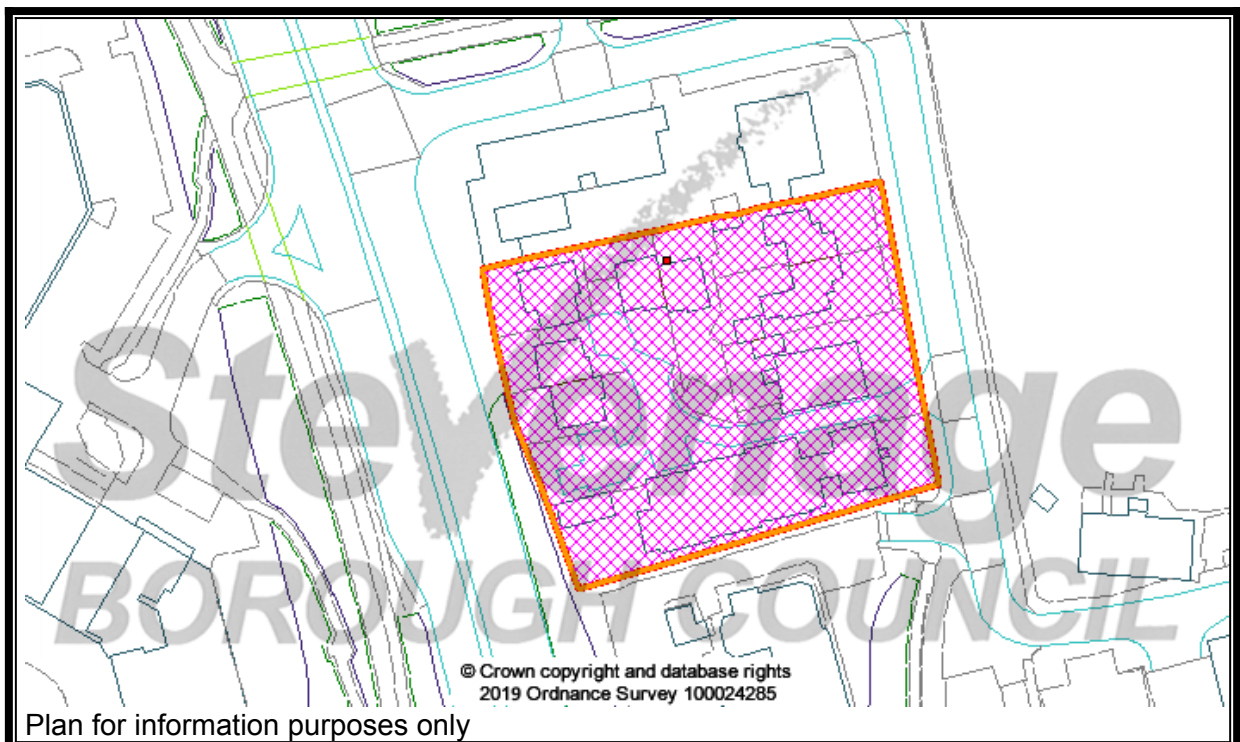


<b>Meeting:</b>	<b>Planning and Development Committee</b>	<b>Agenda Item:</b>
<b>Date:</b>	<b>16 December 2019</b>	
<b>Author:</b>	<b>Dave Rusling</b>	01438 242270
<b>Lead Officer:</b>	<b>Zayd Al-Jawad</b>	01438 242257
<b>Contact Officer:</b>	<b>Dave Rusling</b>	01438 242270

Application No:	19/00368/S106
Location:	1-5 Fairlight Court, Ditchmore Lane, Stevenage.
Proposal:	Variation of Section 106 Agreement dated (13.08.2013) approved under the planning permission reference number 12/00577/FPM to amend the affordable housing obligations set out in paragraph 3.1.7.
Drawing Nos.:	Site Location Plan.
Applicant:	Minara Khatun (Devonshires Solicitors)
Date Valid:	27 June 2019
Recommendation:	Agree Variation of S106 Agreement.



## 1. SITE DESCRIPTION

- 1.1 The application site comprises five affordable housing bungalows which are located to the rear of no's 3-6 Ditchmore Lane. These properties were constructed as part of the planning

permission granted in 2013 for the redevelopment of The Haven and are owned by Settle Group (formerly North Hertfordshire Homes). The properties are located to the west of nos 3-6 Ditchmore Lane and back onto Lytton Way. Access to the dwellings is taken via a tarmaced road located between Nos 5 and 6 Ditchmore Lane.

