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| Planning Committee Date | 2 nd August 2023 |
| Report to | Cambridge City Council Planning Committee |
| Lead Officer | Joint Director of Planning and Economic Development |
| Reference | 22/03731/S106A |
| Site | Land Between Bridewell Road and Lucerne Close |
| Ward / Parish | Cherry Hinton |
| Proposal | Modification of planning obligations contained in a Section 106 Agreement dated 20 December 1993 made between (1) Cambridge City Council and (2) Granta Housing Society Limited |
| Applicant | Jignesh Hirani |
| Presenting Officer | Tom Chenery |
| Reason Reported to Committee | Delegated authority does not extend to include Deeds of Variation |
| 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 20th December 1993 pursuant to planning permission S/1451/93/F.
- 1.2 The application seeks to modify the S106 agreement specifically in relation to the Mortgagee in Possession (MIP) clause. The MIP 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.
- 1.3 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 added to take out any ongoing requirement for a lender to use the property as affordable housing.
- 1.4 The S106a application has been subject to consultation with the Housing Officer who has no objections to the obligation being modified
- 1.5 Therefore, officers recommend that the Planning Committee approve the proposed modification of the planning obligation.

2.0 Site Description and Context

- 2.1 The site comprises a parcel of residential land which covers land both within Cambridge City and South Cambridgeshire. The site includes a residential cul de sac known as Primrose Close. The application site is located to the east of Bridewell Road, Cambridge and to the west of Lucerne Close. There is a footpath that connects Primrose Close to Lucerne Close.
- 2.2 The proposal specifically relates to 8 dwellings within the application site.

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 the Modification of planning obligations contained in a Section 106 Agreement dated 20 December 1993 made between (1) Cambridge City Council and (2) Granta Housing Society Limited.
- 3.3 The application seeks modification of the planning obligation contained in a S106 Agreement dated 20th December 1993 pursuant to planning permission S/1451/93/F. This would include the following clause:

3. 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 Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

(1) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Housing Units 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

(2) if such disposal has not completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely”

4.0 Relevant Site History

| Reference | Description | Outcome |
|-------------|--------------|----------|
| S/1451/93/F | 23 DWELLINGS | Approved |

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 S106 Officer – No Objection

6.2 Affordable Housing Officer – No Objection

7.0 Third Party Representations

7.1 No representations have been received.

8.0 Member Representations

Not applicable

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 added to take out any ongoing requirement for a lender to use the property as affordable housing.

9.5 The Council's Affordable Housing Team has confirmed that their support of the application. Therefore, Officers are satisfied that the proposal would accord with Cambridge Local Plan (2018) policy 45.

9.6 Planning Balance

9.7 Planning decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (section 70(2) of the Town and Country Planning Act 1990 and section 38[6] of the Planning and Compulsory Purchase Act 2004). No material considerations indicate that the deed of variation proposed should not be supported by the Council.

9.8 Having taken into account the provisions of the development plan, NPPF and NPPG guidance, the views of statutory consultees and wider stakeholders, as well as all other material planning considerations, the proposed variation is recommended for agreement.

10.0 Recommendation

10.1 Agree the proposed Deed of Variation

- 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.