



**Horsham
District
Council**

DEVELOPMENT MANAGEMENT REPORT

TO: Development Management Committee (North)
BY: Development Manager
DATE: 4 October 2016
DEVELOPMENT: Modifications to planning obligations attached to DC/14/0590
SITE: Land West of Worthing Road Southwater West Sussex
WARD: Southwater
APPLICATION: S106/16/0009
APPLICANT: Mrs Olivia Forsyth

REASON FOR INCLUSION ON THE AGENDA: The application proposes modifications to a Legal Agreement previously considered by the Committee.

RECOMMENDATION: To agree the proposed changes to the Legal Agreement and enter into a Deed of Variation in relation to the agreed amendments set out at the end of this report.

1. THE PURPOSE OF THIS REPORT

1.1 To consider the planning application.

DESCRIPTION OF THE APPLICATION

1.2 The application proposes modifications to the Legal Agreement of DC/14/0590, which was an outline application permitting up to 540 dwellings and 54 retirement flats with associated parking and landscaping.

1.3 The proposed modifications are as follows:

- Requirement to carry out A24 Pollards Hill Junction Improvement Works to be removed (no longer required by WSCC)
- Definition of 'Application' to be amended to include all reserved matters and subsequent variations.
- 'Plan 2' to be amended, as this shows the A24 Hop Oast Junction Improvement Works and these have been revised.
- Amend the split of affordable housing to reduce the number of age-restricted dwellings.
- Require approval of the Cricket Pitch Specification prior to the implementation of the Cricket Pitch.
- Require approval of the Sports Area Specification prior to the implementation of the Sports Area.

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- Require approval of the Football Pitch Specification prior to the implementation of the Football Pitch.
- Require approval of the Sports Club Car Park Specification prior to the implementation of the Sports Club Car Park.
- Require approval of the Tennis Court Specification prior to the implementation of the Tennis Court.
- Require approval of the Sports Pavilion Specification prior to the implementation of the Sports Pavilion.
- Require approval of the Church Car Park Specification prior to the implementation of the Church Car Park.
- Require approval of the MUGA Specification prior to the implementation of the MUGA.
- Require approval of the First LEAP Specification prior to the implementation of the First LEAP.
- Require approval of the NEAP Specification prior to the implementation of the NEAP.
- Require approval of the Skateboard/BMX Park Specification prior to the implementation of the Skateboard/BMX Park.
- Require approval of 3x Bus Shelter Specifications at first occupation, 2x Bus Shelter Specifications at 200th occupation (linked to Church Lane Improvement Works) and 1x Bus Shelter Specification at 250th occupation (linked to delivery of Worthing Road/Church Lane Improvement Works)
- Require completion of 3x Bus Shelters at 50th Occupation, 2x Bus Shelters at occupation of 100 dwellings south of the Downs Link (linked to Church Lane Improvement Works) and 1x Bus Shelter within 60 working days of the final occupation (linked to delivery of Worthing Road/Church Lane Improvement Works).

DESCRIPTION OF THE SITE

- 1.3 The application site is as per DC/14/0590, described in the Officers report of that application. Reserved Matters approval for part of the site has been issued (DC/15/2064) and works have commenced.

2. INTRODUCTION

STATUTORY BACKGROUND

- 2.1 The Town and Country Planning Act 1990.

RELEVANT GOVERNMENT POLICY

- 2.2 The National Planning Policy Framework (March 2012), in particular paragraphs 203-206 (relating to Planning Conditions and Obligations)

RELEVANT COUNCIL POLICY

- 2.3 The Development Plan consists of the Horsham District Planning Framework (November 2015) (HDPF).
- 2.4 The relevant Policies of the HDPF are 1 (Sustainable Development), 2 (Strategic Development), 3 (Development Hierarchy), 15 (Housing Provision), 16 (Meeting Local Housing Needs), 39 (Infrastructure Provision) and 40 (Sustainable Transport).

RELEVANT NEIGHBOURHOOD PLAN

- 2.5 Southwater Parish is a designated Neighbourhood Plan Area, although no Draft NP has been published at this time.

