

<b>Subject:</b>	Anston House, 137 - 147 Preston Road, Brighton Request to vary the Heads of Terms of Section 106 Agreement in connection with planning permission BH2016/02499.		
<b>Date of Meeting:</b>	20 May 2020		
<b>Report of:</b>	Liz Hobden, Head of Planning		
<b>Contact Officer:</b>	<b>Name:</b>	Luke Austin	<b>Tel:</b> 01273 294495
	<b>Email:</b>	luke.austin@brighton-hove.gov.uk	
<b>Ward(s) affected:</b>	Preston Park		

## 1. PURPOSE OF THE REPORT

- 1.1 To consider a request to vary the Heads of Terms of the Section 106 Agreement dated 30<sup>th</sup> October 2017 in connection with planning permission BH2016/02499 to allow conversion of the approved development to a Build to Rent development.

## 2. RECCOMENDATION

- 2.1 That the S106 Head of Terms with regard to Affordable Housing be varied in order to allow for a Build to Rent development, as set out below:

### **Build to Rent Housing:**

- A restriction that all homes are held as 'Build to Rent' under a covenant for at least 15 years
- Inclusion of a 'clawback' arrangement to fund the consequent affordable housing requirement in the event of any private rented housing being sold or taken out of the Build to Rent sector based on values of units at that particular time (as assessed for viability) within the 15 year covenant period.
- All units to be self-contained and let separately under unified ownership and management
- Submission of a Tenancy Agreement, for example of at least 3 years available to all tenants (unless tenants agree a lesser period) with a break clause of 1 month after initial 6m months. No upfront fees of any kind except deposits and rent in advance
- A minimum of 5% of all residential units to be built to wheelchair accessible standard and evidenced before first occupation. Marketing Agreement to include provision that all reasonable endeavours will be used to ensure wheelchair units are matched with disabled tenants.

### **Affordable Housing:**

- Provision of 13 affordable housing units on site based on rent levels 80% of market level (including service charge) [discount market rent]
- Provision of 17 affordable housing units on site based on rent levels capped at Local Housing Allowance rates (including service charge) [discount market rent]

- Provision of 15 x 1-bed and 15 x 2-bed affordable housing mix. The location of these affordable units may vary over time within the scheme however the reduced rent levels and overall mix of sizes shall remain the same.
- At least 10% of the affordable units will be to wheelchair accessible standard (initially - as location may change over time).
- Review mechanism to reassess the viability of the scheme

The remainder of the Heads of Terms will remain unchanged.

### **3. BACKGROUND INFORMATION**

3.1 Members were minded to grant full planning permission at Planning Committee on 14<sup>th</sup> December 2016 for the following application:

**BH2016/02499** (Anston House, 137 - 147 Preston Road, Brighton) - Demolition of existing building and erection of a new building of varying heights up to 13 and 15 storeys to provide 229 residential units (C3), flexible commercial/café space (B1/A3) use at ground level, car parking at ground and basement level, cycle parking, storage lockers, two new vehicular accesses, landscaping and amenity areas, refuse stores and associated plant.

3.2 The granting of permission was subject to the completion of a S106 agreement containing the following Heads of Term (amongst others) as set out in the original committee report:

- Affordable Housing: On site provision of 17no. affordable rent units and 13no. shared ownership units. Of these, 50% will be 1 bed units and 50% will be 2 bed units.
- Review Mechanism to reassess the viability of the scheme close to completion in order to, where possible, secure up to policy compliant level of affordable housing via an off-site financial contribution.

3.3 Planning Permission was granted on 2<sup>nd</sup> November 2017 following completion of the S106 agreement.

3.4 The developer wrote to the Council on 17<sup>th</sup> October 2019 seeking to bring forward the approved market sales residential units as a Build to Rent (BTR) tenure. The developer has indicated that following the granting of planning permission the proposal was reviewed in terms of current and future market conditions which revealed that the construction cost estimate had risen significantly, thereby reducing the profit to a level which is not considered commercially realistic for a development of this type and risk profile.

3.5 The developer has advised that the reduced profitability is unlikely to be fundable and therefore undeliverable in the current economic climate which is compounded by continued uncertainties within the housing market. On this basis, the developer proposes that the scheme be brought forward as a BTR development.

- 3.6 The proposed changes would result in amendments to the affordable housing provision by way of amending the 17 Affordable Rent units to Discount Market Rent with rents capped at Local Housing Allowance rates (including service charges) and the 13 Intermediate Units (shared ownership under the current consent) to Discount Market Rent (DMR) at no more than 80% market rental value (including service charges). The number of affordable units (30) would therefore remain unchanged and all units would be retained at rent levels in perpetuity.
- 3.7 The developer also requested that trigger point for the for the S278 Highways works to be altered from pre-commencement to pre-floor slab level.

#### **4. PROPOSAL**

- 4.1 The developer has written to the Council to request that the proposed development be delivered as Build to Rent and therefore the affordable housing element (30 Units) would therefore be delivered by an alternative means,

#### **5. COMMENT**

- 5.1 Following initial discussions with the developer and the Housing Strategy Team, the Local Planning Authority (LPA) advised conversion to BTR would be acceptable under the current permission on the basis that the number of affordable housing units were to be retained and the 17 Affordable Rent units would become DMR and capped at Local Housing Allowance rates. The remaining 13 units would be converted from Shared Ownership to DMR; no more than 80% of market value (including service charges). The Housing Strategy Team have confirmed that this approach is acceptable and would comply with the Affordable Housing Brief.
- 5.3 The LPA had initial concerns that the proposed scheme had the potential to be more profitable and therefore had the potential to provide more affordable housing which would not be included within the proposal. Furthermore, it is acknowledged that the economics of BTR schemes differ from a market development and therefore the viability assessment requires a different approach. On this basis a Financial Viability Appraisal was submitted by the developer which indicated that the BTR proposal could not viably provide any more affordable housing than proposed.
- 5.4 The LPA commissioned the District Valuer Service (DVS) to review the information provided. The DVS concluded that the scheme cannot viably provide more affordable housing than is being provided by the applicant, however there were several discrepancies within the methodology used including the rental values.
- 5.5 Given the DVS conclusions it is therefore considered that a robust viability case has been made that the scheme cannot provide any additional affordable housing units.

- 5.7 As set out in the revised Heads of Terms wording in section 2, the LPA's standard clauses will be added to the S106 which relate to BTR developments in order to secure that all units are held as BTR under a covenant for 15 years. A 'clawback' arrangement shall also be included to fund the consequent affordable housing requirement should any of the BTR units being sold or privately rented within the 15 year period. The review mechanism shall also be updated in order to reflect the BTR development.
- 5.8 The affordable housing units and their respective rent levels shall be retained in perpetuity.
- 5.9 It is therefore considered that the proposed changes accord with the priorities of policy CP20 of the City Plan Part One and the Affordable Housing Brief.
- 5.10 Background Documents  
Planning Application **BH2016/02499**.