

PLANNING APPLICATION REPORT

REF NO: A/29/23/PO

LOCATION: Land at Manor Nursery
Roundstone Lane
Angmering
BN16 4AX

PROPOSAL: Application under S106A for the modification of the Section 106 dated 19-03-15 linked to A/51/14/OUT in relation to the removal of Clauses 1.1 - 1.20 of Schedule 2 relating to Affordable Housing Provision.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	<p>This application seeks the modification of the Section 106 Agreement dated 19th March 2015 linked to A/51/14/OUT at Land at Manor Nursery, Roundstone Lane.</p> <p>The modification involves the removal of Clauses 1.1 - 1.20 of Schedule 2, which would remove the requirement for affordable housing to be provided on the site.</p>
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RELEVANT SITE HISTORY

A/51/14/OUT	Outline Application with Some Matters Reserved for demolition of the existing Manor Nursery Garden Centre and hard standing and redevelopment for 32 dwellings with associated access, public open space and landscaping. Departure from the Development Plan.	App Cond with S106 20-03-15
A/38/18/RES	Approval of reserved matters following outline consent A/51/14/OUT relating to appearance, landscaping, layout & scale for demolition of the existing Manor Nursery Garden Centre & hard standing & redevelopment for 32No. dwellings with associated access, public open space & landscaping.	ApproveConditionally 13-12-18
A/167/22/PO	Application under S106A for the modification of the Section 106 dated 19-03-15 linked to A/51/14/OUT in relation to the Second & Fourth Schedule (Affordable Housing) and Third & Fifth Schedule (Strategic Highways Contribution).	Refused 15-02-23

A/167/22/PO - Application under S106A for the modification of the Section 106 dated 19-03-15 linked to A/51/14/OUT in relation to the Second & Fourth Schedule (Affordable Housing) and Third & Fifth Schedule (Strategic Highways Contribution). REFUSED 15th February 2023

REPRESENTATIONS

Angmering Parish Council (APC) - Objection

- The Housing Needs Survey undertaken by Action in Rural Sussex (AiRs) 2020 clearly demonstrated that there was a need for affordable housing for local people in Angmering.
- After the deduction of the affordable housing the developer is expecting a profit of circa 11.5%. Nationally the current financial crisis has resulted in substantial reductions in the profits of the majority of commercial undertakings and in many cases losses. There seems to be no reason why developers should be singled out for protection from this situation to the detriment of others.
- Despite the current financial situation the need for more affordable housing within Angmering and the District has not decreased if anything it has increased.
- The needs of the Parish outweigh the profits of the developer. It also feels that should the developer be having financial problems then a stop should be made to the continued construction of this site until the developer is financially able to continue and honour that agreement.

56 objections have been received. The objections can be summarised as follows:

- There is still a need for affordable housing in the area
- Lack of infrastructure
- Loss of wildlife/greenspace
- Access too narrow

COMMENTS ON REPRESENTATIONS RECEIVED:

This is not an application for a planning permission for new dwellings. Comments relating to supporting infrastructure for new housing, loss of wildlife/ecology are not material considerations, as these matters have already been addressed through the planning permission and are not the subject of this deed of variation application.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

WSSC - No objection to the application, as the wording of the agreement has no impact on the obligations due to WSSC. WSSC allow for discounted financial contributions for Education, Libraries, and Fire if affordable housing is being delivered, however these are all formula based within the S106, and as such this change will be adequately reflected in the final contribution request on the relevant triggers.

COMMENTS ON CONSULTATION RESPONSES:

All comments are noted. With regards to the Parish Council comments, it should be noted that there are no proposed changes to the highways contributions, which have been removed since the refusal of application A/167/22/PO.

DEVELOPMENT PLAN POLICIES

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans, The South Inshore & South Offshore Marine Plan and the Angmering Neighbourhood Development Plans.

Where a Section 106 agreement is older than five years, an application can be made to vary or modify the obligations. The application is made under s106A of the Town and Country Planning 1990 and are given practical effect by the Town and Country Planning (Modification and Discharge of Planning Obligations Regulations 1992.

In determining the application, the Local Planning Authority can decide that the planning obligation:

- Shall continue to have effect without modification;
- Can be discharged, as it no longer serves a useful purpose; or
- Continues to serve a useful purpose, but would serve that purpose equally well subject to modifications in the 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 accords with the requirements of the development plan, specifically in relation to policy AH SP2 in that the applicants have demonstrated that the provision of 30% affordable housing is not viable. In these instances (exceptional circumstances), the policy allows for a reduced provision or a commuted sum.

no affordable housing or commuted sum will be secured.

Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that:

- (2) in dealing with an application for planning permission the authority shall have regard to -
- (a) the provisions of the development plan, so far as material to the application,
 - (aza) a post examination draft neighbourhood development plan, so far as material to the application,
 - (b) any local finance considerations, so far as material to the application, and
 - (c) any other material considerations.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are material considerations which would warrant a decision other than in accordance with the development plan.

CONCLUSIONS

Policy AH SP2 of the Arun Local Plan requires developments of 11 or more residential units to provide a minimum of 30% affordable housing in the first instance. However, the policy acknowledges that where this is not financially viable, a reduction in the amount of affordable housing, off-site delivery, or a commuted sum can be agreed with the Local Planning Authority in very exceptional circumstances. In all cases where the delivery of affordable housing is lower than required, appropriate evidence is required to be submitted.

