

Recommendation Report for Removal of a Planning Obligation

REF NO: LU/205/21/PO

LOCATION: Land at Courtwick Lane
Littlehampton

PROPOSAL: Application to amend the mortgagee exclusion clause which covers affordable housing restrictions under Clause 6 and Clause 7 of the Section 106 dated 22/3/12 (as amended by deed of variation dated 13/11/19/ following the grant of outline planning permission LU/355/10)

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	This planning obligation (PO) application is to modify the Section 106 Agreement imposed on LU/355/10 amending the Mortgagee in Possession Clause. A Deed of Variation has been prepared.
SITE AREA	The overall development at Kingley Gate comprises 33.6 hectares of land.
TOPOGRAPHY	Predominantly flat. However, the land falls away by a significant degree to the western boundary of the site (adjacent to the River Arun) by approximately 4.0 metres.
TREES	None of any significance affected by this application to modify the Section 106 Agreement.
BOUNDARY TREATMENT	The site boundaries are defined as follows: - The south eastern boundary is formed by an industrial building occupied by the Fittleworth Group. - The northern boundary by a hedgerow, containing some trees and a notable tree group south of the farm, separating the site from Brook Barn Farm and adjacent small fields and the West Coastway railway line and Littlehampton branch line. - A belt of newly established planting on the north eastern boundary of the site that forms the boundary with an area of open space provided as part of the adjoining residential development. - Along the southern boundary, a post and rail fence and occasional clumps of scrub along the route of the A259 with residential and employment development to the south, fringed by planting belts. - An overgrown hedgerow along the southern side of Courtwick Lane. - The western edge of the site is defined by a hedgerow beyond which lies a series of fields within the floodplain that extend to the railway line south of Littlehampton railway junction.
SITE CHARACTERISTICS	The entire development site, known as Kingley Gate, is an

urban extension to Littlehampton, located on the north-western edge of the town. Kingley Gate is predominantly residential; it has been developed by a consortium of house builders comprising Barratt Homes and Bellway; and it has virtually been completed.

Kingley Gate comprises 600 dwellings, varying in style and design and ranging between 2 and 3 storeys in height; a mixed use (commercial) building with 5 flats over, together with a separate changing facilities building, and areas of public open space, including a NEAP, a LEAP, LAPs and formally laid out sports pitches.

Kingley Gate also includes 4,000 square metres of Class B1 floorspace (on approximately 1 hectare of land) comprising a building occupied by Fittleworth Medical, in an area located adjacent to the A259 and accessed off the signalised junction on the A259, which serves the whole development.

Kingley Gate is approximately 1.75km from Littlehampton town centre and 1km from the existing local centre at Wick.

CHARACTER OF LOCALITY

To the north of the application site is Brook Barn Farm, an independently farmed agricultural unit. Beyond this is the railway line, beyond which is countryside.

Immediately to the east of the site is Court Wick Park and the adjoining Court Wick Park Stables (known locally as the Coach House), both of which are Grade II listed. This group of buildings is partially enclosed by significant groups of tall mature trees. Other buildings in this location include Numbers 4/5 Courtwick Park Cottages, a pair of two storey semi-detached houses.

Further to the east, beyond Courtwick Park, is a relatively modern housing development which follows a typical medium density pattern of development accessed by a low speed road network of cul-de-sacs. To the south of this, and separated from the application site by an area of undeveloped land (a former nursery site), is the Martello Enterprise Centre, an established employment/business park.

To the west of the site is an area of farmland beyond which is the railway and then the River Arun.

The application site's southern boundary is formed by the A259. A landscaped embankment rises to the south of the A259, beyond which is the large residential area of Wick, which comprises a mix of 2 and 3 storey houses and flats arranged around a loose grid of small parking courts and open spaces. To the west of the Wick residential area is the Lineside Industrial Estate, which is accessed from the A259

via Eldon Way.

The southern edge of the town of Arundel is located 2.5km north of the application site.

RELEVANT SITE HISTORY

lu/24/17/pl	Demolition of No 6 & No 7 Courtwick Park Cottages & associated outbuildings & erection of 8 No. dwellings with associated car parking/ports & access from the formerly approved junction off Benjamin Gray Drive (approved under application LU/355/10 & LU/44/14). This application is a Departure from the Development Plan.	ApproveConditionally 21-03-17
lu/44/14/	Approval of Reserved Matters following Outline Approval LU/355/10 for Phase 2, 185 units for layout, appearance scale and landscape of dwellings. Departure from the Development Plan.	ApproveConditionally 02-07-14
lu/282/17/res	Approval of reserved matters following outline consent LU/355/10 for access, appearance, layout & scale relating to development comprising of up to 162m ² of floorspace for A1/A2/A3 local facilities, with 5 No. residential apartments at first & second floor comprising of 3x2 bed & 2x1 bed with associated parking, bin stores, cycle parking & store. Associated changing facilities which comprise of a single storey building sited towards the open space & playing fields area to the North -East of phase 2	ApproveConditionally 25-01-18
lu/241/18/po	Application for modification of planning obligation dated 22nd March 2012 under planning permission LU/355/10 relating to the Schedule 1 exemption clause & Schedule 2 triggers and locations of LEAP/NEAP	Approve 09-08-19
LU/219/19/PL	Application for the variation of condition 35 on LU/355/10 in relation to Barn Owl tower.	App Cond with S106 18-11-19
lu/355/10/	Outline application with some matters reserved for mixed use development comprising: up to 600 residential dwellings (including up to 30% affordable housing), up to 4,000 sqm of B1a and B1b employment floorspace, up to 235 sqm of A1/A2/A3 local facilities, structural planting	App Cond with S106 23-03-12

and landscaping, multi functional green infrastructure including sports pitches (and associated changing facilities), informal open space, children's play areas, allotments and surface water attenuation, on-site pedestrian/cycle/bus emergency only access from Courtwick Lane and ancillary works. This application is the subject of an Environmental Impact Assessment & a departure from the Development Plan.

