

**Recommendation Report for Removal of a Planning Obligation**

**REF NO:** Y/35/17/PO

**LOCATION:** Land at Goodhew Close  
Yapton

**PROPOSAL:** Application to modify planning obligation approved under reference Y/81/10 relating to West Sussex County Highways providing a payment in-lieu of Cycle Way

**SITE AND SURROUNDINGS**

**DESCRIPTION OF APPLICATION**

This application seeks the variation of a clause in a Planning Obligation made under S52 of the Town and Country Planning Act 1971 which ensured the developer/applicant constructed a cycle way. The modification seeks to amend this restriction to allow a contribution of £80,503.40 towards local highway improvements without the cycle way being constructed.

**SITE AREA**

7.7 hectares

**TOPOGRAPHY**

Generally flat.

**TREES**

None affected by the S106 variation.

**BOUNDARY TREATMENT**

N/A.

**SITE CHARACTERISTICS**

Large scale residential housing estate formed

**CHARACTER OF LOCALITY**

The site is adjoined by residential estates originating from the 60's and 70's to the west (Downview Road), south (Goodhew Close) and south east (Fordwater Gardens and Johnson Way), which are located on the north side of Burndell Road. More extensive areas of housing are located further to the west, south west and east of the site. The existing housing close to the site is characterised by low density two storey 20Cth housing detached, semi-detached and terraced housing. Ford Airfield Industrial Estate lies to the east and comprises an area of large utilitarian buildings and hard standing, beyond which lie several developed parts of the former airfield incorporating a concrete works, sewerage works and storage yard.

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|-----------------------|
| RELEVANT SITE HISTORY |
|-----------------------|

|              |                                                                                                                                                                                                                                                                                               |                                                                               |                 |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|-----------------|
| Y/81/10/     | Proposed development comprising of the construction of 173 new dwellings and associated car parking, public open space, including childrens play areas, vehicular access and highway works - This application is a departure from the development plan & also falls within the parish of Ford | Refused<br>26-05-2011<br><b>Appeal:<br/>Allowed+Conditions<br/>19 12 2011</b> | <i>Appealed</i> |
| Y/24/13/DOC  | Application for approval of details reserved by condition 4 imposed under Y/81/10 - Tree Survey Plan dated 08/03/13, Tree Survey Schedule dated 14/02/13 and Tree Protection Plan GTS353.02.                                                                                                  | DOC Approved<br>31-05-2013                                                    |                 |
| Y/48/13/     | Substitution of plots 1-3, 26-28, 35-43, 54,55,57,58,70-99,129-135,141-149,151-163,166, 167,169-173 following a grant of planning permission Y/81/10.                                                                                                                                         | ApproveConditionally<br>15-10-2013                                            |                 |
| Y/90/13/DOC  | Application for approval of details reserved by condition 14 (Construction Management Plan) following a grant of planning permission Y/81/10/                                                                                                                                                 | DOC Approved<br>04-12-2013                                                    |                 |
| Y/95/13/DOC  | Application for approval of details reserved by condition 3 imposed under Y/48/13 - External materials.                                                                                                                                                                                       | DOC Approved<br>23-12-2013                                                    |                 |
| Y/70/13/DOC  | Application for approval of details reserved by appeal decision APP/C3810/A/11/2155343 of planning application Y/81/10 - conditions 5, 7, 8, 16 & 17                                                                                                                                          | Inc Docs Ret'nd<br>20-01-2014                                                 |                 |
| Y/5/14/DOC   | Application to discharge condition 6 imposed on planning application Y/81/10 relating to SUDS maintenance & management                                                                                                                                                                        | DOC Approved<br>07-02-2014                                                    |                 |
| Y/73/13/DOC  | Application for the approval of details reserved by conditions 5 (surface water drainage), 7 (boundary treatments), 16 (landscape scheme), 17 (mitigation measures) and 20 (foul water drainage system) following a grant of planning permission Y/81/10/.                                    | DOC Part Approved<br>07-02-2014                                               |                 |
| Y/104/13/DOC | Applicaiton for the approval of details reserved by conditions 13 (wheel cleaning), 18 (remediation strategy) and 19 (verification report) following a grant of planning permission Y/81/10/.                                                                                                 | DOC Part Approved<br>05-03-2014                                               |                 |
| Y/25/14/DOC  | Application for approval of details reserved by                                                                                                                                                                                                                                               | DOC Part Approved                                                             |                 |

