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Supporting Statement for an Application under Section 73 of the Town and Country Planning Act 1990 to remove or vary conditions imposed upon the grant of planning permission.

Applicant: Keith Langmead Ltd

Council reference: Y/49/17 OUT

The Site: Land at Street Buildings North End Road Yapton BN18 ODT

The Planning permission granted:

Outline planning permission with some matters reserved for the demolition of all existing structures & redevelopment of the site with up to 45 dwellings (30% affordable (up to 14)) & 0.3 hectares of landscaped open space with vehicular access from Maypole Lane & pedestrian/cycle access only from North End Road.

Date permission granted: 15 February 2018

Date Submitted: 2 March 2018

Background

1. An Outline planning application for the demolition of all existing structures and redevelopment of the site with up to 45 dwellings (30% affordable (up to 14)) and 0.3 hectares of landscaped open space with vehicular access from Maypole Lane and pedestrian/cycle access only from North End Road was submitted to Arun District Council on 7 July 2017 under Council ref: Y/49/17 OUT.
2. Access¹ formed part of the application and was not reserved for later approval whereas appearance, landscaping, layout and scale² were reserved for later consideration.
3. These reserved matters are defined in Part 1 Article 2 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 as follows:
 - “Appearance” - the aspects of a building or place within the development which determines the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture.
 - “Landscaping” - the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and including— (a) screening by fences, walls or other means; (b) the planting of trees, hedges, shrubs or grass; (c) the formation of banks, terraces or other earthworks; (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and (e) the provision of other amenity features.
 - “Layout” - the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development;
 - “Scale” - except in the term ‘identified scale’, means the height, width and length of each building proposed within the development in relation to its surroundings.
4. The following drawings formed part of the application:
 - Location Plan @ Scale 1: 2500
 - Topographical Site Survey @ Scale 1: 500
 - Existing Block Plan PPC1 @ Scale 1:500
 - PPC2 Indicative Proposed Block Plan @ Scale 1: 500
 - Drg: 160602-05 Access Arrangement @ Scale 1:500

¹ Which as defined in Part 1 Article 2 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 in relation to reserved matters, means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network; where “site” means the site or part of the site in respect of which outline planning permission is granted or, as the case may be, in respect of which an application for such a permission has been made;

² “Reserved matters”

5. The application was determined by the Council's development control committee on 14 February 2018 who resolved that the application be approved as detailed in the report and the Council's written notice of that decision³ is dated 15 February 2018 and is **copied at Appendix 1**.
6. The outline planning permission granted is subject to 27 conditions and 6 "informative notes"⁴ and 12 of the conditions are pre-commencement conditions or "condition precedents" for the purposes of article 35 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and NPPG Paragraph: 007 Reference ID: 21a-007-20140306.⁵
7. Paragraph 203 of the National Planning Policy Framework states "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Paragraph 206 of the National Planning Policy Framework states "Planning conditions should only be imposed where they are:
 - necessary;
 - relevant to planning and;
 - to the development to be permitted;
 - enforceable;
 - precise and;
 - reasonable in all other respects.
8. Relevant NPPG⁶ states:

The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls (Paragraph: 001).

The main powers relating to local planning authority use of conditions are in sections

³ Ostensibly in accordance with article 35 of The Town and Country Planning (Development Management Procedure) (England) Order 2015

⁴ NPPG Paragraph: 026 Reference ID: 21a-026-20140306 states: *Informative notes allow the local planning authority to draw an applicant's attention to other relevant matters but do not carry any legal weight and cannot be used in lieu of planning conditions to try and ensure control for planning purposes*

⁵ The relevant part of Article 35 states: (1) When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters— (a) where planning permission is granted subject to conditions, the notice must state clearly and precisely their full reasons— (i) for each condition imposed; and (ii) in the case of each pre-commencement condition, for the condition being a pre-commencement condition; and NPPG Paragraph: 007 Reference ID: 21a-007-20140306 states: *Care should be taken when considering using conditions that prevent any development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that 'no development shall take place until...' or 'prior to any works starting on site...'. Such conditions should only be used where the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission. A condition precedent that does not meet the legal and policy tests may be found to be unlawful by the courts and therefore cannot be enforced by the local planning authority if it is breached. Development carried out without having complied with a condition precedent would be unlawful and may be the subject of enforcement action.*

⁶ NPPG ID: 21a-001-20140306 Paragraphs: 001 – 05, 018 and 019.

