Recommendation Report for Removal of a Planning Obligation

REF NO: **BR/211/15/PO**

LOCATION: 43 Rock Gardens
Bognor Regis

PROPOSAL: Application to discharge planning obligation dated 19/4/84 reference BR/1078/83, restricting the occupation of the flat to persons of 65 years of age or over.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above. The proposal relates to 43 Rock Gardens only and seeks to discharge the planning obligation relating to part of the Rock Gardens development granted permission under BR/1078/83 so that flat 66 is exempt from being occupied solely by persons over 65 years of age.
RESIDENTIAL DEVELOPMENT DENSITY (NET)	This is a high density development of flats.
TOPOGRAPHY	Predominantly flat.
TREES	None affected by the proposed development.
BOUNDARY TREATMENT	Rear boundary defined by dwarf wall. Front boundary has 1 metre high metal gate and the remainder of frontage is mainly 2m high wall.
SITE CHARACTERISTICS	A block of 67 no. flats up to 6 storeys high. This development has limited parking provision and relatively narrow access ways/circulation.
CHARACTER OF LOCALITY	A predominantly residential area on the edge of the Aldwick Road Conservation Area. The rear elevation overlooks the sea.

RELEVANT SITE HISTORY

BR/144/09/PO	Application to discharge planning obligation dated 19/4/84 reference BR/1078/83, restricting the occupation of the flat to persons of 65 years of age or over.	Refused 05-08-2009
BR/1078/83	Erection of 67 no flats with ancillary car parking garages and access road	ApproveConditionally 19-04-1984

In addition to the refusal of permission under BR/144/09/PO to discharge the occupancy

restriction in respect of flat 66, there has also been a previous refusal under BR/289/06/PO for flat 15 and this refusal was on similar grounds.

The refusal reason in respect of BR/144/09/PO was as follows:

The whole development was assessed and granted planning permission on the basis that it would be partly occupied by persons of retirement age. To remove this restriction in a piecemeal fashion flat by flat to a younger age restriction would result in development that did not make adequate provision for on-site facilities such as parking and amenity areas needed to serve any additional family unit accommodation. The removal of the restriction would also lead to conditions of noise and general disturbance that would adversely affect the residential amenities of the remaining elderly occupiers who had purchased the accommodation specifically to provide themselves with a particular environment. The proposal would reduce the type of housing that is required in Arun District to meet the population profile of the area which has a high proportion of persons over the age of 60 years. The proposal is therefore contrary to policies GEN7 & DEV22 of the Arun District Local Plan.

REPRESENTATIONS

Representations received:

Bognor Regis Town Council

Bognor Regis Town Council objects on the grounds that development would change the tenure of the area and the application is unneighbourly. Owners of age restricted properties have purchased these properties due to the restriction and on the belief that they could enjoy a peaceful retirement.

One representation has been received objecting on the following grounds:

The original conditions of sale document stated "All of the one bedroom flats are classified as retirement flats and are only to be occupied by persons of retirement age", I still have it. There are an increasing number of over 65s in the population and they need appropriate accommodation to be available to free up family homes for families. All the one bedroom flats in Rock Gardens are ideal for such occupation. They are convenient for local shops and other facilities. Such accommodation need to be preserved for the over 65s.

Comments on Representations received:

Noted.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

The Councils Solicitor has commented:

The Determination in this Case.
It may be that County Highways no longer back this age restriction but it may still serve a useful purpose if there is evidence to show (judged by you as a planner) that there is another planning ground for keeping the age restriction eg lack of amenity open space, adverse affect on amenity from mixed age groups, discharge or variation will mean a loss of affordable housing for a sector of the population.

I suggest in this case that there are useful purposes, and so grounds to refuse, identified in the evidence and past decisions namely:-

[a] previous applications in 2006 and 2009 refs BR/289/06 and BR/144/09 were refused on the basis that there was a demand and a need for such age restricted accommodation locally,

[b] there was policy support for refusal -GEN 7 and DEV 22 Local Plan for ADC

[c] there will be a potential parking impact identified by WSCC Highways in the 2009 application if not the 2006 application

[d] there may be potential noise and disturbance and harm to residential amenity so you have planning grounds to refuse.

