

Reference:	16/00876/DOV
Application Type:	Deed of Variation
Ward:	Thorpe
Proposal:	Modification of planning obligation (Section 106 agreement) dated 28 th January 2015 pursuant to application 14/01434/FULM to vary the requirement to provide affordable housing.
Address:	3 Acacia Drive, Thorpe Bay, Essex SS1 3JU
Applicant:	Elmore Homes Ltd
Agent:	n/a
Consultation Expiry:	n/a
Expiry Date:	14 th July 2016
Case Officer:	Amanda Rogers
Recommendation:	Delegate to the Head of Planning and Transport or Group Manager for Planning and Building Control to AGREE A MODIFICATION OF THE PLANNING OBLIGATION DATED 28th January 2015 pursuant to application 14/01434/FULM



1 Introduction

- 1.1 Section 106A of the Town and Country Planning Act 1990 (1990 Act) allows for an application to be made to a local authority to consider a proposed modification or discharge of a planning obligation, and the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 set out the procedure for dealing with any such applications.
- 1.2 Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. A planning obligation is enforceable as a contract and whether it is varied or not is at the local authority's discretion. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it "no longer serves a useful purpose" or would continue to serve a useful purpose in a modified way (see Section 106A of the Town and Country Planning Act 1990). However, as this application to modify the S106 agreement has been made within 5 years of completion, this statutory test is not applicable.
- 1.3 If it is more than 5 years since the planning obligation was entered into then section 106B allows for a right of appeal to the Secretary of State should the local authority fail to determine any such application within 8 weeks or refuse an application. In this case less than 5 years has elapsed, which means there is no right of appeal and due to the application being recently considered by the Council, no public consultation is necessary in association with the application.
- 1.4 Sections 106BA to 106BC of the 1990 Act used to provide an application and appeal procedure for the review of affordable housing obligations based on economic viability without taking into account other aspects of the planning consent. These provisions were repealed at the end of 30 April 2016.

2 The Proposal

- 2.1 Planning permission was granted on 28th January 2015 for "*Demolition of existing bungalow at 3 Acacia Drive, erect three storey building comprising fourteen self contained flats, layout parking, amenity space, refuse store, cycle store and form vehicular access on to Thorpe Hall Avenue (Amended Proposal)*".
- 2.2 This permission was subject to a Section 106 (S106) agreement dated 28th January 2015 to secure the following:
- 3 affordable housing flats including 2x2bed rental dwellings and 1x3bed shared ownership dwellings
 - Education contribution of £26,511.89 (index-linked)
 - S106 monitoring contribution of £1,810.48
- 2.3 Under S106A of the TCPA the applicant is seeking to vary the requirement for the provision of affordable housing to provide a reduced financial contribution in lieu of on-site provision on grounds of financial viability.
- 2.4 The applicant previously applied to modify the S106 agreement (application ref. 16/00253/DOV) in February of this year. In support of the earlier application

evidence was submitted demonstrating a lack of interest from Registered Providers for the three affordable housing units on-site. This was not disputed and an equivalent affordable housing financial contribution (calculated in accordance with the Council's current standard approach) was discussed with the applicant. However, the amount of the financial contribution was not agreed on the basis that the applicant deemed it to be unviable for the development. As insufficient viability evidence had been submitted at this stage the applicant withdrew their application to prepare further supporting documentation.

2.5 The applicant has submitted the following evidence in support of their application:

- Letter from Elmore Contractors Limited dated 18th May 2016 including a Cost Analysis
- Correspondence from Dedman Gray Property Consultants dated 11th February 2016 (estimated sales values)
- Schedule of accommodation (unit sizes)
- Table of residential units including bed spaces, unit sizes and open market values

3 Planning Considerations

3.1 The material planning consideration in respect of this application is whether or not the planning obligation relating to affordable housing should be reduced on grounds of financial viability to secure the delivery of the development.

4 Appraisal

The National Planning Policy Framework, DPD 1 (Core Strategy) strategic objective SO7, policies KP3, CP6 and CP8; Development Management DPD policy DM7 and SPD2

4.1 Core Strategy policy CP8 states the following:

For sites providing less than 10 dwellings (or below 0.3 ha) or larger sites where, exceptionally, the Borough Council is satisfied that on-site provision is not practical, they will negotiate with developers to obtain a financial contribution to fund off-site provision. The Council will ensure that any such sums are used to help address any shortfall which in affordable housing.

4.2 Paragraph 2.7 of "Supplementary Planning Document: Planning Obligations" (SPD2) reiterates the fact that *"The policy [CP8] generally requires 20-30% of the proposed units to be affordable depending on the scale of the development, or a financial contribution to be made where on-site provision is either not feasible or not practicable."* Hence, the preference in terms of affordable housing provision is on-site. Alternatively, the Council may seek to secure the affordable housing provision on another site owned by the applicant or in exceptional circumstances accept a financial contribution in lieu of on-site provision.

