REPORT UPDATE

Application No: BR/153/09/

Reason for the Update / Changes

Reason for Update/Changes:

Error in Conclusion Section of Report
The agent has increased the affordable housing offer from £154,150 to £195,000, which equates to an increase of £40,850 not £50,000 as incorrectly stated within the conclusions section of the officers report. It is not considered that this would alter any of the conclusions reached within the officers report.

Amendment to the wording of condition 16.
Condition 16 has been amended to read as follows:-
The access from the site to the public highway shall be designed, laid out and constructed with kerb radii, visibility splays and sight lines in all respects in accordance with plans and details to be submitted to and approved by the Local Planning Authority and the access hereby permitted shall be implemented in accordance with these details prior to the first occupation of any unit on this site.
Reason: In the interests of road safety in accordance with policy GEN7 of the Arun District Local Plan.

Amendment to the wording of condition 22.
Condition 22 has been amended to read as follows:-
A new 2 metre wide footpath shall be provided on the north side of Hawthorn Road on highway land up to the boundary with 252 Hawthorn Road before the development hereby approved is occupied.
Reason: In the interests of highway safety in accordance with PPG13.

S106 Unilateral Undertaking
A signed S106 Unilateral Undertaking has been submitted in relation to the application.

Officers Comment:
If Members are minded to approve the application, the S106 Unilateral Undertaking will be completed after the Development Control Committee Meeting.

Note: The changes to conditions 16 and 22 are attached on the amended replacement recommendation sheet.

Notes: Changes to recommendations, conditions and / or reasons for refusal will always be reflected in the recommendation section of the attached Officer's Report/Recommendation.

BR/153/09/

PLANNING APPLICATION REPORT

REF NO: **BR/153/09/**

LOCATION: 262 Hawthorn Road
Aldwick
Bognor Regis

PROPOSAL: Application for variation of condition 17 and removal/variation of condition 23 imposed upon application BR/60/08/ for erection of 36 Sheltered Apartments (Category II), House Managers accomodation, communal facilities and car parking

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION

This application seeks to vary condition 17 and remove/ vary condition 23, which were imposed upon planning application ref: BR/60/08/.

Planning application ref: BR/60/08/ sought planning permission for the 'Demolition of existing dwelling & erection of 36 Category 2 sheltered apartments, communal facilities & car parking (Resubmission of BR/388/06)'. The application was approved conditionally, subject to a S106 on 6th May 2008.

These conditions read as follows:-

Condition 17:
The access from the site to the public highway shall be designed, laid out and constructed with kerb radii, visibility splays and sight lines in all respects in accordance with plans and details to be submitted to and approved by the Local Planning Authority before any other operation or use authorised by this permission is commenced.
Reason: In the interests of road safety in accordance with policies DEV1, NE17 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

Condition 23:
A new 2 metre wide footpath shall be provided on the north side of Hawthorn Road linking to the existing path before any other development is commenced.
Reason: In the interests of highway safety in accordance with policy NE17 of the West Sussex Structure Plan.

Attached to this planning permission was a S106 agreement, which included a £500,000 contribution towards Affordable Housing.

	The variation of condition 17 relates to some minor alterations to the appeal works to the access for the proposed development. Condition 23 relates to a footpath to be provided on the north side of Hawthorn Road and requires amending due to a dispute over whether all the land is designated public highway.
SITE AREA	0.52 hectares.
RESIDENTIAL DEVELOPMENT DEN	69 dwellings per hectare.
TOPOGRAPHY	Predominantly flat.
TREES	A considerable number of mature trees mainly around the boundary of the site.
BOUNDARY TREATMENT	Green painted hoardings surround the site.
SITE CHARACTERISTICS	Two storey detached house, located within a large garden. White painted smooth render on a brick plinth. Red plain tile roof.
CHARACTER OF LOCALITY	Predominately residential area. Properties are of a mixed style and design. The Martlets Public House is situated on the corner of Hawthorn Road and West Meads Drive.

