

Subject:	City College 87 Preston Road Brighton BN1 4QG Request to vary the terms of the Section 106 agreement relating to planning permission BH2017/01083 (Change of use from education (D1) to 25no flats (C3) including roof conversion, insertion of mezzanine levels, installation of rooflights, replacement of windows, erection of rear infill extension at first floor level, demolition of existing building to rear of property and other associated works including cycle and bin store, new pedestrian access to the building, communal garden space and associated landscaping).
Date of Meeting:	4 November 2020
Report of:	Executive Director Economy, Environment and Culture
Contact Officer:	Name: Russell Brown Tel: 07394414471 E-mail: Russell.Brown@brighton-hove.gov.uk
Wards Affected:	Preston Park

1. PURPOSE OF THE REPORT

- 1.1 To consider a request to vary the Heads of Terms of a Section 106 Agreement signed in connection with planning application BH2017/01083, in order to amend the affordable housing requirements.

2. RECOMMENDATION

- 2.1 That the proposed variation to the Heads of Term be agreed so that the developer is obligated to pay a commuted sum of £1,357,500, twelve (12) months after first occupation, in lieu of providing the affordable housing in the form of ten shared ownership units on site, as set out in the Deed of Variation to the s106.

3. BACKGROUND INFORMATION

- 3.1 Members were Minded to Grant full planning permission at Planning Committee on 9 August 2017 for the following planning application:

“BH2017/01083 Change of use from education (D1) to 25no flats (C3) including roof conversion, insertion of mezzanine levels, installation of rooflights, replacement of windows, erection of rear infill extension at first floor level, demolition of existing building to rear of property and other associated works including cycle and bin store, new pedestrian access to the building, communal garden space and associated landscaping.”

- 3.2 The granting of permission was subject to the completion of a S106 agreement containing the following Head of Term (amongst others), as set out in the original Committee report:

“Affordable Housing: On site provision of 5 no. affordable rent units and 5 no. shared ownership units, which represents 40% affordable.”

- 3.3 Planning permission was granted on 20th November 2017, following completion of the s106 Agreement.

- 3.4 A Deed of Variation was then sought to the s106 Agreement to amend the tenure to provide ten shared ownership units, rather than five affordable rent units and five shared ownership units.
- 3.5 This was approved at the 15th August 2018 meeting of the Planning Committee with the Deed of Variation dated 16th July 2019.

4. PROPOSAL

- 4.1 The developer has written to the Council to request that they pay an in lieu commuted sum of £1,357,500.
- 4.2 The proposal is made by the developer in response to a lack of interest in the affordable units from the Council's list of preferred Registered Social Landlords (RSLs). This is because of the small number of units, the current climate caused by Covid-19, and a lack of confidence in the market.
- 4.3 The only interested Registered Provider has subsequently confirmed they are not proceeding with the sale. The developer has stated that this is due to a combination of factors, including the staircasing requirement, the costs involved with having to convert the wheelchair unit to a private unit at a later date as it will unlikely be sold to such a user, some internal funding priorities, the RP's commitment to other purchases, and the unusual nature of the site.

5. COMMENT

- 5.1 With respect to provision of affordable housing, the expectation of City Plan Part One Policy CP20(a) is to achieve 40% affordable housing provision on sites of 15 more units. Only in 'exceptional circumstances' does the policy allow the Council to accept a commuted sum in lieu of onsite provision on larger sites. An example of one of these circumstances would be where the Registered Provider finds it uneconomic or impractical to provide the units agreed, which is the case here.
- 5.2 Policy CP20 lists 5 considerations for assessing the appropriate level and type of affordable housing provision, namely:
- i. local need in respect of the mix of dwelling types and sizes including the city's need to provide more family-sized affordable housing;*
 - ii. the accessibility of the site to local services and facilities and public transport;*
 - iii. the costs relating to the development; in particular the financial viability of developing the site (using an approved viability model);*
 - iv. the extent to which the provision of affordable housing would prejudice the realisation of other planning objectives; and*
 - v. the need to achieve a successful housing development."*

- 5.3 It is therefore worth noting that the proposed variation would allow a financially viable and successful housing development to be achieved.
- 5.7 It is for the reasons mentioned in paragraphs 4.2 and 4.3 that the developer has proposed to pay a commuted sum in lieu of providing the ten Shared Ownership affordable units. The developer has confirmed that the development cannot be implemented unless this Deed of Variation is agreed.
- 5.8 It is considered that the implementation of the development would deliver planning and economic benefits, including much-needed private housing, in a sustainable location, with good access to shops and services, and sustainable transport links, as well as improving and bringing back into use an attractive locally listed building, helping to secure its long-term retention and maintenance. With the variation, it would also deliver a policy-compliant level (40%) of affordable housing (albeit via a commuted sum), The s106 also commits the developer to £130,835 of contributions towards local education services, recreation facilities and employment schemes.
- 5.9 It is considered that the developer has provided sufficient justification and evidence that affordable housing units cannot be provided on site, and therefore an exception to this requirement within Policy CP20 can be accepted in this case, taking into account the site characteristics and policy considerations iii (the financial viability of delivering the site) and v (delivering a successful housing development).

Housing Response

- 5.10 The Housing Team is willing to accept the payment of an in-lieu commuted sum to the Council that would ensure a set contribution that would be used to provide affordable housing elsewhere in the City. In this case they are satisfied that the payment of the commuted sum can be made within 12 months of occupation
- 5.11 The background to this is that affordable housing is provided in perpetuity. It is the Council's requirement that a portion of the housing be used as affordable and that it be provided through an Affordable Housing Provider, defined as "a housing association, trust, Registered Provider or company or body specialising in the delivery of Affordable Housing as agreed in writing with the Council".

Analysis

- 5.12 Following negotiations, the developer has agreed to offer an in-lieu commuted sum of £1,357,500, which is payable within 12 months of occupation. It is important to note, however, that any subsequent sales of residential units after 12 months where payment of the commuted sum has not been made will be prevented by the Council.
- 5.13 The following clauses would be added to the Deed of Variation:

“Not to Occupy the Proposed Development until the Council has been given at least 15 days prior written notice of the date of first Occupation; such notice to be addressed to the Council’s Head of Planning at Hove Town Hall Norton Road Hove BN3 3BQ.”

“To give the Council at least 10 Working Days’ prior written notice of the actual date that is 12 months from the date of first Occupation (“Payment Date”).”

“To notify the Council of the number of Dwellings Occupied, as at the Payment Date, together with written evidence of the same.”

“To pay the Affordable Housing Contribution (Index Linked) to the Council on or prior to the Payment Date.”

“Not to Occupy or cause or permit the Occupation or sale of any further Dwellings after the Payment Date until the Affordable Housing Contribution has been paid to the Council.”

5.15 In conclusion and in this case, the non-provision of on-site affordable housing has been adequately justified and is therefore considered acceptable as an exception to part (a) of City Plan Part One Policy CP20. As such, it is recommended to vary Clause 2 of Schedule 2 of the S106 dated 20th November 2017, as amended by Clause 3 of the Deed of Variation dated 16th July 2019.

Background Documents:

Planning Application BH2017/01083