



**Horsham
District
Council**

DEVELOPMENT MANAGEMENT REPORT

TO: Development Management Committee (North)

BY: Development Manager

DATE: 04 October 2016

DEVELOPMENT: Application for the modification of the S106 Agreement in connection with planning permission DC/13/0368 to reduce the level of affordable housing provided to 25% (a total of 9 shared ownership units) and remove the requirement for a payment of £180,000 towards off-site provision of affordable housing

SITE: Martin Grant Homes Development Site Rusper Road Ifield West Sussex

WARD: Rusper and Colgate

APPLICATION: S106/16/0007

APPLICANT: Matthew Spilsbury

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

RECOMMENDATION: Delegate approval to the Development Manager to enter into a Deed of Variation to vary the original s106 Legal Agreement with regard to affordable housing provision.

1. THE PURPOSE OF THIS REPORT

To consider the application to modify the original s106 agreement in relation to affordable housing provision.

BACKGROUND

- 1.1 This application has been made under section 106BA of the Town and Country Planning Act 1990. In 2013, sections 106BA, BB and BC were inserted into the Town and Country Planning Act by the Growth and Infrastructure Act (for a temporary 3-year period) to introduce a new application and appeal procedure for the review of affordable housing planning obligations on viability grounds. This was to enable a positive approach to planning to allow sustainable development to come forward without delay, and to unlock stalled development sites which already have the benefit of planning permission. The s106BC provisions allow for a statutory right of 'accelerated' appeal by applicants to the Planning Inspectorate if the Planning Authority refuses the application or fails to determine it. At the end of April 2016 as the 3-year period came to an end, the provisions of sections 106BA, BB and BC were repealed, but applications made before 30th April remain valid as per the procedures of the legislation. This application was made before this time so can be considered as per the provisions of the s106BA legislation.

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- 1.2 Outline planning permission (ref: DC/13/0368) was granted by Horsham District Council in July 2014 for the redevelopment of this land for up to 36 dwellings with associated access, car parking, landscape and open space. The site has since been acquired by Martin Grant Homes and a Reserved Matters application (ref: DC/14/1971) was granted in April 2015. A s106 Legal Agreement was signed pursuant to the Outline approval (DC/13/0368) – within which the level of affordable housing provision was agreed.
- 1.3 The signed Legal Agreement (completed 10 June 2014) requires 11x affordable housing units (30.6%) to be provided on site. This comprises 9x 2-bed affordable rented apartments, and 2x 3-bed shared ownership houses. In addition, a commuted sum of £180,000 (index linked) is to be paid towards the provision of off-site affordable housing.

DESCRIPTION OF THE APPLICATION

- 1.4 Since acquiring the site, the applicant has been unable to implement the extant planning consent due to viability constraints, and requires the scheme to generate additional revenue to proceed. The modifications sought by the applicant to the existing s106 agreement are to:
 - Reduce the provision of on-site affordable housing to 25% of the total units, which equates to 9x 2-bed flats of Shared Ownership tenure; and
 - Removal of the requirement to provide a financial contribution of £180,000 (index linked) towards off-site affordable housing.
- 1.5 In support of the application, the applicant has provided information to explain the changing circumstances that have led to the need to seek a reduction in affordable housing provision on this site (letters dated 25 April 2016 and 22 August 2016). This includes evidence of the applicant's engagement with Registered Providers of affordable housing, and confirmation of the various factors that have contributed to making the scheme as permitted unviable (including high abnormal and construction costs, and design requirements leading to a reduction in saleable floorspace). This information is supported by a detailed viability assessment undertaken by the applicant's consultants Whiteleaf Consulting, and a report detailing the 'Development Abnormals Cost Plan'.

DESCRIPTION OF THE SITE

- 1.6 The site lies on the boundary of Horsham and Crawley with Ifield Golf and Country Club sites to the west and other, denser, residential properties abutting the site to the south. The site is 1.8 ha in size, is rectangular in shape and the land is generally flat. The site is located to the south of Rusper Road in Ifield and formally consisted of 7 relatively modern, detached properties set within large residential curtilages.
- 1.7 At present, the site has been cleared (the 7 previously existing properties have been demolished), and hoarding has been erected around the site perimeter. No works have been undertaken on site since early 2015.

2. INTRODUCTION

STATUTORY BACKGROUND

- 2.1 Section 106BA of the Town and Country Planning Act 1990 (as inserted by the Growth and Infrastructure Act 2013).

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2.2 PLANNING HISTORY

DC/13/0368	Outline application for the redevelopment of land at Rusper Road, Ifield (encompassing Summerwood, Avalon, Rose Lawn, High Trees, Budleigh, White Cottage, Ventura and Avebury) for up to 36 dwellings, together with associated access road, car parking, landscaping and open space	Permitted 31 July 2014
DC/14/1971	Redevelopment of land at Rusper Road, Ifield (encompassing Summerwood, Avalon, Rose Lawn, High Trees, Budleigh, White cottage, Ventura and Avebury) for 36 dwellings, together with associated access road, car parking, landscaping and open space (application for approval of reserved matters following outline planning permission DC/13/0368)	Permitted 16 April 2015

3. OUTCOME OF CONSULTATIONS

INTERNAL CONSULTATIONS

- 3.1 HDC's Housing Manager was consulted early in the process of this application, and noted that the determination of the appropriateness of this proposed modification will rely on the outcomes of the viability review as undertaken by the Council's consultants. The Housing Manager noted that the applicant's efforts to engage with Registered Providers seemed reasonable, and agreed that the block of flats proposed should be 'mono-tenure' with a preference for affordable rented units.

