

<b>Subject:</b>	<b>City College 87 Preston Road Brighton BN1 4QG</b> <b>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).</b>
<b>Date of Meeting:</b>	<b>13 January 2021</b>
<b>Report of:</b>	<b>Executive Director Economy, Environment and Culture</b>
<b>Contact Officer:</b>	<b>Name: Russell Brown Tel: 07394414471</b> <b>E-mail: Russell.Brown@brighton-hove.gov.uk</b>
<b>Wards Affected:</b>	<b>Preston Park</b>

## 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 so that a commuted sum is paid in lieu of the provision of ten on-site affordable housing units.

## 2. RECOMMENDATION

- 2.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** the Deed of Variation to the S106 Agreement 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.

## 3. BACKGROUND INFORMATION

### Relevant History

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

***“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 20<sup>th</sup> 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. This was approved at the 15<sup>th</sup> August 2018 meeting of the Planning Committee with the Deed of Variation dated 16<sup>th</sup> July 2019.

- 3.5 Having unsuccessfully sought a Registered Provider (RP) to take on the affordable housing units, the applicant is now seeking to instead pay a commuted sum to go towards the provision of affordable housing elsewhere. This proposal was originally taken to the 4<sup>th</sup> November 2020 meeting of the Planning Committee, but it was deferred *“in order to allow the Housing Strategy team to reconsider the options on avoiding the move to a commuted sum, and explore the number of Registered Housing Providers being considered.”*

- 3.6 A more detailed response was therefore sought from the applicant and Housing Strategy team, as set out in Section 5 below.

#### Planning Policy

- 3.7 City Plan Part One Policy CP20 and the Affordable Housing Brief indicates that the Council’s preference is for on-site affordable housing provision to help achieve balanced and mixed communities.

- 3.8 While this is preferable, the supporting text to the policy notes that this is not always possible, and that a commuted sum may be acceptable in ‘exceptional circumstances’:

*“Only in exceptional circumstances, will the Council accept a commuted sum or free serviced land in lieu of onsite provision on larger sites. These circumstances might include, for example, where the Registered Provider finds it uneconomic or impractical to provide the units agreed.”* (paragraph 4.244).

- 3.9 The provision of a commuted sum therefore accords with policy, where it can be shown to represent ‘exceptional circumstances’.

- 3.10 Housing Officers note the process by which affordable housing is delivered by Registered Providers in the city:

*“Affordable housing secured through S106 Agreements have historically been sold to a Registered Provider (RP) at a below market price in order for them to be provided as affordable homes (affordable rent or shared ownership). The Council has a number of partner RPs based on presence in and commitment to the city as confirmed via rent levels agreements etc.*

*If an RP purchaser is not found among the partners the developer can bring forward an alternative provider but they will need will to meet the conditions of the Council’s proposed S106 Agreement.*

*Developers may seek to pay a commuted sum to the Council in lieu of providing the housing onsite (which is within policy conditions), with such funds used towards providing affordable housing elsewhere in the city through the Council’s own programmes such as New Homes for Neighbourhoods and Home Purchase.”*

- 3.11 Housing Officers also note that consideration is given as to whether the Council could purchase the homes, but highlight that *“any risk and suitability assessment of the homes on offer would be undertaken along the same lines as that of the RPs, with viability then assessed through the Home Purchase model based on cost of purchase and projected rent levels.”*

#### **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. This amount has been calculated in accordance with the formula in the Council’s adopted ‘Developer Contributions Technical Guidance’ (March 2017).
- 4.2. The developer has stated that they cannot provide on-site affordable housing because of a lack of interest in the affordable units from the Council’s list of preferred Registered Providers (RPs). Full evidence of this lack of interest has been provided, with the reasons given by the RPs as:
- the small number of units meaning it would not be viable to take the units on;
  - management issues with the mixed tenure between rent and sale;
  - the risk of refurbishment and maintenance issues;
  - the current climate caused by the Covid-19 pandemic, and a more general lack of confidence in the market.
- 4.3. The only interested Registered Provider (RP) 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.

4.4. In parallel to this, the developer has expressed concern regarding delays to the development as a result of Covid-19, noting that this had put their finances into a difficult position. Waiting for a RP to come forward, particularly given the lack of interest to date, was not, therefore, a viable option for the development.

## 5. CONSULTATION

5.1 **Housing Strategy: No objection.** Note history of involvement in scheme:

5.2 November 2017 – original planning application approved. Scheme of 25 homes refurbished within old college building to include 10 affordable homes – 40% policy-compliant. Tenure to be 5 homes for affordable rent / 5 homes for shared ownership. Fully supported by Housing as policy-compliant.

5.3 June 2018 – the developers approached the Council with confirmation that all the Council’s partner RPs (below) had rejected the homes proposed. Evidence of this was provided with emails from all the RPs. The reasons given are summarised below. The key factors that came up across all RPs were: too few units (not viable); mixed tenure between rent / sale (management issues); risk of refurbishment (maintenance issues).