70, 72, 73, 73A, and Schedule 5 of the Town and Country Planning Act 1990. Powers to impose conditions on appeal are also given to the Secretaries of State or their Inspectors by sections 77, 79, 177, and Schedule 6 of the Act. In some areas there may also be powers under local Acts which complement or vary the powers in the 1990 Act. Section 70(1) (a) of the Act enables the local planning authority in granting planning permission to impose “such conditions as they think fit”. This power must be interpreted in light of material factors such as the National Planning Policy Framework, guidance on the use of conditions, and relevant case law. **(Paragraph: 002)**

The policy requirement in Framework paragraph 203 is referred to in guidance as the 6 tests. **(Paragraph: 003)**

Whether it is appropriate for a Local Planning Authority to impose a condition on a grant of planning permission will depend on the specifics of the case. Conditions should help to deliver development plan policy and accord with the requirements of the National Planning Policy Framework, including satisfying the 6 tests for conditions. The 6 tests must all be satisfied each time a decision to grant planning permission subject to conditions is made and the tests are set out in the following Table alongside key considerations **(Paragraph: 004)**

TEST	KEY QUESTIONS
Necessary	Will it be appropriate to refuse planning permission without the requirements imposed by the condition? • A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms. • If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.
Relevant to planning	Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached? • A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation). • Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).
Relevant to the development to be permitted	Does the condition fairly and reasonably relate to the development to be permitted? • It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted. • A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.
Enforceable	Would it be practicably possible to enforce the condition? • Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.
Precise	Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it? • Poorly worded conditions are those that do not clearly state what is required and when must not be used.
Reasonable in all other respects	Is the condition reasonable? • Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. • Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.

Any proposed condition that fails to meet any of the 6 tests should not be used. This applies even if the applicant suggests it or agrees on its terms or it is suggested by the members of a planning committee or a third party. Every condition must always be justified by the local planning authority on its own planning merits on a case by case basis. (Paragraph: 005)

Rigorous application of the 6 tests can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible. Front loading and positive dialogue between the local planning authority and the applicant can also result in planning permission being granted with fewer conditions attached. Effective pre-application discussions can help to establish early in the process what may need to be the subject of conditions. An applicant may, where it is feasible to do so, seek approval at the application stage for matters which may otherwise have been the subject of conditions. This can reduce potential delays between the decision being taken and development taking place on site. (Paragraph: 018)

It is best practice for a local planning authority to agree proposed conditions with an applicant before a decision is taken, and as early in the planning application process as possible. It is equally open to both the local planning authority and the applicant to initiate discussions about conditions. Agreeing conditions early is beneficial to all parties involved in the process. It can increase the certainty of what is proposed and how it is to be controlled, including highlighting any condition requirements that may impact on the implementation of the development. (Paragraph: 019)

9. In this case whilst the Officers and the applicant did discuss and agree the number and wording of proposed conditions by e mail before the subject decision was taken, Officers inexplicably recommended to their members that different conditions be imposed on the decision made by the DCC seemingly contrary to that agreement thereby necessitating this application.
10. Decision notices must state clearly and precisely the Council's full reasons for each condition imposed⁷ and in addition must also state clearly and precisely the full reasons for a condition being a pre-commencement condition.⁸
11. Care should be taken when considering using conditions that prevent any development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that 'no development shall take place until...' or 'prior to any works starting on site...' and such conditions should only be used where the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission. A condition precedent that does not meet the legal and policy tests may be found to be unlawful by the courts and therefore cannot be enforced by the local planning authority if it is breached. Development carried out without having complied with a condition precedent would be unlawful and may be the subject of enforcement action⁹.

⁷ Article 35 1) a) (i) of The Town and Country Planning (Development Management Procedure).

⁸ Article 35 1) a) (ii) of the Town and Country Planning (Development Management Procedure) (England) Order 2015

⁹ NPPG Paragraph: 007 Reference ID: 21a-007-20140306

This Application and its determination

12. This application is made under Section 73 of the Town and Country Planning Act 1990 (as amended) as guided by NPPG “Flexible options for planning permissions” ID: 17a-001-20140306 and NPPG Paragraph: 031 Reference ID: 21a-031-20140306.¹⁰
13. In the event that the Council does decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted pursuant to this application in accordance with the provisions of Section 73 of the Act they should grant planning permission accordingly.
14. In the event that the Council fails to determine the application within the statutory determination period (13 weeks beginning with the day immediately following that on which the application is received by the local planning authority) the applicant will have a statutory right to appeal against the Council’s failure to determine the application.
15. In the event that the Council decides that contrary to this application planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application in accordance with the provisions of Section 73 of the Act and the applicant will have a statutory right to appeal against that decision.
16. It should be noted that the original planning permission will continue to exist whatever the outcome of the application under section 73 and/or any appeal relating to same.