PLANNING HISTORY

DC/11/1394	Residential development of up to 500 dwellings with associated vehicular, cycle and pedestrian access, drainage and landscape works, provision of land for a new secondary school and sport/recreation facilities (Land west of Worthing Road) (Outline Planning Permission)	Withdrawn
DC/14/0590	Residential development of up to 540 dwellings and 54 retirement living apartments, associated vehicular, cycle and pedestrian access, drainage and landscape works (Outline)	Permitted
DC/15/2064	Erection of 244 dwellings (including 54 retirement living apartments) with associated access, parking and landscape works pursuant to outline planning permission DC/14/0590 (Approval of Reserved Matters)	Permitted
DC/15/2594	Provision of temporary construction access with associated landscape works	Permitted
DC/15/2849	Application for the approval of reserved matters following outline application DC/14/0590 (residential development of up to 540 dwellings and 54 retirement living apartments, associated vehicular, cycle and pedestrian access, drainage and landscape works) for the provision of 2 x football pitches, cricket pitch, 2 x tennis courts with associated access, parking and landscape work	Pending consideration
DC/16/0582	Erection of temporary sales and marketing suite with associated parking and landscape works for period of 4 years	Permitted
DC/16/0638	Sales and Marketing Signage, 2 x v-Board and 6 x Flags (Advertising Consent)	Permitted
DC/16/0863	Erection of building (Phase 2 Block B) to provide 25no apartments (13 x 1 bed, 12 x 2 bed) with associated parking and landscape works	Pending consideration
DC/16/1775	Non Material Amendment to previously approved application DC/15/2064 (erection of 244 dwellings (including 54 retirement living apartments) with associated access, parking and landscape works pursuant to outline planning permission DC/14/0590), amendments to plots 20-23, 24-27, 28-31, 32-33, 34-35, 36-37, 39-40, 41-44, 45-46, 47, 48, 49, 55, 65, 112, Block A plots 0-9, Block C plots 116-130, Blocks A, B, C, refuse and cycle stores, and garage plots 114-115	Pending consideration

3. OUTCOME OF CONSULTATIONS

INTERNAL CONSULTATIONS

- 3.1 HDC Head of Community and Culture: No comments to make on proposed trigger dates.
- 3.2 HDC Housing Manager: No objection. Removal of age restriction on affordable units and addition of three shared ownership units speeds up delivery of much needed affordable homes.

OUTSIDE AGENCIES

- 3.3 WSCC Highway Authority: No objections to the proposed modifications.

PUBLIC CONSULTATIONS

- 3.4 Southwater Parish Council: No objection to this proposal, but request that the Parish Council are kept informed at all stages of any variations to legal agreements.

4. HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS

- 4.1 Article 8 (Right to respect of a Private and Family Life) and Article 1 of the First Protocol (Protection of Property) of the Human Rights Act 1998 are relevant to this application, Consideration of Human rights forms part of the planning assessment below.

5. HOW THE PROPOSAL WILL HELP TO REDUCE CRIME AND DISORDER

- 5.1 It is not considered that the development would be likely to have any significant impact on crime and disorder.

6. PLANNING ASSESSMENTS

- 6.1 The Application requests a number of modifications to the Legal Agreement of DC/14/0590, as listed in section 1 of this report. This is not a planning application, and permitting this application would not result in any separate planning permission. If the application were permitted, it would be necessary to complete a Deed of Variation to the original Legal Agreement to secure the changes. Each of the proposed amendments is assessed below.

Removal of the requirement to carry out A24 Pollards Hill Junction Improvement Works

- 6.2 The County Highway Authority has advised that these works are no longer necessary to make the development acceptable. They have advised that the works proposed at the outline stage have been reviewed on the basis of a more detailed survey and found to offer little in the way of tangible capacity benefits, and yet would be very disruptive to build. As such, it would not be reasonable to require these to be carried out, as planning obligations can only be secured where they are necessary to make the development acceptable and the application would otherwise be refused without the obligation. No objection is therefore raised to this proposed modification.

