Recommendation Report for Removal of a Planning Obligation

REF NO: WA/23/23/PO

LOCATION: Land East of Fontwell Avenue
Fontwell
BN18 0SB

PROPOSAL: **Application under S106A for the modification of the Section 106 dated 2nd December 2016 linked to WA/22/15/OUT for various modifications in respect of the Bus Service, Discount Housing Units, Healthcare and MUGA obligations (in accordance with the current Section 73 application WA/56/22/PL).**

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION

This is an application under S106A for the modification of the Section 106 dated 2nd December 2016 linked to WA/22/15/OUT for various modifications in respect of the Bus Service, Discount Housing Units, Healthcare, Education and MUGA obligations in accordance with the current Section 73 application WA/56/22/PL.

RELEVANT SITE HISTORY

WA/22/15/OUT	Outline application with some matters reserved to provide up to 400 No. new dwellings, up to 500 sqm of non-residential floorspace (A1, A2. A3, D1 and/or D2), 5000 sqm of light industrial floorspace (B1 (b)/(c)) & associated works including access, internal road network, highway works, landscaping, slected tree removal, informal & formal open space & play areas, pedestrian & cyclist infrastructure utilities, drainage infrastructure, car & cycle parking & waste storage. This application is a departure from the Development Plan & also lies within the parish of Eastergate.	Called In by DCLG/SD 20-01-16 **Appeal: Allowed+Conditions 13-07-17**
WA/48/19/RES	Approval for Reserved Matters following outline permission WA/22/15/OUT comprising 400 new homes (incl. affordable), 360sqm of retail space (A1 to A3), 152sqm of community space (D1 to D2 & including retention & refurbishment of 12sqm 'old smithy'), demolition of remaining buildings to Arundel Road along with public open space, LEAP, MUGA, allotments, car & cycle parking, drainage & associated works - This site also lies within the parish of Barnham & Eastergate.	ApproveConditionally 11-12-20

WA/57/22/NMA	Non material amendment following WA/22/15/OUT to amend the description of development to refer to 405 new dwellings so that the description reads: Outline planning permission for up to 405 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage.	Approve 02-12-22
WA/56/22/PL	Variation of condition imposed under WA/48/19/RES relating to condition 1-plans condition to allow an amendment to the non residential floorspace building at the entrance to the site (Block A) and the provision of 5 No new flats.This site also lies within the parish of Barnham and Eastergate.	

In January 2023 a Section 96 application (WA/57/22/NMA) was granted at committee, which sought to amend the description of development (WA/22/15/OUT) from 400 dwellings to 405 dwellings. The grant of the Section 96 application allows for the application for 5no. dwellings to come forward (WA/56/22/PL). Application WA/56/22/PL is recommended for approval subjection to this Deed of Variation application.

REPRESENTATIONS

WALBERTON PARISH COUNCIL, initially commented, "the Parish Council notes that removal of some of the definitions form the S106 agreement appears to cause some of the remaining paragraphs, such as those in Schedule 7, to become ambiguous as they then refer to undefined items. We have requested clarification form the developer and await a response. We request a delay on a decision until the developer has been able to explain the impact of the changes on the whole S106 document". Following a discussion the Parish Council confirmed the outstanding issues had been clarified.

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATION RESPONSES RECEIVED:

WSCC Education - representations have been made on application WA/56/23/PL, to which this application relates in regard to contributions towards the new secondary school in order to mitigate its impacts for secondary education. Until such time that a new secondary school to meet Arun requirements is built and open to pupils, transport costs are required to mitigate the additional costs to transport pupils from Arun District.

COMMENTS ON CONSULTATION RESPONSES:

The Section 106 contributions in regard to Education will be amended to reflect the contribution requested by WSCC.

POLICY CONTEXT

Designation applicable to site:

DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

AHSP2	AH SP2 Affordable Housing
QESP1	QE SP1 Quality of the Environment
GISP1	GI SP1 Green Infrastructure and Development
HDM1	H DM1 Housing mix
HSP1	HSP1 Housing allocation the housing requirement
HSP2	H SP2 Strategic Site Allocations
HSP2C	H SP2c Inland Arun
HWBSP1	HWB SP1 Health and Wellbeing
INFSP1	INF SP1 Infrastructure provision and implementation
SDSP1	SD SP1 Sustainable Development
SDSP1A	SD SP1a Strategic Approach
TDM1	T DM1 Sustainable Travel and Public Rights of Way
TSP1	T SP1 Transport and Development

Barnham & Eastergate Neighbourhood Plan 2014 POLICY GA1	Connection to sustainable transport
Barnham & Eastergate Neighbourhood Plan 2014 POLICY GA2	Footpath and cycle path network
Barnham & Eastergate Neighbourhood Plan 2014 POLICY GA4	Parking and new development
Barnham & Eastergate Neighbourhood Plan 2014 POLICY H3	Housing mix
Barnham & Eastergate Neighbourhood Plan 2014 POLICY H4	Integration of new housing into surroundings
Barnham & Eastergate Neighbourhood Plan 2014 POLICY H5	Outdoor space
Walberton Neighbourhood Plan Policy 2017 HP10	Affordable Housing
Walberton Neighbourhood Plan Policy 2017 HP11	Housing Density

PLANNING POLICY GUIDANCE:

NPPDG	National Design Guide
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

SUPPLEMENTARY POLICY GUIDANCE:

SPD12	Open Space,Playing Pitches & Indoor& Built Sports Facilities

SPD13 Arun District Design Guide (SPD) January 2021

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans. Barnham & Eastergate Neighbourhood Plan 2014 is relevant in this case.