OUTSIDE AGENCIES

- 3.2 Dixon Searle Partnership (DSP) was instructed by the Council in May 2016 to undertake a review of the applicant's viability assessment and associated supporting information. In September 2016, DSP produced a final report into the submitted viability position and concluded that from their review, a reasonable approach has been taken to the viability assessment; and that the proposed modifications are reasonable and should support the progression of the development. DSP further conclude that they would be unable to support an alternative outcome of a higher affordable housing level and/or contribution than what has been proposed as part of this modification.

THIRD PARTIES

- 3.3 As required by the provisions of s106BA, the applicant has provided copies of letters sent to all signatories of the original s106 Legal Agreement to notify them of the application. No responses or other correspondence from these signatories has been received by the Council.

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 main consideration in the determination of this application is whether the proposed variation to the affordable housing provision as agreed in the existing s106 agreement is acceptable; taking into account the reasons why the development has stalled since the extant planning permission was granted, and the viability rationale supporting the proposed variation.
- 6.2 To support this affordable housing variation as applied for under s106BA, the April 2013 DCLG guidance '*Section 106 affordable housing requirements: Review and appeal*' details what an applicant should submit to the Local Authority to enable proper consideration of the proposed variation. The applicant needs to clearly demonstrate to the planning authority that the affordable housing obligations as agreed make the scheme unviable in current conditions, therefore causing the development to stall. The applicant should submit a revised affordable housing proposal that underpins the case for reduced affordable housing provision. This should be based on prevailing viability which should be supported by relevant viability evidence. The revised proposal should deliver the maximum level of affordable housing possible, with an optimum mix, tenure and phasing of provision. As an original viability assessment was not required when the Outline permission was granted, in order to support the proposed variation, the applicant must submit clear and explicit, up-to-date evidence of why the existing scheme is not viable and why a variation in the affordable housing provision is required to recommence development on site.

Information Submitted in Support of the Application

- 6.3 The applicant has submitted information to explain the nature of the site and why the existing affordable housing obligations render the site's development to be unviable and therefore why development has stalled. The applicant states that they were not party to the original negotiations for the signed Legal Agreement, and since acquiring the site are unable to implement the extant planning consent as provision of 30.6% affordable housing on site plus a £180,000 financial contribution would not allow a competitive return to the developer. Subsequently, the applicant states that the scheme needs to generate additional revenue which cannot be achieved by scheme design alterations alone. Instead, it necessitates converting a proportion of the required affordable housing to open market product to enhance sales receipts and to improve the viability to enable the development to recommence.
- 6.4 As per the requirements of s106BA, the applicant has submitted a viability assessment in support of their application to reduce the affordable housing provision. The viability assessment details the assumptions made within the appraisal (including the mix of accommodation, revenue assumptions, sales/marketing costs, building costs, fees, abnormal costs, s106 costs, interest, profit and land values). The assessment also explains the key issues affecting viability in this case, which includes high build infrastructure and abnormal costs, poor offers from Registered Providers, and high existing use values (i.e. because the site originally consisted of 7 detached residential properties). The conclusion of the applicant's viability assessment reveals that the consented scheme (as per the existing s106 agreement) is an unviable option. The assessment into potential viability at the applicant's proposed affordable housing offer (9x Shared Ownership units and removal of any financial contribution) is accepted in the viability assessment as '*reasonably close to the realms of potential viability*', so whilst likely to be supportable [by the applicant], this is noted as still not achieving a fully viable solution.

Engagement with Registered Providers

- 6.5 To further support the submitted viability assessment, the applicant was asked to clarify the approach that was taken to engage with Registered Providers (RP's) of affordable housing to demonstrate the various affordable housing options available on site, and to highlight the

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responses received by the RP's. The applicant instructed Jolliffe and Flint (J+F) an affordable housing specialist surveying firm in February 2016 to engage with a selection of RPs and to seek current market offers on 3 options, including:

- Option 1: 9x Shared Ownership units
- Option 2: 9x Affordable Rent units
- Option 3: Mixed Tenure (totalling 9x affordable units)

Officers queried with the applicant why an option for RP's to offer 11x affordable units (including 9x flats and 2x houses) was not made. The applicant explains that this offer was not made as it was not considered to return sufficient enough revenue to enable the development to recommence.

Contact was made with 14 RP's, and from this, 3 offers were received for Option 1, and 1 offer (at a low price) was received for Option 2. Evidence of this RP contact has been supplied by the applicant.