Definition of 'Application' to be amended to include all reserved matters and subsequent variations.

- 6.3 The Minor Material Amendment procedure (an application under Section 73 of the Town and Country Planning Act) allows the developer to make an application for the substitution

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of approved drawings or for the variation of conditions of the original permission. If such applications are approved, it results in the issuing of a fresh, stand-alone planning permission and the developer has the option of implementing either the original permission or the new permission for the amended scheme. Therefore, applications for Minor Material Amendments and for the variation of conditions often require a Legal Agreement to ensure that any of the planning obligations secured by the original permission are also secured in the event that the new permission is implemented. With large developments such as this, changes often arise during the detailed design stages which necessitate applications under S73. The completion of a Legal Agreement in connection with a S73 application can add significantly to the time taken to determine such applications, and to the Applicant's and Council's costs associated with determining the application.

- 6.4 In new and recent Legal Agreements, the Council has included clauses allowing any subsequent applications under S73 for Minor Material Amendments or for the variation of conditions to also be covered by the original Legal Agreement, but still allowing the Council discretion to require the Applicant to enter into a fresh Legal Agreement or Deed of Variation where it considers it necessary or desirable to do so. Such clauses speed up the process of dealing with amendments to permitted schemes and reduce the cost of such processes. Officers therefore raise no objection to this proposed modification.

'Plan 2' to be amended, as this shows the A24 Hop Oast Junction Improvement Works and these have been revised

- 6.5 As the proposals for these improvement works have altered slightly through discussions with WSCC, the original Plan is now out of date and should be replaced to reflect the current position. It should be noted that the Legal Agreement as originally worded does include the scope for these works to alter, as the definition of 'Plan 2' states that the works are shown indicatively only. Officers therefore raise no objection to this proposed modification.

Amend the definition of 'Affordable Housing Units' to reduce the number of age occupancy restriction of affordable housing

- 6.6 The original Legal Agreement secured affordable housing mix as follows:

Amount	Size	Tenure	Age Restriction
11	1-bed flat	Affordable Rent	None
27	1-bed flat	Affordable Rent	Over 55s
10	2-bed flat	Affordable Rent	None
11	2-bed flat	Affordable Rent	Over 55s
10	2-bed house	Affordable Rent	None
20	3-bed house	Affordable Rent	None
20	1-bed flat	Shared Ownership	None
5	1-bed flat	Shared Ownership	Over 55s
29	2-bed flat	Shared Ownership	None
11	2-bed flat	Shared Ownership	Over 55s
23	2-bed house	Shared Ownership	None
1	3-bed house	Shared Ownership	None
178 Total			

The proposed modifications would result in the following affordable housing mix:

Amount	Size	Tenure	Age Restriction
17	1-bed flat	Affordable Rent	None
20	1-bed flat	Affordable Rent	Over 55s
10	2-bed flat	Affordable Rent	None
12	2-bed flat	Affordable Rent	Over 55s
10	2-bed house	Affordable Rent	None
20	3-bed house	Affordable Rent	None
26	1-bed flat	Shared Ownership	None
39	2-bed flat	Shared Ownership	None

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23	2-bed house	Shared Ownership	None
1	3-bed house	Shared Ownership	None
178 Total			

6.7 The same number of affordable units would therefore be delivered, and maintains a 50/50 tenure split between rented and shared ownership units. However, there would be a reduction in the number of units with an age occupancy restriction. The HDC Housing Manager raises no objection to this change.

6.8 The description of development permitted by DC/14/0590 was "*Residential development of up to 540 dwellings and 54 retirement living apartments, associated vehicular, cycle and pedestrian access, drainage and landscape works (Outline)*" (my underlining). Reducing the number of retirement apartments to 32 would effectively amend the description of development and therefore the basis on which Members made their resolution to grant planning permission. It is not appropriate to use a Deed of Variation to alter the description of development and therefore what has previously been applied for and permitted. Officers therefore do not recommend agreeing the proposed modification to the affordable housing age occupancy restriction and tenure under this application for modification of a S160 agreement. The proper process for such an amendment would be a fresh planning application. This change is proposed by application DC/16/0863, which is currently under consideration.

