

31st July 2023

Our Ref: 40965PL

Planning
Hinckley & Bosworth Borough Council
Hinckley Hub
Rugby Road
Hinckley
Leicestershire
LE10 0FR



Letter sent via electronic methods only.

Dear Sir / Madam,

**Section 96a of the Town and Country Planning Act 1990
Non-Material Amendment to Planning Application 20/00916/FUL at Ashby House, Hill Top Farm, Hill Top Earl
Shilton, Leicestershire, LE9 7DP.**

I write in relation to the above site address, planning application and proposal having been instructed by the Applicant, Midland Heart as part of their appointed professional team.

Midland Heart have approached rg+p with a clear brief of revising the current tenure mix approved as part of planning application 20/00916/FUL which was granted planning permission November 2022 for a development described as *"Demolition of farm buildings and Ashby House and development of 50 dwellings comprising 49 no. affordable houses and 1no. bungalow to replace Ashby House, with access road off Leicester Road, open space, landscaping, drainage basin, and foul pumping station"*.

It was agreed, as part of the associated signed s.106 agreement that the Affordable Housing Scheme would deliver a scheme of 26x Affordable Rent, 23x Shared Ownership (49). With the single bungalow making the 50 dwellings.

However, following review Midland Heart now wish to deliver an Affordable Housing Scheme that would deliver the entire scheme as Social Rent dwellings replacing the previously agreed tenure mix. This scheme also includes the previously approved bungalow because the previous landowners are no longer intending to move into it. Therefore, there is no requirement to retain this bungalow as a private, open market dwelling.

Midland Heart have detailed to rg+p that they have been in discussions with the Council's Housing Enabling team regarding the revised scheme to be delivered. Concluding that the change to the proposed affordable housing tenure mix has the full support of the Housing team.

In considering which application type to submit reference has been to s.73 and s.96a of the Town and Country Planning Act 1990. We do not wish to vary any of the previously imposed planning conditions which would require a s.73. The agreed tenure mix was agreed as part of the signed s.106 agreement and is not, imposed as a planning condition on the associated grant of planning permission, nor is it clearly set out within the description of development.

Additionally, s.96a applications empower Local Planning Authorities to make changes to any planning permission, including the description of development¹, relating to land in their area if they are satisfied that the change is not material.

This proposal therefore seeks the amendment of the approved description from: -

"Demolition of farm buildings and Ashby House and development of 50 dwellings comprising 49 no. affordable houses and 1no. bungalow to replace Ashby House, with access road off Leicester Road, open space, landscaping, drainage basin, and foul pumping station".

To: -

"Demolition of farm buildings and Ashby House and development of 50 affordable dwellings comprising 49no. houses and 1no. bungalow to replace Ashby House, with access road off Leicester Road, open space, landscaping, drainage basin, and foul pumping station".

In deciding whether a change is material, a local planning authority must have regard to the effect of the change on the planning permission as originally granted. We are of the professional opinion that this revision to the delivered tenure type across the site does not constitute a material amendment.

The reason for this is that the planning system seeks to deliver residential developments which are 'tenure blind' and emphasise the quality of the development overall as a mixed and balanced community. Consequently, the revision is of a 'non-material' amendment, and we respectfully request that the submitted amendment is approved. This could either be subject to the revised description or without, dependent upon the Council's preference.

In addition, we are aware that the signed s.106 agreement details the explicit split of tenure type in paragraph 1.1 'Affordable Housing' (26x Affordable Rent, 23x Shared Ownership). We acknowledge that the proposed affordable housing scheme will require a variation of this s106 agreement. We also acknowledge that this s.106 agreement has been in place for less than five years.

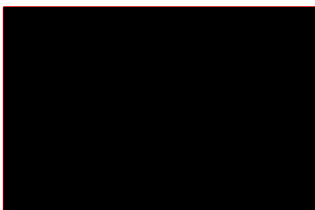
Section 106A (1) states that a planning obligation can be modified or discharged by agreement (at any time) between the appropriate authority and the person or persons against whom it is enforceable. The appropriate authority, according to S.106A (11), will be the local planning authority in this scenario. It is our understanding that an agreement to modify or discharge a planning obligation can be made at any time (and can only be entered into by Deed, by virtue of section 106A (2)). Therefore, a s106 agreement, in our professional opinion, can be renegotiated and varied at any time between the parties.

Consequently, in addition to the submitted s.96a planning application we write to the local planning authority to seek their agreement to establishing a Deed of Variation to the signed s.106 agreement. The team at Midland Heart respectfully request that the Council furnish them with the contact details of their legal services team that will be acting on this request.

It would also be greatly appreciated if the Council could detail to us whether a set procedure is to be followed at the earliest opportunity to ensure that delays are minimised.

Should anything require clarification, please do not hesitate to contact me.

Yours faithfully



Dale Radford
Senior Planner
rq+p



¹ Finney v Welsh Ministers & Ors (Rev 1) [2019] EWCA Civ 1868 (05 November 2019) - <https://www.bailii.org/ew/cases/EWCA/Civ/2019/1868.html>