

Planning Committee

10 April 2024

Request for a S106 Deed of Variation - MC/21/1694

Portfolio Holder: Councillor Simon Curry, Portfolio Holder for Climate Change and Strategic Regeneration

Report from: Mark Breathwick, Assistant Director, Culture & Community - Regeneration Culture Environment and Transformation

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Summary

This report relates to a request for a deed of variation to the S106, signed as part of the approval for development, of 68 dwellings at View Road Cliffe Woods. The request relates to the affordable housing element of the S106 and requests that affordable housing is taken out of the S106 due to no take up from any registered provider. This would then enable a registered provider to apply for grant funding and still deliver affordable homes on site, rather than the developer needing to go through a cascade process of alternative options to the preferred option of direct delivery on site.

1. Recommendation

- 1.1 The Planning Committee agree to take out all reference to affordable homes from the S106 and agree a deed of variation to that effect.
- 1.2 The Planning Committee agree to negotiations around a cascade mechanism of alternatives should grant funding not be agreed or the registered provider still not be able to deliver 25% affordable homes on site.

2. Budget and policy framework

- 2.1 The budget and policy framework implications relating to this matter are clearly set out in the advice and analysis section below.

3. Background

- 3.1 The Planning Committee resolved on 22 July 2022 to grant planning permission under reference MC/21/1694 for the construction of 68 dwellings, affordable housing, associated vehicular parking, landscaping, open spaces, drainage and earthworks and formation of a new access from View Road, subject to 33 conditions and a S106 agreement covering the following heads:

- (i) 25% of all housing to be provided as affordable housing.
- (ii) £16,660 towards public realm improvements to assist with the development of improved civic spaces.
- (iii) £11,608.28 towards improvements to library provision in the area and the mobile library visiting the vicinity of the site.
- (iv) £12,163.84 for the provision, improvement and promotion of waste and recycling services to cover the impact of the development.
- (v) £401,753.39 toward mitigating the impact of the additional pupils.

Nursery - £88,376.66

Primary - £161,143.35

Secondary - £152,233.38

- (vi) £3,990 to mitigate against the footfall that will occur on the bridleways and adjacent Public Rights of Way (PRoW).
- (vii) £44,448.88 to support the creation of additional capacity in Primary Care premises.
- (viii) £99,450 towards bus improvements to promote sustainable transport modes.
- (ix) £17,260.44 towards Designated Habitats Mitigation.
- (x) The implementation and ongoing management and monitoring of the 'No Cat Policy' for the lifetime of the development.
- (xi) The production and implementation of Ecology and Landscape Management Plan specifically for the area of land that will be owned by the applicant within the Chattenden Wood and Lodge Hill Site of Special Scientific Interest (SSSI) for the lifetime of the development to enhance the habitat for Nightingales and other species within the SSSI.

3.2 The S106 was signed and the planning permission issued on 30 January 2023. Since then, the applicants have been working on clearing the necessary pre commencement and other conditions in readiness to start on site. As required, they have also been in contact with all registered providers who operate in Medway to seek offers for the affordable housing part of the development.

3.3 At present registered providers are struggling to make offers on smaller sites particularly in face of financial commitments relating to the maintenance of their existing housing stock. As a result, the applicant and developer (Esquire) has not received any offers from any registered provider for the affordable homes on site.

3.4 They have, though, received an offer from one registered provider that if they were to get grant funding from Homes England to deliver the affordable

homes that they would take up the affordable homes and deliver in accordance with Medway Council requirements as set out in the adopted Developer Contribution Guide.

- 3.5 The Planning Committee needs to be aware that Homes England do not offer grant funding to affordable Homes secured through S106 or conditions on a planning permission. Therefore, in order to secure affordable homes on this site and to enable the development to proceed in accordance with the approved plans, there would need to be a deed of variation to take the affordable homes requirement out of the S106.

4. Options

- 4.1 To agree the deed of variation recommended and allow the affordable homes to be removed from the S106 and the registered provider can then apply to Homes England for grant funding.
- 4.2 To not agree the deed of variation.