The applicants make points which are answerable and do not override the above reasons to refuse:

[a] the flat on the 5th floor is unsuitable for over 65s -ANSWER - there is a lift which will need to be maintained under the landlords obligations

[b] There is confusion over whether this flat No n43 is age restricted ANSWER - the lease should make this clear. The applicants own evidence suggests it is age restricted by the lease see letter from Coastal Management Ltd to Meek dated 22 September. This letter suggests No 43 should not be restricted , but then refers to "errors" which may have caused it to be on one interpretation !

Finally, you will need to use your planning judgement to answer the question ---"between 2009 and now have there been any changes ?" I know of none.

Comments on Consultation responses:

WSCC Highways was not consulted since it no longer comments on applications such as this.

Solicitors comments noted, see Conclusions section of this report.

POLICY CONTEXT

Designation applicable to site:
Within Built Up Area
Class B Road

DEVELOPMENT PLAN POLICIES

Arun District Local Plan 2003:	GEN2	Built-up Area Boundary
	GEN7	The Form of New Development
	DEV21	Accommodation Restricted to Occupation by the Elderly
	DEV22	Relaxation of Restrictions (Occupation by the Elderly)
Publication Version of the Local Plan (October 2014):		SD SP1 Sustainable Development SD SP2 Built-Up Area Boundary D DM1 Aspects of Form and Design Quality T SP1 Transport and Development

PLANNING POLICY GUIDANCE

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun District Local Plan 2003, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

Arun District Council's Development Plans:

Paragraph 215 of the NPPF ensures that specific policies in Arun District Local Plan 2003 can carry weight. The weight afforded to the policies with Local Plan policies can be assessed according to their level of consistency of the various policies with the National Planning Policy Framework.

Paragraph 216 of the NPPF confirms that weight can be given to policies in emerging plans from the day of publication. The Council resolved that the policies and maps in the Publication Version of the Local Plan be used in the determination of this planning application. Following 'publication' of the Local Plan a formal public consultation, examination and adoption process takes place.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The statement of representations procedure and statement of fact produced by the Council under regulation 19 explains that the consultation will take place on 30th October 2014 for six weeks.

The Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area and policies within them will be considered in determining planning applications. Made NDP policies will be considered alongside other development plan documents including Arun District Council's Local Plan. Whilst an NDP is under preparation it will afford little weight in the determination of planning applications. Its status will however gain more weight as a material consideration the closer it is towards it being made. Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation(Reg.14).

Made Plans in Arun District Council's Local Planning Authority Area are: Angmering; Arundel; Barnham & Eastergate; Bersted; Bognor Regis; East Preston; Felpham; Ferring; Kingston; Littlehampton; Rustington; and Yapton.

Bognor Reis had a made Neighbourhood Development Plan, but this contains no policies of relevance to this particular proposal.

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 not comply with relevant Development Plan policies in that it would have a materially adverse effect on residential amenity, the adequacy of parking provision, highway safety and the provision of the type of housing that is required in Arun District to meet the population profile of the area which has a high proportion of persons over the age of 65 years of age.

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

Introductory Observations.
There have been no material changes to the physical circumstances of the site since the last refusal to discharge to obligation. The Development Plan position has not changed in respect of the Adopted Arun Local Plan 2003, policies referred to in the previous 2009 refusal are now Saved Policies and remain in force. The Councils Emerging Local Plan carries only limited weight since it examination has not been completed. The Neighbourhood Plan contains no policies of relevance.

Permission Reference BR/1078/83
This application was subject to a s52 agreement restricting the occupation of 21 flats to those aged 65 or above only. This enabled permission to be granted for a development that proposed an under provision of vehicle parking and amenity space. The current proposal to lift the age restriction for one of the chosen units therefore conflicts with what was approved in 1984 and what occupiers of other restricted units have since believed the development to provide.

