

DEED OF VARIATION REPORT

---

REF NO: BE/37/24/DOV

LOCATION: Nursery Fields, Land to the north of Chalcraft Lane, Bersted

PROPOSAL: Application to enter into a Deed of Variation to the Section 106 agreement dated 7 September 2021 linked to BE/148/20/OUT (APP/C3810/W/21/3275040) to amend schedule 2 (affordable housing) definitions and clauses 1.1, 1.6, 1.7, 2.1, 4.2 and 4.5, add schedule 6 (first homes) and replace schedule 5 (self-build housebuilding).

## SITE AND SURROUNDINGS

### DESCRIPTION OF APPLICATION

This application seeks the agreement of the Council to enter into a deed of variation to the Section 106 agreement signed under reference BE/148/20/OUT. The deed of variation seeks to amend Schedule 2 (affordable housing), addition of Schedule 6 (first homes) as well as replacement of Schedule 5 (self-build housebuilding).

The proposed amendments to Schedule 2 (affordable housing) consist of amendments to clauses 1.1, 1.6, 1.7, 2.1, 4.2 and 4.5. The purpose of these amendments is to allow for a proportion of the affordable housing to be delivered as first homes. This change is to assist with the delivery of the scheme and affordable housing provision given the difficulties that the developer has faced around the sale of the affordable units. This amendment will secure the delivery of the affordable housing within Phase 2 as first homes allowing the developer to sell these units without needing to enter into an agreement with a registered provider. In addition, Schedule 6 (first homes) is proposed to be added to the Section 106 which provides details pertaining to the first homes.

Amendments are also proposed to Schedule 5 (self-build housing), and these amendments are intended to simplify the self-build process and better align the marketing of the self-build units with the delivery of the relevant phase of development.

## RELEVANT SITE HISTORY

BE/148/20/OUT	Outline application with all matters, except for site access, reserved for the development of up to 225 residential units with associated infrastructure, open space and vehicular and pedestrian access. This application affects a Public Right of Way.	Refused 01-04-2021  Allowed at Appeal 24-02-2022
BE/1/23/RES	Approval of reserved matters following BE/148/20/OUT for 225 No dwellings.	Approved 10-08-2023

## REPRESENTATIONS

There is no requirement to advertise this application type as it is determined through negotiation between the Council and applicant. However, no letters of representation were received.

## CONSULTATIONS

### CONSULTATION RESPONSES RECEIVED:

AFFORDABLE HOUSING – No objection

The proposed mix is not policy compliant. However, in order to enable this development to move forward, if the developer would agree to the following provision on the site, then this could be considered as an appropriate provision.

- 67% (sixty-seven per cent) (rounded to the nearest whole Affordable Housing Unit) of the Affordable Housing Units as Affordable Rent Units;
- 30% (thirty per cent) (rounded to the nearest whole First Home) of the Affordable Housing Units as First Homes; and
- 3% (three per cent) (rounded to the nearest whole Affordable Housing Unit) of the Affordable Housing Units as Intermediate Units.

### COMMENTS ON CONSULTATION RESPONSES:

No comments.

## POLICY CONTEXT

### DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

- Policy AH SP2 – Affordable Housing

NPPF National Planning Policy Framework

NPPG National Planning Policy Guidance

## POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan, West Sussex County Council's Waste and Minerals Plans, The South Inshore & South Offshore Marine Plan and Made Neighbourhood Development Plans. The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

## DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

## OTHER MATERIAL CONSIDERATIONS

It is considered that there are other material considerations to be weighed in the balance with the Development Plan and these are set out in the Conclusions section below.

## CONCLUSIONS

This application has been submitted to agree amendments to the Section 106 agreement signed under reference BE/37/24/DOV to allow the affordable housing to be delivered as part of phase 2 as First Homes as well as to amend the delivery and marketing requirements of the self-build units.

### AFFORDABLE HOUSING

Developers nationally are facing significant challenges in disposing of Section 106 Affordable Housing with Housing Associations facing a perfect storm of mounting pressures from constrained financial capacity, higher costs of finance, rising build costs and commitments to remediate existing stock to meet building safety and decarbonisation targets. Recent research undertaken by Savills has revealed that over half of the Housing Associations they surveyed (53%) reported that they were either no longer intending to acquire Section 106 homes or had reduced their requirements for them.

