DESCRIPTION OF SITE AND APPLICATION

Outline planning permission for land at Riversfield in Little Paxton was granted on 22 July 2024 under application reference 22/01594/OUT for:

"*Outline application including matters of access, appearance, layout and scale (landscaping reserved for future consideration) for 26 dwellings*"

The permission was granted subjection a Section S106 Agreement dated 19 July 2024 between (1) Huntingdonshire District Council, (2) Cambridgeshire County Council, (3) D H Barford and S R Hutchison and (4) Bloor Homes Limited.

This application has been made under S106A of the Town and Country Planning Act 1990 to seek a modification to the original Section 106 Agreement. The proposed modification is set out in the submitted application form received by the Council on 5 March 2025 and seeks to amend the mortgagee exclusion clause to include a carve-out of liability clause for individual occupiers and tenants of the affordable housing units (but exclude those who have exercised a right to buy/ staircased out) in the Agreement.

The proposed modification to the wording includes the deletion of clause 14 and its replacement with the following:

"Any bona fide individual purchaser and/or occupier of a Residential Unit erected on the Land shall not be bound by Planning Obligations save that the Affordable Housing Units shall continue to bound by Paragraph 1 of the Planning Schedule and for the avoidance of doubt the reference to Paragraph 1 of the Schedule applies to Paragraph 1 of the Schedule as amended as per 3.2 to 3.4 below".

Paragraph 1.2.2 in The Schedule of the Agreement is proposed to be deleted and not replaced; paragraph 1.2.2.1 in The Schedule of the Agreement is proposed to be renumbered to 1.2.1.1; and paragraph 1.2.2.2 in The Schedule of the Agreement is proposed to be renumbered to 1.2.1.2.

NATIONAL GUIDANCE

The National Planning Policy Framework (12 December 2024) (NPPF 2024) sets out the three objectives - economic, social and environmental - of the planning system to contribute to the achievement of sustainable development. The NPPF 2024 at paragraph 10 provides as follows: 'So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11).'

The NPPF 2024 sets out the Government's planning policies for (amongst other things):

* delivering a sufficient supply of homes;

* achieving well-designed places;

* conserving and enhancing the natural environment;

* conserving and enhancing the historic environment.

Planning Practice Guidance is also relevant and a material consideration.

Paragraph: 009 Reference ID 23b-009-20160519 says planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it "no longer serves a useful purpose" or would continue to serve a useful purpose in a modified way.

The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992

For full details visit the government website: https://www.gov.uk

PLANNING HISTORY

22/01594/OUT - Outline application including matters of access, appearance, layout and scale (landscaping reserved for future consideration) for 26 dwellings - Consent on 22.07.2024.

24/01312/REM - Reserved Matters Application relating to the details of landscaping of 22/01594/OUT for 26 dwellings – Details approved 10.12.2024.

Various condition applications have been submitted and approved since approval of 22/01594/OUT following the subsequent reserved matters application.

CONSULTATIONS

In accordance with the Council's scheme of delegation, the Ward Members were consulted.

Cllr Ferguson and Cllr Pitt have not submitted any comments but Cllr Slade has confirmed he has no objections to the proposed changes.

HDC's Policy and Enabling Officer for Housing Strategy and Development has no objection to the application and advises that the proposed amendment would make the undertaking consistent with the wording of other current S106 obligations for affordable housing.

REPRESENTATIONS

None received.

SUMMARY OF ISSUES

o Main considerations

This application has been made under S106A of the Town and Country Planning Act 1990 to enable consideration and determination of an amendment to the S106 Agreement pursuant to the planning permission granted under application reference 22/01594/OUT.

The application is not a planning application. As such, the normal test "*that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise*" (paragraph 2 of the NPPF 2024) does not apply to this application. Therefore, any conflict with development plan policy that may arise as a result of the proposed discharge of the S106 obligations is not relevant to the determination of the application.

The test which must be applied to the application is, whether the obligation continues to serve a useful planning purpose or whether, as proposed to be modified, it would serve that purpose equally well. A "useful planning purpose" is not defined by the 1990 Act but cases which have come before the courts in the past suggest that the issue should not necessarily be construed narrowly and it is open to the decision maker to consider the broader planning purpose of the scheme and the place of each element within that as well as the individual planning purpose of each element.

The effect of the proposed modification would be to replace the existing mortgagee possession clause (relating to the affordable units) with a clause which represents current day practice. It is considered that such a modification is acceptable.

All other provisions of the S106 Agreement would continue to have effect.

The proposed amendments are listed in the Modification of the Planning Obligation document and are as follows:

- Modification to the wording includes the deletion of clause 14 and its replacement with the following:

"*Any bona fide individual purchaser and/or occupier of a Residential Unit erected on the Land shall not be bound by Planning Obligations save that the Affordable Housing Units shall continue to bound by Paragraph 1 of the Schedule and for the avoidance of doubt the reference to Paragraph 1 of the Schedule applies to Paragraph 1 of the Schedule as amended as per 3.2 to 3.4 below*"

- Paragraph 1.2.2 in The Schedule of the Agreement is proposed to be deleted and not replaced.
- Paragraph 1.2.2.1 in The Schedule of the Agreement is proposed to be renumbered to 1.2.1.1.
- Paragraph 1.2.2.2 in The Schedule of the Agreement is proposed to be renumbered to 1.2.1.2.

o The proposal

The application has been made to replace and amend the wording of clauses of the legal agreement relating to a Mortgagee in Possession Clause pertaining to the affordable housing provisions.

The amendment to the Mortgagee in Possession Clause is to meet the lenders requirements to maximise the value of the affordable housing scheme.

The change enables the Registered Provider to maximise borrowings against the affordable housing. The changes being requested are considered to be more in keeping with the provisions the Council currently seek within Section 106 Agreements for new developments.

The amendment has been carefully considered having regard to the "useful planning purpose" and the obligation would continue to serve a useful purpose, but would

serve that purpose equally well if it had effect subject to the modifications specified in the application. The application should therefore be approved.

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