RELEVANT SITE HISTORY

BR/369/05/	Outline application to form new access way to Hawthorn Road. Demolish number 252 and build 5no. 3 bedroom houses within the curtilage of numbers 262 & 252	Approve Cond 18-01-2006
BR/388/06/	Erection of 44 sheltered apartments, house managers accommodation, communal facilities, car parking and landscaping	Refused 22-02-2007 **Appeal: Dismissed 22 08 2007**
BR/165/06/	Erection of 44 sheltered apartments (category 2), house managers accommodation, communal facilities, car parking and landscaping	Refused 24-05-2007
BR/60/08/	Demolition of existing dwelling & erection of 36 Category 2 sheltered apartments, communal facilities & car parking (Resubmission of BR/388/06)	Approved Cond + S106 06-05-2008
BR/229/08/	Application for the variation of condition 23 of approved application BR/60/08/ for the provision of a new footpath to north side of Hawthorn Road.	Approved Cond + S106 13-10-2008

BR/118/09/CLP	Application for Lawful Development Certificate for a Proposed use - The construction & occupation of 36 sheltered apartments & associated facilities approved under BR/60/08 on 5th May without compliance with Condition 23 would be lawful (on the basis that Condition 23 is unlawful & unenforceable)	PP Not Required 27-07-2009

REPRESENTATIONS

Representations received:

Bognor Regis Town Council

No Objection.

Comments on Representations received:

Noted.

CONSULTATIONS

WSCC Local Development Divis.

Consultations responses received:

County Highways

Condition 17 related to the access being provided prior to development commencing. Satisfied for this condition to be varied to require the access to be provided prior to first occupation. The covering letter from the Applicant's sought different wording that didn't clearly state by when the access was to be provided. It's important that a trigger is included within the condition for the delivery of the access whether it be prior to commencement or more likely prior to first occupation. I would have no preference which is picked as the site already has an access point to facilitate construction traffic access.

Condition 23 relates to the provision of the 2 metre footway. I note the comments I made regarding a certificate of lawful development without compliance with condition 23, and that the certificate was subsequently granted.

Having read through the Applicants supporting letter and the Safety Audit, and in regards of condition 23, I advise as follows. Agree that the original condition 23 requiring a foot way to be provided along the entire site frontage to connect with the existing footway to the north could not be provided. The submitted Safety Audit has also raised issues with the possible installation of a pedestrian refuge with the carriageway width a restricting factor in its possible positioning, hence a refuge would not be sought. However, as per the conclusion within the supporting letter, and the willingness of the Applicant in these regards, that a footway could be provided across the sites frontage within the land known to the public highway and under the control of the applicant, and up to the boundary of no. 252 with dropped pedestrian crossing points provided across Hawthorn Road. In the event that the disputed area of land is found to be public highway, this would allow the Highway Authority at a future point to provide a short connecting length to create a continuous footway on the western side of Hawthorn Road. Would therefore see it as reasonable to seek that the condition (no. 23) is therefore varied as set out in the Applicants letter and is not removed in its entirety.

Comments on Consultation responses:

County Highways comments are noted.

POLICY CONTEXT

Designation applicable to site:

Within Built up Area Boundary
Tree Preservation Order
Class B Road
Class C Road

DEVELOPMENT PLAN POLICIES

South East Plan:	SEPSP3	Urban Focus and Urban Renaissance
	SEPCC1	Sustainable Development
	SEPCC4	Sustainable Design and Construction
	SEPCC7	Infrastructure and Implementation
	SEPH1	Regional Housing Provision 2006-2026
	SEPH2	Managing the Delivery of the Regional Housing Provision
	SEPH3	Affordable Housing
	SEPH4	Type and Size of New Housing
	SEPH5	Housing Design and Density
	SEPT4	Parking
Arun District Local Plan:	GEN2	Built-up Area Boundary
	GEN8	Development and the Provision of Infrastructure
	GEN12	Parking in New Development
	GEN23	The Water Environment
	GEN29	Nature and Conservation Across the District
	DEV17	Affordable Housing
	DEV21	Accommodation Restricted to Occupation by the Elderly

PLANNING POLICY GUIDANCE

PPS1	Delivering Sustainable Development
PPS3	Housing
PPS9	Biodiversity & Geological Conservation
PPG13	Transport
PPG16	Archaeology and Planning

POLICY COMMENTARY

The above policies combine to describe the criteria against which the application will be assessed particularly with regard to visual and residential amenity.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to comply with relevant Development Plan policies in that it would have no materially adverse effect on highway safety.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

This application which is a Section 73 application seeks to vary condition 17 and remove/ vary condition 23, which were imposed upon planning application ref: BR/60/08/.

Planning application ref: BR/60/08/ sought planning permission for the 'Demolition of existing dwelling & erection of 36 Category 2 sheltered apartments, communal facilities & car parking (Resubmission of BR/388/06)'. The application was approved conditionally, subject to a S106 on 6th May 2008.