Where a Section 106 agreement is older than five years, an application can be made to vary or modify the obligations. The application is made under S106A of the Town and Country Planning 1990 and are given practical effect by the Town and Country Planning (Modification and Discharge of Planning Obligations Regulations 1992.

In determining the application, the Local Planning Authority can decide that the planning obligation:

· Shall continue to have effect without modification;
· Can be discharged, as it no longer serves a useful purpose; or
· Continues to serve a useful purpose, but would serve that purpose equally well subject to modifications in the application

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 amendments to the Section 106 agreement would secure appropriate financial contributions to mitigate the impact of the development upon infrastructure provision.

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.

OTHER MATERIAL CONSIDERATIONS

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

CONCLUSIONS

BACKGROUND
The Deed of Variation seeks to amend the agreed Section 106 agreement to address the amendments proposed under the Section 73 application WA/56/22/PL for the variation of condition imposed under WA/48/19/RES relating to condition 1- approved plans to allow an amendment to the non residential floorspace building at the entrance to the site (Block A) and the provision of 5 No new flats.

The Deed of Variation also seeks to regularise some of the previously agreed obligations. The amendments relate to the following matters:

- Bus service Contribution - updated definition and specific contribution figure included.
- Discount Housing Units - definition updated / added.
- Healthcare definition / obligation removed.
- MUGA - Contribution removed.
- Education - contribution amended.

USE OF OBLIGATIONS

Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph 57 of the National Planning Policy Framework States that:

Planning obligations must only be sought where they meet all of the following tests:

a) necessary to make the development acceptable in planning terms;
b) directly related to the development; and
c) fairly and reasonably related in scale and kind to the development.

Regulation 3(1)(d) and (e) of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992) states the applicant must provide:

· reasons for applying for the modification or discharge of the obligation; and
· such other information as the authority consider necessary to enable them to determine the application.

BUS SERVICE CONTRIBUTION

In regard to Bus Service provision, the following new definitions are to be inserted.

"Bus Service Contribution"; - means the sum of one hundred and seventy-nine thousand four hundred and ninety-three pounds and sixty pence (£179,493.60) to be provided in accordance with Schedule 4 which shall be paid to the County Council towards the delivery of additional bus services to serve the Dwellings."

The definition of "County Council Contributions" shall be amended by the addition of "Bus Service Contribution" immediately before "Education Contribution".

In addition, Schedule 4 - Bus Service contributions will be deleted and replaced with the following:

1 "The Developer First Owner and Second Owner hereby covenant with the County Council not to allow Occupation of first (50) Dwellings within the Development to occur until the whole of the Bus Service Contribution has been paid to the County Council."

This contribution has been paid in full to the County Council and these amendments do not affect the delivery of the planning application. No objection is raised to these amendments.

DISCOUNT HOUSING UNITS

The following definitions have been inserted in clause 1.1 of the original agreement:

"Discount Housing Unit Owner" means the person or persons having the freehold or leasehold interest (as applicable) in a Discount Housing Unit other than the Owners or another developer or other entity to

which the freehold interest or leasehold interest in a Discount Housing Unit or in the land on which a Discount Housing Unit is to be provided has been transferred before that Discount Housing Unit is made available and is Disposed of for occupation as a Discount Housing Unit."

"Discount Housing Units" means the 5 Dwellings identified for the purposes of illustration only with red edging on the plan annexed to this Deed and labelled "Discount Housing Units Plan" to be Occupied in accordance with the provisions set out in Schedule 6 to this Deed and which shall only be Disposed as a freehold or (in the case of flats only) as a leasehold property at the Discount Market Price"

"Discount Market Price" means a sum which is the Market Value discounted by 20%.

"Disposal" means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a Discount Housing Unit other than an Exempt Disposal.

and "Disposed" and "Disposing" shall be construed accordingly.

"Exempt Disposal" means the Disposal of a Discount Housing Unit in one of the following circumstances:

(a)Disposal to a spouse or civil partner upon the death of the Discount Housing Units Owner.
(b)a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the Discount Housing Units Owner.

(c)a Disposal to a former spouse or former civil partner of a Discount Housing Units Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order.

(d)a Disposal to a trustee in bankruptcy prior to sale of the relevant Discount Housing Unit (and for the avoidance of doubt paragraph 8 shall apply to such sale).

(e)a Disposal of the freehold interest in the Discount Housing Unit to a management company.

