

Recommendation Report for Removal of a Planning Obligation

REF NO: WA/54/22/PO

LOCATION: Land East of Tye Lane
Walberton

PROPOSAL: Application to negotiate a Deed of Variation to modify Schedule 11 and 12 of the Section 106 dated 1st November 2017 linked to planning permission WA/44/17/OUT in relation to the trigger for completion of the National Highway Agreement(s).

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	This application seeks to vary the current S106 Agreement under the provisions of S106A of the Town and Country Planning Act 1990 in relation to Schedules 11 and 12 of the obligation. The obligations refer to Additional Highway Works, with explicit reference to the requirement to enter into and complete a S278 Agreement.
SITE CHARACTERISTICS	The site comprises agricultural land. The site is generally gently sloping and there are a couple of notable trees within the site to the southeast corner and trees/hedgerows along the boundaries of the site.
CHARACTER OF LOCALITY	The area is rural in character with housing in Walberton Village, including the Conservation Area and related listed buildings, the Walberton and Binstead Primary School, Walberton Recreational Ground and Avisford Park Road to the south of the application site. The site is bounded to the north by Avisford Park Hotel golf course, associated buildings and historic parkland. To the west the site is bounded by Tye Lane, with open farmland beyond. To the east the site is bounded by housing and Yapton Lane, beyond which is open farmland and the golf club's back 9 holes.

Outline application WA/44/17/OUT was approved (23.02.2018) with some matters reserved, for up to 175 dwellings, new vehicular access, together with associated car parking, landscaping and community facilities to include allotments, play space and community orchard.

CONSULTATION RESPONSES RECEIVED:

None

POLICY CONTEXT

Designation applicable to site:

Outside of the built up area boundary.

DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

TSP1 T SP1 Transport and Development

PLANNING POLICY GUIDANCE:

NPPF National Planning Policy Framework

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.

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.

Section 106A of the Town and Country Planning Act 1990 (as amended) provides that:

1) A planning obligation may not be modified or discharged except-

(a) by agreement between the authority by whom the obligation is enforceable the appropriate authority and the person or persons against whom the obligation is enforceable;

3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the local planning authority by whom the obligation is enforceable the appropriate authority for the obligation-

- (a) to have effect subject to such modifications as may be specified in the application; or
- (b) to be discharged.

(6) Where an application is made to an authority under subsection (3), the authority may determine-

- (a) that the planning obligation shall continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

OTHER MATERIAL CONSIDERATIONS

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

CONCLUSIONS

The application seeks to amend the S106 associated with outline planning permission WA/44/17/OUT through the amendment of the clause 11.1 and 12.1 of the obligation. These schedules refer to additional highways works, with explicit reference to the requirement to enter and complete a S278 Agreement. The amendment is sought after as there have been delays associated with the design process that the S278 Agreement will not be completed prior to the occupation of the first market dwelling.

The amendments are as proposed:

Clause 11.1 shall be replaced with "That it shall prior to Occupation of the 50th Market Housing Unit to be Occupied enter into a Section 278 Agreement with Highways England to secure the Highways England Contribution".

Clause 11.2.1 reference to "Commencement of Development" shall be replaced with the text "Occupation of the 50th Market Housing Unit to be Occupied".

Clause 12.1 shall be replaced with "That it shall prior to Occupation of the 50th Market Housing Unit to be Occupied enter into a Section 278 Agreement to enable it to undertake the Additional Highway Works".

The amendments to the S106 agreement do not conflict with any relevant planning policies, and it is recommended that this application is approved and that the S106 Agreement is then modified in accordance with this application by means of a Deed of Variation.

HUMAN RIGHTS ACT

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