

# Planning Committee

## Request for variation of the Section 106 legal agreement to the proposed development at Land South West of Orchard Close and adjoining Murcott Road, Upper Arccott – Application 10/00807/OUT

11 October 2012

### Report of Head of Public Protection & Development Management

#### PURPOSE OF REPORT

To enable Members to consider a request to vary the Section 106 Agreement in relation to the housing development at Land south west of Orchard Close and adjoining Murcott Road, Upper Arccott and determine whether or not to accept the variation of the Agreement.

This report is public

#### Recommendations

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The meeting is recommended:

- (1) To agree to vary the section 106 agreement in accordance with Option 2 set out towards the end of the report.

#### Appraisal

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1. On 13 July 2011 outline planning approval was granted for residential development for up to 50 dwelling houses with associated open space and vehicular access subject to a number of conditions and a Section 106 legal agreement between the applicants (and other related parties) and the District and County Councils.
2. The legal agreement provides for the provision of infrastructure and facilities necessary to serve the development proposed. The Heads of Terms include, inter alia, 40% of the units to be affordable, contributions towards transport, education, libraries, museum resources, public art, on site and off site play facilities and refuse bins. The agreement was secured and dated the same date as the application decision notice.

3. A request has been made by the new applicants (Bloor Homes Ltd) to vary the agreement not in terms of the provisions (the requirements for infrastructure and contributions remain as set out in the principal agreement) but with regard to the definitions relating to the requirement for a LEAP and affordable housing and tenure mix. These matters would not affect the County interest and principally relate to the definition of the LEAP and changes to the affordable rent produce and requirements thereof.
4. The LEAP is to be redefined as a play area with a reduced commuted sum from £79,108 to £71,197 to reflect the reduced scale. The proposed reserve matters application currently under consideration (12/00799/REM refers) is for 48 housing units as opposed to the 50 allowed in the outline consent. A LEAP is, therefore, no longer a requirement. The proposed play area is considered acceptable in its form being sited adjacent to an existing LAP on the Orchard Close scheme and near opposite another at the corner with Buchanon Road. A slightly different approach is required here to produce a more bespoke end product that reflects the needs of this part of the village.
5. As regards to the changes to the affordable housing definitions and proposed mixes, the variation to the agreement proposed centres on the affordable rent product which has been introduced as part of a wider reform programme intended to provide flexibility and enable our Registered Providers (RPs) to deliver the affordable homes. The Homes and Communities Agency (HCA) seek to make better use of existing stock properties and to better target those in greatest need. It is argued that social rent is not always the most appropriate solution for tenants, landlords or taxpayers.
6. The change proposes that the affordable rented homes will be made available to tenants at up to a maximum of 80% of market rent and allocated in the same way as social housing is at present. RPs will be under the same statutory and regulatory obligations when allocating affordable rent homes as they are when allocating properties for social rent.
7. Affordable rent will form the principal element of the new supply offer within the HCA's Affordable Homes Programme framework and this is needed to enable the RPs to fund the affordable homes requirement.
8. The NPPF includes Affordable Rent within the definitions of Affordable Housing for planning purposes: "Affordable housing: Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market." NPPF further defines Affordable rented housing; "is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable)."
9. It should further be noted that the proposed variations to the Section 106 are in line with CDC's tenancy strategy to accept affordable rent on new developments.
10. The following options have been identified. The approach in the recommendation above is believed to be the best way forward to ensure no further delay.

**Option One**

To not accept modifications to the Section 106

**Option Two**

Approve the requested variations to the agreement as laid

out and to delegate to officers the final approval of the precise working of the amendments should this be necessary.

### Consultations

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**Fiona Brown**  
**Strategic Housing Officer**                      The amendments and variations to the agreement are acceptable.

**Paul Almond**  
**Street Scene & Landscape Services Manager**                      No comment received

### Implications

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**Financial:**                      There will be no reduction in contributions secured towards mitigating the impact of the development  
Comments checked by Karen Muir, Service Accountant, 01295 221559.

**Legal:**                      Formal modification of the Section 106 Agreement will be necessary to give effect to the variations proposed, the legal costs of which will be met by the developer.  
Comments checked by Nigel Bell, Planning & Litigation Team Leader 01295 221687

**Risk Management:**                      There are no likely risks arising from this modification  
Comments checked by Nigel Bell, Planning & Litigation Team Leader 01295 221687

### Wards Affected

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Launton

### Document Information

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Background Papers	
Planning Application 10/00807/OUT	
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