

Recommendation Report for Removal of a Planning Obligation

REF NO: LU/78/18/PO

LOCATION: 1A Willow Brook
Wick
Littlehampton
BN17 7NW

PROPOSAL: Application to discharge planning obligation dated 17th February 2014 imposed on planning reference LU/42/14 relating to Affordable Housing Contributions within the Section 106 Agreement

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	It is proposed to discharge the legal obligation requirement to provide affordable housing contributions in respect of one additional 3 bedroom dwelling at the above address.
SITE CHARACTERISTICS	Willow Brook comprises 2 and 3 storey terraced dwellings with flat roofs opposite an area of open space
CHARACTER OF LOCALITY	Predominantly residential comprising a mix of property type design and height. Stean Furlong comprises 2 storey terraced dwellings. 3 storey development is restricted to the corner location

RELEVANT SITE HISTORY

LU/42/14/	Erection of three storey building to create a three bedroom end of terrace property, with additional car parking. Resubmission following LU/104/13.	NON DET APPEAL 02-07-14 Appeal: Allowed+Conditions 09-09-14
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REPRESENTATIONS**REPRESENTATIONS RECEIVED:**

None

COMMENTS ON REPRESENTATIONS RECEIVED:

None

CONSULTATIONS

Planning and Housing Strategy

CONSULTATION RESPONSES RECEIVED:**LEGAL ADVICE**

It would appear that the Developer purchased the Property and, therefore, should have been aware of the Undertaking, which had been registered as a local land charge. As the Undertaking was given under Section 106 it runs with the land and is enforceable against the Developer and, if the Council wished, anybody who purchased from the Developer.

At the time the Undertaking was made it was appropriate to include an affordable housing contribution and this was specifically approved by the Inspector on Appeal. Subsequently the Planning Practice Guidance has changed and the Council's Affordable Housing Policy now provides that:

"The Council will not apply its Affordable Housing Policy on developments between 1 and 10 residential dwellings."

Therefore, if the Planning Application had been made to day, there would have been no requirement for an affordable housing contribution.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted

POLICY CONTEXT

Designation applicable to site:

Within Built up Area Boundary

DEVELOPMENT PLAN POLICES**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.

A new local plan is in preparation and is a material consideration when determining Planning Applications. At this stage the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and supporting documents were submitted for independent examination on 30 January 2015.

A number of Main Modifications to the Arun District Local Plan 2011-2031 (Publication Version) October 2014 were approved by the Council on 22nd March 2017 and consultation on these has taking place. The Main Modifications should be read alongside the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and where there are changes the Main Modification. The examination was completed in September 2017.

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. 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: Aldingbourne; Angmering; Arundel; Barnham & Eastergate; Bersted; Bognor Regis; Clymping; East Preston; Felpham; Ferring; Kingston; Littlehampton; Rustington; Walberton; Yapton. The written Ministerial Statement of 13 December 2016 confirms that relevant policies for the supply of housing in Neighbourhood Plans should not be deemed to be out of date where all of the following circumstances arise;

- The NDP has been part of the development plan for 2 years or less or the ministerial statement is less than 2 years old
- The NDP allocates sites for housing
- The Council can demonstrate a three-year supply of deliverable housing sites

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).

There are no relevant policies in Littlehampton Neighbourhood Plan.

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 conflict with relevant Development Plan policies in that it would have a materially adverse effect on the provision of affordable housing contributions.

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

SITE HISTORY

In 2014 an application was made for planning permission in respect of land at 1 Willowbrook, Wick. The planning permission (Ref: LU/42/14) was granted, on appeal, following receipt of a Unilateral Undertaking ("the Undertaking") dated 17th February, 2014 which was entered into by the Owner / Applicant. The Unilateral Undertaking was made in favour of the Council. and was for the payment of an "Affordable Housing Contribution" in the sum of £2,583.00 and a Monitoring Fee in the sum of £150.00. These were to be paid "on or before commencement of the Development".

The Inspector, on the Appeal, specifically considered the terms of the Undertaking and found:

"From the evidence ... the requirement for an affordable housing contribution would satisfy the three tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010. A contribution towards affordable housing provision would arise from the proposal, and is in accordance with the requirements of the Framework that requires an obligation to make the development acceptable in planning terms and be directly related to the development."

The Property was sold to Greenspace Housing ("the Developer") and it was subject to the Unilateral Undertaking. The Developer implemented the planning permission, but failed to make payment of the sums on or before the commencement of the Development or at any other time. The full sum of £2,733.00 is outstanding.

The applicant is noted to be a Developer in a company with experience of residential development and would be aware that an Undertaking under Section 106 runs with the land and, therefore, they are liable to comply with it.

LEGISLATION

The relevant legislation is Section 106 of the Town and Country Planning Act , 1990 ("section 106"), which provides at subsection (3) "Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection 9(d)-

- a. Against the person entering into the obligation ; and
- b. Against any person deriving title from that person.

Subsection (4) states that "The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer had an interest in the land."

The Council is an authority identified in the Unilateral Undertaking as an authority which has the power to enforce the obligations.

The Government's Planning Practice Guidance, on Planning Obligations, Published on 19th May 2016, provides that on sites of 10 dwelling units or less:

"Some planning obligations may still be required to make a development acceptable in planning terms. For sites where a threshold applies, planning obligations should not be sought to contribute to affordable housing or to pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area. Authorities can still seek obligations for site specific infrastructure - such as improving road access and the provision of adequate street lighting - where this is appropriate, to make a site acceptable in planning terms. They may also seek contributions to fund measures with the purpose of facilitating development that would otherwise be unable to proceed because of regulatory or EU Directive requirements.

SUMMARY

The proposed discharge of the obligation would be unreasonable. The development has been completed and the affordable housing contributions are therefore due. The obligation was signed when contributions were sought in accordance with adopted policy which was tested at appeal and held to be acceptable.

Similar Agreements have been discharged prior to commencement of the development which is outside of the Obligation payment trigger point. This point has been passed in this particular case and removal of the obligation would therefore set an unreasonable precedent. Much of the money derived from these

contributions has already been spent on provision of affordable housing in the District .
The lack of contributions is enforceable and it is recommended that the discharge of the S.106 Planning Obligation is refused.

The applicant could not simply re-apply for the same development to get a planning permission freed from a s.106 deed concerning affordable housing since the development has already taken place.

A signed & completed deed of variation did not accompany the application, but one has been drafted.

CONCLUSION

It is therefore recommended that the application is refused for the following reason

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), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for refusal of permission in this case interferes with applicant's right to respect for their private and family life and their home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of neighbours). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for refusal 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

REFUSE

- 1 The original obligation still serves a planning purpose and was reasonably imposed at the time the application LU/42/14 was determined.