¹⁰ The relevant parts of Section 73 of the Town and Country Planning Act 1990 (as amended) read as follows:

73 Determination of applications to develop land without compliance with conditions previously attached.

(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and —

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application..... The relevant parts of NPPG Paragraph: 031 Reference ID: 21a-031-20140306 state: *“Some or all of the conditions could be removed or changed by making an application to the local planning authority under section 73 of the Town and Country Planning Act 1990. In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question. It should be noted that the original planning permission will continue to exist whatever the outcome of the application under section 73. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.*

The Proposals

17. The application seeks to vary condition 3 and remove conditions 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 imposed upon the grant of an outline planning permission under Council Reference Y/49/17 OUT on 15th February 2018 as numbered/worded on the decision notice at **Appendix 1**.
18. Conditions 9, 11, 12, 13, 14, 16, 21, 22 and 23 are condition precedents for the purposes of Article 35 1) a) (ii) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and NPPG Paragraph: 007 Reference ID: 21a-007-20140306 (Paragraphs 10 and 11 above).
19. The variation of condition 3 and the removal of conditions 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 is sought for the reasons set out in the table below/overleaf and if the application is approved the resulting decision notice would read as per the requirements set out in Paragraph 13 above and NPPG Paragraph: 031 Reference ID: 21a-031-20140306.

Condition 3 (As worded):

This permission relates to the following submitted plans:

- Location Plan
- Indicative Proposed Block Plan Drg: PPC 2
- Access arrangement Plan Drg: 160602 - 05

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with Policy GEN7 of the Arun District Local Plan.

Proposal: Vary the condition/reason to read as follows:

This permission relates to the following submitted plans:

- Location Plan
- Topographical Site Survey
- Existing Block Plan PPC1
- Indicative Proposed Block Plan PPC2
- Drg: 160602-05 Access Arrangement

Reason: To specify the application drawings which form part of the permission consistent with best practice in NPPG Paragraph: 022 Reference ID: 21a-022-20140306.

Reasons

The condition and reason as currently worded fails the tests of precision/clarity.

Condition 9 (As worded)

No development hereby permitted shall take place until detailed scheme of highway works for improvement to the A27/Yapton Lane junction has been submitted to and approved in writing by the Local Planning Authority in consultation with Highways England. No more than 23 dwellings of the development hereby permitted shall be occupied until the completion of the approved improvements to the A27 junction with Yapton Lane.

Reason: To ensure that the A27 Trunk Road continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety, in accordance with Policy GEN7 of the Arun District Local Plan.

Proposal: Remove the condition/reason and any related informative Reasons: The condition fails the test of necessity. No such works have been proposed so as to achieve access and it has not been imposed for a definite planning reason as access to and from the permitted development as proposed has been approved. The condition is not needed to make the development acceptable in planning terms and it is wider in scope than is necessary to achieve the desired planning objectives of promoting sustainable development by reducing the need to travel, particularly by private car and allowing for the safe movement of pedestrians and vehicles, giving priority to pedestrians (ADLP GEN 7). The condition is not relevant to planning. As the reason states ensuring that the A27 Trunk Road continues to be an effective part of the national system of routes for through traffic is a matter for Highways England and section 10 of the Highways Act 1980 and not the LPA and its adopted development plan policies. The condition is not relevant to the development permitted. It is not justified by the nature/impact of the development permitted and has been imposed to address a pre-existing safety concern at the specified A27 Junction which is not created by the proposed development. The condition is not enforceable. As the condition states it is concerned with an improvement to the A27 Junction which is a matter for Highways England over which the applicant has no control. The condition also requires the consent/authorisation of Highways England and should not have been imposed. (NPPG Paragraph: 009 Reference ID: 21a-009-20140306) The condition is not precise. The condition does not clearly state what is required by way of improvements to the A27/Yapton Lane junction and should not have been used. The Condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant. This is a condition precedent that does not meet the legal (The reason does not state precisely and clearly the full reasons why this needs to be a pre- commencement condition) and policy tests and should not have been imposed.
Condition 11 (As worded) <i>No development shall take place until a programme of archaeological work has been secured and implemented in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.</i> <i>Reason: The site is of archaeological significance in accordance with Policy GEN7 of the Arun District Local Plan. It is considered necessary for this to be a pre-commencement condition because archaeology can only be investigated before construction commences.</i>
Proposal: Remove the condition/reason Reasons: The condition fails the test of necessity. The condition is not needed to make the development acceptable in planning terms as the site is not of archaeological significance and ADLP Policy GEN 7 makes no reference to archaeology so is not relevant. The condition is also wider in scope than is necessary because there is no evidence that a programme of archaeological work/investigation is required. The condition is not relevant to the development permitted. It is not justified by the nature/impact of the development permitted.

