

<b>Subject:</b>	Whitehawk Clinic Whitehawk Road Brighton BN2 5FR		
<b>Date of Meeting:</b>	3 November 2022		
<b>Report of:</b>	Liz Hobden, Head of Planning		
<b>Contact Officer:</b>	Name:	Jane Moseley	Tel: 01273 292192
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<b>Ward affected:</b>	East Brighton		

## 1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to consider a request to vary one of the Heads of Terms of Section 106 Agreement dated 19 July 2018 in connection with planning permission BH2017/01665, as amended by BH2020/03619. This required the following:

*“40% affordable housing (8 units for affordable rent and 7 properties for shared ownership sale, comprising 5x one-bedroom units, 7x two bedroom units and 3x three-bedroom units.)”*

- 1.2 The applicant is seeking to vary this to provide ten affordable housing units on site, with the size and tenure to remain flexible to appeal to Registered Providers, along with a commuted sum of £56,664. As with other sites, they are seeking a clause that should they be unable to secure the interest of a Registered Provider, a commuted sum would be provided instead of affordable housing on site.

## 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 Section 106 Agreement dated 19 July 2018 in connection with planning permission BH2017/01665 subject to a review mechanism.

## 3. BACKGROUND INFORMATION

- 3.1 Planning permission was granted in August 2018, following a decision by Planning Committee in November 2017, for the following:

**BH2017/01665** - Demolition of Clinic building (D1) and erection of a 5 storey building over basement containing 38no. dwellings (C3), 18no parking spaces, cycle parking and associated landscaping.

- 3.2 The permission allowed the replacement of a vacant NHS clinic with a five-storey building containing 38 flats.

- 3.3 The application secured, via the s106 legal agreement, 15 affordable units (39.4%), of which 8 would be affordable rent and 7 shared ownership.
- 3.4 A s73 application to amend the approved drawings was submitted and approved in March 2021:
- 3.5 **BH2020/03619** - Application for variation of condition 1 of BH2017/01665 (Demolition of Clinic building (D1) & erection of a 5 storey building over basement containing 38no dwellings (C3), 18no parking spaces, cycle parking & associated landscaping) allowing amendments to approved drawings to remove the solar array from the roof of the proposed building & provide air source heat pumps for each dwelling.

#### **4. PROPOSAL**

- 4.1 The s106 Legal Agreement requires that 15 affordable housing units are provided.
- 4.2 The applicant subsequently undertook a revised Viability Appraisal of the scheme and is now seeking to vary the legal agreement to instead provide ten affordable housing units on site, along with a surplus of £56,664 to be provided as a commuted sum towards off-site affordable housing.

#### **5. CONSULTATIONS**

- 5.1 **Housing Strategy:** No objection.
- 5.2 Informal comments made throughout negotiation process, with comments to be presented verbally at Committee.
- 5.3 **District Valuation Service [independent review of Viability Appraisal]:** No objection.
- 5.4 Confirmed that based on the amended appraisal inputs adopted by DVS, the scheme can support the provision of 10 Affordable Housing units and a surplus contribution of £56,664. Given that the scheme does not meet the policy compliant levels of Affordable Housing, recommend that a review mechanism is agreed.

#### **6. COMMENT**

- 6.1 The main consideration in the determination of this application relates to the acceptability of varying the legal agreement to reduce the amount of affordable housing to be provided on site.

- 6.2 As noted above, the scheme as approved secured the provision of 15 affordable units out of the 38 dwellings to be provided, so 39.4% affordable housing overall. It is proposed to reduce this to 10 affordable housing units, meaning that this would be reduced to 21% of the units being affordable.
- 6.3 Policy CP20 of City Plan Part 1 aims to secure 40% affordable housing on sites of 15 dwellings or more.
- 6.4 The policy notes that:  
*“The targets set out above may be applied more flexibly where the council considers this to be justified. In assessing the appropriate level and type of affordable housing provision, consideration will be given to:*
- 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.”*
- 6.5 In this case, the applicant has provided a revised Viability Assessment taking into account updated costs. This confirmed that eight affordable units could be provided on site rather than the 15 set out in the approved scheme.
- 6.6 As noted above, the Viability Appraisal has been reviewed by the DVS who advised that based on the updated inputs, albeit with some discrepancies, they confirm that ten affordable units can viably be provided on site, along with a surplus contribution of £56,664. The applicant has agreed to this provision.
- 6.7 The applicant has asked for flexibility in the size and tenure of the affordable housing to be provided, to ensure that the units appeal to the widest number of Registered Providers, which is considered an acceptable approach.
- 6.8 They have also sought a clause enabling the provision of a commuted sum in lieu of affordable housing on site, in the event that a Registered Provider cannot be found to take the units. Again, this is considered acceptable, with the clause requiring that written evidence be provided to the Council confirming that reasonable endeavours have been used to dispose of the affordable housing to a Registered Provider for a period of at least six months.
- 6.9 The legal agreement would include a Review Mechanism requiring that an updated viability appraisal is undertaken at a specified point since the scheme would no longer achieve 40% affordable housing.

- 6.10 Such an approach would accord with Policy CP20 which allows for the provision of affordable housing on site, or 'as an equivalent financial contribution'.
- 6.11 In conclusion, it is considered that the applicant's proposal to vary the legal agreement to provide ten affordable housing units on site, plus a sum of £56,664, rather than the 15 originally approved is acceptable and accords with Policy CP20 of City Plan Part 1.
- 6.12 It is therefore recommended that the Deed of Variation is permitted.

7. **BACKGROUND DOCUMENTS:**

Planning Applications BH2017/01665, BH2020/03619.