|              |                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                    |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
|              | conditions 16 & 17 or previously approved planning application Y/48/13 relating to Remediation Strategy & Verification Report                                                                                                                                                                                                                                                                                                               | 28-04-2014                         |
| Y/44/14/DOC  | Application for approval of details reserved by conditions 3 (schedule of materials), 4 (surface water drainage), 5 (Site Specific Maintenance Manual), 6 (boundary treatment), 7 (highway works), 12 (vehicle wheel cleaning), 13 (Construction Management Plan), 15 (mitigation measures in Ecological Appraisal report) Condition 16 (landscaping) and 18 (foul water drainage system) following a grant of planning permission Y/48/13. | DOC Part Approved<br>10-06-2014    |
| Y/41/14/PL   | Application for removal of condition 2 following a grant of planning permission Y/48/13 - replacement of approved plans for layout and street scenes for plots 1-3                                                                                                                                                                                                                                                                          | ApproveConditionally<br>27-06-2014 |
| Y/95/14/DOC  | Application for approval of matters reserved by condition imposed under Y/48/13/ relating to condition 4 for surface water drainage details.                                                                                                                                                                                                                                                                                                | DOC Approved<br>16-12-2014         |
| Y/89/14/PL   | Removal of condition 2 imposed under Y/48/13 relating to the replacement of approved plans for layout and street scenes for plots 1-3                                                                                                                                                                                                                                                                                                       | ApproveConditionally<br>08-01-2015 |
| Y/102/14/DOC | Application for the approval of matters reserved by condition imposed under Y/48/13/ relating to conditons 4 & 18 for surface & foul water drainage.                                                                                                                                                                                                                                                                                        | DOC Approved<br>09-01-2015         |
| Y/31/15/DOC  | Application for approval of matters reserved by condition imposed under Y/89/14/PL relating to conditions 5, 7, 8, 9 &10 - Construction of roads, secure cycle parking spaces, emergency access point, verification report & foul water drainage system                                                                                                                                                                                     | DOC Approved<br>28-04-2015         |
| Y/37/15/PL   | Application for removal of condition 2 following a grant of planning permission Y/48/13 - replacement of approved plans for layout & street scenes for plots 1-3.<br>Resubmission of Y/41/14/PL                                                                                                                                                                                                                                             | ApproveConditionally<br>27-07-2015 |
| Y/90/15/DOC  | Applictaiion for approval of matters reserved by condition imposed under Y/81/10 relating to condition No. 16 - Landscaping scheme                                                                                                                                                                                                                                                                                                          | DOC Approved<br>15-12-2015         |
| Y/61/16/DOC  | Application for approval of details reserved by condition imposed under Y/48/13/ relating to                                                                                                                                                                                                                                                                                                                                                | DOC Approved                       |

condition No. 3 (schedule of materials &  
finishes to be used for external walls & roofs) 18-10-2016

Directly relevant applications:

Y/81/10/

Original application allowed at appeal following refusal

Y/48/13/

Substitution of plots 1-3, 26-28, 35-43, 54,55,57,58,70-99,129-135,141-149,151-163,166, 167,169-173 following a grant of planning permission Y/81/10. Granted conditional approval 15-10-13.

Y/41/14/PL

Application for removal of condition 2 following a grant of planning permission Y/48/13 - replacement of approved plans for layout and street scenes for plots 1-3. Granted conditional approval 15-10-13.