Condition 17 and 23 read as follows:-

Condition 17:
The access from the site to the public highway shall be designed, laid out and constructed with kerb radii, visibility splays and sight lines in all respects in accordance with plans and details to be submitted to and approved by the Local Planning Authority before any other operation or use authorised by this permission is commenced.
Reason: In the interests of road safety in accordance with policies DEV1, NE17 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

Condition 23:
A new 2 metre wide footpath shall be provided on the north side of Hawthorn Road linking to the existing path before any other development is commenced.
Reason: In the interests of highway safety in accordance with policy NE17 of the West Sussex Structure Plan.

County Highways has been consulted in relation to the variation of condition 17 and are satisfied for this condition to be varied to require the access to be provided prior to first occupation. However, it is noted that the covering letter submitted by the Applicant's sought different wording that didn't clearly state by when the access was to be provided. It's important that a trigger is included within the condition for the delivery of the access whether it be prior to commencement or more likely prior to first occupation. County Highways have no preference which is picked as the site already has an access point to facilitate construction traffic access. A condition will therefore be added to any permission accordingly.

With regard to condition 23, it is noted that a certificate of lawful development have been granted, which acknowledges that this condition is not lawful or enforceable. County Highways has also been consulted in relation to this matter and note that a foot way to be provided along the entire site frontage to connect with the existing footway to the north could not be provided. It is noted that the applicants are willing to vary the condition and that a footway could be provided across the sites frontage within the land known to be public highway and under the control of the applicant, and up to the boundary of no. 252 with dropped pedestrian crossing points provided across Hawthorn Road. In the event that the disputed area of land is found to be public highway, this would allow the Highway Authority at a future point to provide a short connecting length to create a continuous footway on the western side of Hawthorn Road. It is therefore considered that it would be appropriate to vary the condition, as set out in the applicants letter.

If officers are minded to recommend approval of this application, the entire original permission, including all conditions and a S106 agreement will need to be repeated.

It is therefore considered that the variation of conditions 17 and 23, originally attached to planning permission ref: BR/60/08/ would be acceptable and would not have a materially adverse effect on highway safety.

Attached to the original planning permission was a S106 agreement, which included a £500,000 contribution towards affordable housing. As part of this application, the agent originally argued that the 36 sheltered housing scheme was unviable, given the current economic climate with any S106 contribution beyond £4,776 towards Libraries and £500 towards Fire Services. After consultation with the Councils consultants, Cushman & Wakefield, and negotiation between all parties on this matter, the agent offered to settle with payment of £154,150 towards affordable housing.

In summation, the significant elements of the agents original development appraisal, with which the Councils Consultant's originally disagreed were the low assumptions on sales values, high profit and long sales periods (and resulting high finance costs). The current status of these issues have been outlined below, for clarification purposes.

Sales Values:
The agent has now provided a detailed analysis of the market evidence and revised upwards their assumptions on sales values. Officers are now satisfied that this is reasonable.

Profit:
The guidance from the HCA was revised in July 2009 and now states that 'a typical allowance would currently be 20% on profit sales'. In these circumstances, Officers accept the profit level of 17.5% put forward by the applicants.

Sales period:
The agent originally assumed a 1 unit per month rate of sales. Officers considered that 2 units were a more realistic rate. The agents figure was subsequently revised to 1.5 units and Officers accept that this is a reasonable compromise.

The outcome of this process is that Officers of the Council, in consultation with Cushman & Wakefield are of the opinion that the assumptions within the appraisal, supporting the submitted viability argument are now reasonable.

Following further discussion between the case officer and agent of the application, the client has agreed that they are willing to increase the affordable housing offer by a further £50,000 which equates to its likely appeal costs (in the event the application was refused and the application was taken to appeal). This would therefore result in a contribution of £195,000 towards affordable housing on the site. This works out at 39% of the original sum.

Members should note that in effect, the inclusion of the appeal costs means that the applicant will effectively reduce its profit below 17.5%. The agent has made it clear however that this is very much a final offer on grounds of commercial expediency and if this matter was to proceed to appeal, as part of any viability review, empty property charges would be included and profit levels in excess of 22% are being advocated by RICS surveyors due to the risk profile of sheltered

schemes compared to conventional housing and flatted schemes.

Members are reminded of a similar situation, which took place in relation to planning applications ref: BR/155/07/ & BR/136/08/ for the 'Demolition of 3 existing properties and the erection of sheltered accommodation for the elderly comprising 24 apartments, communal facilities, access, parking and landscaped amenity space' at Site of Beaumaris, Stapleford and Holyrood, Sylan Way, Bognor Regis. At this time, the appellants stated that the scheme would be unviable if there was a contribution needed for affordable housing as required by Council policy. The contribution required by policy at the time would have been 4.8 (5) units. However, it was considered that a family unit would be more appropriate than sheltered flats for the elderly and that a contribution of £115,000 was sought. The District Council employed Consultants to advise on the matter and following lengthily discussion with regard to the affordable housing provision, a contribution of £30,000 towards affordable housing was accepted. This worked out at 26% of what had originally been requested. Counsel's opinion was also sought on this matter.

