

Recommendation Report for Removal of a Planning Obligation

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| REF NO:   | LU/241/18/PO                                                                                                                                                                                               |
| LOCATION: | Land at Courtwick<br>Littlehampton<br>BN17                                                                                                                                                                 |
| PROPOSAL: | 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 |

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| <b>SITE AND SURROUNDINGS</b> |
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| DESCRIPTION OF APPLICATION | This is an application to modify the Section 106 Agreement, dated 22nd March 2012, which accompanied the outline planning permission LU/355/10 for the development of Kingley Gate (formerly known as Courtwick). The proposed modifications to the Section 106 Agreement relate to the Schedule 2 triggers; the locations of the Locally Equipped Areas of Play (the LEAPs); the location of the Neighbourhood Equipped Area of Play (NEAP); and the Schedule 1 mortgagee in possession clause.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 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         | <p>The site boundaries are defined as follows:</p> <ul style="list-style-type: none"> <li>- The south eastern boundary is formed by a new industrial building occupied by the Fittleworth Group.</li> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> <li>- An overgrown hedgerow along the southern side of Courtwick Lane.</li> <li>- The western edge of the site is defined by a hedgerow</li> </ul> |

## SITE CHARACTERISTICS

beyond which lies a series of fields within the floodplain that extend to the railway line south of Littlehampton railway junction.

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 is almost completed.

When completed, Kingley Gate will comprise of 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.

## REPRESENTATIONS

### REPRESENTATIONS RECEIVED:

Littlehampton Town Council  
No objection.

### COMMENTS ON REPRESENTATIONS RECEIVED:

The response from the Parish Council is noted.

## CONSULTATIONS

Parks and Landscapes  
Planning and Housing Strategy

### CONSULTATION RESPONSES RECEIVED:

ADC HOUSING:  
No objection to the proposed amendment in schedule 1.

ADC NEIGHBOURHOOD SERVICES:  
No objection to the proposed modifications to the Section 106 Agreement regarding the play areas (the NEAP and the LEAPs) and to the revised trigger of 31st May 2019.

ADC GREENSPACE:  
No objection.  
ADC Greenspace requested that LEAP 1 be re-specified as a Central Square comprising a landscaped area with raised beds, due to its proximity of the LEAP to residential properties.

### COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

## POLICY CONTEXT

Designation applicable to site:  
Within the Built Up Area Boundary (BUAB) in the Local Plan.

### DEVELOPMENT PLAN POLICIES

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

DDM1      D DM1 Aspects of form and design quality

|        |                                                             |
|--------|-------------------------------------------------------------|
| DSP1   | D SP1 Design                                                |
| INFSP1 | INF SP1 Infrastructure provision and implementation         |
| OSRDM1 | Protection of open space,outdoor sport,comm& rec facilities |
| QESP1  | QE SP1 Quality of the Environment                           |
| SDSP1  | SD SP1 Sustainable Development                              |
| SDSP2  | SD SP2 Built-up Area Boundary                               |

|                                                                |                             |
|----------------------------------------------------------------|-----------------------------|
| <a href="#">Littlehampton Neighbourhood Plan 2014 Policy 2</a> | A Spatial Plan for the Town |
| Littlehampton Neighbourhood Plan 2014 Policy 22                | Design of New Development   |

## 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 policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

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.

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

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."

The proposal is considered to comply with relevant Development Plan policies in that it would provide public open space, a NEAP and allotments for the local community of Kingley Gate within a fixed timeframe.

## 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 outline planning permission (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 the outline planning permission (LU/355/10/); together with a number of reserved matters approvals.

### ENVIRONMENTAL IMPACT

The Environmental Statement submitted in support of the outline planning application for this site (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

The Section 106 Agreement was agreed to deliver various community facilities comprising public open space, allotments, sports pitches, changing facilities and a commercial building. These facilities are provided in accordance with the Council's planning policy for both the new residents of the development and the existing community. The sports pitches, the NEAP and the changing facilities building are being transferred to the District Council; the LEAP and Local Areas of Play (LAPs) are being retained by a management company; and the allotments have already been transferred to Littlehampton Town Council.

