

**REPORT of
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

**to
CENTRAL AREA PLANNING COMMITTEE
22 MARCH 2017**

Application Number	MLA/MAL/17/00049
Location	Land off Park Drive, Maldon
Proposal	Application for a modification to the existing Section 106 Legal Agreement (executed under planning application FUL/MAL/14/00581)
Applicant	Chelmer Housing Partnership Limited
Agent	Sarah Balfour - Birketts LLP
Target Decision Date	19 April 2017
Case Officer	Joy Thomas, TEL : 01621 875879
Parish	MALDON EAST
Reason for Referral to the Committee/Council	In accordance with Area Planning Committee Terms of Reference

1. RECOMMENDATION


APPROVE subject to the applicant entering into a Deed of Variation pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).

2. SITE MAP

Please see overleaf.

Land Off Park Drive
Maldon MLA/MAL/17/00049



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	Organisation:	Maldon District Council
	Department:	Planning Services
	Comments:	Central Committee
	Date:	10/03/2017
www.maldon.gov.uk	MSA Number:	100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 A request has been received to modify the original legal agreement (which was in the form of a Unilateral Undertaking) dated 1 October 2014 which was entered into in respect of the planning application (FUL/MAL/14/00581) for proposed development comprising the construction of 131 dwellings with access from Park Drive, associated internal access roads, cycle ways/footpaths, garaging, parking, open space and landscaping.
- 3.1.2 The reason for this application for modification is that the clause relating to mortgagee exclusion (in respect of the Affordable Housing provision) is no longer considered acceptable by the lenders. Mortgagee in Possession clauses are a fundamental element of S106 agreements and the proposed revision is consistent with other agreements. The Chelmer Housing Partnership, who now own the affordable units, therefore now require a modification to the agreement by adding an appropriate clause.
- 3.1.3 In addition to this, further modification is required in respect of the tenure mix. The Unilateral Undertaking provides (at Schedule 2 Part 3 paragraphs 1.1 and 1.2) for 75% of the affordable housing to be affordable rented units, and 25% of the affordable housing to be shared ownership units. However, the proposal is to modify this with the numbers 27 and 12 (thus expressing the mix in numbers rather than percentages), which would be 69% and 31% respectively. The Housing Manager has been consulted on this and has agreed that this breakdown is acceptable; therefore the proposed modification is acceptable.

3.2 Conclusion

- 3.2.1 A Deed of Variation has been drafted. Given the need for the amendments due to the requirements of mortgagees and the change in affordable housing tenure, it is considered that the wording proposed in the Deed of Variation is acceptable, and the Strategic Housing Manager agrees that these amendments are needed and acceptable.

4. MAIN CONSIDERATIONS

4.1 Principle of Development

- 4.1.1 The 'principle of development' on this site has already been established and the site has now been developed accordingly.
- 4.1.2 This application has been made to vary the S106 legal agreement for this site as the owners of the affordable housing (Chelmer Housing Partnership) are looking to secure the affordable housing against loan finance in order to continue developing affordable housing and other properties.
- 4.1.3 In addition the proposals for tenure have changed from 75% affordable rent to 69% and from 25% shared ownership to 31%. The reason for this is that when the

agreement was signed affordable rents were increasing, but in 2015 a Ministerial Statement was produced which resulted in affordable rents being reduced, therefore affecting the viability of the Affordable Housing provision on this site. To remedy this a minor conversion of tenure from affordable rented to shared ownership is proposed and the developer has also accepted that there would need to be a reduction in the value paid for the affordable housing as well as in the affordable rented accommodation as all parties make a contribution towards managing the impact this has had.

- 4.1.4 Another minor amendment relates to the removal of the reference to bungalows as there are now none provided on site, as the approved dwellings have rooms upstairs and cannot therefore be described as bungalows.

