



Planning Committee Date	26 th April 2023
Report to	Cambridge City Council Planning Committee
Lead Officer	Joint Director of Planning and Economic Development
Reference	20/04107/S106A
Site	55-68 (inclusive) And 84-97 (inclusive) Hampden Gardens Cambridge Cambridgeshire CB1 3EL
Ward / Parish	Romsey
Proposal	Modification of planning obligations contained in a S106 Agreement dated 23rd May 2005 pursuant to planning permission C/03/0922
Applicant	BPHA Limited
Presenting Officer	Alice Young
Reason Reported to Committee	Application raises special planning policy or other considerations
Member Site Visit Date	N/A
Key Issues	1. Housing provision
Recommendation	APPROVE subject to S106 deed of variation

1.0 Executive Summary

- 1.1 The application seeks to modify the planning obligations contained in a S106 Agreement dated 23rd May 2005 pursuant to planning permission C/03/0922 to delete clauses 9.1.1, 9.1.1 (a), 9.1.1 (b) and replace them with a revised conditional mortgagee exclusion clause.
- 1.2 This means that the registered provider can borrow against the Market Value subject to Tenancy valuation (MV-STT) of the affordable to increase the funding available for investment into further affordable housing.
- 1.3 The S106a application has been subject to consultation with the Housing Officer who has no objections to the obligation being modified and has recommended revised wording for the proposed modification.
- 1.4 Therefore, officers recommend that the Planning Committee approve the proposed modification of the planning obligation.

2.0 Site Description and Context

None-relevant	x	Tree Preservation Order	
Conservation Area		Local Nature Reserve	
Listed Building		Flood Zone 1, 2, 3	
Building of Local Interest		Green Belt	
Historic Park and Garden		Protected Open Space	
Scheduled Ancient Monument		Controlled Parking Zone	
Local Neighbourhood and District Centre		Article 4 Direction	

- 2.1 Hampden Gardens is located on the north-western side of Cromwell Road, south of the railway line, and falls outside of the conservation area. Areas of the site fall within areas which are at risk of surface water flooding. There are no other site constraints.
- 2.2 The application specifically relates to 55-58 (inclusive) and 84-97 (inclusive) Hampden Gardens which are affordable units located within the wider Hampden Garden estate.

3.0 The Proposal

- 3.1 The application has been made under the Town and Country Planning Act 1990 (S106A) and the Town and Country (Modification and Discharge of Planning Obligations) Regulations 1992.
- 3.2 The application seeks modification of the planning obligation contained in a S106 Agreement dated 23rd May 2005 pursuant to planning permission

C/03/0922. This would delete clauses 9.1.1, 9.1.1 (a), 9.1.1 (b) and replace them with the following conditional mortgagee exclusion clause:

9.1.1 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 Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver (including immediate and all subsequent successors in title to such persons)

PROVIDED THAT:

9.1.1 (a) such mortgagee, chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Units; and

9.1.1 (b) shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Units to another Approved Body or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

9.1.1 (c) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Units free from the Affordable Housing provisions in this Agreement which provisions shall determine absolutely.

4.0 Relevant Site History

Reference	Description	Outcome
C/03/0922/FP	Demolition of existing building. Erection of 2,3,4 and 5 storey residential building comprising 2 blocks of 68 private and 28 affordable apartments associated car parking (part below ground) and public open space.	Granted

5.0 Policy

5.1 National

Town and County Planning Act 1990 (s106a)
Town and County Planning (Modification and Discharge of Planning
Obligations) Regulations 1992
National Planning Policy Framework 2021 (NPPF)
National Planning Practice Guidance (NPPG)

5.2 Cambridge Local Plan 2018

Policy 45: Affordable housing and dwelling mix
Policy 85: Infrastructure delivery, planning obligations and the Community
Infrastructure Levy

5.3 Neighbourhood Plan

N/A

5.4 Other Guidance

Homes England Capital Funding Guide (2016)

6.0 Consultations

6.1 Affordable Housing Officer

6.2 Supportive of the application and have no objection to the MIP/MPC being
amended for the Registered Provider.

Industry Standard Mortgagee Exclusion Clause

*The [affordable housing provisions] in this Agreement **[DN: cross-referencing the specific provisions would be preferable]** 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 PROVIDED THAT:*

such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the [affordable dwellings] and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the [affordable dwellings] to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the

terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the [affordable dwellings] free from the [affordable housing provisions] in this Agreement which provisions shall determine absolutely.

7.0 Third Party Representations

7.1 No representations have been received.

8.0 Member Representations

8.1 Cllr Baigent has commented on this application requesting clarification on the proposal.

8.2 The above representations are a summary of the comments that have been received. Full details of the representations are available on the Council's website.

9.0 Assessment

9.1 Housing Provision

9.2 Policy 45 states developments should include a balanced mix of dwelling sizes, types, and tenures to meet projected future household needs within Cambridge. Whilst not being prescriptive, Policy 45 requires dwelling mix and tenure types to have regard to the different needs for different unit sizes of affordable and market housing, which is further detailed on Cambridge's draft Affordable Housing SPD (June 2014).

9.3 The applicant has submitted a S106 (A) application to modify the terms of the S106 agreement through a deed of variation, specifically in relation to the Mortgagee in Possession (MIP) clause. The Mortgagee in Possession clause is a requirement of financial lenders to Registered Providers for the development of affordable housing, to ensure that they have some security against the money they are lending.

9.4 The reason for the requested change is that the applicant would like to ensure that they receive a Market Value subject to Tenancy valuation (MV-STT) to be able to increase the funding available for investment into affordable housing. This requires the Mortgage Exclusion Clause to be amended to take out any ongoing requirement for a lender to use the property as affordable housing.

9.5 The MIP clauses which were originally included within the S106 may have been appropriate at the time, however the funding and grant regime for Registered Providers has changed significantly over the years and the

government now expect Registered Providers to maximise their assets to help fund the delivery of affordable housing, rather than a reliance on grant funding. The current MIP clause does not allow the Registered Provider to do this. Without the proposed changes requested this will impact on Cambridge Housing Society's ability to raise sufficient funds to continue to develop affordable housing in the City.

- 9.6 The Council's Affordable Housing Team has confirmed that their support of the application and have proposed wording for the new Mortgagee in Possession clause. Therefore, Officers are satisfied that the proposal would accord with Cambridge Local Plan (2018) policies 45.

9.7 Conclusion

- 9.8 The proposed modified planning obligation would continue to serve a useful planning purpose and should be supported.

9.9 Recommendation

- 9.10 **Approve** subject to:

-Satisfactory completion of a deed of variation to the Section 106 Agreement which includes the wording as recommended by the Housing Officer as set out in the report with minor amendments delegated to officers.