5. Advice and analysis

- 5.1 The developer wants to deliver a scheme on site that accords with the approved plans and that includes affordable housing. They recognise that delivery of affordable homes on site is not only consistent with Policy H3 of the Medway Local Plan 2003 and with the aims of the National Planning Policy Framework (NPPF) (Section 5) but also helps to meet the housing needs of the village and rural area and will help provide for a balanced community on site, particularly when taken alongside the proposed retirement development on the adjacent site (MC/24/0279 refers).
- 5.2 The option of not agreeing the deed of variation will have consequences. It will mean that not only will there be no affordable homes on site but that the permission is not then implementable as delivery of Affordable Homes is part of the linked S106. Non delivery of the approved housing on site will impact on the provision of much needed housing in Medway to meet our needs. There is a housing crisis in Medway, Kent, the South East and in England generally. In addition, non delivery here will impact on Medway's ability to meet the requirements of the housing delivery test, with possible consequences of speculative housing applications being allowed elsewhere in the area on sites that in sustainability terms are not as suitable as this one. That includes other sites in Cliffe Woods potentially. Linked to that other applicants could argue on appeal about the issues of affordable housing and there is the potential serious consequence of S106's being agreed on appeal with no affordable housing and no agreement to work towards alternative delivery like grant funding etc.
- 5.3 The added consequence of non delivery on this approved site is the impact of stopping development for one of the small to medium sized enterprise (SME's) working in Medway, with potential consequences on direct and indirect local employment.

- 5.4 Notwithstanding the above, the recommended option does present a risk for the Local Planning Authority (LPA). The only way for the LPA to guarantee delivery of affordable housing on site is through a S106 or conditions. To agree a deed of variation to remove Affordable Housing from the S106 then results in the potential for non delivery of such housing on site.
- 5.5 In this instance the LPA have seen the agreement between the developer and Moat Housing to deliver affordable homes on site subject to grant funding linked to a deed of agreement to take the Affordable Housing out of the S106. The offer from Moat proposes to purchase 17 affordable units on site comprising 6 flats and 4 houses for social rent (which for Medway is better than affordable rent) and 7 houses for shared ownership. In addition to this, the developer has written (see appendix 1) to explain the background and requirement for a deed of variation, and also to set out clearly their commitment to continuing to develop in Medway working in partnership with the LPA and to this effect giving assurance that, if for any reason the offer with Moat is not taken forward, then they will work with the LPA to find other viable ways of delivering affordable housing, ideally on site.
- 5.6 In this instance the developer is a local SME who is invested in delivering high quality development in Medway now and in the future and to working with the LPA to deliver balanced communities with the necessary infrastructure, including affordable homes. In addition, the relevant registered provider (Moat) is also one well known to the LPA and has a proven track record of taking affordable homes in Medway and already has a significant housing stock in the area.
6. Risk management
- 6.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Affordable Homes are not delivered on site	A deed of variation is agreed but then the agreement with the registered provider breaks down and the developer implements a permission for 68 dwellings for private sale	The LPA has seen the offer letter from Moat to the developer and has a letter from the developer confirming that if the agreement with Moat falls away for whatever reason, that they will work with the LPA to find alternative viable ways of delivering affordable homes on site. The developer is a local SME invested in delivering high quality development in Medway	CIII

Risk	Description	Action to avoid or mitigate risk	Risk rating
		now and in the future and wants to work with the LPA to deliver balanced communities.	

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

7. Consultation

7.1 None required for this proposed deed of variation.

8. Climate change implications

8.1 Climate Change and energy efficiency was one of the considerations in the determination of the application and this will remain unchanged. In addition, the registered provider in their offer have made it a requirement of delivery and take up of the homes of the required measures, including for them to achieve or be as close to the future homes standard as possible, so the use of renewable technologies, Electric Vehicle Charging points and PV panels are now required as standard.

9. Financial implications

9.1 None.

10. Legal implications

10.1 The legal implications are clearly set out in the report.

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Appendices

Appendix 1 - Letter from Esquire developments.

Background Papers

None.