Government guidance indicates that Local Planning Authorities should take into account the financial viability of proposals.

This is a Section 73 application and the Courts have indicated that when issuing a fresh permission it is highly desirable that all conditions should be reinstated. However, it should be noted that the statutory time limit is not included in this decision and the original time limit shall still apply in accordance with Section 73 (5)(inserted by the Planning and Compulsory Purchase Act 2004).

Taking all of the above into consideration, it is therefore recommended that the application is approved, subject to the conditions set out below and a s106 agreement including a reduced contribution towards affordable housing of £195,000 and contributions towards Libraries and Fire.

RECOMMENDATION

APPROVE CONDITIONALLY SUBJECT TO A SECTION 106 AGREEMENT

1 No development shall be carried out unless and until a schedule of materials and finishes and samples of such materials and finishes to be used for external walls and roofs of the proposed building have been submitted to and approved by the Local Planning Authority and the materials so approved shall be used in the construction of the building.

Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality in accordance with policy GEN7 of the Arun District Local Plan.

2 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of amenity and of the environment of the development in

accordance with policy GEN7 of the Arun District Local Plan.

3 No development, including site works of any description, shall take place on the site unless and until all the existing trees/bushes/hedges to be retained on the site have been protected by a fence to be approved by the Local Planning Authority erected around each tree or group of vegetation at a radius from the bole or boles of 5 metres or such distance as may be agreed in writing by the Local Planning Authority. Within the areas so fenced off the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant machinery or surplus soil shall be placed or stored thereon without the prior written approval of the Local Planning Authority. If any trenches for services are required in the fenced off areas they shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Reason: To ensure the retention and maintenance of trees and vegetation which is an important feature of the area in accordance with policy GEN7 of the Arun District Local Plan.

4 The burning of materials obtained by site clearance or from any other source shall not take place within 6 metres of the furthest extent of the canopy of any tree or group of trees to be retained on the site or on land adjoining.

Reason: To protect trees and vegetation from fire damage in the interests of the visual amenities of the locality in accordance with policy GEN7 of the Arun District Local Plan.

5 Details of a scheme for the retention and management of the amphibians found on the site shall be submitted to and approved in writing by the local planning authority before the development hereby permitted is ccommenced.

Reason: In the interests of nature conservation in accordance with policy GEN29 of the Arun District Local Plan.

6 The windows on the end elevation of the building facing 10 Newhall Close shall at all times be glazed with obscured glass.

Reason: To protect the amenities and privacy of the adjoining property in accordance with policy GEN7 of the Arun District Local Plan.

7 With the exception of the manager's accomodation, the Category II sheltered flats hereby permitted shall only be occupied by persons of 60 years of age or over, together with a spouse of 55 years or older, if applicable, or other persons as may be agreed in writing by the local planning authority.

Reason: A reduced car parking standard has been used in accordance with policy GEN12 of the Arun District Local Plan.

8 No development shall be carried out until all buildings and structures existing on the application site at the date of this permission have been demolished, the debris removed from the site and the site cleared.

Reason: In the interests of the amenities of the locality in accordance with policy GEN7 of the Arun District Local Plan.

9 Details of any external lighting/floodlighting shall be submitted to and approved in writing by the Local Planning Authority before the use hereby permitted commences and the building is occupied. Development shall be carried out in accordance with the approved details.

Reason: to safeguard the amenities of nearby residents in accordance with policy GEN7, GEN33 of the Arun District Local Plan.

10 Details of the materials to be used for the access drive and car parking area shall be submitted to and approved in writing before the development hereby permitted is commenced.

Reason: In the interests of visual amenity in accordance with policy GEN7 of the Arun District Local Plan.

11 No development shall take place until details of screen walls, railings and/or fences have been submitted to and approved by the Local Planning Authority and no dwellings shall be occupied until such screen walls, railings and/or fences associated with them have been erected.

Reason: In the interests of amenity in accordance with policy GEN7 of the Arun District Local Plan.

12 An archaeological investigation of the site shall be carried out at the expense of the developer in accordance with a specification to be submitted to and agreed by the Local Planning Authority in writing before the commencement of any building works.

Reason: The site is of archaeological significance and it is important that it is recorded by excavation before it is destroyed by development in accordace with policy AREA 17 of the Arun District Local Plan.

