

5e 3/11/2046/SV - Modification of S106 agreement to planning permission 3/08/0840/FP in respect of clauses 3.1 and 3.2 within Schedule 3 - Affordable Housing at Land off Tylers Close, Buntingford for Leach Homes.

Date of Receipt: 22.11.2011

Type: Variation of S106 – Major

Parish: BUNTINGFORD

Ward: BUNTINGFORD

RECOMMENDATION:

That the S106 legal agreement be varied to remove the following financial contributions:

1. That Members agree, in principle, to the variation of clauses 3.1 and 3.2 of the S106 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.

_____ (204611SV.FM)

1.0 Background:

- 1.1 The application site is shown on the attached OS extract. The site is located to the north west side of Buntingford, within the Rural Area beyond the Green Belt and outside the development boundary for the town. The site is rectangular in shape and is some 1.69 hectares in size. It is approximately 300 metres in length and 30 metres in width.
- 1.2 Members may recall that a resolution to grant reserved matters for the construction of 50 dwellings comprising of 12 No. 2 bedroom units, 18 No. 3 bedroom units, 17 No. 4 bedroom units and 3 No. 5 bedroom units (LPA reference 3/11/1033/RP) was given by the Development Control Committee on the 14 September 2011. This followed the grant of outline permission for proposed development on the 11th February 2008 which was subject to the applicant entering into a S106 agreement to secure financial contributions. That S106 has since been signed and the development was granted permission on the 20th September 2011.
- 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. 3/08/0840/FP) in respect of affordable housing. The signed S106 agreement states:

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- Not to suffer nor permit the Occupation of more than 60% (rounded up) of the Free Market Dwellings until the Affordable Dwellings have been constructed and completed in accordance with Annex A and paragraph 2.1 of this schedule.
- Not to suffer nor permit the Occupation of more than 40% (rounded up) 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 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 12 private dwellings until the affordable housing is complete and transferred to the RSL. They state that on this site the affordable housing is located at the top of the site and the current wording of the S106 means that they would need to operate in two separate locations on the site when building the Affordable Housing and the private dwellings.

1.6 Having to operate in such a way would be impractical, particularly in current times when construction is completed within grouped phases to avoid exposure to potentially damaging market conditions. The applicant goes on to state that proposed wording therefore offers a compromise whereby they will only occupy 30% (9 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

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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.

2.0 Site History:

2.1 The following is the relevant planning history relating to the site:

<u>LPA reference</u>	<u>Description of development</u>	<u>Decision</u>
<u>3/08/0840/OP</u>	Outline planning application for the erection of 50 dwellinghouses together with access road and landscaping.	Approved
<u>3/11/1033/RP</u>	Approval of reserved matters application for the erection of 50 dwellinghouses together with access road and landscaping.	Approved

3.0 Consultation Responses:

3.1 The Council's Housing Manager has commented that the principle of the proposal is acceptable. The Housing Manager raises concerns however with the proposed wording to the alteration of the S106, and particularly in relation to the contract which is required to be agreed between the applicant and the RSL.

4.0 Town Council Representations:

4.1 Buntingford Town Council were consulted on the application. No comments have been received at the time of writing this report.

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 9 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 12 free market dwellings can be occupied until the Affordable Dwellings have been constructed and transferred to the RSL.

7.3 In principle Officers have no objection to the proposed changes to the wording in the S106. The development would still provide 40% affordable housing which would be in accordance with the Council's policies. 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 on the proposed changes to the wording of the S106, and whilst they have no objection in principle to the changes, 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, 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.