

The Meeting: Planning and Development Agenda Item:
Committee

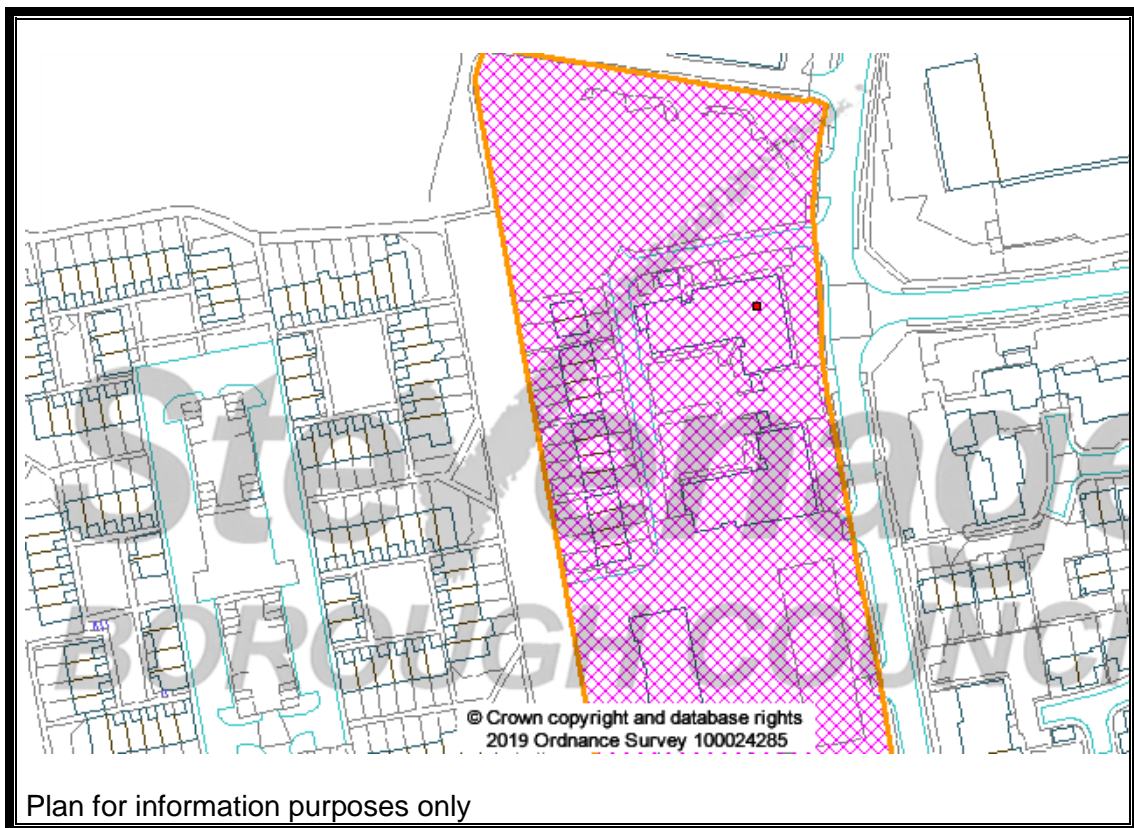
Date: 8 December 2022

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Application Nos:	22/00764/S106
Location:	Moxham House, Giles Crescent, Stevenage
Proposal:	Deed of variation to S106 Agreement dated 11.08.2016 approved under planning permission reference 15/00253/OPM to delete clause 12.5 and insert new clause 19, which incorporates a mortgage exclusion clause.
Drawing Nos.	DEED OF VARIATION MOXHAM HOUSE; OFFICIAL COPY (REGISTER) - HD129053; OFFICIAL COPY (TITLE PLAN) - HD129053; SECTION 106 AGREEMENT DATED 11.08.2016
Applicant:	Jignesh Harari
Date Valid:	18 August 2022
Recommendation:	Agree Variation of S106 Agreement.



