

Subject:	Former Dairy, 35-39 The Droveaway, Hove, BN3 6LF		
Date of Meeting:	4th October 2023		
Report of:	Liz Hobden, Head of Planning		
Contact Officer:	Name:	Emily Stanbridge	Tel: 01273 292101
	Email:	Emily.stanbridge@brighton-hove.gov.uk	
Ward affected:	Hove Park		

1. PURPOSE OF THE REPORT

- 1.1. The purpose of this report is to consider a request to vary one of the Heads of Terms agreed by Planning Committee in March 2023 in relation to proposed Section 106 Legal Agreement to be secured in connection with planning application BH2022/00456. The agreed S106 Head of Term sought the following:
“On-site affordable housing of 3 units (2x affordable rent and 1x shared ownership)”
- 1.2. The applicant is seeking to vary this to still provide affordable housing, but instead by way of a commuted financial sum proportionate to the level of on-site provision previously sought.
- 1.3. The amended Head of Term would therefore read:
“Affordable housing contribution of £787,300 as a commuted sum.”

2. RECOMMENDATION

- 2.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **AGREE** the amended Head of Terms to the proposed S106 Agreement, subject to a review mechanism. The remainder of the S106 Heads of Terms would as per the original Committee agreement.

3. BACKGROUND INFORMATION

- 3.1. Policy CP21 of the City Plan Part 1 requires the following:

“The Council will require the provision of affordable housing on all sites of 5 or more dwellings (net) and will negotiate to achieve the following affordable housing targets:

- a) 40% onsite affordable housing provision on sites of 15 or more (net) dwellings;*
- b) 30% onsite affordable housing provision on sites of between 10 and 14 (net) dwellings or as an equivalent financial contribution;*

c) *20% affordable housing as an equivalent financial contribution on sites of between 5 and 9 (net) dwellings.”*

3.2. In this case, therefore, to comply with Policy CP20 the scheme (of 19 dwellings) was required to provide 40% affordable housing. The application was supported by a viability assessment which stated the site was capable of providing 16% affordable housing equivalent to 3 affordable dwellings on site. The applicant agreed to do so in principle.

3.3. In March 2023 the Planning Committee agreed they were minded to grant planning permission, subject to the completion of a s106 legal agreement, for the following:

BH2022/00456: Change of use from former dairy depot (B8) to mixed-use development comprising 19no. dwellings (Use Class C3) and commercial space (Use Class E), including erection of a new northern wing and a new central wing to courtyard; onsite car and cycle parking and associated works. (part-retrospective)

3.4. This was subject to several S106 Heads of Terms including one requiring the provision of three on-site affordable units, comprising 2 x affordable rent and 1 x shared ownership.

3.5. Since that date, the developer has been in contact with Registered Providers and the Council, and it has become clear that no such provider is able to take on the affordable units on this site owing to the small scale of the development.

4. PROPOSAL

4.1. It is proposed that the Head of Terms for the s106 is amended to replace the requirement for onsite affordable housing with a commuted sum to provide off-site affordable homes. This is to reflect the position of Registered Providers and the Council.

5. CONSULTATIONS

5.1. **Strategic Housing:** No objection.

This application as originally submitted offered three affordable homes on site which is a policy compliant position. This is made up of two homes for rent and one for sale.

5.2. However smaller numbers of affordable housing such as this are not currently viable for most Registered Providers (RPs) and the developer has shown that there has been no interest from RPs in purchasing these homes. The council also looks at potential purchase of rented homes but faces similar challenges in terms of viability and resources around smaller sites.

5.3. A move to commuted sum payment in lieu of providing units on site is outlined in the council's Affordable Housing Brief as a suitable option when no Registered

Provider has come forward to purchase the affordable homes. Commuted sums are used by the council to fund alternative affordable homes for rent through council led initiatives across the city including New Homes for neighbourhood and Home Purchase.

6. COMMENT

- 6.1. The sole consideration in the determination of this application relates to the acceptability of varying the proposed s106 legal agreement to change the affordable housing provision from on-site affordable units to a commuted sum to provide affordable housing off-site.
- 6.2. This development proposes 19 homes being developed as part of a mixed use commercial and residential development on the site of a former dairy. Council policy CP20 requires schemes providing more than 5 net residential homes to contribute to affordable housing in the city. For schemes of more than 15 homes (net) this is to be provided on site where viable.
- 6.3. Homes available through planning gain have traditionally been provided through Registered Provider (RP) partners with nominations to the rented homes from the council's Housing Register and affordable ownership homes sold via shared ownership sales based on the current national criteria.
- 6.4. However, sites with smaller numbers of homes available have more recently been rejected for purchase by the RP's as not viable. The developer has provided evidence that they have contacted a number of RP's, with each confirming that they are not able to take these units on given the size of the development. In response to this challenge, the council has developed and continues to look at alternative ways in which affordable housing achieved through planning gain can be provided.
- 6.5. The council can, in certain circumstances, also look to purchase such affordable rented homes but, similarly to RPs, face challenges in terms of viability and resources around smaller sites. Another alternative, as outlined in the councils Affordable Housing Brief, are commuted sums in lieu of onsite provision. These commuted sums are used by the council to fund alternative affordable homes elsewhere in the city, securing homes for rent through council led initiative such as New Homes for neighbourhood and Home Purchase. It is considered that a commuted sum would be the most practical in this instance.
- 6.6. The commuted sum of £787,300 has been calculated using the council's Developer Contribution Guidance and is equivalent to the 2x2 bedroom units and 1x3 bedroom unit previously secured.
- 6.7. It is therefore recommended that the Deed of Variation is permitted.