13 The development shall not proceed until details of the proposed surface water means of disposal have been submitted and approved by the Local Planning Authority. Surface water drainage shall be carried out in accordance with such details and in conjunction with associated building works.

Reason: To ensure that the proposed development is satisfactorily drained in accordance with policy GEN7, GEN9 of the Arun District Local Plan.

14 Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies to BS 5911:1982 with an overall capacity compatible with the site being drained.

Reason: In order to prevent pollution of the water environment in accordance with policy GEN7 of the Arun District Local Plan.

15 No material shall be deposited at the site other than clean, uncontaminated naturally occurring excavated material, brick and concrete rubble only.

Reason: To prevent pollution of controlled waters in accordance with policy GEN7 of the Arun District Local Plan.

16 The access from the site to the public highway shall be designed, laid out and constructed with kerb radii, visibility splays and sight lines in all respects in accordance with plans and details to be submitted to and approved by the Local Planning Authority and the access hereby permitted shall be implemented in accordance with these details prior to the first occupation of any unit on this site.

Reason: In the interests of road safety in accordance with policy GEN7 of the Arun District Local Plan.

17 The building hereby permitted shall not be occupied until provision has been made within the site in accordance with details to be submitted to and approved by the Local Planning Authority to prevent surface water discharging onto the public highway.

Reason: In the interests of road safety and to accord with approved policy in accordance with policy GEN7 of the Arun District Local Plan.

18 The building hereby permitted shall not be occupied until all accesses to the site other than hereby approved have been stopped up permanently and obliterated.

Reason: In the interests of road safety in accordance with policy GEN7 of the Arun District Local Plan.

19 No work shall be carried out on the site unless and until an effective vehicle wheel-cleaning facility has been installed in accordance with details approved by the Local Planning Authority and such facility shall be retained in working order and operated throughout the period of work on the site to ensure that vehicles do not leave the site carrying earth and mud on their wheels in a quantity which causes a nuisance or hazard on the road system in the locality.

Reason: In the interests of road safety in accordance with policy GEN7 of the Arun District Local Plan.

20 The building shall not be occupied until the parking spaces and turning facilities shown on the submitted plans have been provided and constructed. The areas of land so provided shall not thereafter be used for any purpose other than the parking and turning of vehicles.

Reason: To ensure that adequate and satisfactory provision is made for the accommodation of vehicles clear of the highways in accordance with policy GEN7 of the Arun District Local Plan.

21 The use of any land for car parking shall not be commenced until it has been laid out, surfaced and drained and such land shall not be used thereafter for any purpose other than the parking of vehicles.

Reason: To ensure a satisfactory standard of development in accordance with policy GEN7 of the Arun District Local Plan.

22 A new 2 metre wide footpath shall be provided on the north side of Hawthorn Road on highway land up to the boundary with 252 Hawthorn Road before the development hereby approved is occupied.

Reason: In the interests of highway safety in accordance with PPG13.

23 INFORMATIVE:

The West Sussex County Council as Highway Authority would remind applicants that they may have to provide on the application site, areas for the parking and unloading of vehicles, temporary contractor buildings, plant and stacks of materials as the use of the adjacent public highway for these purposes may not be acceptable under the terms of the Highways Act.

24 Informative:

A formal application for connection to the public sewerage system is required in order to service this development. To initiate a sewer capacity check to identify the appropriate connection point for the development , please contact Atkins Ltd, Anglo St James House, 39A Southgate Street, Winchester, SO239EH (tel 01962 858688) or www.southernwater.co.uk

25 INFORMATIVE:

The applicant is advised that attached to this permission is a S106 agreement.

26 INFORMATIVE:

It should be noted that the time limit of planning permission ref: BR/60/08/ still applies to this permission, in accordance with Section 73 of the Town and Country Planning Act 1990.

27 INFORMATIVE: Summary of Reasons for Grant Article 22(1) General Development Procedure Order 1995

SUMMARY
This planning permission is granted because it complies with the policies listed below in that the development would have no materially adverse effect on higway safety and there are no material considerations to indicate otherwise.

RELEVANT POLICIES

SOUTH EAST PLAN: SP3, CC1, CC4, CC7, H1, H2, H3, H4, H5, T4.

LOCAL PLAN: GEN2, GEN8, GEN12, GEN23, GEN29, DEV17, DEV21.

NATIONAL POLICIES: PPS1, PPS3, PPS9, PPG13, PPG16.

This is only a summary of reasons for granting to comply with Article 22 and full reasons appear in the Officer report.