



Cambridge City Council Planning

Date: Wednesday, 7 July 2021

Time: 10.00 am

Venue: Main Room - The Cambridge Corn Exchange, 2 Wheeler Street, Cambridge, CB2 3QB

Contact: democratic.services@cambridge.gov.uk, tel:01223 457000

Agenda

10 S106 Variation Reports 12:30

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Planning Members: Smart (Chair), D. Baigent (Vice-Chair), Dryden, Flaubert, Gawthrop Wood, Porrer and Thornburrow

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SUMMARY	The planning obligation for affordable housing still serves a useful planning purpose for the development. The applicant's proposed modification to include a revised mortgagee in possession clause (MIP) in the form now widely accepted as representing current needs of affordable housing providers will enable the value of the assets to be maximised. These assets can then be used as security when seeking funding for delivering more affordable housing.
RECOMMENDATION	APPROVE MODIFICATION TO THE S106 AGREEMENT

1.0 SITE DESCRIPTION/AREA CONTEXT

- 1.1 The proposal relates to a scheme of 22 dwellings granted planning permission in September 1995. The dwellings consist of 10 houses and 12 flats at 53-59 (odd), 60-76 and 78 Bosworth Road. All dwellings are affordable homes within the ownership of Metropolitan Thames Valley Housing (MTVH). MTVH have over 2000 properties within Cambridge.
- 1.2 The properties are located off Bosworth Road and comprise terraced houses and blocks of flats in a traditional design. A communal parking court is set in front of the dwellings adjacent to Bosworth Road.

2.0 THE PROPOSAL

- 2.1 MTVH are looking to put these properties into security to raise finance to secure further social housing development projects and as such, is undergoing a recharging/remortgaging exercise. The s106 Agreement does not contain an effective mortgagee in possession clause therefore, they are seeking to vary the Agreement in order to achieve the best value possible for the assets.
- 2.2 The amendments to the s106 Agreement through a Deed of Variation are proposed as follows:

- Removal of clause 3 paragraph (4) in its entirety and replacement with the following:

The obligations within this agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the affordable dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver.

2.3 The purpose of the variation is to enable MTVH to maximise the value of the assets and in turn, maximise funding made available from them for future investment in affordable housing.

3.0 SITE HISTORY

Reference	Description	Outcome
C/0949/94	Erection of 22 houses and flats with associated parking and landscaping	Approved

4.0 PUBLICITY

4.1 Advertisement:	No
Adjoining Owners/Occupiers:	Yes
Site Notice Displayed:	No

5.0 POLICY

5.1 See Appendix 1 for full details of Central Government Guidance, Cambridge Local Plan 2018 policies, Supplementary Planning Documents and Material Considerations.

5.2 Relevant Central Government Guidance, Supplementary Planning Documents and Material Considerations

- National Planning Policy Framework (NPPF) 2019
- National Planning Practice Guidance

6.0 CONSULTATIONS

Enabling – Affordable Housing

6.1 The proposal is acceptable and is consistent with other mortgagee in possession clauses now routinely included in s106 Agreements which secure affordable housing.

7.0 REPRESENTATIONS

7.1 None

8.0 ASSESSMENT

8.1 The main issue to be considered is the manner in which the proposal to modify the s106 Agreement is determined. The options are as follows:

- that the planning obligation shall continue to have effect without modification;
- If the obligation no longer serves a useful purpose, that it shall be discharged;
- If the obligation continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

8.2 The s106 Agreement pertaining to the properties requires that the dwellings are occupied by persons who are in need of affordable housing. The planning obligation therefore, still serves a useful purpose in relation to the development and as such, it needs to be determined whether the S106 Agreement should be modified as proposed by the applicant.

8.3 Paragraph 3 clause 4 of the s106 Agreement is proposed to be varied by its deletion as it currently reads.

8.4 The applicant is seeking to maximise the value of the assets within the development to enable them to use the asset as security when seeking funding for further affordable housing

projects. It is therefore, undergoing a recharging exercise. In order to maximise the value of the asset the s106 Agreement requires a modification to the mortgagee in possession clause (MIP). A MIP enables a lender, in the event of a default by the housing association under its loan agreement, to enforce its security and sell the mortgaged property free of the affordable housing restrictions. However, the likelihood of a housing association getting into such a financial position is very low and the Council has taken a risk based approach and allowed similar modifications to other s106 Agreements in order to promote much needed investment in affordable housing. The proposed replacement clause is a standard MIP which has been approved by the valuers (JLL and Savills) and funders across the sector and also agreed by the National Housing Federation. The Council's Housing Officer has also raised no objection to modify paragraph 3 clause 4 with the following wording:

The obligations within this agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the affordable dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver.

- 8.5 The applicant states that the difference in value between properties charged at Existing Use Value for Social Housing (EUV-SH) and at Market Value – Subject to Tenancy (MV-ST) is significant. Properties charged at MV-ST typically obtain 70% of Market Value with Vacant Possession and properties charged at EUV-SH obtain approximately 30% of Market Value.
- 8.6 The modification if approved by Committee will allow MTVH to maximise the value of its assets which will provide security in seeking further funding to deliver more affordable housing. Therefore, it is considered that the proposed planning obligation would be served equally well with the proposed modification.

9.0 CONCLUSION

- 9.1 The planning obligation for provision of affordable housing within the existing s106 Agreement still serves a useful purpose in relation to the development. The proposal to modify the Agreement is considered appropriate as it will maximise the value of the assets for MTVH. This will, in turn, enable it to use those assets as security when seeking funding to deliver additional affordable housing.