Y/89/14/PL

Removal of condition 2 imposed under Y/48/13 relating to the replacement of approved plans for layout and street scenes for plots 1-3. Granted conditional approval 08-01-15.

Y/37/15/PL

Application for removal of condition 2 following a grant of planning permission Y/48/13 - replacement of approved plans for layout & street scenes for plots 1-3. Resubmission of Y/41/14/PL. Granted conditional approval 27-07-15.

#### **REPRESENTATIONS**

##### **Representations received:**

Yapton Parish Council

No objection.

##### **Comments on Representations received:**

Comments noted.

#### **CONSULTATIONS**

Solicitor - Legal Services

WSCC Strategic Planning

##### **Consultations responses received:**

WSCC Highways

"As background, as part of Y/81/10, details were proposed by the applicant for the creation of various cycle way works along Burndell Road into Yapton village centre. At that time, it was agreed that those works were indicative, of limited benefit, and that a more comprehensive scheme of cycle improvements should instead be delivered from the development towards Barnham. This requirement was not however included in the s106 agreement. Instead, the obligation made reference to the delivery of those indicative cycle way improvements alongside Burndell Road.

Notwithstanding this, the cycle way improvements have been taken forwarded to detailed design, where a number of significant safety issues were raised. It's therefore apparent that the

cycle way works cannot be implemented. Given also the overall limited benefit as raised through the formal consultation response issued in 2010, the LHA are satisfied that the existing s106 obligation can be varied to a contribution in lieu of works.

The contribution (of £80,503.40) has been derived from the costs of the proposed cycle way works. This contribution, which will be used towards local highway improvements, is acceptable.

There would be no objection to the variation of the s106 obligation."

WSCC Infrastructure Engineer

"On speaking with Ian Gledhill I understand this issue was made clear some time ago. It was agreed some time ago that WSCC did not want the cycleway scheme and would accept a contribution instead. The principle of this has been agreed, see attached email from Ian to Stuart Jones dated 18th March 2014.

The outstanding point to agree is the value of the contribution."

Planning Solicitor:

On this basis (referring to WSCC Infrastructure Engineer comment above) the application can proceed ASAP with a discharge and variation of the cycleway and a substitution of the capital sum of £80,503.40.

**Comments on Consultation responses:**

Comments noted.

**POLICY CONTEXT**

Designation applicable to site:

Designation applicable to site:  
Outside the built-up area boundary  
Tree Preservation Order  
Public Right of Way

**DEVELOPMENT PLAN POLICIES**

|                                  |               |                                                       |
|----------------------------------|---------------|-------------------------------------------------------|
| Arun District Local Plan 2003:   | <u>AREA18</u> | Portsmouth and Arundel Canal                          |
|                                  | <u>DEV17</u>  | Affordable Housing                                    |
|                                  | <u>GEN12</u>  | Parking in New Development                            |
|                                  | <u>GEN15</u>  | Cycling and Walking                                   |
|                                  | <u>GEN18</u>  | Crime Prevention                                      |
|                                  | <u>GEN20</u>  | Provision of Public Open Space within New Development |
|                                  | <u>GEN3</u>   | Protection of the Countryside                         |
|                                  | <u>GEN5</u>   | Provision of New Residential Development              |
|                                  | <u>GEN7</u>   | The Form of New Development                           |
|                                  | <u>GEN8</u>   | Development and the Provision of Infrastructure       |
| Publication Version of the Local | <u>GEN9</u>   | Foul and Surface Water Drainage                       |
|                                  | <u>GEN2</u>   | Built-up Area Boundary                                |
|                                  |               | D DM1 Aspects of Form and Design                      |

Plan (October 2014):

