

Delegated Report

Planning Ref: 23/00322/DOV
Applicant: PERSIMMON PLC
Ward: Burbage Sketchley & Stretton



Hinckley & Bosworth
Borough Council

Site: Land off Brookfield Road, Burbage

Proposal: Deed of variation to s106 agreement dated 04.03.2022 to support the delivery of affordable housing

1. Recommendations

- Agree to the proposed deed of variation to application 21/00225/FUL.

2. Publicity

In accordance with the Constitution, the Chair of Planning and Ward members were consulted on the proposed Deed of Variation.

There were no objections or queries from the Chair of Planning, Ward Members, or HBBC's Affordable Housing Officer.

3. Deed of variation details

Address	Land off Brookfield Road, Burbage	
Original Application Details	21/00225/FUL – Residential Development of 40 dwellings and associated infrastructure	
Provisions of Agreement	The 8 affordable units will no longer be acquired by a Registered Provider. The LPA will acquire the 6 affordable rent properties, and the developer will provide the additional 2 as discount market sale properties.	
Proposed Changes to Agreement	To delete the following definitions from Clause 1.1: a. "Shared Ownership Dwellings"; 1. All references to "Shared Ownership" in the remaining definitions in clause 1.1 shall be read as referring to "Discount Market Dwellings" 2. To amend the definition of "Affordable Dwellings" in Clause 1.1 to remove reference to Shared Ownership Dwellings and replace with "Discount Market Dwellings" so that the definition now reads as follows:	

"Affordable Dwelling/s"	means the units to be constructed as part of the Development as Affordable Housing being 8 Dwellings (20%) and unless otherwise agreed in writing with the Borough Council to comprise: (i) 6 (75%) as Affordable Rented Dwellings; and (ii) 2 (25%) as Discount Market Dwellings
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To insert the following definitions into Clause 1.1 hereof:

"Affordable Housing Units"	means those 8 Dwellings which shall comprise of 6 Affordable Rented Dwellings and 2 Discount Market Dwellings as shown on Plan 2
"Affordable Rented Dwellings"	means the 6 Affordable Dwellings to be provided as Affordable Housing for Rent
"Discount Market Dwellings"	means Affordable Housing to be sold at the Discount Market Price
"Discount Market Price"	means 80% of the Open Market Value
"Eligible Purchaser"	means a person having a Local Connection
"Notice of Sales Release"	means written notification given by the Owner to the Director of Economic Development at the Borough Council of the date upon which it proposes to release the Discount Market Dwellings for Disposal and of which not less than 6 (six) weeks' notice shall be given;
"Open Market Value"	means the price which 100% of the freehold interest in a Market Dwelling would fetch if sold on the open market by a willing vendor to a willing purchaser and disregarding the obligations in this Agreement

<i>“Practical Completion”</i>	<i>means the date given in a written statement issued by the Owner (which for the avoidance of doubt includes their successors in title) or their agent certifying practical completion of a Dwelling and/or Dwellings;</i>
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3. In clause 3.1.2 to delete the words *“Affordable Dwellings”* and replace with *“Affordable Rented Dwellings”* and to delete the words *“an Affordable Housing Provider”* and replace with the *“Borough Council”* and to delete in its entirety the words ready for Occupation and the freehold interest in them has been so that clause 3.1.2 now reads as follows:
“Not to Occupy or permit the Occupation of more than 65% of the Market Dwellings until the Affordable Rented Dwellings have been constructed and are ready for to be transferred to the Borough Council”
4. To insert a new clause 3.1.2A as follows:
3.1.2A Not to Occupy or permit the Occupation of more than 65% of the Market Dwellings until the Discount Market Dwellings have been constructed and are ready for Occupation and the freehold interest in them has been transferred to an Approved Provider”
5. To delete reference to *“Shared Ownership Dwelling”* in clause 3.1.5.2, 3.1.5.3 and 3.1.5.4 *“The Owner’s Planning Obligations with the Borough Council*
6. To insert the following and *“3.1.2A”* into clause 3.1.3 after *“3.1.2*
7. To amend clause 3.1.4 of the *“The Owner’s Planning Obligations with the Borough Council to the Principal Deed* by replacing references to *“Affordable Dwellings”* with *“Discount Market Dwellings”* throughout the Clause.

	8. To amend clause 3.1.6 to remove the words “<i>and being such persons as shall be agreed between the Borough Council and the Affordable Housing Provider</i>” and to delete the final paragraph of clause 3.1.6 from “<i>PROVIDED THAT....to criteria</i>” 9. To insert a new clause 3.1.6A - of the Owner's Planning Obligations with the Borough Council to the Principal Deed as follows: <i>“In the event that the Affordable Rented Dwellings have not been transferred to the Borough Council in accordance with Clause 3.1.2 within 6 months of the date of this Agreement to notify the Team Leader Development Management of the Borough Council that the Affordable Rented Dwellings will revert to Discount Market Dwellings and the provisions of Clause [] shall apply to those Affordable Rented Dwellings”</i> 10.To insert a new clause 3.1.6AA “Discount Market Dwellings” 3.1.6AA a) The Discount Market Dwellings shall only be sold at the Discount Market Price b) The Discount Market Units shall only be used for the purpose of Affordable Housing and in accordance with the below	
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4. Conclusion

HBBC Affordable Housing have no objections to the proposed amendment. The applicant has provided evidence to show that there is no Registered Provider interest in acquiring the affordable housing on site.

The local authority has therefore agreed that it will acquire the 6 affordable rent properties for new council housing. The developer wishes to provide the 2 affordable home ownership properties as discount market sale properties, which they will market themselves.

As discount market sale properties have not been included in the section 106 agreement, a variation to the legal agreement is needed; firstly, to set the level of discount, secondly, to ensure the properties are only sold to people with a local connection, and thirdly, to ensure these conditions are included in perpetuity so that the properties are retained as affordable housing on resale.

The proposed variation to the section 106 agreement therefore is accepted in respect of affordable housing as it will reflect the tenure types to be delivered as a result of the renegotiation between the local authority and the applicant. The removal of the obsolete clauses is also supported as they are no longer relevant.

5. **Recommendation:** Approve the Deed of Variation under delegated powers.