



PROPOSAL:
DISCHARGE OF PLANNING OBLIGATION
SIGNED UNDER SECTION 106
OF
THE TOWN & COUNTRY PLANNING ACT 1990
IN RESPECT OF
PLANNING APPLICATION REFERENCE WA/27/15/PL
AT
DEANS YARD
ORCHARD WAY
FONTWELL
WALBERTON
WEST SUSSEX BN18 0SJ

DEVELOPMENT:
ERECTION OF TWO CHALET DWELLINGS

APPLICANT:
MJH PROPERTY DEVELOPMENTS LIMITED

Overview

Planning consent was granted at appeal under application ref. WA/27/15/PL to erect two chalet-style detached dwellings at Deans Yard, Orchard Way, Walberton, West Sussex BN18 0SJ. The appeal decision dates from the 4th March 2016 and it was a detailed consent valid for three years. The application was the subject of a Unilateral Section 106 Agreement concerning the payment of a contribution of £18,256 towards affordable housing. A copy of the appeal decision granting the planning consent and a copy of the signed Section 106 Agreement are appended with this submission.

Subsequent to the grant of this planning consent the Law, with regard to the ability of Local Planning Authorities to secure affordable housing contributions on relevant proposals of less than 10 residential units and less than a cumulative floor area of 1,000m², was the subject of the Court of Appeal decision in *R (West Berkshire District Council and Reading Borough Council) v. Secretary of State for Communities and Local Government [2016] EWCA*. This case was decided on the 11th May 2016 (that is to say, after the grant of planning consent at Deans Yard).

The case involved a challenge to the Government's policy on the provision of affordable housing on small sites of fewer than 10 units and the vacant building credit. The Court of Appeal in this case allowed the Secretary of State's appeal on all grounds. The judgment is an important analysis of the role of Central Government in promulgating policy, the nature of such policy and its inter-action with the underlying statutory scheme in the planning field.

Following this Court of Appeal decision, revised guidance concerning Planning Obligations was issued within the Planning Practice Guidance of 2016. The Guidance states:

'There are specific circumstances where contributions for affordable housing and tariff style planning obligations (section 106 obligations) should not be sought from small scale and self-build development. This follows the order of the Court of Appeal dated the 13 May 2016, which give legal effect to the policy set out in the written ministerial statement of the 28 November 2014 and should be taken into account.'

It goes on to state that:

'These circumstances are that:

- *Contributions should not be sought from developments of 10 units or less and which have a maximum combined gross floor space of no more than 1,000m² (gross internal area).'*

Following the Court of Appeal decision referred to, Arun District Council dropped requirements for small residential schemes of less than 10 units/ 1,000m² to make contributions towards affordable housing in the locality.

This leaves the Planning Obligation signed in respect of application ref. WA/27/15/PL as something of an anachronism as the monies being sought for affordable housing by this Obligation are no longer supported either in terms of the advice contained within the Planning Policy Practice Guidance 2016 or in terms of the planning policy currently operated by the Local Planning Authority.

In these circumstances there is considered a clear and justified case for discharging the applicants from the requirements of the Planning Obligation they signed as part of the original planning application.

The application is accompanied by standard forms issued by the Planning Authority referring to the discharge of a Section 106 Agreement. Further, a copy of the Court of Appeal decision in respect of *R (West Berkshire District Council and Reading Borough Council) vs. Secretary of State for Communities and Local Government [2016] EWCA* is attached.

Finally, there is attached a 1:1250 location plan identifying the land to which the Legal Agreement pertains.

Should any additional information or further clarification be required then we would invite you to contact us at your earliest convenience.