The condition is not precise. The condition does not clearly state what is required by way of a programme of archaeological work/investigation or to which parts of this previously developed site they should relate.

The Condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.

This is a condition precedent that does not meet the legal (The reason does not state precisely and clearly the full reasons why this needs to be a pre- commencement condition as archaeology cannot only be investigated before construction commences as asserted) and policy tests and should not have been imposed.

Condition 12 (As worded)

No development shall take place until details of the implementation, maintenance and management of a sustainable drainage scheme have been submitted to and approved in writing by the LPA. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

- i) a timetable for the scheme's implementation; and*
- ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for the adoption by any public body or statutory undertaker, or any other Arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.*

Reason: To ensure that the proposed development is satisfactorily drained in accordance with policies GEN7 and GEN9 of the Arun District Council Local Plan.

Proposal: Remove the condition/reason and any related informative

Reasons:

The condition fails the test of necessity. The application proposed that disposal of surface water was to be by way of infiltration/soakaways which are to be designed and controlled via BRE Digest 365 or equivalent under the Building Regulations and this was permitted in principle. This is a sustainable drainage system that does not require ongoing management/maintenance or adoption as the condition erroneously assumes and unnecessarily asserts. ADLP Policy GEN 7 is not relevant and GEN 9 does not require such a condition.

The condition is not needed to make the development acceptable in planning terms and is wider in scope than is necessary to achieve the desired objective of securing satisfactory surface water drainage for the development permitted.

The condition is not relevant to planning. The sustainable drainage system proposed/permitted is a matter controlled under the Building Regulations.

The condition is not relevant to the development permitted. It is not justified by the nature/impact of the development permitted.

The condition is not enforceable. See above and below

The condition is not precise. The condition does not clearly state what is required by way of a sustainable drainage system as an alternative to that proposed/permitted.

The Condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.

This is a condition precedent that does not meet the legal (The reason does not state precisely

and clearly the full reasons why this needs to be a pre- commencement condition) and policy tests and should not have been imposed.

Condition 13 (As worded)

Construction of the development shall not commence until details of the proposed means of foul water sewerage have been submitted to and approved in writing by the LPA. No dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.

Reason: To ensure that the proposed development is satisfactorily drained in accordance with policies GEN7 and GEN9 of the Arun District Council Local Plan. It is considered necessary for this to be a pre-commencement condition to ensure foul and surface water sewerage disposal is in place before construction commences.

Proposal: Remove the condition/reason and any related informative

Reasons:

The condition fails the test of necessity. The application proposed that disposal of Foul water was to be by way of a connection to the Foul sewer in North End Road. No further details are required for planning purposes. The condition is not needed to make the development acceptable in planning terms and is wider in scope than is necessary to achieve the desired objective of securing satisfactory Foul water drainage for the development permitted.

The condition is not relevant to planning. There is a statutory right to connect to the existing Foul water sewer (Barratt Homes Limited v Dwr Cymru Cyfyngedig (Welsh Water) [2009] UKSC 13, para 59 et al) and such matters are controlled under The Water Industry Act 1991 (et al).

The condition is not relevant to the development permitted. It is not justified by the nature/impact of the development permitted.

The condition is not enforceable. See above and below

The condition is not precise. The condition does not clearly state what is required by way of an alternative to the intended sewer connection.

The Condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.

This is a condition precedent that does not meet the legal (The reason does not state precisely and clearly the full reasons why this needs to be a pre- commencement condition as the assertion that foul and surface water drainage is in place before construction commences is untenable) and policy tests and should not have been imposed.

Condition 14 (As worded)

No development shall commence until details the measures to avoid or mitigate ecological impacts and provide ecological enhancements as recommended in the Extended Phase 1 Habitat Survey prepared by Corylus Ecology and submitted with the planning application have been submitted to and approved by the LPA and no dwelling shall be occupied until the approved measures have been undertaken.

Reason: This condition is necessary to ensure the protection of wildlife and supporting habitat and secure opportunities for the enhancement of the nature conservation value of the site in line

with national guidance and Policy GEN23 and GEN29 of the Arun District Local Plan. It is considered necessary for this to be a pre-commencement condition because of the need to ensure measures are in place to protect wildlife and habitats on site prior to any disturbance.