## **2. RELEVANT PLANNING HISTORY**

- 2.1 Planning permission granted under ref 12/00577/FPM in August 2013 for refurbishment of Nos. 3, 4 and 5 to provide 2no. five bed dwellings and 1no. one bed flat; erection of 4no. two bed and 1no. three bed bungalows; extension to No. 6 to provide homeless hostel for The Haven; change of use of No. 4 from office to residential; associated access, car parking and landscaping.
- 2.2 Conservation Area Consent granted under ref 12/00608/CA in August 2015 for demolition of existing outbuildings and extensions to the rear of 4, 5 and 6 Ditchmore Lane 15.08.2013
- 2.3 Permission granted under ref 13/00417/COND in November 2013 for discharge of conditions 4 (landscaping); 8 (Tree Protection) and 18 (noise protection) attached to planning permission 12/00577/FPM.
- 2.4 Permission granted under ref 13/00431/COND in November 2013 for discharge of Condition 14 (Wheel Washing) attached to planning permission reference number 12/00577/FPM.
- 2.5 Permission granted under ref 13/00554/COND in March 2015 for discharge of Conditions 16 (Travel Plan) and 22 (External Lighting) attached to planning permission reference number 12/00577/FPM.
- 2.6 Consent granted under ref 13/00570/NMA in March 2013 for non-material amendment to planning permission reference number 12/00577/FPM to alter the position of the vehicular access and amendments to specified trees.
- 2.7 Consent granted under ref 14/00575/NMA in November 2014 for non-material amendment to previously approved planning permission reference number 12/00577/FPM to amend bin store roof construction.
- 2.8 Consent granted under ref 15/00003/NMA in February 2015 for non-material amendment to previously approved planning permission reference number 12/00577/FPM to amend proposed road surface from block paving to tarmac.
- 2.9 Permission granted under ref 13/00391/COND in November 2013 for discharge of condition 5 (bat survey) and partial discharge of condition 3 (archaeological investigation) attached to planning permission 12/00608/CA.
- 2.10 Permission granted under ref 13/00392/COND in November 2013 for discharge of conditions 3 (materials); 10 (means of enclosure); 21 (bat survey report) and partial discharge of condition 9 (archaeological investigation) attached to planning permission 12/00577/FPM.
- 2.11 Consent granted under ref 13/00400/NMA in October 2013 for non-material amendment to previously approved planning permission reference number 12/00577/FPM for amended parking bays to No.5, vehicular access bellmouth northern kerbline repositioned, and brick wall to rear of Nos. 3 & 4 amended to close boarded fence.
- 2.12 Consent granted under ref 16/00230/NMA June 2016 in for Non-material amendment to previously approved planning permission 12/00577/FPM to amend landscaping proposals

to create 2no. new parking spaces; widening of driveways; amendments to approved fenestrations and materials; and amendments to wall finishes.

### **3. THE CURRENT APPLICATION**

3.1 This application has been made under S106A of the Town and Country Planning Act 1990 (as amended) to seek permission to vary the wording of the S106 agreement which was attached to planning permission reference 12/00577/FPM in respect of the wording of the affordable housing obligations.

3.2 Clause 3.1.7 of the legal agreement states:-

“In the event any Affordable Housing to which this Deed relates is the subject of a legal charge or mortgage and there is a default under any legal charge or mortgage of that Affordable Housing then the mortgagee or chargee shall be entitled to exercise its power of sale free from the restrictions set in this clause 3.1 provided that the mortgagee or chargee shall first have followed the procedure set out below:-

3.3 Clauses 3.1.7.1 - 3.1.7.7 in the legal agreement set out a number of clauses which need to be adhered to all of which refer to the mortgagee and chargee.

3.4 Changes to the housing administration regime in July 2018 introduced the added definition of administrative receiver. In view of this, the request has been made to amend the legal agreement to add the word “receiver and administrative receiver” to the clauses in 3.1.7 of the legal agreement after the words mortgagee or chargee. The reason given for this change is that it is required to bring the agreement in line with current lenders. Additionally, it is suggested that lenders prefer this wording when charging a property as it would help to obtain a higher market value were the property to be sold.

3.5 Added to the above Clause 3.1.7.3 of the agreement states:-

“The Council and the mortgagee or chargee shall endeavour to agree the Purchase Price within two weeks of receipt by the Council of the offer which shall represent the open market value of the Affordable Housing but subject to all or any tenancies of the Affordable Housing as may be subsisting at the date of the Notice of Sale and in default of such agreement the Purchase Price shall be determined on the same basis of valuation by an independent surveyor (“the Surveyor”) experienced in valuing residential land and property and who shall act as an expert and whose costs shall be borne by the Council and the mortgagee or chargee in equal shares and the Surveyor shall be appointed in default of agreement between the parties on the application of the Royal Institute of Chartered Surveyors (or successor organisation) and the Surveyor’s determination shall be made within one week of the application by the Council or the mortgagee or chargee;”

3.6 With regard to this clause the applicant is looking to also make changes to the wording seeking to substitute the word “endeavour” with “reasonable endeavours”. The reason given for this is that a lender considers “endeavours” as onerous, however, “reasonable endeavours” can be measured by a lender.

