

OFFICER REPORT FOR COMMITTEE

DATE: 12/02/25

Q/0004/25
FOREMAN HOMES

WALLINGTON & DOWNEND

DEED OF VARIATION TO AN AGREEMENT PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 DATED 2nd SEPTEMBER 2021 RELATING TO PLANNING APPLICATION P/18/1073/FP

LAND TO SOUTH OF ROMSEY AVENUE, FAREHAM

Report By

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1.0 Introduction

- 1.1 On 28th January 2022 outline planning permission (P/18/1073/FP) was allowed on appeal for a residential development of 225 dwellings, a bird conservation area and area of public open space with all matters reserved except for access at Land South of Romsey Avenue.
- 1.2 The outline planning permission was subject to a Section 106 planning obligation which secures various obligations, including 40% affordable housing; fifty-eight dwellings for affordable rent and thirty-two dwellings as shared ownership.
- 1.3 Since outline planning permission was granted, a reserved matters application (P/22/1864/RM) providing details of the layout, scale, appearance, landscaping of the site was considered by the Planning Committee and granted planning permission in October 2023. Development has now commenced on site.

2.0 Description of Proposal

- 2.1 The planning obligation requires that prior to occupation of more than 60% of the market homes, that 100% of the affordable homes are constructed, and the freehold is transferred to a Housing Association Registered Provider (HARP) which in this instance would be VIVID Homes.
- 2.2 It has been requested that the 'mortgagee in possession' clause (7.1.5) contained in Schedule 1 (Affordable Housing Obligations) of the planning obligation be amended to be in line with the standard wording set by the National Housing Federation. There is concern that as currently drafted the lending values available to the HARP against the affordable units as security would be unreasonably limited.

- 2.3 The 'mortgagee in possession' clause of the obligation only becomes of relevance in the unlikely event that the HARP fails to keep up payments on any mortgage secured on any affordable unit and the mortgagee (or the 'chargee' as defined within the legal agreement) were to repossess the property.
- 2.4 The obligation currently requires that where there has been a default by the HARP of the mortgage or financial charge then the mortgagee or the 'chargee' who seeks to dispose of the whole or any part of the affordable housing land shall give no less than 1 month's prior written notice to the Council of its intention to dispose of any of the affordable housing units. If the Council responds within the 1-month period to indicate that the affordable housing properties can be transferred in such a way as to safeguard them as affordable housing (for example by arranging for the properties to be transferred to another HARP or to the Council), then the mortgagee shall co-operate with such arrangements to secure the transfer.
- 2.5 If the Council does not serve its response to the notice within 1 month or is then unable to complete the transfer within 2 months of giving its notice, the chargee would be entitled to dispose of the units free of the affordable housing obligations in the section 106 agreement (i.e. on the open market).
- 2.6 The proposed deed of variation amalgamates these 1-month and 2-month periods into a single 3-month timeframe. The amended wording still requires that notice be given to the Council of the chargee's intention to dispose of the affordable housing and requires the chargee to use reasonable endeavours over a three-month period, beginning with the date of the notice, to complete a disposal of the affordable housing to another registered provider or to the Council.
- 2.7 In the event that the disposal had not been completed within the three-month period, the chargee would be entitled to dispose of the Affordable Housing Land free from the affordable housing obligations of the legal agreement.
- 2.8 In addition to the above it is proposed that the definition for 'chargee' set out within Schedule 1 of the planning obligation be deleted and replaced with an alternative definition for the same term which encompasses the different kinds of mortgagee that may enact the mortgagee in possession clause.
- 2.9 Paragraphs 4.2 and 5.2 of Schedule 1 of the obligation seek to prevent the disposal of affordable units to any person(s) not on the Council's affordable housing register. It is proposed to amend these clauses to clarify that the mortgaging of a property by the HARP would not constitute a disposal.

3.0 Consultations

INTERNAL

Affordable Housing Delivery Manager

- 3.1 No objection raised. Proposed revised wording would be in line with wording used in current s106 agreements.

4.0 Planning Considerations

- 4.1 The change has been sought to bring the legal terminology in line with the agreed wording which is approved and published by the National Housing Federation. Unless the 'mortgagee in possession' clause is in line with this National Housing Federation wording, the HARP would be unable to obtain optimum lending rates, potentially affecting their funding arrangements to secure, deliver and retain affordable housing.
- 4.2 There would be no change to the amount of affordable housing secured, the triggers for delivery of the affordable housing or the amount and timing of the affordable housing contribution.
- 4.3 The purpose of the 'mortgagee in possession' clause is to allow some protection or security for mortgagees lending to RP's on affordable units whilst balancing this against the Council's objective of maintaining all of the on-site affordable housing as affordable housing over the long term.
- 4.4 The principal consideration for Members is whether the obligation would continue to serve this purpose equally well if varied. In other words, whether the amended clause still provides sufficient protection for the on-site affordable housing whilst recognising the need to offer flexibility to mortgagees of registered providers.
- 4.5 Officers are satisfied that the amended wording would still offer a good level of protection for the affordable housing, especially considering the minor nature of the amendment.

5.0 Recommendation

- 5.1 That Members delegate to the Head of Planning in consultation with the Solicitor to the Council to complete a deed of variation in relation to the relevant paragraphs and obligations contained within Schedule 1 (Affordable Housing Obligations) of the existing Section 106 legal agreement dated 2nd September 2021.

Land South of Romsey Avenue Portchester

