

# Planning Committee

## Request for a variation of the S106 Agreement relating to the proposed development at Oak Farm, Milcombe - 1000967OUT

11 October 2012

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

#### PURPOSE OF REPORT

To enable Members to consider a request to vary the S106 Agreement in relation to the development at Oak Farm, Milcombe and determine whether or not to accept the variation of the Agreement.

This report is public

#### Recommendations

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The Planning Committee is recommended:

(1) To 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.

#### Appraisal

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1. On 5<sup>th</sup> April 2011 outline planning approval was granted for the residential development comprising 29 no. dwellings with private gardens and car parking. Approval was granted subject to a number of conditions and a legal agreement between the applicants and the District and County Councils.
2. The Agreement provides for the provision of the infrastructure necessary to serve the development proposed. The Heads of Terms include (amongst other things) 30% affordable housing; financial contributions towards education, libraries, museum resources, public art, sports, open space and play area. 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 regards to the affordable housing mix (Third Schedule Part 2), the provision of the LAP and open space (Third Schedule Part 1) and

associated clauses.

### Affordable Housing

4. This has arisen because of the potential difficulty in securing funding for the affordable element of the scheme and changes to the preferred mixes likely to be required by Registered Providers (previously Registered Social Landlords (RSL's)).
5. The signed S106 sets out the prescribed mix of the 9 no. affordable units as follows:

#### **Shared Ownership Housing**

- 2 no. x 2 bedroom houses
- 1 no. x 3 bedroom house

#### **Social Rented Housing**

- 4 no. x 2 bedroom houses
- 2 no. x 3 bedroom houses

6. An amendment is proposed to the Social Rented Housing element only, in that it is to be delivered as Affordable Rented Housing instead. There is no change to the mix and allocations are the same as for Social Rented Housing.
7. The Council's Housing Department have been involved in the negotiations relating to this proposed amendment and are satisfied that it is appropriate and that it is in line with the Cherwell Tenancy Strategy 2012 – 2015.

### LAP and Informal Open Space

8. The amendment is also sought in respect to the provision and transfer of the LAP and Open Space to be thereafter maintained by the Council. Essentially given the fairly small scheme size and construction constraints the applicant anticipates both the LAP and IOS will not be practically complete until the last dwelling is completed. The S106 Agreement puts significant constraints on the occupancy of Dwellings until 12 months after the LAP and IOS are practically complete, which the applicant considers to be unworkable.
9. The existing Agreement states under the Transfer of the Lap clause:
  2. The owners will not cause or permit to be occupied more than 50% of the sum of all the dwellings to be constructed on site until:
    - 2.1 the District Council has issued the Final Completion Certificate in relation to the LAP
10. The amendment to the Agreement is to change the percentage from 50% to 75% and that instead of Final Completion Certificate, the wording Practical Completion Certificate be used. This will mean that the 23<sup>rd</sup> unit cannot be occupied until the LAP is transferred.
11. This is a similar case with the provision of the Informal Open Space, the

wording of the clause is as follows:

7.14 Will not cause or permit to be occupied more than 75% of the sum of all the dwellings until:-

7.14.1 The informal Open Space Maintenance period in respect to each Area of Informal Open Space has expired and the District Council has issued an Informal Open Space Final Completion Certificate in respect to each Area of Informal Open Space comprising the whole of the Informal Open Space:

12. The amendment to the Agreement is to change the percentage from 75% to 85% and that instead of Final Completion Certificate, the wording Practical Completion Certificate be used.
13. This amendment has been agreed with the Landscape Services Department, who consider it appropriate and that the LAP and Public Open Space will still be reasonably delivered before the development is completed. It just allows the applicant more flexibility and as this small scale development is delivering affordable housing and is to be built out at the same time, the amendment is considered to be acceptable.
14. 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.
15. 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.

### **Conclusion**

16. The proposed changes to the S106 agreement do not affect the overall level of affordable housing and Members are recommended to agree to the proposal.

### **Implications**

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| <b>Financial:</b> | There will be no reduction in contributions secured towards mitigating the impact of the development.<br>Comments checked by Kate Drinkwater, Service Accountant 01295 221559 |
| <b>Legal:</b>     | 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       |

Comments checked by Nigel Bell Planning and Litigation  
Team Leader 01295 221687

**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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Bloxham and Bodicote

**Document Information**

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<b>Background Papers</b>	
Planning application 10/00967/OUT	
Panning Obligation dated 5 <sup>th</sup> April 2011	
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