

5b 3/11/2032/SV - Modification of S106 agreement to planning permission 3/07/1569/OP in respect of clauses 3.4.4.1 and 3.4.4.2 within Schedule 3 - Affordable Housing at Land at Leventhorpe School for Leach Homes

Date of Receipt: 22.11.2011

Type: Variation of S106 – Major

Parish: SAWBRIDGEWORTH

Ward: SAWBRIDGEWORTH

RECOMMENDATION:

That Members agree, in principle, to the variation of the S106 legal agreement and delegate authority to the Director of Neighbourhood Services in consultation with the Director of Internal Services, to agree the detailed wording of the variation.

_____ (203211SV.EA)

1.0 Background:

- 1.1 The application site is shown on the attached OS extract, and is located on the north-western edge of the settlement of Sawbridgeworth, to the south of Leventhorpe School. The site has an area of 1.67 hectares and is bounded to the south by a public footpath, and partly by the residential properties in Walnut Tree Avenue, and the pitches of Sawbridgeworth Town Football Club. To the west and north of the site are the playing fields and buildings of Leventhorpe School. The site is accessed from Cambridge Road.
- 1.2 Outline planning permission (ref. 3/07/1569/OP) was granted subject to a Section 106 (S106) agreement in November 2008 for the residential development of the site. Reserved matters approval was given in June 2011 (ref. 3/11/0571/RP) for a residential development of 55 dwellings with parking and related works including new site access from Cambridge Road.
- 1.3 This application seeks permission to vary the wording of the S106 agreement which was attached to the grant of outline planning permission (ref. 3/07/1569/OP) in respect of affordable housing. The signed S106 agreement states:
 - Not to suffer nor permit the Occupation of more than sixty percent (60%) (rounded up or down to the nearest whole number) of the Free Market Dwellings until the Affordable Dwellings have been constructed and completed in accordance with Annex A and Clause 3.4.3. hereto.

- Not to suffer nor permit the Occupation of more than sixty percent (60%) (rounded up or down to the nearest whole number) of the Free Market Dwellings until free from financial charges the Affordable Dwellings have been Transferred to an RSL together with all necessary rights privileges and easements and all mains services reasonably available and in accordance with and subject always to Annex C hereto.

1.4 This application seeks permission to modify those clauses of the S106 in the following way:

- Not to suffer or permit the occupation of more than 30% of the free market dwellings(s) until Affordable Housing Land has been transferred to an RSL and the building contract for the construction of the Affordable Housing has been signed by both the Owner (Leach Homes) and the RSL. The building contract shall be determine the type, location and delivery timeframes for the affordable housing recognising the requirements of the relevant annexes to this agreement.

1.5 The applicant, in their submissions with the application, states that their reason for requesting the modification of the wording of the S106 is to provide them with more flexibility for the construction sequence to operate whilst maintaining an agreed delivery process for the affordable housing. Currently they will be unable to allow occupation of more than 20 private dwellings until the affordable housing is complete and transferred to the Registered Social Landlord (RSL). They state that on this site the affordable housing is positioned in two areas and the current wording of the S106 means that they would need to operate in the two separate locations on the site which is impractical, particularly in current times when construction is completed within grouped phases to avoid exposure to potentially damaging market conditions. They go on to state that the proposed wording therefore offers a compromise whereby they will only occupy 30% (10 dwellings) of the private units at the stage when the land is transferred to the RSL and the Contract signed, rather than all units complete. The contract will then agree the details in respect of the delivery timeframes for the affordable housing. The developer states that this will then allow them to proceed in a more logical sequence and gives more flexibility to proceed with the construction of private units whilst still imposing occupancy triggers within the contract with the RSL that ensures they deliver the affordable housing within a timely fashion.

