

## **Proposed Deed of Variation to Section 106 Agreement for a mixed use development at Manor Farm, Bessacarr**

### **EXECUTIVE SUMMARY**

1. This report seeks the approval of the Planning Committee to a variation to the Section 106 Agreement for a mixed use development of housing; employment uses; ancillary amenities and public open spaces, including associated landscaping and means of access on approximately 70.07ha of land.
2. Outline planning permission was granted on appeal on the 9<sup>th</sup> November 2009, with the decision being subject to a Section 106 Agreement dated 23<sup>rd</sup> September 2009. The Agreement sought to deliver the following obligations;
  - a. - affordable housing,
  - b. - bus services,
  - c. - village greens,
  - d. - play areas,
  - e. - woodland and nature areas,
  - f. - railway crossing improvements,
  - g. - a site for a school,
  - h. - a travel plan,
  - i. - a financial contribution to the Warren Lane works,
  - j. - the provision of service infrastructure
  - k. - access to the commercial use development site, and
  - l. - a public open space management and maintenance scheme
3. In relation to affordable housing, the Agreement required that 26% of all units on site were to be delivered as affordable homes. The tenure split required 25% to be Social Rented dwellings and 75% to be Shared Ownership dwellings.
4. The first reserved matters application for Phase 1 of the development was approved in January 2012, this included details for the erection of 276 dwellings. The application also included the phasing plan for the remainder of the development, comprising of a further two phases of development.
5. Following a period of extensive marketing of the shared ownership homes within Phase 1 to housing associations, it was demonstrated that there was no demand for these homes. To enable the scheme to continue providing its contribution towards affordable housing without delay, the Council agreed to receive an equivalent financial sum in lieu of on-site provision. This financial contribution will be invested by the Council into affordable homes provision within the Borough. The S106 Agreement was subsequently amended by a Deed of Variation (DoV) to secure this.

6. The lack of demand for shared ownership homes continues and is an issue not only in Doncaster but also across the Sheffield City Region, a situation which is acknowledged by the Council's Strategic Housing team, HCA and Housing Associations. As such, Persimmon has asked to amend the S106 Agreement for the Phase 2 and 3 to deal with the continuing market conditions.

## **EXEMPT REPORT**

7. The report does not contain exempt information, however the financial information contained within the supporting evidence is confidential and not in the public domain.

## **RECOMMENDATIONS**

8. For the reasons set out below, it is recommended that Planning Committee authorise the Head of Planning to agree a Deed of Variation to vary the terms of the Section 106 Agreement dated 23<sup>rd</sup> September 2009 in accordance with the terms of this report.

## **WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?**

9. The variation to the Section 106 Agreement will enable a commuted sum to be provided in lieu of on-site affordable housing provision, in the event that there is no interest from Housing Associations to take the units. This will ensure that the Council has certainty and an agreed mechanism for the delivery of affordable housing for the future which takes account of prevailing market conditions. It also gives the Council funding to target specific schemes or programmes for affordable housing delivery across the Borough in the future.

## **BACKGROUND**

10. The original Agreement requires that approval is sought from the Council for the delivery of the affordable units prior to the commencement of each phase of the development. Such details should include 75% of the affordable units being shared ownership and 25% Social Rented. The Agreement also states that, if there is no interest from a Housing Association to take on the relevant shared ownership dwellings within a certain timescale, the landowner would pay a sum to the Council on completion of each sale of any shared ownership dwelling. This would mean that the income would be spread over many years.
11. In January 2013 the report to Planning Committee to request authorisation for a Deed of Variation related to how the affordable housing was to be delivered on Phase 1. There was a lack of interest from Housing Associations in the shared ownership dwellings and therefore a commuted sum was agreed in lieu of the shared ownership dwellings. The 25% social rented dwellings would remain to be provided on site. This was agreed.
12. This 2013 Deed of Variation (DoV) enabled the shared ownership dwellings on Phase 1 to be sold on the open market and a payment of £959,169 paid

to the council instead.