4.2 Other Material Considerations

- 4.2.1 The amendment relating to mortgagee exclusion is necessary as, due to the passage of time since the original S106 agreement was signed in 2002, the clause which addresses this issue is no longer considered acceptable by prospective lenders. Therefore the amendments contained in the draft Deed of Variation are suggested in order to ensure that a lender, should they take possession of a property, can sell the property free of the affordable housing restrictions.
- 4.2.2 The original S106 contains a very brief mortgagee exclusion clause and whilst the position relating to the affordable housing is not fundamentally changing, the amendment contained in the draft Deed of Variation addresses the concerns of prospective mortgagees. This request is quite conventional for all new developments and has been for a number of years, and the request is therefore updating an older S106 agreement. In general terms, this enables providers of affordable housing to borrow whether for the construction of the homes in question, or at a later date to use existing stock as an asset to secure future investment.

5. ANY RELEVANT SITE HISTORY

- **FUL/MAL/14/00581** - Erection of 131 dwellings with access from Park Drive, associated internal access roads, cycle ways/footpaths, garaging, parking, open space and landscaping. Approved 09.10.2014.
- **NMA/MAL/15/00565** - Application for non-material amendment following grant of Planning Permission FUL/MAL/14/00581 (Erection of 131 dwellings with access from Park Drive, associated internal access roads, cycle ways/footpaths, garaging, parking, open space and landscaping) Amendment sought: Minor revisions to plot and road layout excluding the shaded grey area as shown on drawing number 14482TA/NMA/PL-01. Approved 26.06.2015.
- **FUL/MAL/15/00582** - Minor Material Amendment to permission FUL/MAL/14/00581 - Erection of 131 dwellings with access from Park Drive, associated internal access roads, cycle ways/footpaths, garaging, parking, open space and landscaping. Realignment of Plots 37-54 adjacent to the eastern boundary. Approved 18.11.2015.
- **FUL/MAL/16/00208** – Variation of conditions 3, 4 and 5 of approved application FUL/MAL/14/00581 (Erection of 131 dwellings with access from Park Drive,

associated internal access roads, cycleways/footpaths, garaging, parking, open space and landscaping). Approved 04.10.2016.

6. CONSULTATIONS AND REPRESENTATIONS RECEIVED

6.1 Representations received from Parish/Town Councils

Name of Parish/Town Council	Comment	Officer Response
Maldon Town Council	No objection	Acknowledged

6.2 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Housing Manager	No objection	Acknowledged

7. DEED OF VARIATION

The proposed changes to the S106 Agreement dated 01 October 2014 are as follows:

Schedule 2 Part 1 – Definitions – amend definition of “Chargee” to read:

Chargee: means any mortgagee of charge of the Registered Provider or the owner of the Affordable Housing Units or any receiver or manager (including administrative receiver) appointed by such mortgagee or charge or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security or any administrator (however appointed) including a housing administrator.

Schedule 2 Part 1 – Definitions – add the following definition:

Nominations Agreement: such agreement to include a mortgagee exclusion clause which states that none of the provisions in the agreement will be binding on any mortgagee or Chargee or receiver (including an administrative receiver) appointed by such mortgagee of Chargee to realise its security or any administrator (however so appointed) including a housing administrator.

Schedule 2 Part 1 – Definitions – amend the following definition:

Replace the definition of Initial Marketing Period with “means a total of 6 months such period to commence one month prior to completion of the construction of the relevant Shared Ownership Unit such that it is completely ready for Occupation and ending 5 months after completion of construction of the relevant Shared Ownership Unit”.

Schedule 2 Part 1 – Definitions

Remove the definition of “Bungalow”

Schedule 2 Part 3 – Affordable Housing Tenure Mix

Paragraph 1.1 – replace the word “75%” with the number “27”.

Paragraph 1.2 – replace the word “25%” with the number “12”.

Remove paragraph 3 as no bungalows are included within this scheme.

Schedule 2 Part 6 – General Provisions Applying to all Affordable Housing Units – amendment to wording

Paragraph 3.1 remove “a mortgagee or chargee or receiver appointed by the chargee who has first complied with the provisions of paragraph Part 4 of this Part” and replace with “a chargee or receiver who first complied with the provisions of paragraph Part 4 of this Part and any persons deriving title from such Chargee”.

Paragraph 4.2 after the wording “paragraph 4.1” to replace the wording with “above must not be 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”.

Clause 8.6.3

Add at the end “or any mortgagee or chargee or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (however so appointed) including a housing administrator of such Registered Provider or any persons or bodies deriving title from them”.