



The Old Vicarage

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Mr C Brown
Head of Planning
Hinckley and Bosworth Borough Council
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RW/24.155/CL
01 July 2024

Dear Mr Brown,

Deed of Variation – Application to modify a planning obligation in respect of affordable housing – Land off Wood Lane, Higham-on-the-Hill

I am instructed by Owl Homes to submit a Deed of Variation application in respect of the s106 Agreement accompanying planning permission reference: 21/01147/OUT for Residential development for up to 61 dwellings, including a shop, open space, new access and associated works (Outline - access only) at Land Off Wood Lane Higham on the Hill, Leicestershire.

As you are aware, the above outline planning permission was granted on 9th September 2022. The permission was subject a s106 agreement including obligations in respect of affordable housing. The Definitions define the Affordable Dwellings being required to deliver 40% of the total number of dwellings, comprising 75% Affordable Rent and 25% Shared Ownership, with an Affordable Housing Scheme to be submitted to agree the details of the location, house types and size and tenure of the affordable dwellings. Clauses 3.1, and the relevant sub-clauses, control the timings of provision, use and transfer of the dwellings to a Registered Provider.

Following grant of the Outline permission, the site was bought by Owl Homes who subsequently sought approval of the Reserved Matters, application ref: 23/00712/REM. The Reserved Matters approval included the Affordable Housing Scheme, complying with the requirements of the s106 agreement in respect of affordable housing; aiming to deliver an affordable offering as follows:

- 19no. Affordable Rent
 - 4no. 1-bed homes
 - 9no. 2-bed homes
 - 6no. 3-bed homes
- 6no. Shared Ownership
 - 2no. 2-bed homes

- 4no. 3-bed homes

Following the approval of the Reserved Matters and discharge of conditions, Owl have started on-site and are in the process of completing vibro piling works to enable the foundation to be finalised.

Despite best efforts, Owl now find themselves unable to secure a Registered Provider to take the affordable housing units, which poses a significant problem.

As a result of a comprehensive tender process Owl had previously agreed terms to transfer the affordable homes to Stonewater HG and legal work relating to the transfer was well progressed when Stonewater withdrew from the scheme in January of this year citing capacity issues and their priority to deliver their Homes England grant funded programme.

Following Stonewater's withdrawal, Owl once again approached all Registered Providers (RP) operating in the Hinckley and Bosworth Borough Council (HBBC) area to seek offers for the affordable units. Owl approached 14 RP's and unfortunately all 14 RP's confirmed they are not interested in the acquisition of the affordable units within this development. For clarity, the RP's approached were:

- Longhurst
- Trent and Dove
- Trident
- Sage
- EMH
- MH
- PfP
- Orbit (no response)
- L&G
- Platform
- Riverside
- NCHA
- Futures
- Stonewater

In brief, the main reasons for rejecting the scheme included.

- Capacity
- Non-priority area
- Number of units too low

To demonstrate the position, accompanying this submission is correspondence from all the Registered Providers.

In respect of timescales and effects of this, occupation of market units is restricted at 65% until the affordable are constructed ready for occupation and the freehold interest has been transferred to an Registered Provider, as set out at Clause 3.1.4 of the s106 Agreement. Occupation of 65% of the market units is due July 2025, which is not far away and at that time, without an alternative solution, occupations will be prohibited, and progress of the site will be unable to continue, and the site completed. You will appreciate that this leaves Owl in a very difficult position.

As such, Owl have considered options for addressing this situation and these include.

- Change of tenure to first homes or discounted market sale
- Commuted sum payment in lieu of provision
- Transfer of a reduced number of affordable homes to H&BBC

Prior to this submission, we have discussed in broad terms the situation set out above with the Housing Strategy and Enabling Manager (Valerie Bunting) via Gary Turner of G&CT Consultants. Ms Bunting has advised, that from the perspective of affordable homes delivery, her preferred option is for HBBC to take a reduced number of homes directly into the councils' ownership with a commuted sum payment to be made to cover any shortfall in value between the units transferred and the cost of delivering the obligation as set out in the s106 agreement. This approach ensures that some homes are still delivered on-site and at the same expense to Owl.

In short, Owl are proposing that HBBC secure 4 x 1b2p maisonettes for sum of £1 plus a commuted sum payment of £210,074.78, with the remainder of the units currently allocated for affordable housing to have the existing restrictions removed by deed of variation to allow for them to be disposed of as open market units.

The application is accompanied by a detailed calculation and explanatory note prepared by G&CT which should be reviewed in full, but the calculation and offer are summarised as follows:

- The affordable provision of 25no. homes was agreed in accordance with the s106 agreement, as set out above
- Terms were agreed with Stonewater at an offer level of £4,018,000
- The cost to Owl Homes of delivering the 25 affordable homes was £4,810,941
- This implies that the open market element of the development is cross subsidising the affordable homes delivery to the value of £792,940.81. This is the established obligation to deliver cross subsidy
- The proposal is to transfer 4 x 1b2p maisonettes to H&BBC for the sum of £1
- The cost of delivering the 4 x 1b2p maisonettes is £582,866
- This leaves a balance of £210,074.78 as an additional commuted sum payment made to H&BBC to deliver the total cross subsidy i.e.
 - Subsidy to be delivered - £792,940.81
 - Cost of 4 x 1b2p apartments - £582,866
 - Difference - £210,074.78 – to be paid as a commuted sum
 - Payment associated with the transfer of 4 x 1b2p apartments to H&BBC = £1

The basis of this proposal and our submission is to safeguard delivery of affordable homes whilst ensuring the same viability established through the costs and incomes associated with the transactions agreed with Stonewater last year. We hereby seek your agreement and approval to process a deed of variation to the current s106 agreement to allow us to deliver the proposal set out above.

The detail of the provisions of the s106 agreement to be amended shall be discussed between the acting solicitors in due course, and subsequent to the Deed of Variation, the Approved Plans on the Reserved Matters application would be amended accordingly through a non-material amendment.

Please acknowledge this as a formal submission, provide a reference number, and availability to discuss and agree the proposals.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Richard West', with a long horizontal flourish extending to the right.

RICHARD WEST BA (Hons) MRTPI
Director
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