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2.0 Site History:

- 2.1 Outline planning permission for the residential development of the site (ref. 3/07/1569/OP) was granted subject to a S106 agreement in November 2008 (the application also involved a new school sports hall, classroom building, all weather pitch, replacement tennis courts, extended hard play area, car parking and access works).
- 2.2 In 2009 a reserved matters application (ref. 3/09/0425/RP) for the residential development of 65 dwellings with parking and related works including new site access was refused by the Council, and this application was also dismissed on appeal.
- 2.3 Reserved matters approval was given in June 2011 (ref. 3/11/0571/RP) for a residential development of 55 dwellings with parking and related works including new site access from Cambridge Road.

3.0 Consultation Responses:

- 3.1 The Council's Housing Manager has commented that they have no objection in principle to a variation on this matter but would wish to see amendments to the detailed wording prior to agreement.

4.0 Town Council Representations:

- 4.1 Sawbridgeworth Town Council has no objection to the application.

5.0 Other Representations:

- 5.1 The application has been advertised by way of press notice, site notice and neighbour notification.
- 5.2 No letters of representation have been received.

6.0 Policy:

- 6.1 The relevant 'saved' Local Plan policies in this application include the following:

HSG3	Affordable Housing
HSG 4	Affordable Housing Criteria
IMP1	Planning Conditions and Obligations

- 6.2 The Council's 'Affordable Housing and Lifetime Homes SPD' is also of

relevance.

7.0 Considerations:

- 7.1 The determining issue in relation to the consideration of this application is whether the proposed amendment to the wording of the S106 agreement is acceptable in principle.
- 7.2 It is important in this case for Members to note that this application makes no change to the number of affordable units to be provided on the site. The change only relates to when and how the affordable housing is provided to the RSL. Specifically in this case it would mean that no more than 10 free market dwellings could be occupied before the Affordable Housing Land is transferred to the RSL and a contract made to agree the timing of the construction of those units. Currently the S106 requires that no more than 20 free market dwellings can be occupied until the Affordable Dwellings have been constructed and transferred to the RSL.
- 7.3 Officers have noted the reasons set out by the applicant for the proposed change to the wording of the S106, and in principle Officers have no objection to the proposed changes. The development would still provide 40% affordable housing which would be in accordance with the Council's policies in that respect. Whilst it is acknowledged that the proposed changes to the wording may result in a slight delay in the provision of all of the affordable housing on the site, a contract would be signed by both the Developer and the RSL which would specify the timescale for construction of the units.
- 7.4 The Council's Legal Team has commented (via the Housing Manager) on the proposed changes to the wording of the S106, and whilst they have no objection in principle to the changes to the wording, they are concerned with the specific wording proposed by the applicant. In particular they appear to be concerned with the detailed wording in relation to the contract which is required to be agreed between the applicant and the RSL.
- 7.5 Members will be aware that when a resolution is given to grant planning permission subject to a S106 agreement the Committee report will only contain the heads of terms for the S106 which provides a brief outline of the requirement. Detailed wording is not provided at this stage and is discussed and agreed during the drafting of the agreement. In Officer's opinion this situation is no different, and the detailed wording of the amendment to the S106 can be agreed once a resolution has been given by Members that, in principle, it is acceptable to change the wording of the S106. It would then be for the Council's Legal Team, in consultation

with Officer's in Development Control and Housing to agree suitable detailed wording with the Developer. Officers are therefore satisfied that sufficient safeguards exist to ensure that all parties (specifically Development Control, Housing and Legal) are given the opportunity to consider and comment on the changes to the detailed wording of the S106.

8.0 Conclusion:

- 8.1 This application proposes to alter the wording of the agreed S106 and, in accordance with the above consideration, the modification of the wording of the S106 is considered to be acceptable in principle. Such a modification will provide the applicant with more flexibility for the construction sequence to operate whilst maintaining an agreed delivery process for the affordable housing. The modification of the wording of the S106 would make no change to the number of affordable units to be provided on the site and the change would only relate to when and how the affordable housing is provided to the RSL.
- 8.2 Officers are therefore satisfied that the development will still accord with Planning Policy and that the precise wording of the amendment to the S106 can be agreed between the Council and the developer once a resolution has been given by Members. Accordingly, it is recommended that the variation be agreed in principle, and authority is delegated to Officers to agree the detailed wording of the variation.