Specifications for the Sports Area, Sports Club Car Park, Sports Pavilion, Cricket Pitch, Football Pitch, Tennis Courts, Multi-Use Games Area (MUGA), Skateboard/BMX park, NEAP, First Leap and Church Car Park to be submitted prior to commencement of each of these elements

6.9 The Legal Agreement currently requires Specifications for these facilities to be submitted prior to the commencement of development, and for them to be delivered in accordance with the approved Specifications either prior to the 250th occupation (in the case of the Football Pitches, Cricket Pitch, Tennis Courts, Sports Area, Sports Club Car Park, Sports Pavilion, MUGA, Skateboard/BMX park and Church Car Park), or a phased delivery for the LEAPs, NEAPs and LAPs.

6.10 The applicant does not propose to deliver these facilities any later in the process, and it is considered reasonable to amend the triggers for approval of Specifications for these facilities to prior to commencement of the construction of each facility, rather than prior to commencement of any development at the site. There is a need to link the delivery of the Pavilion and Sports Club Car Park to the completion of the first sports facility or the 250th occupation, whichever is the sooner. This will ensure that the ancillary parking and changing facilities provided by the Car Park and Pavilion are in place in the event that one or more of the sports facilities are delivered prior to the 250th occupation.

6.11 The play areas (LEAPs and NEAPs) will be dispersed through the development, and therefore requiring approval of details of these prior to commencement of any development is not practical, as construction will be phased and some play areas will therefore be within later phases, the details of which are not yet known. It is therefore entirely reasonable to amend the triggers for approval of the Specifications of these areas to prior to their commencement, as it will allow consideration of the integration of the play areas with the detailed residential layout.

6.12 The Council's Head of Community and Culture has raised no objection to the proposed amendments to trigger points. Officers therefore have no objection to the amendment to trigger points for the submission of these Specifications. For information, application DC/16/1919 is currently under consideration and seeks approval of reserved matters relating to the sports area element of the outline planning permission.

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Require approval of 3x Bus Shelter Specifications at first occupation, 2x Bus Shelter Specifications at 200th occupation (linked to Church Lane Improvement Works) and 1x Bus Shelter Specification at 250th occupation (linked to delivery of Worthing Road/Church Lane Improvement Works) and Require completion of 3x Bus Shelters at 50th Occupation, 2x Bus Shelters at occupation of 100 dwellings south of the Downs Link (linked to Church Lane Improvement Works) and 1x Bus Shelter within 60 working days of the final occupation (linked to delivery of Worthing Road/Church Lane Improvement Works).

- 6.13 The Legal Agreement currently requires approval of Bus Shelter Specifications to be agreed at the Reserved Matters Stage and delivered before the occupation of the 50th dwelling. The Bus Shelters are linked to off-site highway works, some of which will be carried out in the later phases of development. The proposed amendments seek to address the timetable for delivery of the off-site highway works, and ensure that the Bus Shelters are delivered in accordance with this. The Highway Authority have raised no objection to this, and Officers therefore do not object to this proposed modification.

7. RECOMMENDATIONS

- 7.1 To delegate the completion of a Deed of Variation to the Legal Agreement of DC/14/0590 to the Development Manager to include amendments to:
- Remove the requirement to carry out A24 Pollards Hill Junction Improvement Works
 - Include clauses to allow the provisions of the Legal Agreement to apply to subsequent S73 applications for the variation of conditions, at the discretion of the Council
 - Amend 'Plan 2' showing the A24 Hop Oast Junction Improvement Works
 - Amend the trigger points for approval of Specifications for the Sports Area, Sports Club Car Park, Sports Pavilion, Cricket Pitch, Football Pitch, Tennis Courts, Multi-Use Games Area (MUGA), Skateboard/BMX park, NEAP, First LEAP, Church Car Park and Bus Shelters
 - Amend the trigger points for delivery of the Bus Shelters.

Background Papers: DC/14/0590