

Recommendation Report for Removal of a Planning Obligation

REF NO: R/106/22/PO

LOCATION: Rustington Convalescent Home
Sea Road
Littlehampton
BN16 2LZ

PROPOSAL: Application to modify a planning obligation under R/83/15/PL (principal agreement dated 11th December 2015), R/187/16/PL (prior Deed of Variation) and R/258/18/PL (prior Deed of Variation) in relation to clarification of the definition of 'profit' under clause 5.4 of the Agreement.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	This planning obligation (PO) application is to modify the Section 106 Agreement imposed on R/83/15/PL amending the definition of 'Profit'. A Deed of Variation is being prepared. The proposal relates to the obligation in clause 5.4 of the Section 106 Agreement requiring profits from the overall development to be applied to the Endowment Fund. The purpose of the amendment is to clarify that any profits to be applied to the Endowment Fund will now come from the sale of the residential land rather than the sale of the houses by the applicant as originally envisaged.
TOPOGRAPHY	Predominantly flat.
BOUNDARY TREATMENT	Mixture of boundary treatments - open mesh wire fencing, hedging, wall to front.
SITE CHARACTERISTICS	Large, detached property of attractive design currently with scaffolding around it. Grade II Listed Building with the listing stating: - 'Convalescent Home. 1897 neo-Caroline style. Brown brick with red dressings and some stone enrichment. Slate hipped roof with single and paired segment headed dormers. 2 storeys with attics and 1 storey and attic wing to east. Central square 4 storey tower with stone dressings surmounted by clock stage and octagonal open cupola over. 13 bay central block, with sash windows in pairs, and half-hipped aprons below glazing bars only in broken upper-leaves. Central stone segmental pedimented entrance in tower. 3 bay east wing, windows very closely spaced in centre with balcony over ground floor. 3 bay west wing projecting gable over and with windows closely spaced in centre and 2 storey octagonal corner turret with octagonal conical roof over at southwest corner. West front 3 bays with southwest corner turret. Central 1 bay projection with pediment over and stone segmental pedimented entrance.'

Car parking area is provided behind the main building. Front area of site comprises formal expansive lawns and shrub planting. The building is located approximately 80m from the site frontage.

Further Listed Building within the site is the 'Laundry Building' to which the listing states: - 'Staff quarters block for Rustington Convalescent Home. 1897 by F Wheeler in a neo-Caroline style. Brown brick with red dressings. Wooden eaves cornice. Parallel ridge slate roof with central gable pediment to south, containing thermal window, over slight central projection. Octagonal ogee-domed cupola in central roof-valley. 2 storeys; 7 bays, with central 1 bay projection, wider with coupled windows in single opening. Sashes with glazing bars in upper blade and with slight segment heads on 1st floor and with rubbed brick arches and prominent rubbed brick keystones on ground floor. 2 storey 1 bay extension to left with a parapet roof, topped by globes. Irregular fenestration. Brick chimney to rear with upper stone moulded cornice decoration above blank brick arched panels.

There is also a 'Cooks House' and 'Carpenters House' on site. Vehicular access drive running to side through site to rear.

CHARACTER OF LOCALITY

Mainly residential. Mewsbrook Park to northwest of the site, which contains, inter alia, boating lake, children's play area; football area; miniature railway; etc. Beach opposite.

RELEVANT SITE HISTORY

R/258/18/PL	Variation of conditions 2 & 3 imposed under R/187/16/PL relating to amended phases (phase one amended to the conversion of the laundry building, cooks house & dairy & works to the Convalescent Home and phase two amended to the erection of the new build dwellings).	ApproveConditionally 15-04-19
R/187/16/PL	Variation of conditions 2, 3, 6, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 & 24 imposed under R/83/15/PL to allow for scheme to be brought forward in two phases.	App Cond with S106 14-11-16
R/83/15/PL	Redevelopment of land to the rear of Convalescent Home to provide 26 new dwellings, reuse of laundry building to provide five apartments, reuse of both the cooks house & carpenters house to provide two dwellings with refurbishment works and first floor rear roof extension to the main house to create 4 additional patient bedrooms.	App Cond with S106 21-10-15

