

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 5</b>
<b>DATE OF MEETING:</b>	<b>15<sup>th</sup> DECEMBER 2020</b>	<b>CATEGORY: Delegated</b>
<b>REPORT FROM:</b>	<b>HEAD OF PLANNING AND STRATEGIC HOUSING</b>	
<b>MEMBERS' CONTACT POINT:</b>	<b>LUCY MITCHELL</b> <a href="mailto:lucy.mitchell@southderbyshire.gov.uk">lucy.mitchell@southderbyshire.gov.uk</a>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>DEED OF VARIATION - LAND SOUTH OF THE MEASE, HILTON</b>	<b>REF: 9/2013/1044</b>
<b>WARD(S) AFFECTED:</b>	<b>HILTON</b>	<b>TERMS OF REFERENCE:</b>

---

## **1.0 Recommendations**

- 1.1 That the Committee approves the request to amend the Section 106 Agreement (S106) and subsequent Deed of Variation (DoV) by means of a further DoV to include; Changes to exempt the Affordable Housing Provider (AHP) from non-affordable housing contributions; Changes to para. 5.3 in the fourth schedule which relates to the different ways in which tenants can achieve home ownership, and how the obligations contained within this agreement are not binding in these instances; Inclusion of a standard Mortgagee in Possession (MiP) clause; and Other minor amends as the Strategic Housing Team feel appropriate to bring the existent agreements in line with current practice.
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured under the DoV.

## **2.0 Purpose of Report**

- 2.1 To inform the Committee of the proposed changes to the S106 including the addition of a MiP clause.

## **3.0 Background**

- 3.1 Members may recall that the site, known as Land South of the Mease, Hilton was granted planning permission for up to 485 homes in March 2015. The original S106 agreement required 10% affordable housing provision on Phase 1, with the provision on Phases 2 and 3 to be decided by future viability assessments, setting the parameters of these thresholds of between 10% and 30%. Subsequent viability assessments on Phases 2 and 3 further revised this provision down to 6%. The tenure mix remained the same at 75% of the affordable homes to be provided as social/affordable rent and 25% provided as intermediate homes.

## **4.0 Discussion**

- 4.1 The Strategic Housing Team have been approached by the Affordable Housing Provider (AHP) wishing to purchase the affordable homes on the site who would like to propose a variation to the formally agreed affordable housing definitions and schedule by means of a DoV.
- 4.2 The proposed changes would include:
- A general exemption for an AHP from all of the non-affordable housing obligations; and
  - Changes to para. 5.3 in the fourth schedule regarding how tenants can achieve home ownership, and how the obligations contained within the agreements are not binding in these instances; and
  - A MiP clause and associated definition of chargee.
- 4.3 A MiP clause means that in the instance that an AHP defaults on their loan payments or mortgage terms, their lender can take control of their affordable housing assets against which the loan is secured. In such instances, the clause offers protection and allows for another AHP, including the Council, to purchase the affordable homes within a specified time period, however, in circumstances where a buyer cannot be found, they lender is free to sell the homes without the affordable housing restrictions to allow them to regain some or all of the loan provided. The Council now includes the MiP as a standard clause in all S106 agreements in order to allow an AHP to borrow money to purchase the S106 affordable homes on sites. This S106 agreement pre-dates the use of this clause and therefore these changes seek to rectify this.
- 4.4 The Strategic Housing Team would like to take the opportunity to update the S106 and various DoVs to be more aligned with current working practice by amending the definition of the AHP and other minor amends to the agreement.

## **5.0 Financial Implications**

- 5.1 There are no financial implications associated to the Council for this change as the costs of the DoV will be paid for by the AHP.

## **6.0 Corporate Implications**

- 6.1 None.

## **7.0 Community Implications**

- 7.1 There would be the same number of affordable homes delivered on the site.

## **8.0 Background Information**

- a. Section 106 Agreement:  
[https://planning.southderbyshire.gov.uk/documents/DN/2013/9\\_2013\\_1044%20Section%20106%20Agreement.pdf](https://planning.southderbyshire.gov.uk/documents/DN/2013/9_2013_1044%20Section%20106%20Agreement.pdf)
- b. Deed of Variation:  
[https://planning.southderbyshire.gov.uk/documents/DN/2013/9\\_2013\\_1044%20Deed%20of%20Variation%20\(15-08-18\).pdf](https://planning.southderbyshire.gov.uk/documents/DN/2013/9_2013_1044%20Deed%20of%20Variation%20(15-08-18).pdf)

c. Planning Application:

<https://planning.southderbyshire.gov.uk/ApplicationDetail.aspx?Ref=9/2013/1044>