10.0 RECOMMENDATION

APPROVE MODIFICATION TO THE S106 AGREEMENT AS OUTLINED IN PARAS 8.3 AND 8.4 OF THIS REPORT

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SUMMARY	The planning obligation for affordable housing still serves a useful planning purpose for the development. The applicant's proposed modification to include a revised mortgagee in possession clause (MIP) in the form now widely accepted as representing current needs of affordable housing providers will enable the value of the assets to be maximised. These assets can then be used as security when seeking funding for delivering more affordable housing.
RECOMMENDATION	APPROVE MODIFICATION TO THE S106 AGREEMENT

1.0 SITE DESCRIPTION/AREA CONTEXT

- 1.1 The proposal relates to a scheme of 20 dwellings granted planning permission in January 1995. The dwellings consist of 12 houses and 8 flats at 112-120 New Street and 150-178 York Street and are all affordable homes within the ownership of Metropolitan Thames Valley Housing (MTVH). MTVH have over 2000 properties within Cambridge.
- 1.2 The properties are located on the corner of York Street and New Street and comprise two storey semi-detached and terraced properties in a traditional design with a central communal parking court accessed from York Street.

2.0 THE PROPOSAL

- 2.1 MTVH are looking to put these properties into security to raise finance to secure further social housing development projects and as such, is undergoing a recharging/remortgaging exercise. The s106 Agreement does not contain an effective mortgagee in possession clause therefore, they are seeking to vary the Agreement in order to achieve the best value possible for the assets.

2.2 The amendments to the s106 Agreement through a Deed of Variation are proposed as follows:

- Removal of clause 2 paragraph (3) in its entirety and replacement with the following:

The obligations within this agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the affordable dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver.

2.3 The purpose of the variation is to enable MTVH to maximise the value of the assets and in turn, maximise funding made available from them for future investment in affordable housing.

3.0 SITE HISTORY

Reference	Description	Outcome
C/0802/93	Erection of 12 houses and 8 flats	Approved

4.0 PUBLICITY

4.1 Advertisement:	No
Adjoining Owners/Occupiers:	Yes
Site Notice Displayed:	No

5.0 POLICY

5.1 See Appendix 1 for full details of Central Government Guidance, Cambridge Local Plan 2018 policies, Supplementary Planning Documents and Material Considerations.

5.2 Relevant Central Government Guidance, Supplementary Planning Documents and Material Considerations

- National Planning Policy Framework (NPPF) 2019
- National Planning Practice Guidance

6.0 CONSULTATIONS

Enabling – Affordable Housing

6.1 The proposal is acceptable and is consistent with other mortgagee in possession clauses now routinely included in s106 Agreements which secure affordable housing.

7.0 REPRESENTATIONS

7.1 An objection was received from the following address:

- 168 York Street

7.2 Concerns raised with regard to previous actions of the landlord (MTVH) in relation to contractual changes (eg: right to buy clauses) associated with the properties.

8.0 ASSESSMENT

8.1 The main issue to be considered is the manner in which the proposal to modify the s106 Agreement is determined. The options are as follows:

- that the planning obligation shall continue to have effect without modification;
- If the obligation no longer serves a useful purpose, that it shall be discharged;
- If the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

8.2 The s106 Agreement pertaining to the properties requires that the dwellings are occupied by persons who are in need of affordable

housing. The planning obligation therefore, still serves a useful purpose in relation to the development and as such, it needs to be determined whether the S106 Agreement should be modified as proposed by the applicant.

8.3 Paragraph 2 clause 3 of the s106 Agreement is proposed to be varied by its deletion as it currently reads.

8.4 The applicant is seeking to maximise the value of the assets within the development to enable them to use the asset as security when seeking funding for further affordable housing projects. It is therefore, undergoing a recharging exercise. In order to maximise the value of the asset the s106 Agreement requires a modification to the mortgagee in possession clause (MIP). A MIP enables a lender, in the event of a default by the housing association under its loan agreement, to enforce its security and sell the mortgaged property free of the affordable housing restrictions. However, the likelihood of a housing association getting into such a financial position is very low and the Council has taken a risk based approach and allowed similar modifications to other s106 Agreements in order to promote much needed investment in affordable housing. The proposed replacement clause is a standard MIP which has been approved by the valuers (JLL and Savills) and funders across the sector and also agreed by the National Housing Federation. The Council's Housing Officer has also raised no objection to modify paragraph 2 clause 3 with the following wording;

The obligations within this agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the affordable dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver.

8.5 The applicant states that the difference in value between properties charged at Existing Use Value for Social Housing (EUV-SH) and at Market Value – Subject to Tenancy (MV-ST) is significant. Properties charged at MV-ST typically obtain 70% of

Market Value with Vacant Possession and properties charged at EUV-SH obtain approximately 30% of Market Value.

- 8.6 The modification if approved by Committee will allow MTVH to maximise the value of its assets which will provide security in seeking further funding to deliver more affordable housing. Therefore, it is considered that the proposed planning obligation would be served equally well with the proposed modification.

Third Party Representations

- 8.7 Whilst the concerns of the third party are noted, they are not are not material planning considerations.

9.0 CONCLUSION

- 9.1 The planning obligation for provision of affordable housing within the existing s106 Agreement still serves a useful purpose in relation to the development. The proposal to modify the Agreement is considered appropriate as it will maximise the value of the assets for MTVH. This will, in turn, enable it to use those assets as security when seeking funding to deliver additional affordable housing.

10.0 RECOMMENDATION

APPROVE MODIFICATION TO THE S106 AGREEMENT AS OUTLINED IN PARAS 8.3 AND 8.4 OF THIS REPORT.

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