R/91/19/L	Application for Listed Building Consent for the reuse of laundry building to provide six apartments, minor alterations to the Carpenters House and the Cottage.	ApproveConditionally 24-07-19
R/85/15/L	Application for Listed Building Consent for conversion of laundry building to provide 5 apartments, conversion of both the cooks house & carpenters house to provide 2 dwellings with refurbishment works to the main house.	ApproveConditionally 19-06-15

Previous applications to amend the original planning obligation have been approved and the Section 106 Agreement (R/83/15/PL) was modified in accordance with the application by means of a Deed of Variation in respect of R/187/16/PL and R/83/15/PL.

Listed Building Consent has been granted for the conversion works and alterations to the buildings and home, which were the subject of R/85/15/L.

R/258/18/PL altered the time of works to the Convalescent Home by moving them to the first phase before any dwellings are constructed.

The Development, as authorised by the Section 73 Permissions and the Listed Building Consent, has been implemented within the time-limits set out in them and the permissions are extant.

REPRESENTATIONS

One Objection:

- On basis more houses will be built on the site than was agreed in 2015.
- If they stick to the original agreed plans from 2015. where the agreed number of houses and flats are to be sold at the market rate, and it does not interfere with our properties and access to and from them, or cause disruption in The Martlets then no objection.

COMMENTS ON REPRESENTATIONS RECEIVED:

The number of dwellings and layout are not altered by this proposal.

CONSULTATION RESPONSES RECEIVED:

None.

COMMENTS ON CONSULTATION RESPONSES:

None.

POLICY CONTEXT

Designation applicable to site:
Within the Built-Up Area Boundary

Grade II Listed Building
Class B Road

DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

HERDM1	HER DM1 Listed Buildings
HERSP1	HER SP1 The Historic Environment
HSP1	HSP1 Housing allocation the housing requirement

Rustington Neighbourhood Plan 2014 Policy 1

The Rustington Convalescent Home (Carpenters),
Sea Road

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, 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.

Policies 1 and 2 of Rustington Neighbourhood Plan have been considered.

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 the Town and Country Planning Act 1990 (as amended) 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,
(aza) 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
Order 1995, as amended.

The proposal to modify the Section 106 Agreement imposed on R/83/15/PL and subsequent Deeds of Variation to amend the definition of profits to reflect that it will be those derived from selling the land for residential development rather than the applicant building and selling the homes themselves.

OTHER MATERIAL CONSIDERATIONS

It is considered that there no other material considerations to be weighed in the balance with the Development Plan.

CONCLUSIONS

PRINCIPLE

This application follows earlier approved applications R/258/18/PL, R/187/16/PL and R/83/15/PL for development resulting in 26 new dwellings, within the grounds and conversion and repairs to the listed buildings to create additional apartment accommodation and additional rooms within the home. The site is identified for housing in Policy 1 of Rustington Neighbourhood Plan.

The originally approved application was submitted for additional housing within the grounds in order to fund repairs and improvements to the listed convalescent home building and to provide essential funding towards the endowment fund, ensuring that the Charity could continue to subsidise facilities and visitor stays at the home. It was subject to the following clause to ensure that the profit was used by the charity to meet these objectives.

Clause 5.4 of the Agreement states

The Owner shall apply any Profit to the Endowment Fund to produce income to be spent on furthering Rustington Convalescent Home's charitable purposes.

R/258/18/PL has subsequently been approved which has altered the timing of works to the Listed Convalescent Home by moving them to the first phase prior to construction of any dwellings and these repair and renovation works are nearing completion.

The Development, as authorised by the Section 73 Permissions and the Listed Building Consent, has been implemented within the time-limits set out in them and the permissions are extant.

AMENDMENT TO THE SECTION 106 AGREEMENT

This Planning Obligation application proposes to amend the wording of para 5.4 to allow for the part of the site within the grounds of the home, with approval for 26 new dwellings, to be sold and developed separately.

