

# Planning Committee

## Request for a variation of the S106 Agreement relating to the proposed development at Bankside, Banbury – Application 05/01337/OUT

11 October 2012

### Report of Head of Public Protection and Major Developments

#### PURPOSE OF REPORT

To enable Members to consider a request to vary the S106 Agreement in relation to the development at Longford Park (Bankside), Banbury and determine whether or not to accept the variation of the Agreement. Members will recall that this item was deferred at the last meeting to allow answers to be provided to questions concerning the mix of housing.

This report is public
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#### Recommendations

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The Planning Committee is recommended:

- (1) To agree to vary the s106 agreement to enable further progress towards the commencement of the development and delegate to officer the final approval of the precise wording of the amendments (option 2).

#### Appraisal

1. On 30 September 2009 outline planning approval was granted for residential development with associated facilities including primary school, playing fields, local shops and community facilities and 2200sq metres of employment provision (Use class B1 Business). Approval was granted subject to a number of conditions and a legal agreement between the applicants (and other related parties) and the District and County Councils.
2. The Agreement provides for the provision of infrastructure and facilities necessary to serve the development proposed. The Heads of Terms include (amongst other things), 30% of the units to be affordable; substantial financial contributions towards transport, education, libraries, museum resources; public art, the provision of a community building; a community park, a site for an Ecumenical place of worship, a healthcare site, and highway improvements. The agreement was secured and dated the same date as the application decision notice.

3. A request has been made by the applicants 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 affordable housing mix (Schedule 2) and associated clauses. This has arisen because of the potential difficulty in securing funding for the affordable elements of the scheme and changes to the preferred mixes likely to be required by Registered Providers (previously Registered Social Landlords (RSLs)).
4. The signed legal agreement sets out the following proportions of affordable units in relation to their sizes;
  - 15% of the affordable housing is to be one bedroom flats
  - 20% of the affordable housing is to be two bedroom flats
  - 35% of the affordable housing is to be two bedroom houses
  - 20% of the affordable housing is to be three bedroom houses
  - 5% of the affordable housing is to be four bedroom houses
  - 5% of the affordable housing is to be two bedroom bungalows
5. The mix of sizes/houses relative to tenure is currently set out as follows;

Type	Social Rent	Int. Rent	Shared Ownership
1 bed flat	88%	-	12%
2 bed flat	50%	9%	41%
2 bed house	66%	12%	22%
3 bed house	69%	9%	22%
4 bed house	100%		
2 bed bungalow	100%		

6. The following amendments are proposed;
  - 9% of the affordable housing is to be one bedroom flats
  - 13% of the affordable housing is to be two bedroom flats
  - 38% of the affordable housing is to be two bedroom houses
  - 28% of the affordable housing is to be three bedroom houses
  - 8% of the affordable housing is to be four bedroom houses
  - 2% of the affordable housing is to be two bedroom bungalows
  - 1% of the affordable housing is to be three bedroom bungalows

Type	Affordable Rent	Shared Ownership
1 bed flat	100%	
2 bed flat	59%	41%
2 bed house	63%	37%
3 bed house	65%	35%
4 bed house	100%	
2 bed bungalow	85%	15%
3 bed bungalow	66%	34%

7. The Council's Housing Department have been involved in the negotiations relating to the amended mix and are satisfied that the amendments are appropriate. At the last meeting questions were asked concerning the appropriateness of this given the Council's Housing Strategy.
8. In order to help clarify matters it is worth pointing out that the matter of principle significance which was not made explicit in the previous report is the change in tenure. The Council has now adopted the Tenancy Strategy which makes clear that we will accept Affordable Rent as opposed to Social

Target rents on new development sites to ensure these can be delivered as quickly as possible. This is being driven by the changes to HCA grant levels and the need for Registered Providers to fulfil their obligations under the Affordable Homes Programme. Because Affordable Rent and Intermediate Rent are set at the same level we have moved the Intermediate rents to Shared Ownership to keep our usual policy of 70% rent and 30% Shared Ownership. The Affordable Housing Officer has provided the following further explanation;

*The affordable housing mix for the Bankside site was negotiated in January 2012 and was set to respond to meeting future housing needs in the Cherwell district. The evidence base for this mix included:*

- *The housing mix within the draft Core Strategy*
- *Cherwell Housing Needs estimate report (2009)*
- *Evidence from the Housing Register*

*Officers supported the principle of fewer units of flats being delivered on the site compared to other recent approvals – this support was based on the following:*

- *Greater confidence in other strategic sites and opportunities coming forward in Banbury*
- *Knowledge that other sites – such as Canalside – are likely to bring forward a higher number of flats*

*Agreement of the affordable housing mix was also set in the context of:*

- *The (then) forthcoming Cherwell Housing Strategy 2012-17*
- *The (then) forthcoming Cherwell Tenancy Strategy 2012-15*