13. The 2015 Budget Statement set out measures to reduce national deficit, including welfare reform savings. A fundamental change to the rent formula was also set out, which forms a significant part of investment profiles for Housing Associations. The cut was to apply to both affordable and social rents and would mean a 12% reduction in average rents by 2020/2021. Persimmon state that this reform compounded an already existing issue of a lack of demand for affordable homes experienced at Manor Farm. As a result, Housing Associations were revoking offers and pulling out of schemes in which they had previously declared firm interest. This effect was later acknowledged in a Ministerial Statement published November 2015.
14. The lack of demand for shared ownership homes continues and is an issue not only in Doncaster but also across the Sheffield City Region, a situation which is acknowledged by the Council's Strategic Housing team, HCA and Housing Associations. As such, Persimmon has asked to amend the S106 Agreement for the Phase 2 and 3 to deal with the continuing market conditions.
15. Persimmon now seeks a variation to the S106 Agreement in respect of the affordable housing in phases 2 and 3. The proposal seeks to provide a tailored solution for each of social rented and shared ownership homes based upon market experience over the lifetime of the development so far. The proposal will see the social rented units offered to Housing Associations for an appropriate marketing period. If, however, it is demonstrated there is no interest or Housing Association commitment then an equivalent financial contribution will be provided to the council in lieu of on-site provision.
16. It has been demonstrated that there has been a lack of demand for shared ownership homes over a prolonged period of time. The 2013 Deed of Variation for phase 1 to allow a financial payment in lieu of on-site provision was necessary because of this and it is now necessary for phases 2 and 3. This will ensure the uncertainty of on-site delivery is removed and replaced with a reliable, transparent and certain framework of affordable housing provision. The S106 will, obligate the Council to allocate those funds in to new affordable housing schemes across the Borough. Such use of Commuted Sum payments has in recent years enabled Housing Associations and the Council to lever significant HCA grant and institutional loan funding into affordable housing schemes in the Borough which otherwise would have been unable to proceed.
17. Persimmon has updated the financial model used to inform the phase 1 financial contribution. The model calculates a commuted sum equivalent to the contribution that would have been provided through the delivery of on-site units. In addition the model has also been updated to include a form of indexation calculated annually. This will ensure that the Council receives any benefit in potential future uplift in values.
18. The financial contribution for social rent homes would be approximately £2.1m. The financial contribution in lieu of shared ownership homes would be circa. £3.4m.
19. Two payment profile options for the financial contribution have been

considered. One is to receive the financial contribution in annual payments reflective of the rate of sale of properties on site. The second is a one-off payment agreed at a specific point in the development. The one-off payments would be £1.0m for the social rent homes and £1.6m for the shared ownership homes. The latter option is not preferred because the amounts proposed to be paid by the developer have been heavily discounted to take account of their costs of capital. By taking profiled payments the Council is better able to spend the receipts within the 5-years allowed by the agreement.

20. The proposal seeks to find a long term solution for affordable housing delivery at Manor Farm. Should a lack of demand continue to be demonstrated the proposed financial contributions in lieu of on-site provision provides an equivalent contribution to what would have been contributed on site. The proposal will allow the scheme to contribute to affordable housing provision without delay, being a key objective of the Government's targets to increase the supply of both affordable and market housing, giving the Council the ability to manage and invest financial resource into affordable schemes across the Borough.
21. Policy CS 12 of the Doncaster Council Core Strategy sets out the Council's policy on affordable housing, and sets out a range of affordable housing delivery options (including payment of commuted sums in lieu). Paragraph 5.27 states that affordable housing will generally be on-site to support mixed communities but commuted sums may sometimes be necessary and can offer greater flexibility including purchasing houses from the existing stock or re-using empty homes. Commuted sums are likely to be more appropriate in adverse housing market conditions where they can be used instead of, or alongside a reduced, on-site provision to assist viability of the housing development and deliver more affordable housing than may be possible with on-site new build.
22. Consultation has taken place with the Council's Strategic Housing team who raise no objection to the proposal. They state that Council policy allows for a range of Affordable Housing delivery options (including payment of Commuted Sums in lieu). They also comment that the directions given by Government to Local Authorities regarding reviewing existing Section 106 Agreements is such that this proposal meets those criteria. This proposal should enable development to proceed and still deliver some affordable homes on the development. As such it is an acceptable amendment.
23. The Strategic Housing team further state that it is clear the proposed change is designed to deal with the lack of demand for shared ownership homes and follows the principals the Council accepted for the DoV on phase 1. The interest from South Yorkshire Housing Association in acquiring affordable units for rent is recognised. Rented tenure will still be offered to Housing Associations on phases 2 and 3, however the DoV builds in the methodology for calculating the payment should Persimmon also fail to dispose of those units to an Housing Association.
24. The advantage of accepting this DoV is that the Council have certainty and an agreed mechanism for the future. It also gives the Council funding to target specific schemes or programmes in the future. The disadvantage is should the market change or new affordable home ownership products be

developed that are attractive we may lose an opportunity. However at present and for a number of years, RP's have had little appetite for shared ownership units across the region due to limited buyer demand.

25. The National Planning Policy Framework (NPPF) states that 'local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.'

26. Planning obligations should only be sought where they meet all of the following tests;

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably relating in scale and kind to the development.

These are the tests set out as statutory tests in the Community Infrastructure Levy Regulations 2010 and as policy tests in the NPPF.

27. The National Planning Policy Guidance (NPPG) states that planning obligations should not be sought where they are clearly not necessary to make the development acceptable in planning terms. Paragraph 205 of the NPPF states that 'where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

## **OPTIONS CONSIDERED**

28. To not enter into a Deed of Variation would have a negative effect on the delivery of the development, resulting in affordable housing stock sitting vacant with no Registered Providers to take them on. This may also jeopardise the delivery of the remainder of the Manor Farm development.