A previous application to amend a planning obligation (LU/241/18/PO) was approved and the Section 106 Agreement was modified in accordance with the application by means of a Deed of Variation. Clause 2 and 3 under Schedule 1 were amended to replace the mortgagee in possession clause (i.e. the notice of pending enforcement) with a clause to say, "No provision of this deed shall be enforceable against individual owner occupiers of the dwellings or their mortgagee." The only interested parties conducting local searches would be potential purchasers of properties at Kingley Gate (both first and second time buyers). It was resolved that the notice be removed as it did not affect incoming buyers.

REPRESENTATIONS

LITTLEHAMPTON TOWN COUNCIL:
No objection.

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

ADC HOUSING:
No objection.

COMMENTS ON CONSULTATION RESPONSES:

Noted.

POLICY CONTEXT

Designation applicable to site:
Within the Built-Up Area Boundary in the Arun Local Plan.

DEVELOPMENT PLAN POLICIES

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

AHSP2 AH SP2 Affordable Housing

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's

Waste and Minerals Plans, The South Inshore & South Offshore Marine Plan and Made Neighbourhood Development Plans. The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The Littlehampton Neighbourhood Plan (NP) was made on 5th November 2014. Relevant Littlehampton NP policies have been taken into account and are addressed in the 'Conclusions' section of this report.

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."

Section 70(2) of TCPA provides that:-

- (2) In dealing with an application for planning permission the authority shall have regard to:
- (a) the provisions of the development plan, so far as material to the application, a post-examination draft neighbourhood development plan, so far as material to the application,
 - (b) any local finance considerations, so far as material to the application, and
 - (c) any other material considerations.

The proposal to modify the Section 106 Agreement imposed on LU/355/10 amending the Mortgagee in Possession Clause complies with the affordable housing policy in the Development Plan.

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

PRINCIPLE

The principle of development at Kingley Gate was established when LU/355/10/ was granted on 23rd March 2012 for up to 600 residential dwellings, up to 4,000 square metres of employment floor-space, up to 235 square metres of A1/A2/A3 local facilities, sports pitches and open spaces, together with on-site pedestrian / cycle / bus emergency only access from Courtwick Lane. A Section 106 Agreement accompanied LU/355/10, together with a number of reserved matters approvals.

ENVIRONMENTAL IMPACT

The Environmental Statement submitted in support of LU/355/10/ is considered adequate to assess the significant effects of the development on the environment and has been taken into consideration in this report.

AMENDMENT TO THE SECTION 106 AGREEMENT

This Planning Obligation application proposes to amend the Mortgagee in Possession Clause (Schedule 4) to reflect changes requested by the Registered Provider.

The proposed changes to the S106 Agreement comprise:

Clause 7.3(s) of Schedule 4 to be deleted and replaced with the following wording:

"7.3 (a) a mortgagee of chargee or any receiver (including an administrative receiver) of the AHP appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver provided that the mortgagee or chargee or Receiver has complied with the provisions of paragraph 7.5 below; or"

Paragraph 7.5 of Schedule 4 to be deleted and replaced with the following wording:

"7.5. In order to rely on the provisions of paragraph 7.3(a) of this Schedule 4, such mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses and if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions of this Schedule 4 which provisions shall determine absolutely."

Following on from the amendment to Clause 7, an amendment is also required to Clause 6 of the template nominations agreement so that it refers to the updated Mortgagee Exclusion wording.

THE IMPACT OF THE PROPOSED AMENDMENTS TO THE MORTGAGEE IN POSSESSION CLAUSE:

Mortgagee in Possession (MiP) clauses within Section 106 agreements enable Registered Providers (RP) to provide for circumstances where an RP defaults on loan payments or other loan/mortgage terms and a mortgagee (or other relevant funding party) takes control of the RP's interest in affordable housing units as assets against which their loan is secured. The clauses allow for another RP to purchase the affordable housing units within a specified timeframe known as the 'moratorium period' under a prescribed procedure. This is set out in the S106 Agreement and is a contractual arrangement. Where the units are not purchased within this period, they are released from affordable tenure, enabling the mortgagee to dispose of the units in order to regain some or all of the loan that they have provided.

It is important to stress that the MiP clause does not relate to the initial offer(s) for the affordable housing, it only becomes relevant if there is an issue where the RP, which owns the affordable housing, defaults for any reason. The ADC Housing Officer has yet to encounter an instance where this has occurred.

The MiP states that the Council must be informed and given an opportunity, via the three month period, for either another RP or the Local Authority to make an offer for the affordable units.

In recent years RPs have regularly sought to amend MiP clauses due to the stipulation of lenders. The ADC Housing Officer has raised no objection to the proposed amendment to the MiP clause in the S106 Agreement for Kingley Gate. The proposed amendment to the MiP clause is acceptable as it complies with the CIL Regulations, and it is in accordance with Policy AH SP2 of the Local Plan and the National Planning Policy Framework, 2021.

SUMMARY

The proposal to modify the S106 Agreement imposed on LU/355/10 by amending the MiP Clause is CIL compliant and is acceptable and it complies with Policy AH SP2 of the Local Plan.

RECOMMENDATION

It is recommended that this application is approved and the Section 106 Agreement is modified in accordance with this application by means of a Deed of Variation.

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