

5d 3/12/0785/SV - Modification of S106 agreement to planning permission 3/10/2040/OP in respect of clause 1.1 and the definition of Affordable Dwellings at Land off Longmead, Buntingford for Matthew Homes Limited

Date of Receipt: 03.05.2012

Type: Variation of S106 – Major

Parish: BUNTINGFORD

Ward: BUNTINGFORD

RECOMMENDATION:

That Members agree, in principle, to the variation of clause 1.1 (definition of Affordable Dwellings) 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.

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1.0 Background:

- 1.1 The application site is shown on the attached OS extract. The site is located on the western edge of the settlement of Buntingford, within the Rural Area beyond the Green Belt and outside the development boundary for the town. The site is triangular in shape and is some 1.15 hectares in size. To the east, the site is bounded by residential properties; to the north by a mixture of commercial and residential properties; to the west by the A10 and to the south by arable fields.
- 1.2 Members may recall that a resolution to grant outline permission to establish the acceptability of a residential development and access to the site (LPA reference 3/10/2040/OP) was given by the Development Control Committee on the 25^h May 2011.
- 1.3 The grant of this outline permission was subject to the applicant entering into a S106 agreement to secure financial and other contributions. That S106 has since been signed and the development was granted permission on the 18th October 2011.
- 1.4 This application seeks permission to vary the wording of the S106 agreement which was attached to the grant of outline planning permission (ref. 3/10/2040/OP) in respect of affordable housing. The signed S106 agreement states:

“Affordable Dwellings” means the dwellings being 40% rounded up to the nearest whole number of the total number of dwellings to be

constructed on the Application Site to a maximum of 26 constructed and completed as Affordable Housing on the Affordable Housing Land and where the context so admits shall be constructed to mean (a) the Affordable Dwellings or (b) the concept of what is meant by affordable housing.

- 1.5 This application seeks permission to modify this definition of the S106 in the following way:

“Affordable Dwellings” means the dwellings being 40% rounded to the nearest whole number of the total number of dwellings to be constructed on the Application Site to a maximum of 26 constructed and completed as Affordable Housing on the Affordable Housing Land and where the context so admits shall be constructed to include Affordable Housing Land.

- 1.6 The main difference is therefore that instead of stating ‘rounded up to the nearest whole number’ it would state ‘rounded to the nearest whole number’. The applicant, in their submissions with the application states that whilst they are requesting the modification of the wording of the S106, 40% affordable housing will be retained. It was agreed under LPA ref. 3/10/2040/OP to permit the erection of up to 26 residential dwellings on the site. Policy HSG3 of the Local Plan outlines that on suitable sites, the inclusion of up to 40% affordable homes will be sought as part of the proposed development of the site. Under LPA reference 3/10/2040/OP it was considered that the site was suitable for 40% of the approved dwellings to be affordable homes. As a calculation, this works out to be 10.4 dwellings and was rounded up to provide 11 affordable homes. The applicant now proposes to round this number down to 10 affordable homes.

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>3/10/2040/OP</u>	Outline planning application for the erection of 26 dwellinghouses together with access.	Approved

3.0 Consultation Responses:

- 3.1 The Council’s Housing Manager has commented that the proposal is acceptable.

4.0 Town Council Representations:

4.1 Buntingford Town Council was 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
HSG4	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 Members will note that this application will result in the loss of one affordable dwelling as approved in LPA ref. 3/10/2040/OP, and the number of affordable homes will be reduced from 11 to 10. The approved outline permission (LPA ref. 3/10/2040/OP) granted permission for a maximum of 26 dwellings on the site which would therefore require 10.4 affordable dwellings and, in accordance with the agreement this would be rounded up to provide 11 affordable homes. The applicant now proposes to round this number down to 10 affordable homes and outlines in the statement submitted with the application that in most cases any number that would be 0.5 or greater should be rounded up to the next whole number and anything below this should be rounded down. In this case it is important to note the wording of Policy HSG3 'Affordable Housing' of the Local Plan. This outlines that *up to* 40% affordable homes will be provided rather than

40% as a minimum. It is also noted that the Affordable Housing and Lifetime Homes SPD outlines that 40% is an achievable target in most situations, with some room for negotiation. Furthermore, the Affordable Housing and Lifetime House SPD sets out in a table the Market/Affordable Housing Gearing Ratio. The SPD states that the figures have been rounded to the nearest dwelling. For example it states that 40% of 5 dwellings equals 1.6, which has been rounded up to 2 dwellings whereas 40% of 6 dwellings equals 2.4 which has been rounded down to 2 dwellings. The approach proposed by the applicant is therefore consistent with the approach outlined in the SPD.

- 7.3 In principle therefore Officers have no objection to the proposed changes to the wording in the S106. The development would still provide 40% affordable housing (albeit rounded down to the nearest whole number rather than rounded up) which would be in accordance with the Council's policies. It is also an important consideration that the Council's Housing Manager raises no objection to the proposal.
- 7.4 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 still provide 40% affordable housing; this number has simply been rounded down as opposed to rounded up in LPA reference 3/10/2040/OP. As such the development would still accord with Local Plan Policy.
- 8.2 Officers are therefore satisfied that the development will still accord

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with the policies of the Development Plan and that the precise wording of the amendment to the S106 can be agreed between the Council and the applicant 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.