Planning permission, reference A/51/14/OUT, was approved with a Section 106 agreement which secured no less than 30% of the residential units to be affordable. Based upon the subsequently approved reserved matters approval which securing the layout of 32 dwellings, a minimum of 10 affordable residential dwellings would be required.

This application seeks to remove the obligation requiring the delivery of any affordable housing. In support of the application to remove the affordable housing contribution, evidence was provided in the form of a viability assessment and further supporting evidence. Based upon estimated costs from the developer, the scheme was shown to be unviable with the provision of any affordable housing.

Arun District Council appointed an independent viability consultant to review the developers submission. It was concluded that the applicant's costs were estimated to be too high, however, even accounting for this the scheme would remain in a deficit. Therefore, the scheme would not be viable with the inclusion of affordable housing.

It is noted that the Parish Council raise concerns regarding the proposed profit of the developer. However, profit is an inherent part of any development to accommodate the risk of undertaking development. Planning Practice Guidance suggests that a profit margin between 15-20% is acceptable for market housing. A profit margin of 17.5% has therefore been proposed and accepted by the viability consultant.

The independent review suggested to ADC that a late-stage review is included within any modification to the Section 106 agreement. The review mechanism would ensure that any changes in costs which result in an uplift in Gross Development Value, are captured and provided as a commuted sum towards Affordable Housing Provision. The principle of the late stage review mechanism has been agreed by all parties.

Whilst a policy compliant level of affordable housing cannot be supported, the evidence provided justifies a reduction in the level provision. The late stage review mechanism will allow any additional profits to be secured as a commuted sum, and would therefore not be in conflict with ALP Policy AH SP2.

Therefore, it is recommended that the proposed modification to the S106 agreement to remove the Affordable Housing Contribution is approved subject to the inclusion of a late stage review.

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

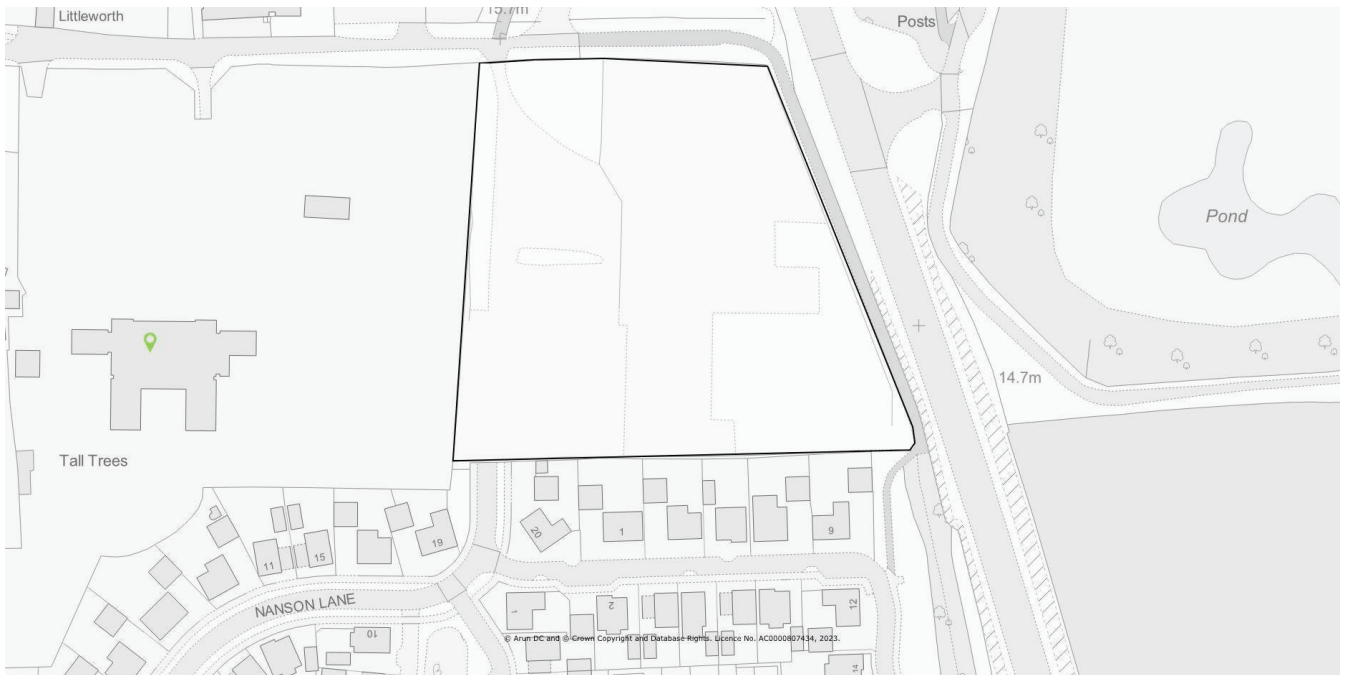
APPROVE

- 1 It is recommended that authority is delegated to the Group Head of Planning, in consultation with the Chair and Vice-Chair of the Planning Committee, to complete the deed of variation to the S106 dated 19th March 2015 and linked with A/51/14/OUT (Land at Manor Nursery, Roundstone Lane) to remove the Affordable Housing requirements subject to the incorporation of a late stage review mechanism.

BACKGROUND PAPERS

[The documents relating to this application can be viewed on the Arun District Council website by going to https://www.arun.gov.uk/weekly-lists and entering the application reference or directly by clicking on this link.](https://www.arun.gov.uk/weekly-lists)

A/29/23/PO - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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