Given the challenges faced by developers in this regard, it is understandable why they are looking to overcome these issues and ensure that development can proceed even in the absence of agreement with a Housing Association for the disposal of Section 106 affordable housing. In this case it is proposed to add First Homes to the affordable tenure mix and deliver 100% of the affordable dwellings in phase 2 as first homes. This would allow the first housing phase to progress without undue delay or uncertainty around the disposal of the affordable housing being delivered as part of the development.

The affordable housing tenure mix originally secure under reference BE/148/20/OUT was split 75% affordable rent and 25% intermediate. This affordable housing mix pre-dated the publication of the 'Arun Interim Affordable Housing Policy to Accommodate First Homes' which was approved by Full Council on 25 January 2022. This interim policy identifies that 33% of the affordable provision should be 'intermediate housing' (25% First Homes and 8% other intermediate ownership products) and 67% affordable rent.

The applicants originally proposed a tenure mix of 64% affordable rent, 30% first homes and 6% other intermediate products. This resulted in an under provision of affordable rented units and an overprovision of intermediate housing (first homes and other products). This amount of First Homes was proposed to allow for the entirety of the affordable housing units within the first phase containing dwellings to come forward without the need to secure a registered provider. The proposed amended tenure mix was the subject of consultation with the Council's Affordable Housing Development Manager who advised that it would be better to secure a policy compliant (67%) level of affordable rented units given that these are in the highest demand. Therefore, the overall provision of intermediate units would remain at 33% in accordance with the interim affordable housing policy. Whilst this would result in a 5% overprovision of First Homes beyond that identified by the interim policy but as this is considered a comparable product to shared ownership and other intermediate products this is acceptable.

As such, no objection has been raised by housing subject to the following affordable housing tenure mix being secured:

- 67% (sixty-seven percent) (rounded to the nearest whole Affordable Housing Unit) of the Affordable Housing Units as Affordable Rent Units.
- 30% (thirty percent) (rounded to the nearest whole First Home) of the Affordable Housing Units as First Homes; and
- 3% (three percent) (rounded to the nearest whole Affordable Housing Unit) of the Affordable Housing Units as Intermediate Units.

In addition to the changes in the affordable housing tenure mix it is proposed to amend the trigger points associated with the delivery of the affordable housing contained within each phase. This is to ensure that the delivery of the affordable housing aligns with the construction timetable of the development. The applicant has identified that there is no issue with the triggers associated with Phase 2 of the development which will contain 100% of the First Homes. However, for Phase 3 it has been identified that 55 dwellings (62%) of the market dwellings will have been occupied prior to the affordable housing having been fully constructed and for Phase 4 it has been advised that 38 (59%) of the market units will have been occupied by the time all the affordable units have been built out. Therefore, the applicant is seeking to amend the trigger for affordable housing delivery within each phase from 50% to 65%. This amendment has been considered by the Council's Affordable Housing Development Manager through the drafting of the deed of variation and it has been confirmed that the amendment to the trigger is acceptable.

The proposed amendments to the affordable housing clauses to introduce First Homes as part of the affordable housing tenure mix are acceptable. The proposals are substantially in accordance with the adopted interim policy whilst the amendments of the triggers for provision of the affordable units in the later phases are only amended to align with the identified construction timetable.

### SELF-BUILD UNITS

In addition, to the above amendments relating to the affordable housing on site. This application seeks to amend the requirements associated with the self-build units. The original Section 106 agreement under reference BE/148/20/OUT required that 5% of the residential units were provided as self-build plots. As originally drafted, the legal agreement requires that a self-build marketing plan is approved and that the self-build plots are marketed in accordance with the marketing plan for a period of 9-months prior to occupation of 50% of the open market units contained within a phase that includes self-build plots. It is then identified that in the event the plots remain unsold they will revert to open market housing plots subject to confirmation from the Council.

The proposed amendment establishes a 6-month marketing period but does provide an additional 5-months for the transfer of the land should a 'genuine offer' be received during the marketing period. This is an improvement over the original marketing strategy which identified that should the self-build plot not have been transferred within 9-months they could revert to market housing. The amendment retains the 5% provision of self-build plots, the description of 'prepared and serviced plots' as well as the need for the submission of a marketing plan. Therefore, the proposed amendment retains the original purpose and function of the Section 106 schedule whilst providing additional certainty for the developer and purchasers around marketing and transfer timeframes.

### RECOMMENDATION

It is recommended that Planning Committee delegate authority to the Group Head of Planning in consultation with the Chair or Vice Chair authority to complete the Deed of Variation to amend the Section 106 Agreement, with any minor amendments authorised by the Group Head of Planning.

## HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

## DUTY UNDER THE EQUALITIES ACT 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