Quality  
D DM2 Internal Space Standards  
D DM3 External Space Standards  
SD SP1 Sustainable Development  
D SP1 Design  
T DM1 Sustainable Travel and Public Rights of Way  
T SP1 Transport and Development  
W DM2 Flood Risk  
W DM3 Sustainable Urban Drainage Systems  
Built-up Area Boundary  
Protection and maintenance of local green spaces  
Minimising the environmental impact of development  
Enhancement of biodiversity  
Green infrastructure and development  
Housing requirement  
Dwelling size  
Parking standards for new residential development

Yapton neighbourhood plan 2014 Policy BB1  
Yapton neighbourhood plan 2014 Policy E2

Yapton neighbourhood plan 2014 Policy E4

Yapton neighbourhood plan 2014 Policy E5  
Yapton neighbourhood plan 2014 Policy E6  
Yapton neighbourhood plan 2014 Policy H1  
Yapton neighbourhood plan 2014 Policy H2  
Yapton neighbourhood plan 2014 Policy PK1

## PLANNING POLICY GUIDANCE

NPPF  
NPPG

National Planning Policy Framework  
National Planning Practice Guidance

### POLICY COMMENTARY

The above policies combine to describe the criteria against which the application will be assessed particularly with regard to visual and residential amenity.

The Development Plan consists of the Arun District Local Plan 2003.

Paragraph 215 of the NPPF ensures that specific policies in Arun District Local Plan 2003 can carry weight. The weight afforded to the policies with Local Plan policies can be assessed according to their level of consistency of the various policies with the National Planning Policy Framework. It should be noted that the NPPF states that weight is given to individual policies and not to the plan as a whole.

NPPF Paragraph 216 confirms that weight can be given to policies in emerging plans following publication. The Council agreed the majority of the Arun Local Plan in February 2014 (Publication Version) and this is a material consideration in the determination of this planning application. The remaining chapters of the Local Plan namely: the Spatial Portrait, Employment & Enterprise, Housing Allocations, Transport, Monitoring and Implementation will be considered for publication at a later meeting of Full Council. Following 'publication' of the Local Plan a formal public consultation, examination and adoption process takes place. The chapters that have been published will undergo public consultation alongside the remaining chapters when they have been agreed. The weight given to the current published policies can be significant depending:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);
- the degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

The policies within this published version of the plan are at an advanced stage as they have been agreed by Full Council for regulation 19 consultation, they have been subject to independent audit and are considered to meet the NPPF and there are no known significant unresolved issues arising from regulation 18 consultation for the published policies.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The statement of representations procedure and statement of fact produced by the Council under regulation 19 explains that the consultation will take place once the remaining chapters / policies have been published.

No Yapton NDP policies are relevant to this 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 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**

This application is for the variation of the S106 agreement first imposed on Y/81/10 which sought to ensure the development of a cycle highway by the developer/applicant. This application seeks to vary the S106 to include a financial contribution instead of the construction of the cycle way following completion of the development.

Relevant saved policy GEN15 "Cycling and Walking" states:

"The Council will continue to work with West Sussex County Council and others to encourage and support the development of safe cycle and footpath networks. Where appropriate, new development will be required to provide safe and attractive facilities for cyclists and pedestrians,

both within the site and in the form of links to the surrounding area. The proposed Barnham - Felpham and River Arun cycle routes will be protected from development which would preclude their use as a safe cycle route.

#### **Reason**

To enhance the provision of safe facilities for cyclists and pedestrians."

The requirement for the cycle highway was included in the obligation to encourage and support the development of safe cycle and footpath networks in line with policy GEN15 (below) and advised for inclusion by WSCC. During construction of the development and is consultation with WSCC it was decided that the highway would not be of suitable benefit and WSCC accepted a financial contribution towards local highway improvement would be an appropriate alternative.

As the contribution will be spent on local highways improvements, WSCC can use the contribution to improve cycle and walking highways in the local area and on the estate itself if and when the roads are adopted. As such it is considered that the variation of the S106 would comply with policy GEN15 and is acceptable in policy terms.

It is considered the modification of the planning obligation be approved.

#### **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.

Y/35/17/PO

RECOMMENDATION

APPROVE