*This context led to agreement of the affordable rent product as part of the District's Investment Ready approach. The negotiated approach met the department's requirements at the time. However the matter of preferred mixes is an issue that regularly evolves due to changing circumstances.*

*The current mix remains valid in the context of the above. Whilst the Tenancy Strategy highlights some of the issues around four-bed units being set at affordable rents, these issues relate mainly to the south of the District where market rents are higher than Banbury.*

*If the situation were being addressed from starting point today, this would probably result in a slightly different mix based on the increasing awareness of the impact of Welfare Reform and the new Allocations Scheme. The potential effects of any changes are shown in the table below, and include estimated numbers (in brackets) based on delivery of 322 affordable units. In more recent negotiations we have started to ask for larger 3 beds units in lieu of the 4 beds.*

<b>Size and Type of Unit</b>	<b>Current Agreed Position</b>	<b>Position if we were negotiating now</b>
<i>1 bed ( 2 person) flats</i>	<i>9% (29)</i>	<i>12% (39)</i>
<i>2 bed (3 person) flats</i>	<i>13% ( 42)</i>	<i>10% (32)</i>
<i>2 bed (4 person) houses</i>	<i>39% (125)</i>	<i>39% (125)</i>

<i>3 bed (5 person) houses</i>	<i>28% (91)</i>	<i>28% (91)</i>
<i>3 bed (6 person) houses</i>	<i>0%</i>	<i>4% (13)</i>
<i>4 bed (7 person) houses</i>	<i>8% (26)</i>	<i>4% (13)</i>
<i>2 bed (3 person) bungalows</i>	<i>2% (6)</i>	<i>2% (6)</i>
<i>3 bed (4 person) bungalows</i>	<i>1% (3)</i>	<i>1% (3)</i>

9. Amending the housing mix as set out in paragraph 6 above results in a greater number of larger houses, giving rise to a greater impact on services and in particular the primary school. The County Council have therefore been party to the proposed amendments and it seems that there is now an agreement between the principle parties that the proposed amendments result in the need for an increased payment to the County Council.
10. The County Council require an additional contribution of £367,539. This is to be divided as follows;
- a) £301,355 for primary education
  - b) £42,651 for secondary education and special education needs
  - c) £18,225 for libraries, museum and waste management
  - d) £5,308 for elderly day care
- These figures have been written into the draft amendment.
11. S106A of the Town & Country Planning Act 1990 (as amended) allows for S106 Agreements to be modified by agreement between the authority by whom they are enforceable and the persons against whom the obligation is enforceable. S106B allows for applications to be made for modification and allows for a right of appeal but such requests can not be made within 5 years of a S106 agreement being entered into. The modification of the current agreement can therefore only be done by agreement between the parties at the present time.
12. If the Council do not agree to the variation it could result in delays to the implementation of the development, and to the provision of affordable housing and other development secured by the approval. Further delays in the commencement of development could potentially affect the housing land supply position, leaving the Council in a weaker position.
13. It has taken several months to reach the current position where the applicants and officers of the District and County Councils are in agreement, an agreement reached at a moment in time relating to a matter which is regularly evolving. Whilst the mix of affordable housing may be different to the proposed mix set out at paragraph 6 if the new Housing Strategy was imposed, it is not recommended that Members require such compliance with the Strategy in relation to this particular matter given the potential for further delays arising from renegotiation. The current agreement could not be implemented due to the requirement for Social and Intermediate Rent. The proposed amendments make the scheme deliverable by only making reference to Affordable Rent and Shared Ownership.

## Conclusion

The proposed changes to the S106 agreement do not affect the overall level of affordable housing, and in fact result in an increase in County Council contributions. It is considered that the proposal to vary the S106 agreement is acceptable and is therefore recommended for approval for the reasons discussed above.

The following options have been identified. The approach in the recommendations (Option Two) is considered to be the best way forward

- Option One** Refuse the modification of the S106 which is likely to delay the start of development and retaining the existing housing tenure and mix may dissuade some house builders from developing the site.
- Option Two** Approve the modification of the S106 Agreement to enable further progress towards the commencement of the development and delegate to officer the final approval of the precise wording of the amendments.
- Option Three** Seek to negotiate different modifications to the S106 Agreement as set out in paragraph 8 to enable development to commence but this is likely to result in further delays to the implementation of the scheme.

## 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 S106 Agreement will be necessary to give effect to the variations proposed. The legal costs of the modification will be met by the developer.
- Risk Management:** There are no likely risks arising from this modification.  
Comments checked by Nigel Bell Planning and Litigation Team Leader 01295 221687

## Wards Affected

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Banbury Calthorpe and Bodicote

## Document Information

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Background Papers
Planning Application 05/01337/OUT
Planning Obligation dated 30 September 2009

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