

Recommendation Report for Removal of a Planning Obligation

REF NO: WA/5/18/PO

LOCATION: Deans Yard
Orchard Way
Walberton

PROPOSAL: Application to discharge a planning obligation dated 11/01/2016 under planning application WA/27/15/PL relating to Affordable Housing Contributions within the Section 106 Agreement

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	The application seeks to remove the affordable housing obligation included in the Section 106 agreement dated 11.01.2016 under planning reference WA/27/15/PL. The Section 106 agreement secured the payment of affordable housing contributions totalling £18,256.
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	Dense hedging along the majority of the western boundary at approximately 2m in height. Brick walling at approximately 2m in height along the eastern boundary and extending to the south. The walls of the commercial units currently on site form the remainder of the eastern boundary
SITE CHARACTERISTICS	The site comprises a commercial use with 6 no. units in a line along the eastern boundary. The units are flat roofed and single storey. The site is serviced by its own access road leading from Orchard Way and there is a yard/parking area to the front of the units.
CHARACTER OF LOCALITY	Predominantly residential in character, there are mainly two storey detached properties, bungalows and chalet style bungalows in the area.

RELEVANT SITE HISTORY

WA/27/15/PL	Demolition of existing garages & erection of 2No. chalet dwellings	Refused 21-07-15 Appeal: Allowed+Conditions 24-03-16
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REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Walberton Parish Council

Support

I comment - The site plan of the application is incorrect and part of the plan is the property of 20 orchard way which is the rear drive and garage to this property. There should be planning restrictions attached to this application to maintain unrestricted 24hr access to the garage at the rear of this property and 18 Orchard Way.

Orchard way, is a private road, therefore there will not be any parking for construction vehicles/delivery and site workers, and there should not be any damage to the roads. We would therefore insist on a condition within the application to protect the privately owned access roads.

COMMENTS ON REPRESENTATIONS RECEIVED:

The red edge of the application site has been amended to delete inclusion of adjoining land. This is not a planning application so the other comments cannot be considered.

CONSULTATIONS

Planning and Housing Strategy

CONSULTATION RESPONSES RECEIVED:

Housing Strategy and Enabling Manager - No Objection

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 Walberton 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 comply with relevant Development Plan policies in that it would have no materially adverse effect on the visual amenities of the locality or the residential amenities of the adjoining properties, nor would it have an adverse impact upon the established character of the surrounding area.

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

The site benefits from planning approval for the erection of 2 chalet dwellings.

In line with the order of the Court of Appeal dated 13th May 2016, which gave effect to the policy set out in the written ministerial statement of the 28th November 2014, Paragraph 031 (ref ID: 23b-031-20161116) of the National Planning Policy Framework states that;

"contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area)"

Since that time, the Council has not been requiring affordable housing contributions for sites of less than 10 dwellings. Indeed, policy AH SP2 of the emerging Local Plan reflects this position and states that:

"For all developments of 11 residential units or more the Council will require a minimum 30% of the total number of units proposed on site to be provided as affordable housing on the same site in the first instance."

Therefore, since the development has not commenced and the s.106 deed is not contractually enforceable, there is no longer a legislative/policy basis by which the Local Planning Authority can require the provision of affordable housing contributions. It is also considered that regard should be had to the fact that the applicant could simply re-apply for the same development to get a planning permission freed from a s.106 deed concerning affordable housing.

In these circumstances, it is considered that this decision should be approved and the legal deed discharged.

A signed & completed deed of variation has been prepared and is awaiting the decision on this application before being completed.

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

- 1 INFORMATIVE: For the avoidance of doubt this permission relates to the substitute site location plan dated 06-03-2018.