Proposal: Remove the condition/reason

Reasons:

The condition fails the test of necessity. The condition is not needed to make the development acceptable in planning terms and is wider in scope than is necessary to achieve the desired objective of protecting and enhancing ecology on the site.

The Extended Phase 1 Habitat Survey prepared by Corylus Ecology and submitted with the planning application does not identify any likelihood of protected species being present or habitats for same and does not recommend any measures needed to avoid or mitigate ecological impacts and ecological enhancements recommended can be addressed by way of details submitted as part of the reserved matters of landscaping and layout so the submission of separate details for approval is not needed.

The condition is not relevant to the development permitted. ADLP Policy GEN 23 Water Environment is only relevant/applicable where there would be a direct or indirect unacceptable adverse impact on the water environment, notably in relation to rivers, ponds, wetlands, public access in river corridors and water related recreation which is not the case here.

ADLP GEN 29 Nature Conservation across the District is only relevant/applicable where sites contain semi-natural habitats, features of nature conservation interest, or are within wildlife corridors and this is not the case here. The condition is not justified by the nature/impact of the development permitted.

The condition is not enforceable. See above and below

The condition is not precise. The condition does not clearly state what is required in order to comply.

The Condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.

This is a condition precedent that does not meet the legal (The reason does not state precisely and clearly the full reasons why this needs to be a pre- commencement condition as the assertion that measures are in place to protect wildlife and habitats on site prior to any disturbance is untenable) and policy tests and should not have been imposed.

Condition 15 (As worded)

The details referred to in condition 1 shall include details of the materials and external finishes of the buildings, surfaces for roads/footpaths, means of enclosure and the parking of vehicles, and the provision of samples of such materials and finishes as required. Development shall be carried out in accordance with the approved details unless otherwise agreed with the Local Planning Authority.

Reason: To enable to the Local Planning Authority to control the development in detail in the interests of amenity in accordance with Policy GEN 7 of the Arun District Local Plan.

Proposal: Remove the condition/reason

Reasons:

The condition fails the test of necessity. The condition is not needed to make the development acceptable in planning terms and is wider in scope than is necessary to achieve the desired

objective of controlling the details of the permitted development. The condition simply repeats information that must be submitted under the reserved matters of Appearance, landscaping and layout and in the case of landscaping that required under condition 5.

The Condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.

Condition 16 (as worded)

Prior to the commencement of the development hereby approved, a detailed level survey of the site including existing and resulting ground levels and the slab levels of the building the subject of this approval, shall be submitted to and approved by the Local Planning Authority. The development shall proceed only in accordance with the details thus approved and there shall be no subsequent raising of levels without prior written approval of the Local Planning Authority.

Reason: In order to safeguard the amenities of the area and neighbouring residents in accordance with policy GEN7 of the Arun District Local Plan.

Proposal: Remove the condition/reason

Reasons:

The condition fails the test of necessity. The condition is not needed to make the development acceptable in planning terms and is wider in scope than is necessary to achieve the desired objective of controlling the details of the permitted development.

A detailed level survey of the site including existing ground levels was submitted with the application (Topographical Site Survey @ Scale 1: 500)

Ground and slab levels that would result from the development permitted would by definition be included in the details to be submitted in accordance with condition 1 as part of the reserved matters of scale and landscaping.

The second sentence of the condition is also unnecessary. The development permitted can only lawfully proceed in accordance with the reserved matters when approved and subsequent significant raising of levels (whatever that may mean – see below) would be operational development requiring an application for permission and/or permitted development.

The condition is not relevant to the development permitted. The condition is not justified by the site characteristics, its relationship to residential properties, the nature/impact of the development permitted or ADLP Policy GEN 7.

The condition is not enforceable. See above and below

The condition is not precise. The condition does not clearly state what is required in order to comply as it does not state what levels are necessary to safeguard residential amenity nor what is meant by “significant”.

The condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.

This is a condition precedent that does not meet the legal (The reason does not state precisely and clearly the full reasons why this needs to be a pre- commencement condition) and policy tests and should not have been imposed.

Condition 17 (As worded)

No dwelling shall be occupied until refuse and recycling bins have been provided and space has been laid out for their storage in relation to that dwelling in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter these areas shall not be used for any purpose other than the storage of refuse and recycling bins.

Reason: In the interests of the amenity of occupiers of nearby properties in accordance with Arun District Local Plan Policy GEN7 and DEV26.