- 6.6 Reasons for RPs declining to offer are supplied by the applicant, and include:
- It is not feasible to offer for more than 50% Affordable Rent (i.e. Option 2), due to government rent reductions (of 1% per annum for 4 years from April 2016).
 - Shared tenure (i.e. Affordable Rent and Shared Ownership) in the same block is not acceptable (i.e. Option 3).
 - The overall number of affordable units is too low (9x units). Many RPs now only typically offer for over 20 units on individual sites.
 - Several RPs will only consider acquiring Affordable Rent dwellings if they are to be delivered beyond April 2019.

Other Factors Stalling Development

- 6.7 Since acquiring the site in September 2014 with the benefit of Outline Planning Permission and a signed s106 Legal Agreement, an application for Reserved Matters was submitted by Martin Grant Homes which was approved in April 2015. Since then, detailed design and costing work has revealed several factors that have affected the viability and therefore deliverability of the site.
- 6.8 The applicant has provided full details of these factors, but in brief they include:
1. Increased costs associated with abnormal works (including foundations extra-overs, off-site highways and need for imported topsoil);
 2. Escalation of normal construction costs (reflecting a response to inflation in materials and labour, which have increased by around 16% since the original Outline approval was submitted in 2013);
 3. Design requirements of the development by Horsham District Council at Reserved Matters stage which has resulted in a reduction of approximately 2,000ft² of saleable floorspace from the volume assumed at Outline stage.

HDC Review of the Viability Assessment

- 6.9 In order to assess the accuracy and robustness of the assumptions made in the submitted Viability Appraisal and supporting information, the Council instructed independent viability consultants Dixon Searle Partnership (DSP) to review the applicant's submitted viability position. The outcome of the DSP report notes that the appraisal methodology used by the applicant in their Viability Appraisal is appropriate, and reflects the usual accepted principles and methodology. DSP note that in some aspects of the submission the assumptions made were not considered to be correct (i.e. they influenced viability too negatively), but in other aspects, the assumptions made were considered to be overly positive (i.e. influencing the viability more positively). In essence, DSP were able to

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'pressure-test' the submission by making a balanced judgement on the appropriateness of the overall picture to form a view.

- 6.10 The DSP review concluded that a reasonable and balanced approach has been taken to the viability assessment. DSP consider that the submission represents a scheme that should be deliverable with the modifications sought (i.e. 9x Shared Ownership units) and confirm that they would be unable to support a higher affordable housing level / contribution in this instance.

Summary

- 6.11 Paragraph 173 of the NPPF seeks to ensure that sites earmarked for development should be viable and should not be subject to such a scale of obligations that their ability to be developed is threatened. NPPF para 173 states that the cost of any requirement placed on the development should still provide competitive returns to the landowner and/or developer to enable the development to be deliverable. Paragraph 205 of the NPPF, reminds decision takers that where obligations are being revised (as in this case) Local Planning Authorities should be aware of and take into account changes in market conditions over time, and to be sufficiently flexible to prevent planned development being stalled. Paragraphs 016 – 024 of the Planning Practice Guidance (PPG) explore in more depth issues around viability and decision taking. Paragraph 019 states that when making decisions, the LPA must understand the impact of planning obligations on the proposal. The PPG states that where a planning obligation (particularly one for affordable housing contributions) would cause the development to be unviable, the LPA needs to be flexible in seeking these obligations. Regard for this must be made to individual scheme viability, and it is important to ensure that current costs and values are considered.
- 6.12 The viability assessment submitted with the application, alongside the independent review of this assessment by the Council's specialist viability consultants (DSP), confirms that reducing the on-site affordable housing provision to 25% (9x Shared Ownership units) and removing the £180,000 financial contribution, would sufficiently increase revenues to enable unlocking of the site so development can recommence, and for the applicant to achieve an acceptable return as per the requirements of Paragraphs 173 and 205 of the NPPF as well as the provisions of the Government's 'Section 106 affordable housing requirements: review and appeal' advice document.
- 6.13 As verified by the DSP report, without the reduction in affordable housing contributions as sought by this application, the development as approved on this site is likely to remain stalled, and the development of 36 dwellings are not likely to come forward in the foreseeable future. Given that these dwellings are included in the Council's housing trajectory as 'committed' units, the Council are reliant on them coming forward in order to maintain a healthy 5-year housing land supply going forward.
- 6.14 Given the circumstances including the reduced ability for RPs to acquire affordable units and higher construction costs generally, it is considered that the request to reduce the amount of affordable housing on this site would, on balance, be acceptable and in accordance with the provisions of the NPPF and government guidance in connection with applications made under Section 106BA of the Town and Country Planning Act 1990, which seeks to enable a positive approach to planning to allow sustainable development to come forward without delay, and to unlock stalled development sites which already have the benefit of planning permission

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7. RECOMMENDATIONS

7.1 Delegate approval to the Development Manager to enter into a Deed of Variation to vary the original s106 Legal Agreement with regard to affordable housing provision to:

- Reduce the provision of on-site affordable housing to 25% of the total units, which equates to 9x 2-bed flats of Shared Ownership tenure; and
- Removal of the requirement to provide a financial contribution of £180,000 (index linked) towards off-site affordable housing.

Background Papers: DC/13/0368