The applicant is applying to modify the Section 106 Agreement. The proposed modifications to the Section 106 Agreement are to pick up the following outstanding matters:-

1. Revision of Plan 2 in the Section 106 Agreement to reflect the precise location of the NEAP next to the changing facilities building (covered in reserved matters application LU/47/19/RES); the location of LEAP 2 next to LAP 6 (and re-naming "LEAP 2" as "LEAP"); and the removal of LEAP 1 and its replacement with a "Central Square" next to LAP2.

The NEAP has been laid out on site at Kingley Gate next to the changing facilities building. LEAP 2 has been moved several metres to ensure that it is more than 20 metres from the nearest house. LEAP 1 has been replaced by a raised planting bed, specimen trees and gravel. The proposed revisions to Plan 2 regarding the locations of the NEAP and LEAP 2 (and the re-naming of LEAP 2 as "LEAP"), together with the removal of LEAP 1 with a "Central Square" are all considered to be acceptable both visually and in amenity terms on the ground.

2. Amendment to Schedule 2 Paragraph 12 to "12. The Owner Covenants before 31 May 2019 to:" and removing Schedule 2 paragraph 18, for consistency.

3. Amendment to Schedule 2 Paragraph 17 to adjust the trigger of 500 dwellings for the delivery of the NEAP to a revised trigger of "31st May 2019".

4. Amendment to Schedule 2 Paragraph 11 to adjust trigger (450 dwellings) for the delivery of the

'outstanding items' to a revised trigger of "by 31st May 2019". The allotments have been laid out, the Certificate has been issued and the land has already been transferred to Littlehampton Town Council.

The proposed amendments to the triggers in Schedule 2, paragraphs 11, 12 and 17 (in criteria 2, 3 and 4 above), revising the triggers to "31st May 2019" is considered to be reasonable and acceptable as the number of houses completed on the site has already passed 500 units.

5. A proposed amendment of Plan 2 removing LEAP 1 and replacing it with a "Central Square" which includes a raised landscaped bed (shown on Drawing No. 972/07 Revision E - Central Square, Courtwick Lane, Littlehampton'); and re-naming LEAP 2 as "LEAP". Schedule 2, paragraph 5 should be deleted and replaced with: "The owner covenants to complete the laying out, servicing, planting and ecological enhancement of Central Square in accordance with the Central Square scheme prior to the 31st May, 2019". Schedule 2, paragraph 6 should be deleted.

The Central Square has been constructed and completed. It is considered that the development that has been implemented at Central Square is acceptable visually; and it removes the provision of LEAP 1, which was considered would have been situated far too close to houses as the LEAP would have been constructed within 20 metres of the front elevation of the nearest house.

It is considered that the proposed modifications to the Section 106 Agreement regarding the play areas (the NEAP and the LEAPs) and to the revised trigger of 31st May 2019 are acceptable, as they would ensure that provision is made for public open space and community play facilities and the allotments at Kingley Gate within a reasonable timeframe.

The applicant anticipates being finished on site by August 2019. By 13th February 2019, 591 dwellings were completed and occupied on Kingley Gate. The proposal to amend the triggers in the Section 106 Agreement from 450 or 500 dwellings to the date of 31st May 2019 is therefore considered to be acceptable. It is considered acceptable to agree to the proposed amendments to the Section 106 Agreement including the revisions to the triggers to "31st May 2019".

The provision of the NEAP, the LAPs, a LEAP (formerly LEAP 2) and the "Central Square" in place of LEAP 1, together with the allotments were all completed on site prior to the 31st May 2019 trigger point.

6. Clause 3 Schedule 1 currently states:- "For the avoidance of doubt no individual owner or occupier of the Dwellings or their mortgagee shall be responsible for any financial obligations payable under this Deed or for constructing the Affordable Housing Units or for the carrying out of any Highway Works or for the provision of any Amenity Space or Landscaped Area or for marketing the Employment Land."

The proposal is to amend Clause 2 and 3 under Schedule 1 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 is considered that the request that the notice be removed as it does not affect incoming buyers, is both reasonable, necessary and acceptable.

## SUMMARY

The proposed modifications to the Section 106 Agreement would be in accordance with Policy D DM1 and Policy OSR DM1 of the Arun Local Plan.

Therefore, 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, which has been drafted by

the ADC Legal Services Team. The Schedule 2 triggers were achieved at Kingley Gate by 31st May 2019.

#### **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