

Decision under Delegated Powers

Officer Requesting Decision

Head of Planning and Regeneration

Officer Making the Decision

Head of Strategic Support

Recommendation

That a Deed of Variation (s106 Linking Agreement) be agreed to the Principal Agreement dated 16th July 2014 in relation to planning application P/13/1519/2 for a residential development at land at Groby Road, Anstey.

Reason

The Deed of Variation seeks to vary an existing Section 106 Agreement in relation to:

- Amendments to the wording of Clause 2.5.1 and Paragraph 2.1.5 (Schedule 3) of the Section 106 Agreement (Principal Agreement), together with the insertion of new provisions (sub-clauses 2.53 to 2.57) and Paragraph 5 (Schedule 3). These amendments are sought by the Affordable Housing Provider (Riverside Group Limited) to ensure that the occupiers of the affordable dwellings were not bound by the provisions of the Section 106 Agreement.

Authority for Decision

A variation of a Section 106 Agreement can be made under the delegated authority of the Head of Strategic Support.

Decision and Date

Background

Outline Planning permission (reference P/13/1519/2) was granted for a residential development of up to 35 dwellings at land north of Groby Road, Loughborough on 11th August 2014. All matters were reserved for later consideration as part of a future Reserved Matters application. This was subject to a Section 106 Agreement (Principal Agreement) dated 16th July 2014 relating to a variety of contributions towards the provision of land on-site for areas of structural planting and for the maintenance of such areas, education, healthcare, libraries and affordable housing.

This Deed of Variation relates to following amendments to the Section 106 Agreement (Principal Agreement):

- The deletion of the existing Clause 2.5.1 and its replacement with a new paragraph to reflect amended wording to this clause.

The existing Clause (2.5.1) states:

“2.5.1 The buyers of an individual Dwelling erected on the Site pursuant to the Planning Permission; or”

The proposed Clause 2.5.1 states:

*“2.5.1 The buyers of an individual Dwelling erected on the Site pursuant to the Planning Permission **(save for the occupancy restrictions pursuant to paragraph 2.1.5 of Schedule 3 in respect of Affordable Dwellings, subject always to the provisos set out therein)**”;*

N.B. The proposed changes to the wording between the existing and proposed Clause 2.5.1 are highlighted in bold, above.

- The deletion of the existing Paragraph 2.1.5 of Schedule 3 and its replacement with a new paragraph to reflect amended wording to this paragraph.

The existing Paragraph (2.1.5) states:

“To provide that the Affordable Dwellings shall remain available as Social Rented Dwellings/Affordable Rented Dwellings and Intermediate Dwellings provided that this provision shall not be binding on:”

The proposed Paragraph 2.1.5 states:

*“To provide that the Affordable Dwellings shall remain available as Social Rented Dwellings/Affordable Rented Dwellings and Intermediate Dwellings **and shall not be Occupied other than as Affordable Dwellings all in accordance with an Affordable Housing Scheme***

approved by the Council provided that this provision shall not be binding on:

N.B. The proposed changes to the wording between the existing and proposed Clause 2.5.1 are highlighted in bold, above.

- The insertion of the following provisions at Sub-Clauses 2.5.3 to 2.57:

“2.5.3 save in the case of the obligations under Schedule 3, a Registered Provider (as defined in limb i) of the definition of “Affordable Housing Provider” in Schedule 3) acquiring any Affordable Dwelling or Affordable Dwellings erected on the Site nor any tenant or lessee thereof nor any successor in title to the Registered Provider, tenant or lessee thereof; or

*2.5.4 save in the case of the obligations under Schedule 3, Paragraph 2.1.5, a mortgagee or chargee of any Affordable Dwelling or Affordable Dwellings erected on the Site or a housing administrator or a receiver (including an administrative receiver) appointed by a mortgagee or chargee (all or any of which are collectively referred to in this Agreement as “**Chargee**”) nor any persons or bodies deriving title through such Chargee; or*

2.5.5 an occupier of an Affordable Dwelling who has exercised a statutory right to acquire or right to buy (or equivalent contractual right) in respect of an individual Affordable Dwelling (as defined in Schedule 3) nor any successor in title to such person; or

2.5.6 save in the case of the obligations under Schedule 3, Paragraph 2.1.5, any person acquiring an interest which satisfies the requirements of an “Intermediate Affordable Dwelling” or an equity share in an individual Shared Ownership Accommodation Affordable Dwelling (each term as defined in Schedule 3) which for the avoidance of doubt shall include but shall not be limited to a tenant who has progressed to 100% equity share in a Shared Ownership Lease nor any successor in title to such person; or

PROVIDED THAT in respect of the obligations under Schedule 3 any Chargee who wishes to rely on sub-clause 2.5.4 and sub-paragraphs 2.1.5(a) and 2.1.5(b) of Schedule 3 must first procure that the following requirements have been satisfied prior to the disposal of any Affordable Dwelling or occupation of any Affordable Dwelling other than as an Affordable Dwelling in accordance with the Affordable Housing Scheme:

- (i) *for the period of 6 weeks or such lesser period as may be agreed in writing by the Council such Chargee has used reasonable endeavours to secure the continued availability of the Affordable Dwelling in question through the involvement of Registered Providers; and*

(ii) *without prejudice to the generality of the above, such mortgagee, chargee, receiver or manager shall in writing give the Council (or a Registered Provider nominated by the Council) at least 6 weeks, or such lesser period as may be agreed in writing by the Council to facilitate the delivery of the Affordable Dwellings, prior notice of its intention to exercise any power of sale in respect of any Affordable Dwellings and to provide the Council or the Registered Provider the opportunity to complete a transfer of the Affordable Dwellings (all parties acting reasonably) in question in order to ensure that they continue to be used for the purposes of Affordable Housing;*

- The insertion of the following provisions at Paragraph 5 of Schedule 3:

“In the event an occupier of an Affordable Dwelling has exercised a statutory right to acquire or right to buy (or equivalent contractual right) in respect of an individual Affordable Dwelling or acquired a lease in an Intermediate Affordable Dwelling or an equity share in an individual Shared Ownership Accommodation Affordable Dwelling (each term as defined in this Schedule) which for the avoidance of doubt shall include but shall not be limited to a tenant who has progressed to 100% equity share in a Shared Ownership Lease the Owners and any relevant Affordable Housing Provider shall, unless the legislation otherwise requires, use or procure the use of the net proceeds of sale of such Affordable Dwellings to fund the provision of further Affordable Housing and use reasonable endeavours to make such provision in the district of the Council.”

This amendment is sought to address concerns raised by the Affordable Housing Provider, Riverside Group Limited, in respect of the the potential for the future occupiers of the affordable housing to be bound by the provisions of the S106 Agreement. This latest amendment will ensure that the future occupiers of the affordable housing will not be bound by the provisions of the S106 Agreement, which will remain with the Affordable Housing Provider.

The agreed level of affordable housing contribution, at 30%, to be secured on-site, will still be delivered.

Financial Implications

None

Risk Management

Key Decision:

Background Papers:

P/13/1519/2 - Planning file and principal Section 106 Agreement