## **REASONS FOR RECOMMENDED OPTION**

29. The Deed of Variation will not negate the need for affordable housing to be provided on site. The Social Rented dwellings will still be offered to RPs during an appropriate marketing period, and only if there is no demonstrated demand will an equivalent financial contribution be provided to the Council.

30. Given the current difficulties with the market for Affordable Home Ownership products in Doncaster, this proposal should enable development to proceed and still deliver some affordable homes on the development.

31. This approach will ensure the risk and uncertainty of on-site delivery is removed and replaced with a reliable, transparent and certain framework of affordable housing provision. Such financial contributions, where payable, obligate the Council (within the terms and conditions of S106 legislation) to allocate those funds in support of providers of new affordable housing schemes across the Borough. Such use of Commuted Sum payments has in recent years enabled Housing Associations and the Council to lever very significant HCA Grant and Institutional loan funding into affordable housing schemes in the Borough which otherwise would have been unable to

proceed.

### IMPACT ON THE COUNCIL'S KEY OUTCOMES

	Outcomes	Implications
	<p>All people in Doncaster benefit from a thriving and resilient economy.</p> <ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Creating Jobs and Housing</i></li> <li>• <i>Mayoral Priority: Be a strong voice for our veterans</i></li> <li>• <i>Mayoral Priority: Protecting Doncaster's vital services</i></li> </ul>	<p>Agreeing to the recommendation will reduce the level of affordable housing provision on the site, replacing this with a sum which could be spent elsewhere in the Borough. This has the potential to disadvantage those in need of affordable housing in the Cantley and Finningley ward.</p> <p>The development of the site may be jeopardised, therefore reducing construction employment opportunities.</p>
	<p>People live safe, healthy, active and independent lives.</p> <ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Safeguarding our Communities</i></li> <li>• <i>Mayoral Priority: Bringing down the cost of living</i></li> </ul>	<p>Not to agree with the recommendation will mean that the development of the site may stall and that the potential for new and improved housing stock in the settlement will be reduced.</p>
	<p>People in Doncaster benefit from a high quality built and natural environment.</p> <ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Creating Jobs and Housing</i></li> <li>• <i>Mayoral Priority: Safeguarding our Communities</i></li> <li>• <i>Mayoral Priority: Bringing down the cost of living</i></li> </ul>	<p>The development of the site may stall, reducing the potential for new families to move to the area which would boost the local economy, and allow existing families to move to new housing and remain in the local area.</p> <p>The delivery of the development will provide an attractive place to live with associated infrastructure and green space.</p>
	<p>All families thrive.</p> <ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Protecting Doncaster's vital services</i></li> </ul>	<p>Existing and new families will have access to new housing with attractive landscaping and open areas. Without the development being brought forward these facilities would not be provided.</p>
	<p>Council services are modern and value for money.</p>	<p>The development of new homes will deliver additional Council Tax and New Homes Bonuses to the Borough.</p>
	<p>Working with our partners we will provide strong leadership and governance.</p>	<p>The proposed changes have been agreed following consultation with the Strategic Housing team ensuring that they are involved in the decision making process as the implications of this decision will directly affect their service.</p>

## **RISKS AND ASSUMPTIONS**

32. The disadvantage is that should the market change or new Affordable Home Ownership products be developed that are attractive the Council may lose an opportunity. However at present and for a number of years, Registered Providers have had little appetite for Shared Ownership units across the region due to limited buyer demand.
33. The development may not proceed and no affordable units, or alternative commuted sum, would be provided.

## **LEGAL IMPLICATIONS**

34. Consultation has taken place with the Strategic Housing team and the Ward Members for both the Finningley and Bessacarr wards. At the time of writing this report, no comments have been received from Ward Members, however should comments be received following completion of the report, these will be reported verbally to the Planning Committee.

## **FINANCIAL IMPLICATIONS**

35. The financial implications are largely considered above. The Council ring-fences S106 receipts for the purpose for which they were received. Strategic Housing have provided assurance that the valuation data used within Persimmon's proposals are consistent with those used for similar developments.

## **HUMAN RESOURCES IMPLICATIONS**

36. There is no identified staffing or other resource implications.

## **TECHNOLOGY IMPLICATIONS**

37. There are no identified technology implications.

## **EQUALITY IMPLICATIONS**

38. There are no identified equality implications.

## **CONSULTATION**

39. Consultation has taken place with the Strategic Housing team and the Ward Members for both the Finningley and Bessacarr wards. At the time of writing this report, no comments have been received from Ward Members, however should comments be received following completion of the report, these will be reported verbally to the Planning Committee.

## **BACKGROUND PAPERS**

40. Planning application 01/1201/P

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