

Application Number: 15/11616 Modification or Discharge of Planning Obligation
Site: CUSSENS DAY CARE CENTRE, FAIRVIEW DRIVE, HYTHE
SO45 5GY
Development: Application for the Modification or Discharge of a Section 106
Obligation in respect of outline Planning Permission 15/11616 for
2 bungalows; 1 two-storey dwelling; parking; access
Applicant: Coastline Homes Ltd
Target Date: 30/9/16

1 REASON FOR COMMITTEE CONSIDERATION

Contrary to Policy and Parish Council view.

2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Built-up area

3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES

Core Strategy

Objectives

1. Special qualities, local distinctiveness and a high quality living environment
3. Housing
6. Towns, villages and built environment quality

Policies

- CS2: Design quality
- CS3: Protecting and enhancing our special environment (Heritage and Nature Conservation)
- CS7: Open spaces, sport and recreation
- CS15: Affordable housing contribution requirements from developments
- CS24: Transport considerations
- CS25: Developers contributions

Local Plan Part 2 Sites and Development Management Development Plan Document

DM3: Mitigation of impacts on European nature conservation sites

4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Section 38 Development Plan
Planning and Compulsory Purchase Act 2004
National Planning Policy Framework

5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS

SPD - Housing Design, Density and Character
SPD - Mitigation Strategy for European Sites

6 RELEVANT PLANNING HISTORY

2 bungalows; 1 two-storey dwelling; parking; access (15/11616) - granted
23/12/15

7 PARISH / TOWN COUNCIL COMMENTS

Hythe & Dibden Parish Council:- The S106 legal agreement is a legally binding agreement which was part of the application for which approval was given; As the payment has already been agreed to, feel that the payment should be made, especially as the provision of affordable housing is a necessity in the area.

8 COUNCILLOR COMMENTS

None

9 CONSULTEE COMMENTS

None

10 REPRESENTATIONS RECEIVED

None

11 CRIME & DISORDER IMPLICATIONS

No relevant considerations

12 LOCAL FINANCE CONSIDERATIONS

None

13 WORKING WITH THE APPLICANT/AGENT

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council take a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome.

This is achieved by

- Strongly encouraging those proposing development to use the very thorough pre application advice service the Council provides.
- Working together with applicants/agents to ensure planning applications are registered as expeditiously as possible.
- Advising agents/applicants early on in the processing of an application (through the release of a Parish Briefing Note) as to the key issues relevant to the application.

- Updating applicants/agents of issues that arise in the processing of their applications through the availability of comments received on the web or by direct contact when relevant.
- Working together with applicants/agents to closely manage the planning application process to allow an opportunity to negotiate and accept amendments on applications (particularly those that best support the Core Strategy Objectives) when this can be done without compromising government performance requirements.
- Advising applicants/agents as soon as possible as to concerns that cannot be dealt with during the processing of an application allowing for a timely withdrawal and re-submission or decision based on the scheme as originally submitted if this is what the applicant/agent requires.
- When necessary discussing with applicants/agents proposed conditions especially those that would restrict the use of commercial properties or land when this can be done without compromising government performance requirements.

In this case all the above apply and as the application was acceptable as submitted no specific further actions were required.

14 ASSESSMENT

- 14.1 An application for 3 dwellings was approved by the Local Planning Authority in December 2015. The permission is subject to a Section 106 legal agreement that requires the development to make a contribution of £61,190 towards affordable housing, although it should be noted that, somewhat unusually, the legal agreement was completed in March 2016, 3 months after the initial decision was issued. The delayed completion of the legal agreement arose from the fact that the Council were the original landowners.
- 14.2 An application has now been submitted to the Local Planning Authority that seeks to modify / discharge the Section 106 legal agreement so that no affordable housing contribution will be payable. The application has been submitted in the light of recent changes to national planning guidance. Specifically:-

On 19th May 2016 the Government issued planning guidance setting out the specific circumstances in which contributions for affordable housing and tariff style planning obligations (section 106 agreements) should not be sought from small scale and self-build development. This guidance has been reissued following the order of the Court of Appeal dated 13th May 2016 (*West Berkshire District Council and Another v The Secretary of State for Communities and Local Government*). The planning guidance specifies the circumstances in which contributions should not be sought as follows:

“Contributions should not be sought from developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1,000 sqm;

In designated rural areas, local planning authorities may choose to apply a lower threshold of 5 units or less...;

Affordable housing and tariff style contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing house"

- 14.3 With this latest application, the only matter that needs to be considered is whether the previously secured affordable housing obligation should be discharged in the light of the recent change to national guidance, which is at odds with Policy CS15 of the Council's Core Strategy. In circumstances such as this, the law gives no priority to either the Council's Core Strategy or to the Government's national guidance. It is for the decision maker to assess both policies as "material considerations" and to decide which should have greater weight in the determination of a planning application. However, the Secretary of State, through his Inspectors can be anticipated to give greater weight to the Government's national guidance unless there are exceptional circumstances which indicate otherwise. While the need for affordable housing in this District is pressing, this in itself does not give rise to the sort of circumstances that can be considered exceptional.
- 14.4 Accordingly, it is felt that the new national guidance should carry greater weight than the Council's own Core Strategy Policy CS15, and therefore, it is felt that the affordable housing contribution secured within the existing Section 106 legal agreement is an obligation that should be discharged. In essence, it is felt the development should be allowed to proceed without any requirement to make a contribution towards the provision of affordable housing.
- 14.5 In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

15 RECOMMENDATION

That the S106 Affordable Housing Obligation be discharged in full and that the Service Manager Planning and Building Control be authorised to vary the Section 106 legal agreement accordingly

Further Information:

Major Team
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New Forest
DISTRICT COUNCIL

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**Planning Development
Control Committee
September 2016**

Item No: 3a
Cussens Day Care Centre
Fairview Drive
Hythe
15/11616
SU4407

Scale 1:1250

N.B. If printing this plan from
the internet, it will not be to
scale.