"Market Value" means the open market value as assessed by a Valuer of Dwelling and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 20% discount in the valuation.

"Valuer" means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the Discount Housing Units Owner and acting in an independent capacity.

In addition, Schedule 6 - Discount Housing Units will be deleted and replaced with updated text to reflect the updated definitions.

These amendments do not affect the delivery of the planning application. No objection is raised to these amendments.

HEALTHCARE CONTRIBUTION
The Deed of Variation seeks to remove the NHS contribution of £250,000. Outline Planning Permission (WA/22/15/OUT) for the erection of up to 400 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage, was granted on appeal subject to a Section 106

agreement and various conditions.

Section 10 of the appeal decision (APP/C3810/V/16/3143095) considered Conditions and the S106 Unilateral Undertakings and specifically "whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development".

In regard to Healthcare contribution this was considered by the Inspector, and paragraphs 11.23 & 11.24 are of relevance, these state:

(11.23) "The S106 Agreement obligations have been reviewed against the requirements of Framework paragraph 204, CIL Regulations 122/123 and the submissions made by the applicants, the LPA and WSCC . All the obligations, bar the NHS contribution, are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, the S106 Agreement is consistent with the guidance at Framework paragraph 204 and Regulations 122/123 of the CIL Regulations and where appropriate, I have attached weight to it in coming to my conclusion.

(11.24) Very limited information has been provided in relation to the need for the NHS contribution or how it has been calculated. In these circumstances and having regard to context provided by the Infrastructure Delivery Plan 2015, which is the latest information provided, the justification provide for the NHS contribution has not been substantiated and as such fails to satisfy the guidance at Framework paragraph 204 and Regulations 122/123 of the CIL Regulations . Accordingly, I have not attached weight to this part of the S106 Agreement in coming to my conclusion".

The Secretary of State agreed with the Inspector that all the obligations, bar the NHS contribution, were necessary to make the development acceptable in planning terms. In cases where the Secretary of State (or his appointed Inspector) consider any obligations to be not necessary or to fail the legal tests *then these obligations shall be deemed to be 'served' from the Deed and shall no longer bind the parties.*

The Council's solicitors confirm they "agree that the Healthcare Contribution has been severed from the Agreement as a result of clause 3.1(ii)." This Deed of Variation seeks to remove it for 'neatness'.

MUGA
The definitions of "MUGA at Walberton Contribution" and "Walberton Cycle Path Contribution" shall be deleted as these provision are to be provided on the wide site.

These amendments do not affect the delivery of the planning application. No objection is raised to these amendments.

EDUCATION
In regard to Education item 4 under Schedule 6 has been amended to include:

(4.1) Prior to Occupation of any of the Discount Housing Units, to pay the sum of Two Thousand One Hundred and Seventy Nine Pounds and Sixty Eight Pence (£2,179.68) to the County Council to be used towards the provision of transport to secondary schools serving the Development.

(4.2)The parties agree that the Discount Housing Units shall be excluded from any calculation of the Education Contribution pursuant to Part B of Schedule 1 to the Original Agreement.

This is a proportional and appropriate financial contribution from the 5 additional residential units proposed by WA/56/22/PL.

OTHER MATTERS
The original Section 106 agreement did not include the usual Section 73 consent clause. As such, this has been added at paragraph 1.1 under interpretation and referred to in subsequent paragraphs where relevant. Moreover, some definitions have been amended to reflect any changes in policy and legislation.

In addition to the above. Item 5 under Schedule 6 has been added, this relates to Highways and states:

(5.1)Prior to Occupation of any of the Discount Housing Units, to pay the sum of Twenty-Five Thousand Pounds (£25,000) minus the costs of the signalisation of the Fontwell Roundabout to be delivered as a part of the Trunk Road Highway Works (which costs are to be agreed in writing with the County Council as part of the County Highway Works Scheme) to the County Council to be used towards strategic highway improvements to the A29 within the County Council's administrative area.

(5.2)The parties agree that the Discount Housing Units shall be excluded from any calculation of the Highways Contribution pursuant to Part B of Schedule 1 to the Original Agreement.

and Items 6 under Schedule 6 has also been added this relates to Fire and Rescue, it states:

(6.1)Prior to Occupation of any of the Discount Housing Units, to pay the sum of One Hundred and Sixteen Pounds (£116.00) to the County Council to be used towards the redevelopment or relocation of fire stations and vehicles and equipment in West Sussex Fire Rescue Service Southern Area serving Arun District.

(6.2)The parties agree that the Discount Housing Units shall be excluded from any calculation of the Fire and Rescue Contribution pursuant to Part B of Schedule 1 to the Original Agreement.

RECOMMENDATION
It is recommended that the deed of variation to the S106 dated 2nd December 2016 linked to WA/22/15/OUT is completed for various modifications in respect of the Bus Service, Discount Housing Units, Healthcare, Education and MUGA obligations in accordance with the current Section 73 application WA/56/22/PL.

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