4.3 Although not submitted with the current application, with regard to the provision of affordable housing on site, it is considered that the applicant has previously satisfactorily demonstrated that there is no interest from Registered Providers (RP's) for the relatively small scale provision. The same issue has been

encountered recently on other sites within the borough where a small number of affordable units were to be provided; and it is consistently proving difficult to secure a Registered Provider on sites where 5 affordable housing units or less are required. In addition, as far as officers are aware the developer is not in a position to locate the affordable housing on an alternative site, which may also present the risk of a Registered Provider still not being interested in purchasing the units. It is therefore, considered appropriate to allow a commuted sum payment in lieu of on-site affordable housing provision.

- 4.4 In this instance, the Strategic Housing team support the proposition of accepting the commuted sum of £175,000 in lieu of providing 3 affordable housing units on site. This funding will be utilised to provide further affordable housing in the borough by either purchasing units or help to fund the Council's affordable housing development programme.
- 4.5 To corroborate the applicant's viability submission, officers have carried out a financial assessment of the scheme using a standard viability appraisal approach. This assessment has been completed using both the appraisal inputs (incl. sales values, costs and profit) provided by the applicant, and using more traditional appraisal inputs (i.e. BCIS figures and fees/finance/profit figures etc. generally accepted as industry standards and reflecting local market conditions). The conclusions are similar in that the scheme is only viable with 100% market housing and a reduced affordable housing contribution of £175,000.

5 Conclusion

- 5.1 On the basis of the above, it is considered that sufficient evidence has been provided to justify a modification of the S106 affordable housing requirement to allow payment of a commuted sum in lieu of on-site provision. The financial contribution towards affordable housing is a reduced sum of £175,000 based on the outputs of a viability appraisal. The education contribution and S106 monitoring contribution secured by the S106 agreement dated 28th January 2015 would remain unmodified.
- 5.2 The affordable housing contribution would be payable prior to occupation of the 6th market housing unit, which is consistent with the 'trigger' in the original S106 agreement relating to the on-site provision of affordable housing. In addition, and in the interests of securing the timely delivery of the scheme and protecting the Council's position in respect of securing a reasonable affordable housing contribution, if Practical Completion has not taken place within one year of the date of the Deed of Variation then the provisions of the original S106 agreement would apply (i.e. policy compliant provision of affordable housing required, which if deemed impractical to provide on-site would need to be provided by way of an additional affordable housing contribution assessed in accordance with our policy requirements). These terms have been agreed with the applicant who intends for the development to be complete by the end of the year.

6 Planning Policy Summary

- 6.1 National Planning Policy Framework (NPPF) 2012 and National Planning Practice Guidance (NPPG).

- 6.2 Development Plan Document 1 (2007): Core Strategy Policies KP3 (Implementation and Resources), CP6 (Community Infrastructure) and CP8 (Dwelling Provision).
- 6.3 Development Management Document (July 2015): Policy DM7 (Dwelling Mix, Size and Type).
- 6.4 Supplementary Planning Document 2: A Guide to Section 106 & Developer Contributions (2015).

7 Representation Summary

- 7.1 **Strategic Housing:** In this instance, the Strategic Housing team support the proposition of accepting the commuted sum of £175,000 in lieu of providing 3 affordable housing units on site. This funding will be utilised to provide further affordable housing in the borough by either purchasing units or help to fund the Council's affordable housing development programme.

8 Public Consultation

- 8.1 None required (see paragraph 1.3 above).

9 Relevant Planning History

- 9.1 28th January 2015 (14/01434/FULM): Conditional planning permission granted for "*Demolition of existing bungalow at 3 Acacia Drive, erect three storey building comprising fourteen self contained flats, layout parking, amenity space, refuse store, cycle store and form vehicular access on to Thorpe Hall Avenue (Amended Proposal)*".
- 9.2 Application 16/00253/DOV for "Modification of planning obligation (Section 106 agreement) dated 23rd June 2014 pursuant to application 14/01434/FULM to vary the requirement to provide affordable housing." **withdrawn** March 2016.

10 Recommendation

- 10.1 Members are recommended to delegate to the Head of Planning and Transport or the Group Manager for Planning and Building Control to **AGREE A MODIFICATION OF THE PLANNING OBLIGATION** dated 28th January 2015 pursuant to planning application 14/01434/FULM to provide a commuted sum payment for affordable housing of £175,000 in lieu of on-site provision prior to occupation of the 6th market housing unit. This modification will be time limited for one year from the date of the Deed of Variation.