<b>Southern Housing Group</b>	<b>Hyde Housing</b>	<b>Moat</b>	<b>Clarion</b>	<b>Guinness</b>
Location				
Scale	Too small	Too small (minimum 20)	Too small (minimum 50)	Too small
Lifecycle costs	Refurb makes unattractive for maintenance & management		Unit mix not preferred (too many 1 beds) Size of units Wheelchair unit access etc	Concerns on leasehold (only buy with freehold)
Integration of tenures	Mixed tenures			Mixed tenures

5.4 RPs have to assess the affordability and viability of such purchases and the factors outlined in the table above are all elements that are included in that assessment, alongside risk regarding sale of shared ownership homes. Southern Housing confirmed that they may consider a scheme of shared ownership homes only with a minimum of ten

homes and the developer brought this forward as an option. Housing confirmed they would support this, or accept the move to a commuted sum payment (as outlined within policy), with the funds then being available to provide alternative affordable homes including homes for affordable rent.

- 5.5 August 2018: Planning Committee approved a Deed of Variation amending to ten shared ownership homes in place of mixed tenure.
- 5.6 October 2018: Southern Housing were still intending to purchase these for shared ownership. Negotiation for the change to the S106 reflecting the Deed of Variation was ongoing and the changes to the S106 were brought forward in July 2019. Southern Housing subsequently decided not to proceed with purchase.
- 5.7 October 2019: Housing received an email from SOSI - a 'profit with purpose' housing provider who confirmed they were aiming to purchase the homes. Nothing further was brought forward from SOSI.
- 5.8 March 2020: Housing were approached by Legal & General Affordable Homes (L&GAH) - a for profit housing association stating that they were now planning to purchase these homes. L&GAH are known to the Council as they are the RP at the Edward Street Quarter (ex Amex offices) development.
- 5.9 L&GAH proposed a change to the Council's S106 which would have effectively removed the 'in perpetuity' requirement outlined in the Council's affordable housing policy. For shared ownership homes where owners may eventually 'staircase' purchase up to be outright owners, the RP is required to commit to recycling the income from this process back into affordable housing in the city. L&GAH had agreed this at Edward Street but asked for it to be changed at this development. There was detailed discussion between the developer and L&GAH and the Council's Legal, Planning and Housing Teams in an attempt to reach an agreement. L&GAH did agree to proceed but then reversed this decision.
- 5.10 Meanwhile, the developer was expressing concern at the delay to the development this process was taking, particularly in light of Covid, and the pressure this was putting on their financial position. There was a sense of extreme urgency from the developer so the commuted sum became the logical and practical way ahead.
- 5.11 Housing did not specifically assess purchase of these homes for the following reasons:
  - There was no existing process for carrying out a viability assessment at the time of the original application and the original scheme as approved was policy-compliant.
  - Tenure on these homes was agreed as shared ownership through a previous Deed of Variation (shared ownership is not developed by the Council at present).
  - The developer has declined to seek a variation to make all the homes available for affordable rent tenure.

- Risks of providing the homes had been outlined previously by RPs and the Council would have faced the same risks (particularly high risks being refurbished buildings and mixing tenures).
- Timing was an urgent consideration relating to the above factors.
- The Council is supportive of SMEs (small & medium enterprises), and was working pro-actively with the developer to bring their development to fruition. They expressed concerns that this was at risk.
- The homes have been built to a high sales specification meaning the sales cost is likely to make purchase unviable. Advertised property values: 3 beds £550k / 2 bed £475k and 1 bed £360k.
- Commuted sum is a policy-compliant position.
- Commuted sum funds are used to provide additional homes for affordable rent in the city by supporting the Council's Home Purchase policy (and also used towards other Council projects).
- Housing finance confirm that commuted sums are an integral part of the delivery programme and are unlocking sites and allowing the Home Purchase scheme to continue at scale.

5.12 The potential outcome, if a commuted sum is not agreed, is that the developer will seek to sell to a non-partner Registered Provider outside the usual terms of the Council's S106 requirements.

5.13 Purchase of s106 homes is an active project and consideration is now given to this at an earlier stage of the planning process. This will allow properties to be assessed against a standard set of risks and checked for viability based on the cost of the homes against the rent levels the Council intends to charge and any subsidy required.

5.14 The cost is not the only factor and may not be the deciding factor as important consideration is also given to the quality of construction, long term maintenance issues and practical matters such as layout and outdoor space.

5.15 Commuted sum remains a policy-compliant position, but achieving the homes on site is always the preferred option where viable and with suitable homes provided.

5.16 In this instance with all factors above taken into consideration commuted sum remains the most practical outcome at this scheme. The commuted sum will lead to an increase of affordable homes in the City so is considered beneficial.

## **6. COMMENT**

6.1 The main considerations in the determination of this application relate to the principle of varying the legal agreement to allow for the payment of a commuted sum in lieu of the on-site provision of ten shared ownership houses.

6.2 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.

6.3 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. It should be noted that this approach is still policy-compliant, remains the most practical outcome at this site, and crucially, would still allow for the delivery of affordable housing in the city.

6.4 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.

6.5 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.”*

6.6 In conclusion, the non-provision of on-site affordable housing has, in this case, been adequately justified and is therefore considered acceptable as an exception to part (a) of City Plan Part One Policy CP20. The proposed variation would allow a financially viable and successful housing development to be achieved. As such, it is recommended to vary Clause 2 of Schedule 2 of the S106 dated 20<sup>th</sup> November 2017, as amended by Clause 3 of the Deed of Variation dated 16<sup>th</sup> July 2019.

Background Documents:  
Planning Application BH2017/01083