Serving a "Useful Purpose"
Whilst the original Agreement was made under S52(A) of the Town and Country Planning Act 1971 as amended , this application can be broadly assessed under the "useful purpose" tests of S106(A) and the CIL Regulations which are more recent.

In parking terms the Highway Authority have previously stated that notwithstanding that the site has good access to services and amenities the original under provision of parking space will mean that this proposal will have an impact on the parking demand in local roads. Therefore in their opinion there was some useful purpose in retaining the age restriction of occupation in the case of this proposal.

In addition, this development was permitted with limited parking provision specifically as occupancy was restricted to persons less likely to utilise a car (or more than 1 car). Unrestricted occupancy would be likely to give rise to additional parking demand which cannot be met and therefore potential obstruction of parking spaces or access ways and consequently potential danger to pedestrians within the development. There is also a consequent likelihood of unmet demand for parking leading to parking on nearby roads which would also be likely to result in danger to highway users generally. Therefore there is a useful purpose in retaining the age restriction of occupation in the case of this proposal.

Furthermore, the obligation serves a useful purpose in terms of amenity space as there would be

an inadequate ammount of amenity space to serve a residential development that was not age restricted and was for example open to family occupation. Also a precedent would be set for other age restricted units to be lifted in this development aswell as others and thereby have a detrimental impact on the character of the area in conflict with policy GEN7 of the Arun District Local Plan (ADLP).

The CIL Regulations state that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

(a)necessary to make the development acceptable in planning terms;.
(b)directly related to the development; and.
(c)fairly and reasonably related in scale and kind to the development.

The maintaining of the obligation would meet the above tests.

Neighbouring Residential Amenity
If this application was to be approved it is considered that the amenity of the units that remain restricted by the S52 Agreement would be unduly harmed by general noise and disturbance through a possible preponderance of say family occupation and therefore in conflict with policy DEV22 of the ADLP.

Housing Stock
The population of Bognor Regis comprises a significant amount of older people of state pensionable age in demand for housing to meet their needs. Therefore the provision of flats designed and restricted specifically to meet their needs is considered justified and needed. If age restrictions on existing flats become modified or discharged it would lead to an inadequate supply of housing stock across the District of Arun. It is therefore considered that the age restriction should be kept in place.

Conclusion
Taking all the above factors into account it is considered that the obligation still serves a "useful purpose". Approval would mean that there would be a prejudicial impact on parking demand within the site and on local roads, there would be an inadequate level of amenity space and there would be undue harm on the residential environment of those units that remain unrestricted. This is in addition to detrimentally altering the character of certain areas of the Distict where there are age restricted units as well as detrimentally altering the housing supply of housing for older residents in the Distict.

The application is therefore in conflict with policy GEN7 and DEV22 of the ADLP and it is therefore recommended that the application be refused for the reason set out overleaf.

RECOMMENDATION

1 The whole development was assessed and granted planning permission on the basis that it would be partly occupied by persons of retirement age. To remove the occupancy restriction for the application flat and allow younger occupancy would result in development that does not make adequate provision for on-site facilities such as parking and amenity areas needed to serve an additional unit of family accomodation. The

removal of the occupancy restriction would also lead to increased likelihood of unacceptable conditions of noise and general disturbance that would adversely affect the residential amenities of the remaining elderly occupiers. In addition, the removal of the occupancy restriction would be likely to result in increased parking demand which cannot be met within the site and is therefore likely to give rise to obstruction, parking on local roads and danger to highway users and pedestrians. The proposal would also reduce the type of housing that is required in Arun District to meet the population profile of the area which has a high proportion of persons over the age of 65 years of age. The proposal is therefore contrary to policies GEN7 & DEV22 of the Arun District Local Plan.

2 INFORMATIVE:The applicant should note that as the original Legal Agreement is dated pre-1992 any appeal against the refusal of the application has to be to the Lands Tribunal at Prcession House, 55 Ludgate Hill, London EC4M 7JW