### **4. PUBLIC REPRESENTATIONS**

4.1 A site notice has been erected in accordance with Section 5 (1) of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulation 1992. No comments or representations have been received.

## **5. CONSULTATIONS**

### **5.1 Council's Housing Development Team**

5.1.1 No comments received.

## **6. RELEVANT PLANNING POLICIES**

### **6.1 Background to the Development Plan**

6.1.1 In the determination of planning applications development must be in accordance with the statutory development plan unless material considerations indicate otherwise. For Stevenage the statutory development plan comprises:

- Hertfordshire Waste Development Framework 2012 and Hertfordshire Waste Site Allocations Development Plan Document (adopted 2012 and 2014);
- Hertfordshire Minerals Local Plan 2002 – 2016 (adopted 2007); and
- The Stevenage District Plan Second Review 2004.

6.1.2 The National Planning Policy Framework sets out that decision-takers may give weight to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and their degree of consistency with policies in the National Planning Policy Framework.

6.1.3 In considering the policy implications of any development proposal, the Local Planning Authority will assess each case on its individual merits.

### **6.2 Central Government Advice**

6.2.1 A revised National Planning Policy Framework (NPPF) was published in February 2019. The NPPF sets out the Government's planning policies for England and how these are expected to be applied. Annex 1 of the NPPF provides guidance on how existing local plan policies which have been prepared prior to the publication of the NPPF should be treated. Paragraph 213 of the NPPF applies which states that due weight should be afforded to the relevant policies in the adopted local plan according to their degree of consistency with it.

6.2.2 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is itself a material consideration. Given that the advice that the weight to be given to relevant policies in the local plan will depend on their degree of consistency with the NPPF, it will be necessary in the determination of this application to assess the consistency of the relevant local plan policies with the NPPF. The NPPF applies a presumption in favour of sustainable development.

6.2.3 In addition to the NPPF, advice in Planning Practice Guidance must also be taken into account. It states that, where the development plan is absent, silent or the relevant policies are out of date, paragraph 11 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

### **6.3 Central Government Legislation**

- Town and Country Planning Act 1990 (as amended);
- Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992;
- Planning Practice Guidance (2014).

## **7. APPRAISAL**

7.1 The main issue for consideration in the determination of this application is whether the proposed variations to the S106 agreement as set out under Section 3 of this report are acceptable to the Council as the Local Planning Authority.

### **7.2 Planning Policy Considerations**

7.2.1 Through Section 106a part 6(b) of the Town and Country Planning Act (1990), an application can be made to the Local Planning Authority to seek to vary the terms of a Section 106 agreement. This application has therefore been submitted, in accordance with the Town and Country Planning (Modifications and Discharge of Planning Obligations) Regulation 1992, to seek to vary the wording of affordable housing provision as specified in paragraphs 3.1 to 3.6 of this report.

7.2.2 The amendments sought to the wording are considered to be minor in nature and would not fundamentally change the requirements of the original permission. They would also bring the agreement in line with current housing legislation.

## **8. CONCLUSIONS**

8.1 The proposed changes to the S106 agreement as described are minor in nature and, as such, the proposed changes are not considered to weaken the Council's position. Therefore, the proposed changes are considered to be acceptable and it is recommended that this deed of variation can be agreed.

## **9. RECOMMENDATIONS**

9.1 The Committee agree to the variation of clauses 3.1.7.1 to 3.1.7.7 of the S106 agreement dated 13 August 2013 to add the word "receiver or administrative receiver" and at clause 3.1.7.3 to substitute the word "endeavour" with the words "reasonable endeavours" and to delegate authority to the Assistant Director of Planning and Regulation in conjunction with an appointed Solicitor on behalf of the Council to amend the wording of the variation to the S106 agreement.

## **10. BACKGROUND DOCUMENTS**

The application file, forms, plans and supporting documents having the reference number relating to this item.

2. Stevenage Borough Council Supplementary Planning Documents – Parking Provision adopted January 2012 and the Stevenage Design Guide adopted October 2009.

3. Stevenage Borough Local Plan 2011-2031 adopted May 2019.

4. Responses to consultations with statutory undertakers and other interested parties referred to in this report.

5. Central Government advice contained in the National Planning Policy Framework February 2019 and National Planning Policy Guidance March 2014.

6. Letters received containing representations referred to in this report.