The Charity Company is in the process of agreeing to transfer land to a developer to undertake the residential development authorised by the Section 73 Permission. A contract is close to being concluded. Before exchanging contracts, this application has been submitted to clarify that the profits that the developer makes from the sale of the dwellings would not be required to be applied to the endowment fund for the Convalescent Home's charitable purposes ("the Endowment Fund") under clause 5.4 of the Section 106 Agreement.

The proposed changes to the S106 Agreement comprise modifying/amending the definition of profit to allow the sale of the land and provide comfort to the developer.

A draft deed of variation of the Section 106 Agreement has been submitted with the application and the proposed amended obligation defines the 'profits' that are to be applied to the endowment fund as being: "The financial benefit to the Master and Wardens and Commonalty of the Mystery of Freeman of the Carpentry of the City of London that is realised from the proceeds of the sale of land and / or the New Dwellings (or any of them) net of expenditure, costs and taxes incurred in carrying out or in connection with the development authorised by the Planning Permission and the Listed Building Consent."

THE IMPACT OF THE PROPOSED AMENDMENTS TO THE CLAUSE:

The reason for the application is to clarify that any profits to be applied to the Endowment Fund will now come from the sale of the residential land rather than the sale of the houses by the Company as

originally envisaged.

The aim of the obligation was to ensure that, once the development was completed, any surplus receipts available to the Company(applicants) were to be applied to the Endowment Fund (the purpose being to further the Convalescent Home's charitable purposes). Effectively, once the overall development (renovation of the Convalescent Home and the residential development) was completed, any remaining surplus profit to the Company from the scheme would be applied to the Endowment Fund.

The applicant's original intention was to carry out the development as one overall scheme and that was reflected in the wording of clause 5.4 of the Section 106 Agreement with the 'profits' comprising any surplus receipts available to the Company once all costs of the development and associated fees had been paid. However, the Company has subsequently decided, for reasons explained below, to undertake only the renovation of the Convalescent Home, and to sell the residential land to a developer rather than build and sell the homes itself.

The Company will still apply any profits that it makes from the overall development to the Endowment Fund, but because of the changed circumstances the Section 106 Agreement needs to be varied to make it clear that the 'profits' will be those that arise to the Company from the sale of the residential land. This would still be in line with the requirements of the original obligation and would allow the Company to minimise risk and realise a profit for the Convalescent Home to be invested in the future maintenance of the home and its charitable role. The financial implications for the charity have been a driving force behind this application. It was decided that the financial risk of undertaking the entire development would be unacceptable, requiring significant borrowing that would be unacceptable due to the collateral required by any bank to insure against the amounts borrowed. The scale of the project is such that the amounts that would have needed to be borrowed would have significantly outweighed the value of the Convalescent Home, potentially putting the home itself at risk and the continued use and maintenance of the listed building. Further, the applicant did not have the necessary expertise to take forward the residential part of the Development.

It is possible that that the profits from a land sale receipt might be less than the profit from the sale of the units if built out by the Company, but the latter option carries significant and unacceptable risks to the Company. Further, there are additional risks with escalating build costs and uncertainty in the economy more generally that may lead to the development in the future not being profitable.

Allowing the site for the new dwellings to be dealt with separately will ensure the new dwellings can be provided, which will provide a valuable contribution to the significant need for improved rates of both housing delivery and housing supply within Arun. The site has been identified for housing within Rustington Neighbourhood Plan and the role of the extant planning permission at Rustington Convalescent Home is acknowledged in addressing this and will be facilitated by this amendment to the wording of the definition of profits which provides more flexibility in achieving the housing delivery.

SUMMARY

The proposal to modify the S106 Agreement imposed on R/83/15/PL by amending the Clause 5.4 is acceptable and it complies with Policies HER DM1 and HER SP1 of the Local Plan in respect of facilitating the upkeep of a Grade 2 Listed Building and the delivery of additional housing identified in Policy 1 of Rustington Neighbourhood Plan and policy H SP1 of Arun 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