

Decision under Delegated Powers

Officer Requesting Decision

Group Leader - Development Management

Officer Making the Decision

Head of Strategic Support

Recommendation

That a Deed of Variation (Section 106 Linking Agreement) be agreed to the Principal Agreement dated 30th October 2013, as amended by the First Deed of Variation dated 8th December 2014, in relation to Outline Planning Permission reference P/12/2569/2 for a residential development scheme for the erection of up to 44 dwellings and associated development on land at Beacon View Industrial Estate at Farley Way in Quorn.

Reason

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

- The deletion of the definition of “Chargee”;
- Amendments to the wording of Clause 4.2 of the Second Schedule
- The deletion of Clause 5 of the Second Schedule.

These amendments are sought by the Affordable Housing Provider (Midland Heart Limited) to amend a mortgagee exclusion clause which is not acceptable to the mortgagee/lender.

Authority for Decision

A variation of a Section 106 Agreement can be made under the delegated authority of the Head of Strategic Support. Consultation has taken place with the Chair and vice chair of Plans Committee and Ward Councillors who have raised no objections to the decision being made under delegated powers.

Decision and Date

Background

Outline Planning permission (reference P/12/2569/2) was granted for a residential development of up to 44 dwellings, and associated development, at land at Beacon View Industrial Estate at Farley Way in Quorn on 30th October 2013. This was subject to a Section 106 Agreement (Principal Agreement) dated 29th October 2013 relating to a variety of contributions towards the provision of education, healthcare, libraries, highway improvements and public transport, open space and affordable housing.

The Principal Agreement has been amended by a subsequent Deed of Variation; the First Deed of Variation dated 8th December 2014.

This latest Deed of Variation relates to following amendments to the Section 106 Agreement (Principal Agreement), as amended by the First Deed of Variation dated 8th December 2014:

- The deletion of the definition of “Chargee”.

The definition of “Chargee” contained in the Agreement refers to successors in title. This is inadequate to a lender as this inadvertently rebinds successors in title to complying with the obligations a Chargee must comply with before they can dispose of the affordable housing on the open market and this is not the intention of the parties.

- The deletion of existing Clause 4.2 of the Second Schedule and its replacement with a new paragraph to reflect amended wording to this clause.

The existing Clause 4.2 states:

“4.2 on any Chargee provided that the Chargee shall have first complied with the Chargee’s Duty.”

The proposed Clause 4.2 states:

“4.2 on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- (1) *such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units; and*

- (2) *shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not 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; and*
- (3) *if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely.”*

- The deletion of Clause 5 of the Second Schedule.

This Clause refers to making arrangements for the transfer of the affordable housing units to safeguard them as affordable housing. This is inadequate to a lender as they require a disposal to actually take place during the notice period rather than just agree that it will happen.

These amendments are sought to address concerns raised by the Affordable Housing Provider, Midland Heart Limited, in order to address an inadequate mortgagee exclusion clause which is not acceptable to the mortgagee/lender.

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

All other on-site provisions/off-site contributions secured under the Section 106 Agreement will remain unaltered.

Comments from HR

None.

Financial Implications

None.

Risk Management

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
Applicant doesn't comply with the S106 Agreement	Very low	Low	Very Low (1 - 2)	Routine monitoring of the S106 Agreement.

Key Decision: No

Does the report contain exempt information? No

Background Papers:

P/12/2569/2 – planning file and officer recommendation, Principal S106 Agreement and First Deed of Variation.