Proposal: Remove the condition/reason**Reasons**

The condition fails the test of necessity. The condition is not needed to make the development acceptable in planning terms and is wider in scope than is necessary to achieve the desired objective of providing satisfactory provision for refuse and recycling storage/collection.

The laying out of space for the storage of refuse and recycling bins is a matter that should be addressed as part of the reserved matter of layout and the provision of householder refuse and recycling bins is a matter between the Council and future occupiers under other legislation and standard procedures and practice and there is no evidence that the development could not meet same or that the residential amenity of occupiers of nearby residential properties would be affected by the application of same..

The condition is not relevant to the development permitted. Arun District Local Plan Policy GEN 7 does not require such a condition or address refuse and recycling layout/provision in residential schemes and Policy DEV 26 Criteria for Retail Development is not relevant to residential development.

The condition is not enforceable. It would, in practice, be impossible to detect a contravention or remedy any breach of the last sentence of the condition which also concerns matters over which the applicant has no control.

The condition is not precise. The condition does not clearly state what is required in order to comply as it does not state what is required to safeguard residential amenity.

The condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.

Condition 18 (As worded)

There is a requirement that 25% of 1, 2 and 3 bed dwellings included as part of the development must be delivered to Lifetime Home standards.

Reason: To ensure that part of the development allows for residents to remain in their own homes over the course of their lifetime in accordance with Policy H3 of the Yapton Neighbourhood Plan.

Proposal: Remove the condition/reason**Reasons:**

The condition fails the test of necessity. There is no requirement for such as YNP Policy H3 is a policy for the supply of housing which is demonstrably out of date, the mix of dwellings and their size is a matter for consideration under the reserved matters of layout and scale and the provision of 30% affordable housing under condition 6 provides a mechanism for ensuring such provision in any case as most affordable housing (of whatever bedroom size) is constructed to meet lifetime homes standards.

The condition is not relevant to Planning. The majority of the 16 Lifetime Home Standards criteria have now been incorporated into the Building Regulations applicable to all residential properties and it is not appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people (NPPG Paragraph: 015 Reference ID: 21a-015-20140306).

The condition is not relevant to the development permitted. The mix of dwellings proposed does not form part of the development permitted and the development has been permitted to meet district wide need and not just the needs of Yapton.

The condition is not precise. The condition does not clearly state what is required in order to comply and there is confusion with condition 6 as it is not clear whether or not the condition would apply to both open market and affordable housing.

The condition is not reasonable in all other respects. The condition potentially places an unjustifiable and disproportionate burden on the applicant.

Condition 19 (As worded)

There is a requirement that the proposed reserved matters submission conform to the following range of dwellings: 1-bed dwellings: 10-15% of all dwellings; 2-bed dwellings: 25-35% of all dwellings; 3-bed dwellings: 45-55% of all dwellings; and 4+-bed dwellings: 5-10% of all dwellings.

Reason: In accordance with Policy H2 of the Yapton Neighbourhood Plan in the interests of ensuring homes are provided to meet local demand.

Proposal: Remove the condition/reason

Reasons:

The condition fails the test of necessity. There is no requirement for such as YNP Policy H2 is a policy for the supply of housing which is demonstrably out of date and there is no up to date evidence that the mix of dwellings specified would in fact meet local demand and/or need at the date that they will be built so this is a matter that should be considered at reserved matters stage under the reserved matters of layout and scale.

The condition is not relevant to the development permitted. The mix of dwellings proposed does not form part of the development permitted and the development has been permitted to meet district wide need/demand and not just the needs/demands of Yapton.

The condition is not precise. The condition does not clearly state what is required in order to comply and there is confusion with condition 6 as it is not clear whether or not the condition would apply to both open market and affordable housing.

The condition is not reasonable in all other respects. The condition potentially places an unjustifiable and disproportionate burden on the applicant.

Condition 20 (As worded)

No dwelling shall be occupied until space for that dwelling has been laid out for the parking of cars, motorbikes and cycles in relation to that dwelling in accordance with a drawing and schedule to be submitted to and approved in writing by the Local Planning Authority. These areas shall thereafter not be used for any purpose other than the parking of cars, motorcycles and cycles.

Reason: In the interests of road safety and to accord with approved policy in accordance with Policy GEN7 of the Arun District Local Plan.