1. SITE DESCRIPTION

- 1.1 The application site comprises a residential building in use as flats located in the north east of Stevenage, approximately 2.8km from Stevenage town centre. The site is situated in the south western corner of the Pin Green Industrial Estate and is bounded by Wedgwood Way to the east, amenity grassland, a path and cycleway to the south with Martins Way beyond, a tree belt to the west, beyond which are residential properties in Ely Close and industrial and commercial buildings of the industrial estate to the north. To the north west of the application site is Wellfield Wood which is a designated Wildlife Site. The site was formerly occupied by the DuPont UK Headquarter offices and former training area.

2. RELEVANT PLANNING HISTORY

- 2.1 15/00253/OPM outline application for the demolition of existing buildings and provision of up to 200 new homes, up to 900 sqm of Use classes A1/A2/A3/D1, provision of residential amenity space and associated access and car parking granted planning permission 11 August 2016.
- 2.3 16/00782/RMM Reserved matters application pursuant to planning permission 15/00253/OPM for the erection of 38 no. two bedroom apartments, 42 no. one bedroom apartments, and 14 no. 3 bedroom dwellings, seeking approval of the appearance, landscaping, layout and scale granted planning permission 21 February 2017.
- 2.4 17/00185/RMM Reserved Matters application pursuant to outline planning permission 15/00253/OPM for 37 no. one bedroom apartments, 67 no. two bedroom apartments and commercial space; seeking the approval of the appearance, landscaping, layout and scale granted planning permission 9 June 2017.
- 2.5 17/00376/FPM Erection of apartment building containing 70 apartments with associated access, parking and landscaping granted 21 December 2017.
- 2.6 16/00742/S106 Variation of clause 3.1.3.3 (affordable housing), clause 3.1.4.1 (affordable housing), clause 12.5 (obligation exclusion), and clause 5.4 of schedules 2 and 4 and clause 8 of schedule 4 (mortgagee exclusion) of the section 106 Agreement (dated 11 August 2016) approved under planning permission 15/00253/OPM granted 7 December 2018.

3. THE CURRENT APPLICATION

- 3.1 This application has been made under S106A part 6(b) 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: 15/00253/OPM to delete clause 12.5 and insert new clause 19, which incorporates a mortgage exclusion clause. Clause 12.5 of the agreement states:

“12.5 an Affordable Housing Provider and its successors in title or the mortgagee of an Affordable Housing Provider and the mortgagees of any successors in title”.

- 3.2 This application seeks permission to delete clause 12.5 and insert new clause 19, which incorporates a mortgage exclusion clause:

“19. 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:

(a) 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 shall have used reasonable endeavours over a period of three (3) 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

(b) if such disposal has not completed within the three (3) 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”.

- 3.3 The proposal before the Council does not consist of or include any alteration to the external appearance of the existing building nor change the number of flats, including affordable units.

- 3.4 The application was considered by Members at Planning and Development Committee on the 1 November 2022, where it was resolved to agree the variation subject to a period of 6 months rather than 3 months as proposed, namely;

*“(a) 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 shall have used reasonable endeavours over a period of **six (6) 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*

*(b) if such disposal has not completed within the **six (6) 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”.*

- 3.5 The applicant has advised they are unable to accept the amendment to 6 months rather than 3 months as this would not be accepted by the lenders. Their justification is as follows:

i) Firstly, at present the Section 106 Agreement contained within this scheme contains a defective mortgagee exclusion clause. As a result, when this property is included in a debt finance exercise carried out by the Association, we are unable to obtain the maximum value (MV-T: 60%-80% of the full value of the property) and instead are offered a restricted value (EU-V: 20-40% of the full value of the property). With 40 units constructed in 2019 for this scheme, this amounts to a loss of circa £1.6 million which could in turn be used to build and develop affordable housing to meet an ever-growing need for these homes. The proposal of six months, as suggested, would not be accepted by the lender, and therefore would still be considered as defective, and thus limiting the value a lender will apply.

ii) Secondly, the three-month moratorium period is a standard which is recommended by the National Housing Federation as well as the Greater London Authority designed to help achieve full value funding against borrowings from most lenders; a standard which is now being successfully adopted across many local authorities and key stakeholders. This is becoming widely accepted as Councils begin to appreciate the negative impact that this restriction places on Housing Associations when raising finance for new homes. We understand that this standard wording has been accepted by the

following districts: East Hertfordshire, Dacorum, Broxbourne, St Albans, and Three Rivers District Council. As mentioned above, if this standard were to be allowed, we could increase our ability to borrow against the properties as security and continue our investment programme further into the future.

