

Report to Planning Committee

Application Numbers: 2010/0437 and 2012/1408

Location: Land At Stockings Farm, Calverton Road.

Proposal: Variation of s106 Agreement with the Borough Council for Affordable Housing.

Purpose of Report

The purpose of this report is to seek authority to enable the Service Manager Development Services to instruct the Director of Organisational Development and Democratic Services to vary the s106 agreement associated with application 2010/0437 and 2012/1408 relating back to Outline Planning Approval 2005/0925.

A reserved matters application was granted following outline planning approval for a residential development of 360 dwellings. The s106 agreement sought 1.08 hectares of public open space, financial contributions towards healthcare and education, and 20% affordable housing was secured comprising 63% social rented and 37% affordable ownership.

Metropolitan Housing Association, the registered provider which owns and administrates the affordable housing units at this development, has asked the Council to enter into a deed of variation to vary the s106 agreement so that it contains an effective mortgagee exclusion clause. This will enable Metropolitan Housing Association to achieve the best possible value when securing finance against the units.

Background

The original s106 agreement between the Council and the then owners of the site was completed on 10th October 2007. This agreement contained a mortgagee exclusion clause but that clause is now outdated and does not allow the registered provider to obtain best value when securing loans against the assets. There is now considered a standard mortgagee exclusion clause which is best practice across the sector and has been agreed by the National Housing Federation and various local authorities.

It is proposed that the definition of "Chargee" and paragraph 25 of Part 2 of the Schedule of the original s106 agreement are varied to incorporate the now standard mortgagee exclusion clause and the definition of "Chargee's Duty" is varied to rectify a drafting error in the original s106 agreement.

The original s106 agreement defines a "Chargee" as "any mortgagee or chargee of the Registered Social Landlord or the successors in title to such mortgagee or

charge or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925”.

Paragraph 25 states as follows:

- “25. The Chargee shall prior to seeking to dispose of any of the Affordable Housing Units pursuant to any default under the terms of its mortgagee or charge give not less than three months prior notice to the Council of its intention to dispose and:
- a) in the event that the Council responds within one month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall cooperate with such arrangements and use its best endeavours to secure such transfer
 - b) if the Council does not serve its response to the notice served under paragraph 26(a) within one month then the Chargee shall be entitled to dispose free of the restrictions set out in this Part of the Schedule
 - c) if the Council or any person cannot within three months of the date of service of its response under paragraph 26(a) secure such transfer then provided the Chargee shall have complied with its obligations under paragraph 26(a) the Chargee shall be entitled to dispose free of the restrictions set out in this Part of the Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 25 shall not require the Chargee to act contrary to its duties under the charge or mortgage and the Council must give consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage”

The definition of “Chargee’s Duty” incorrectly refers to paragraph 26 to Part Two of the Schedule. It should refer to paragraph 25.

It is proposed that the above provisions are varied as in the following manner:

1. The definition of “Chargee” at clause 1 is deleted in its entirety and replaced with the following:

“any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units”

2. The definition of “Chargee’s Duty” at clause 1 is deleted in its entirety and replaced with the following:

“the tasks and duties set out in paragraph 25 of the Schedule Part Two”

3. Paragraph 25 of Part Two of the Schedule is deleted in its entirety and replaced with the following:

“25. A Chargee seeking to dispose of any of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall not be bound by the provisions contained in this Part Two PROVIDED THAT:

- (a) such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Social Landlord or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (b) if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Part Two of the Schedule which provisions shall determine absolutely”

Under the proposed variations the definition of Chargee would be widen to include administrators. The amendment to paragraph 25 of Part Two the Chargee would still be required to give the Council three months’ notice of its intention to dispose of the affordable housing units and use its best endeavours to complete disposal of the units to the Council or an alternative registered provider. However, the Chargee is protected as it will not be required to dispose of the units to the Council, or an alternative registered provider, for consideration less than the amount due and outstanding under the security.

Planning Issues

The deed of variation would not alter the planning policy compliant position of affordable housing provision that was provided under the original s106 agreement completed on 10th October 2007. There are no financial implications for the Council and there would be no physical or aesthetic changes to the development whatsoever. Therefore there are no material planning considerations or implications that would arise as a result of this deed of variation.

Recommendation:

That the Service Manager for Development Services be authorised to instruct the Director of Organisational Development and Democratic Services to undertake the necessary work to prepare and finalise a Deed of Variation amending the definition of ‘Chargee’ and ‘Chargee’s Duty’ and to amend paragraph 25 of Part 2 of the Schedule as set out above in the original s106 agreement associated to planning applications: 2005/0925, 2010/0437 and 2012/1408.