Proposal: Remove the condition/reason
Reasons: The condition fails the test of necessity. This would be covered by the reserved matter of layout and conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. (NPPG Paragraph: 017 Reference ID: 21a-017-20140306) The condition is not enforceable. The future use of such areas for any purpose other than the parking of cars, motorcycles and cycles by future residents is a matter governed by permitted development rights and/or the consideration/determination of a planning application for change of use if required at the appropriate time. The condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.
Condition 21 (As worded) <i>No development hereby permitted shall be commenced until a scheme for the location and installation of fire hydrants has been submitted to and approved in writing by the Local Planning Authority. For the purposes of this condition the scheme shall be in accordance with the Guidance Note: The Provision of Fire Hydrants and an Adequate Water Supply for Fire Fighting as published by West Sussex Fire and Rescue Services (as amended from time to time). No building hereby permitted shall be occupied until the fire hydrant(s) required to serve that building have been installed in accordance with the approved scheme.</i> <i>Reason: In order to provide adequate infrastructure for emergency services, in accordance with Policy GEN7 of the Arun District Local Plan. It is considered necessary for this to be a pre-commencement condition because of the need to ensure the safety of residents on the site.</i>
Proposal: Remove the condition/reason
Reasons: The condition fails the test of necessity and is not relevant to planning. The Location/Provision of fire hydrants would be covered by the reserved matter of layout and the Building Regulations. The condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant. This is a condition precedent that does not meet the legal (The reason does not state precisely and clearly the full reasons why this needs to be a pre- commencement condition) and policy tests and should not have been imposed.
Condition 22 (As worded) <i>At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low carbon energy sources (as described in the glossary at Annex 2 of the National Planning Policy Framework, March 2012). Details and a timetable of how this is to be achieved for each phase or sub phase of development, including details of physical works on site, shall be submitted to and approved in writing by the Local Planning Authority before any development in that phase or sub phase begins. The development shall be implemented in accordance with the approved details and timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.</i> <i>Reason: In order to secure on site renewable energy in accordance with national planning policy, in accordance with Policy GEN7 of the Arun District</i>

Local Plan.
Proposal: Remove the condition/reason
Reasons: The condition fails the test of necessity and is not relevant to planning as worded. Although the Framework has a core planning principle of support for the transition to a low carbon future, Neither the Framework nor ADLP Policy GEN 7 prescribe the level of reduction required for any residential development or that this should be achieved on a site over and above that appropriate under the Building Regulations. The condition is not relevant to the development permitted. There is an existing electricity supply from the national grid on site but no gas supply and the intention was to supply the future housing with energy from the national grid. The condition is not enforceable. Even if decentralised energy supply equipment was installed on site future residents/occupiers may choose not to maintain that equipment and/or to secure their supply from other sources including the national grid so this is a matter outside of the control of the applicant and it would, in practice, be impossible to detect a contravention or remedy any breach of the condition. The condition is not precise. The condition does not clearly state what is required in order to comply. “Decentralised energy” is defined in the NPPF as being “Local renewable energy and local low-carbon energy <u>usually but not always on a relatively small scale encompassing a diverse range of technologies</u>” whereas “Renewable and low carbon energy” (and not “or” as stated in the condition) is defined as being “energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass and deep geothermal heat”. It is therefore entirely possible that 10% of the intended energy supply from the national grid is already sourced from decentralised and renewable or low carbon energy sources so that on site generation from such sources is not required to comply. The condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant. The second part of the condition is a condition precedent that does not meet the legal (The reason does not state precisely and clearly the full reasons why this needs to be a pre-commencement condition) and policy tests and should not have been imposed.
Condition 23 (As worded) <i>Prior to the commencement of development, a strategy for the provision of the highest available headline speed of broadband provision to future occupants of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall take into account the timetable for the delivery of 'superfast broadband' (defined as having a headline access speed of 24Mb or more) in the vicinity of the site (to the extent that such information is available). The strategy shall seek to ensure that upon occupation of a dwelling, the provision of the highest available headline speed of broadband service to that dwelling from a site-wide network is in place and provided as part of the initial highway works and in the construction of frontage thresholds to dwellings that abut the highway. Unless evidence is put forward and agreed in writing by the Local Planning Authority that technological advances for the provision of a broadband service for the</i>

majority of potential customers will no longer necessitate below ground infrastructure, the development of the site shall be carried out in accordance with the approved strategy.

Reason: To safeguard the amenities of residents in accordance with Policy 7 of the Arun District Local Plan. It is considered necessary for this to be a pre- commencement condition because the provision of broadband needs to be incorporated into the design for the site.

Proposal: Remove the condition/reason

Reasons:

The condition fails the test of necessity. It would not have been appropriate to refuse planning permission without the requirements imposed by the condition as it is not needed to make the development acceptable in planning terms.