- 3.6 Members are therefore requested to re-consider the proposed variation subject to the three-month moratorium period as originally proposed.

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. At the time of drafting this report, no comments or representations have been received.

5. CONSULTATIONS

- 5.1 None required.

6. RELEVANT PLANNING POLICIES

6.1 Background to the development plan

- 6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that the decision on the planning application should be in accordance with the development plan unless material considerations indicate otherwise. For Stevenage the statutory development plan comprises:

- The Stevenage Borough Council Local Plan 2011-2031
- Hertfordshire Waste Development Framework 2012 and Hertfordshire Waste Site Allocations Development Plan Document (adopted 2012 and 2014); and
- Hertfordshire Minerals Local Plan 2002 – 2016 (adopted 2007).

6.2 Central Government Advice

- 6.2.1 A revised National Planning Policy Framework (NPPF) was published in July 2021. This largely reordered the policy substance of the earlier 2012 version of the NPPF albeit with some revisions to policy. The Council are content that the policies in the Local Plan are in conformity with the revised NPPF and that the Local Plan should be considered up to date for the purpose of determining planning applications. The NPPF provides that proposals which accord with an up to date development plan should be approved without delay (para.11) and that where a planning application conflicts with an up to date development plan, permission should not usually be granted (para.12). This indicates the weight which should be given to an up to date development plan, reflecting the requirements of section 38(6) of the 2004 Act.

6.3 Planning Practice Guidance

The PPG contains guidance supplementing the NPPF and with which Members are fully familiar. The PPG is a material consideration to be taken into account together with the National Design Guide (2019) which has the same status as the PPG.

6.4 Community Infrastructure Levy Charging Schedule

- 6.4.1 Stevenage Borough Council adopted a Community Infrastructure Levy Charging Schedule in 2020. This allows the Council to collect a levy to fund infrastructure projects

based on the type, location and floor space of a development. This proposal would not be CIL liable as no additional floor space is proposed under this application.

7. APPRAISAL

- 7.1 The main issue for consideration in the determination of this application is whether the proposed variation as set out in section 3 above is acceptable to the Local Planning Authority.

7.2 Land Use 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 the amendment to the original S106 agreement attached to planning permission reference 15/00253/OPM as described above.
- 7.2.2 The amendment is required as the site has been purchased by the Housing Association Metropolitan and the original provisions as set out in the S106 agreement are not acceptable to their lenders. At present when charging, the properties in Moxham House are being restricted by the lender in value due to there being a defective mortgagee exclusion clause. Metropolitan are therefore seeking to modify this clause to enable them to receive full value from the lender, which would in turn allow the Housing Association to raise more money in order to continue building affordable housing for those in need. The amendment as described in section 3 above will now be considered.
- 7.2.3 The application seeks to delete clause 12.5 of the Section 106 Agreement dated 11 August 2016 and insert new clause 19 which incorporates a mortgagee exclusion clause. The proposed amendment is not considered to weaken the position of the Council and would enable the Housing Association to receive full value from the lender and can therefore be accepted.

8. CONCLUSION

- 8.1 The proposed change to the S106 agreement as described above is minor and is not considered to weaken the Council's position in any way. As such, the proposed change to delete clause 12.5 and insert new clause 19, which incorporates a mortgage exclusion clause is considered to be acceptable. It is therefore recommended that this deed of variation can be agreed.

9. RECOMMENDATIONS

- 9.1 That the Committee agree the deletion of clause 12.5 from schedule 2 and the insertion of clause 19, which incorporates a mortgage exclusion clause of the S106 agreement dated 11 August 2016 and delegate authority to the Assistant Director of Planning and Regulation in conjunction with an appointed Solicitor on behalf of the Council to agree the precise wording of the variations to the original S106 agreement.

10. BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents having the reference number relating to this item.
2. Stevenage Borough Local Plan 2011 – 2031 adopted 2019.
3. Central Government advice contained in the National Planning Policy Framework February 2021 and Planning Policy Guidance March 2014.