

Extended Delegated Decisions Meeting: 20 August 2020

Application No: W/14/0681

Town/Parish Council: Warwick

Case Officer: Lucy Hammond

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Land South of Gallows Hill / West of Europa Way, Warwick, CV34 6SP

Residential development up to a maximum of 450 dwellings:
(Outline application including details of access)

For Gallagher Estates Ltd, now L&Q

INTRODUCTION

This report relates to the above planning application which was allowed at appeal on 14th January 2016, subject to the signing of a Section 106 Agreement.

This proposal seeks a minor alteration to the content of the Section 106 Agreement, specifically in relation to the Mortgagee in Possession (MiP) clause.

RECOMMENDATION

The Head of Development Services in consultation with the Chair of Planning Committee is recommended to resolve to agree the proposed changes to the Section 106 agreement to allow;

- An increase in the provision of affordable housing from 40% to 50%; and
- Amendments to the MiP clauses (summarised below under 'Details of the Changes' and considered more fully in the 'Assessment' of this report).

HISTORY

W/14/0681 - Residential development up to a maximum of 450 dwellings: Provision of two points of access (one from Europa Way and one from Gallows Hill); Comprehensive green infrastructure and open spaces including potential children's play space; Potential footpaths and cycleways; Foul and surface water drainage infrastructure, including attenuation pond; Ancillary infrastructure and ground modelling (Outline application including details of access) – **ALLOWED ON APPEAL - 14 JANUARY 2016**

DETAILS OF THE CHANGES

- Increase the offer of affordable housing in this phase of the development from the usual 40% (as required by Policy H2) up to 50%; and
- Make the necessary amendments to the MiP clauses which have been added to S.106 agreements to allow funders the ability to take possession of the

properties in the event that Registered Providers (RP's) default and recover the debt.

RELEVANT POLICIES

- National Planning Policy Framework
- DS2 – Providing the Homes the District Needs (Warwick District Local Plan 2011-2029)
- DS11 – Allocated Housing Sites (Warwick District Local Plan 2011-2029)
- H0 – Housing (Warwick District Local Plan 2011-2029)
- H2 - Affordable Housing (Warwick District Local Plan 2011-2029)
- H4 – Securing a Mix of Housing (Warwick District Local Plan 2011-2029)
- DM1 - Infrastructure Contributions (Warwick District Local Plan 2011-2029)
- Affordable Housing SPD (July 2020)
- Developer Contributions SPD (July 2020)

ASSESSMENT

The main issue relevant to the consideration of this is whether the amended details would continue to enable the delivery of a sustainable development that mitigates its impact through appropriate infrastructure contributions/obligations having regard to the Council's policies and national planning guidance.

The key issue relates to the affordable housing, specifically in this instance, the Mortgagee in Possession (MiP) clause in the S.106 agreement. By way of a brief background, since Homes England (previously the Housing Corporation) started to give partial grant instead of 100% grant for affordable housing, Registered Providers (RP's) have relied on private funding and are therefore subject to funders requirements. MiP clauses have been added to S.106 agreements to allow funders the ability to take possession of the properties in the event that RP's default and recover the debt.

Each Local Authority has developed their own clauses requiring lenders to give notice to the Council at various points of a repossession procedure as the primary objective is to retain the affordable housing and not lose it to the open market. Some of these clauses have been regarded as onerous by funders and as a result can limit the amount of funding that can be lent. There are two definitions of fund amount referred to:

- Existing Use Value (EUV) based on the rental stream from the properties which equates to approximately 30% of Open Market Value (OMV), with loan agreements normally requiring 105% asset cover.
- Market Value - Subject to Tenancies (MV-STT). The definition allows for properties to be sold subject to tenancies not limited to affordable housing. This level of funding equates to around 60% of OMV with loan agreements normally requiring 115 to 125% asset cover.

In recent months, many RP's have made representations to the Council that the MiP clauses outlined in S.106 agreements at Warwick District Council are causing difficulties and restricting the amounts they can borrow to EUV instead of MV-

STT. This applies to initial borrowing for the scheme in question as well as re-financing at a later date.

In 2018, many RP's, the National Housing Federation and legal advisors produced a clause (referred to as the NHF clause) which they considered to meet funder obligations to lend at MV-STT and the Council were presented with this as an option. In presenting this as an option, some RP's stated that if the current Warwick clauses are retained, then they may not be able to continue to develop affordable housing in the District.

In taking into account the new clause, an additional factor was negotiated with another RP as a variation to another S.106, that the Council should be given the option to step in and buy the properties or be able to nominate an RP to do so. This is a MiP clause adopted by the Greater London Authority. It is therefore suggested that delegated authority be granted to vary the MiP clause from the WDC current clause to this revised clause, therefore removing some of the restrictive requirements for notices, but allowing the option for the Council or nominated RP to step in and purchase the properties.

In addition to the above provisions in relation to the proposed MiP clause amendments, there is also a proposal to increase the offer of affordable homes above the usual policy requirement of 40% in accordance with Policy H2 and increase this to 50%, which in reality equates to the provision of an additional 45no. affordable units across the development, all of which would be shared ownership.

The proposed amendments have been agreed with the Council's Housing Strategy team.

A deed of variation is required to make the necessary amendments to the S.106 agreement and secure the aforementioned obligations.

SUMMARY / CONCLUSION

The proposed changes to the Section 106 Agreement require authority from the Head of Development Services in consultation with the Chair of Planning Committee to update the terms of the Section 106 Agreement to increase the offer of affordable housing within the development, from 40% to 50% together with making the necessary amendments to the Mortgagee in Possession (MiP) Clause to allow funders the ability to take possession of the properties in the event that RP's default and recover the debt.

These elements have been fully justified and the Head of Development Services is requested to authorise the changes as set out within this report.