The condition is not enforceable. This is a matter outside of the control of the applicant and it would, in practice, be impossible to detect a contravention or remedy any breach of the condition.

The condition is not precise. The wording of the condition is so convoluted and imprecise as to render it impossible to understand what the applicant must do to comply with same.

The condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.

This is a condition precedent that does not meet the legal (The reason does not state precisely and clearly the full reasons why this needs to be a pre- commencement condition) and policy tests and should not have been imposed.

Condition 24 (As worded)

As part of the approval of the reserved matters application, the applicant shall include details of how the scheme will link with surrounding land. The links shown shall then be provided prior to completion of the development and retained in perpetuity.

Reason: To promote sustainable development by encouraging walking and cycling in accordance with policy GEN7 of the Arun District Local Plan and the National Planning Policy Framework.

Proposal: Remove the condition/reason

Reasons:

The condition fails the test of necessity. It would not have been appropriate to refuse planning permission without the requirements imposed by the condition as it is not needed to make the development acceptable in planning terms as access which formed part of the development permitted was found to be in accordance with ADLP Policy GEN 7 and Framework paragraph 32.

The condition is not relevant to the development permitted. Access has been approved and none of the reserved matters to be submitted do not by definition relate to such matters.

The condition is not enforceable. These matters are outside of the control of the applicant as he does not own or control any adjoining land and it would, in practice, be impossible to detect a contravention or remedy any breach of the condition particularly the requirements that links if provided shall be provided prior to completion and then retained in perpetuity.

The condition is not precise. The phrases “links” and “surrounding land” are not defined in terms of meaning or extent so it is not clear what it is the applicant must do to comply.

The condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.
Condition 25 (As worded) <i>Any works to the trees or vegetation clearance on the site should only be undertaken outside of the bird breeding season which takes place between 1st March - 1st October. If works are required within this time an ecologist will need to check the site before any works take place (with 24 hours of any work).</i> <i>Reason: In the interests of amenity in accordance with policy GEN7 of the Arun District Local Plan.</i>
Proposal: Remove the condition/reason
Reasons: The condition fails the test of necessity. It would not have been appropriate to refuse planning permission without the requirements imposed by the condition as there is no definite planning reason for it and it is not needed to make the development acceptable in planning terms. There are no such requirements in any relevant legislation or development plan policy and such matters can, if necessary, be controlled via the reserved matter of landscaping and condition 5 The condition is not relevant to the development permitted. No work to trees or vegetation clearance is necessary as a result of the permitted development. The condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.
Condition 26 (As worded) External lighting in association with the development should comply with Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Light Limitations for Exterior Lighting Installations for Zone E2. Reason: In the interests of residential amenity in accordance with Policy GEN7 of the Arun District Local Plan.
Proposal: Remove the condition/reason
Reasons: The condition fails the test of necessity. External Lighting is a matter that can be controlled under the reserved matters of appearance, layout and landscaping and ADLP Policy GEN 7 is not applicable to such matters and does not contain any such requirements. The condition is not precise nor enforceable. It is not clear whether or not the condition applies to all external lighting including that provided within residential curtilages so as worded it would, in practice, be impossible to detect a contravention or remedy any breach of the condition. The condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.
Condition 27 (As worded) <i>Prior to occupation of any of the dwellings, an electric vehicle charge point shall be installed to serve each dwelling and this shall then be permanently retained and maintained in working condition.</i> <i>Reason: New petrol and diesel cars/vans will not be sold beyond 2040, and to mitigate against any potential adverse impact of the development on local air quality, in accordance with Policy GEN7 of the Arun District Local Plan, policy QE DM3 (c) of</i>

the Arun Local Plan 2011 -2031 Publication version showing modifications and the National Planning Policy Framework.

Proposal: Remove the condition/reason

Reasons:

The condition fails the test of necessity. It would not have been appropriate to refuse planning permission without the requirements imposed by the condition as there is no definite planning reason for it and it is not needed to make the development acceptable in planning terms. There is no requirement that an electric vehicle charge point shall be installed to serve each dwelling in any relevant legislation or planning policy including those cited.

The condition is not precise or enforceable. The term “electric charging point” is not defined and most electric cars come with or have available, adapters that enable them to be charged via a domestic plug socket and even if separate ECP were unnecessarily provided to serve each dwelling the requirement that they should be permanently retained and maintained in working condition by future occupiers is a matter outside of the control of the applicant so as worded it would, in practice, be impossible to detect a contravention or remedy any breach of the condition.

The condition is not reasonable in all other respects. The condition places an unjustifiable and disproportionate burden on the applicant.