

Recommendation Report for Removal of a Planning Obligation

REF NO: FG/71/19/PO

LOCATION: Jenkins Yard
Glenbarrie Way
Ferring

PROPOSAL: Application to modify planning obligation by removing paragraph 8.3 on agreement dated 11/10/2010 (FG/23/10) relating to the installation of play equipment on public open space within the development.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above. The application seeks to remove para 8.3 of the Section 106 Planning Obligation which relates to provision of play equipment on the site. It states: ' on or prior to First Occupation of the Development to install play area equipment to the value of £10,000 (ten thousand pounds) on the public open space within the Development, details of such equipment to be agreed with ADC prior to installation.' The equipment has never been provided. FG/23/10 granted permission for the erection of 39 dwellings on a 1.5ha site comprising a mix of 2 bed (x15), 3 bed (x18) and 4 bed (x6) dwellings with 40% of the units proposed to be affordable. 1,700 sqm of public amenity space was provided.
TOPOGRAPHY	Predominantly flat
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	Fencing/hedging
SITE CHARACTERISTICS	The dwellings approved under planning permission FG/23/10 have been constructed and are occupied.
CHARACTER OF LOCALITY	Predominantly residential characterised mainly by detached and semi detached bungalows

RELEVANT SITE HISTORY

FG/120/13/	Variation of condition 2 (house type amendments) imposed under planning appeal relating to planning application FG/23/10/.	Approve 18-12-13
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FG/23/10/

Thirty nine proposed dwellings (This application is a Departure from the Development Plan).

Refused
26-05-10

Appeal: Allowed+Conditions
01-12-11

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

None

COMMENTS ON REPRESENTATIONS RECEIVED:

None

CONSULTATIONS

Parks and Landscapes

CONSULTATION RESPONSES RECEIVED:

Landscape Officer - No Objection

COMMENTS ON CONSULTATION RESPONSES:

Comments noted

POLICY CONTEXT

Designation applicable to site:
Within Built Up Area Boundary

DEVELOPMENT PLAN POLICIES

[Arun Local Plan 2011 - 2031:](#)

SDSP2	SD SP2 Built-up Area Boundary
DDM1	D DM1 Aspects of form and design quality
INFSP1	INF SP1 Infrastructure provision and implementation
OSRDM1	Protection of open space,outdoor sport,comm& rec facilities

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

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.

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 the obligation serves no useful purpose.

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

The above development was originally required as part of the Section 106 Agreement to provide an off-site sum for play - £29,000 plus indexation, together with provision for on-site play facilities to the value of £10,000. Both the sum for off-site provision and a sum for £10,000 were invoiced for - the second incorrectly. It was assumed that the Greenspace Officer was organising an appropriate Deed of Variation with the Developer to allow the money to be kept and spent on nearby play area or a seating area in lieu of the play area but the Deed of Variation has not been forthcoming for many years and for audit purposes a refund has been made. The agent has requested a preference for no provision on site due to the residential make up of the development. Further since drafting of this S106 ADC policy towards play provision has changed in that the provision of small play areas on developments of this scale is no longer sought, the preference is for enhancement of larger scale facilities instead. The proposal would retain the area of open space in accordance with policy OSR DM1 of Arun Local Plan.

The reasons given in the application for submitting the proposed modification refer to the fact that the residents do not require play equipment to the open space and the site is located on land owned by Glenbarrie Way Residents Management Company Ltd.

Prior to submission of the application it was considered that it would not be expedient to pursue the outstanding obligation after all this time and given the above circumstances. It was concluded that Para 8.3 of the S106 Agreement no longer served a 'useful planning purpose'. The application was invited on this basis. As stated in para 58 of the NPPF - Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control

The application has been submitted to the LPA under Section 106A of the Town and Country Planning Act, 1990, to modify para 8.3 of the the Section 106 Agreement in respect of Jenkins Yard, Glenbarrie Way. The modification would be made and cease to have effect from the date of the Deed of Modification.

Summary:

For the reasons set out above it is recommended that the modification to the original Section 106 Agreement under planning permission FG/23/10 by removing para 8.3 and therefore the requirement for the provision of play equipment on the open space should be approved.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE