

Subject:	Former KAP garage, Newtown Road		
Date of Meeting:	9 March 2022		
Report of:	Liz Hobden, Head of Planning		
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Ward(s) affected:	Hove Park		

1. PURPOSE OF THE REPORT

- 1.1. To consider a request to vary the Heads of Terms of Section 106 Agreement dated 28 September 2020 in connection with planning permission BH2018/03356 on the following points:
- Vary the clause requiring that 18 affordable rented dwellings are to be provided to instead provide a financial contribution (of £3.642M) for offsite affordable units in lieu of the on-site provision;
 - Vary the clause requiring 14 shared ownership affordable housing units to allow for either shared ownership or shared equity units; and
 - Transfer/Substitute the requirement for a financial contribution of £46,200 towards the Local Employment Scheme and instead require an enhanced financial contribution of £40,173 for offsite affordable housing.
 - Include a requirement to contribute £6,027 (the balance of the sum originally secured) to support the Local Employment Scheme Co-ordinator to work with the developer and their selected contractor to maximise the use of local supply chain, local labour, training and apprenticeship opportunities throughout the construction phase and provide monitoring.

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 **GRANT** the Deed of Variation to the S106 Agreement dated 28 September 2020 related to planning permission ref: BH2018/03356.

3. BACKGROUND INFORMATION

- 3.1. The permission relates to the redevelopment of the former Kap garage and car sales on Newtown Road. Full planning permission was granted for the following development:
BH2018/03356 - Demolition of existing buildings in association with car dealership (sui generis) to facilitate the erection of a mixed-use redevelopment to provide 148 dwellings (Class C3), 954sqm of office floorspace (Class B1), within a scheme of 3no Blocks ranging from 4 to 11 storeys in height with associated underground car

parking, cycle parking and landscaping and 22 sqm of cafe floorspace (Class A3).
Granted: 29 September 2020.

- 3.2. The permission provides for a residential led mixed used development involving 148 residential units and 954sqm of office space in three separate blocks set around a landscaped area with under cycle and vehicular parking.
- 3.3. The application secured, via the s106 legal agreement, 22% affordable housing. This provided for 18 affordable rented units and 14 shared ownership units.
- 3.4. The commencement of demolition and construction on site is earmarked for early/mid 2022, which will mean the development is undertaken in parallel with the approved developments nearby, such as at Sackville Trading Estate and Ellen Street.

4. PROPOSAL

- 4.1. The s106 Legal Agreement requires that 32 affordable housing units are provided. Eighteen of the new residential units must be offered up for affordable rent and 14 for shared ownership. A contribution of £46,200 is required for the Local Employment Scheme.
- 4.2. The proposal is to vary the legal agreement to firstly allow a commuted sum to be paid in lieu of the on-site affordable rented housing; secondly to allow for the 14 shared ownership units to be provided as either shared ownership or shared equity affordable housing; and thirdly to transfer/substitute part of the Local Employment Scheme Contribution to provide offsite affordable housing

5. CONSULTATIONS

- 5.1. **Housing Strategy:** No objection
Background:
Planning policy CP20: Affordable Housing requires the provision of affordable housing in developments of more than five homes. This is on a sliding scale as follows:
 - developments of between 5 and 9 homes to provide a 20% housing contribution (i.e., 20% of the homes being built) as a financial contribution.
 - developments of 10 to 14 homes to provide a 30% contribution either onsite or as a financial contribution and
 - developments of 15 homes or more to provide a 40% contribution onsite.
- 5.2. Provision of a commuted sum in lieu of onsite units is a policy position which can be applied in exceptional cases including where Registered Providers find it uneconomic or impractical to provide the units on site.
- 5.3. Supporting documents for the policy include the council's Affordable Housing Brief which is provided to developers and includes details such as the preferred unit and tenure mix, and the Developer Contribution Technical Guidance which provides a

policy overview on areas for developer contributions, enabling the granting of planning permission. The contributions to be secured as Planning Obligations under Section 106 of the Town and Country Planning Act 1990.

- 5.4. Affordable housing secured through S106 Agreements have historically been sold to a Registered Provider (RP) at a below market price for them to be provided as affordable homes (affordable rent or shared ownership). The council has several partner RPs based on their presence in and commitment to the city as confirmed via rent levels and nomination agreements.
 - 5.5. If an RP purchaser is not found among the partners, the developer can bring forward an alternative provider, but they will need to meet the conditions of the council's proposed S106 Agreement. Developers may seek to pay a commuted sum to the council in lieu of providing the housing onsite (which is within policy conditions), with such funds used towards providing affordable housing elsewhere in the city through the council's own programmes such as home purchase and New Homes for Neighbourhoods.
 - 5.6. Consideration is now also given as to whether the council could purchase S106 homes directly. Any assessment of risk, suitability and viability of the homes on offer would be undertaken along the same lines as that of the RPs.
- Presentation Application: Kap, Newtown Road – BH2018/03356
- 5.7. April 2020 – original planning application approved. Scheme to provide 22% affordable housing with 18 x affordable rent and 14 x shared ownership homes.
 - 5.8. Summer 2021 – the developers approached the council with confirmation that all the council's partner RPs had rejected the homes proposed. The reasons given were that there were too few units, they were pursuing alternative land-led opportunities, or seeking additional homes on top of S106 homes (as units provided as part of a S106 Agreement do not receive grant funding)
 - 5.9. The developers approached a further set of RPs who presented similar feedback with some not active in the local area.
 - 5.10. It is worth noting that cost is just one factor, as important consideration is also given to the quality of construction, long term maintenance issues and practical matters such as layout and outdoor space.
 - 5.11. B&HCC Housing have also assessed the purchase opportunity. This was restricted to the affordable rented homes as the council do not manage shared ownership properties at present. The four key factors in approaching the purchase are financial viability; the construction quality (particular regarding sustainability and future maintenance liabilities); nature of tenure; and operational considerations (management of the homes).
 - 5.12. Two options were considered for council purchase. Firstly the affordable rent homes within the Block B and secondly Block C was also investigated as it is a stand-alone block of 8 larger homes. This involved a valuation of the homes and viability undertaken based on the current Home Purchase process-

- 5.13. However, purchase was ultimately not considered suitable due to a combination of factors:
- The practical difficulties of managing rental homes in a mixed tenure block including housing for sale;
 - The homes would be a leasehold not freehold disposal. This applied even to the houses in Block C due to the underground car park constructed beneath the block. The council is keen to secure freehold interest;
 - A review of liability for wider site maintenance charges, some of which may not be rechargeable to tenants creating is an additional cost to the HRA;
 - There would have been an additional cost to secure car parking spaces; and
 - The property values within Block C were beyond the rates considered viable through the Home Purchase scheme operated by the council thereby not offering value for money (particularly when compared to the offsite housing that could be provided through the agreed commuted sum)
- 5.14. It was also noted that the provision of a commuted sum is a policy compliant position, and that such funds can be used to provide additional homes for affordable rent in the city by supporting the council's Home Purchase policy (and used towards other council projects).
- 5.15. Housing Finance officers confirm that commuted sums are an integral part of the delivery programme and are unlocking sites and allowing the home purchase scheme to continue at scale.

Shared Equity Housing

- 5.16. Landspeed Homes have confirmed they would like to take forward the affordable ownership units on the site supplying them as either shared ownership or shared equity. Shared equity was agreed at another site (Sackville Hotel, 189 Kingsway) and is an acceptable low-cost home ownership product that Housing would support.
- 5.17. Shared Equity Housing, where property dwellers and lenders share ownership of a property, falls within the national definitions of affordable housing for sale (as 'other low-cost homes for sale' NPPF definition). The national shared ownership eligibility criteria would also apply to the shared equity housing. Landspeed also apply a local connection as an additional eligibility criterion, which is not a national rule, but is supported by the Council.

Conclusion and Housing Strategy Position:

- 5.18. The council is actively assessing the purchase of s106 homes and consideration has been given to this scheme by both RPs and the council. A range of factors as described above has meant there is not a provider for the on-site affordable rent homes.
- 5.19. The scheme will however still benefit from on-site affordable home ownership either to be sold as shared ownership or shared equity.
- 5.20. In this instance with all factors above taken into consideration a commuted sum is now the most practical outcome for the affordable rented homes to be provided on this scheme.

- 5.21. Whilst achieving the homes on site is always the preferred option where viable and with suitable homes provided, a commuted sum remains a policy compliant position and will lead to an increase of affordable rented homes elsewhere in the city.

6. COMMENT

- 6.1. The main considerations in the determination of this application relate to the principle of varying the legal agreement to allow for the payment of a commuted sum in lieu of the on-site provision of 18 units in shared ownership, to allow for shared equity affordable housing and to transfer the financial contribution amount due for the Local Employment Scheme to offsite affordable housing.
- 6.2. City Plan Part One policy CP20 and the Affordable Housing Brief indicates that the Council's preference is for on-site affordable housing provision to help achieve balanced and mixed communities. However, the supporting text to the policy notes that this is not always possible, and that a commuted sum may be acceptable in 'exceptional circumstances':
"Only in exceptional circumstances, will the council accept a commuted sum or free serviced land in lieu of onsite provision on larger sites. These circumstances might include, for example, where the Registered Provider finds it uneconomic or impractical to provide the units agreed." (paragraph 4.244).
- 6.3. This is expanded on in the Developer Contributions Technical Guidance (2017) which notes that circumstances which might justify offsite provision or payment in lieu of affordable housing could include, in summary, where mixed community objectives/housing priorities could be better met in an alternative location; where there are high housing costs for occupiers associated with the development; or where a RP finds it uneconomic or impractical to provide the affordable units provided. With regards to the latter, the Guidance notes *"An example could be where on some sites it is not practical, from a management perspective, to provide and manage a small number of on-site affordable housing units."*
- 6.4. The final point is of some relevance to this proposal as it includes 18 affordable housing units within a block which would include other private and shared ownership housing. Registered Providers have currently indicated that this type of scenario would not be practical to manage, a view supported by the Housing Strategy Team.
- 6.5. The applicant has provided evidence that they have been unable to find a Registered Provider to take on the 18 affordable units. The key issues in the unwillingness of RPs to take on the units was the limited number of units (only 18) and the management issues associated with a mixed private / affordable rent block.
- 6.6. As noted in their response above, the Housing Strategy Team confirms that RPs are generally seeking to purchase a larger volume of units when they are making investment decisions as this will improve the viability of any scheme. For affordable rent, the local providers are generally seeking a minimum of 50 units within a standalone block. The Housing Team are satisfied that every effort has been made

to achieve the sale of the 18 affordable rented units to a Registered Provider and that this approach is not possible at this time.

- 6.7. As noted in their response above, the Housing Strategy team has also explored whether the Council could purchase the units as part of its affordable housing portfolio but as noted above, this was dismissed as unworkable.
- 6.8. On this basis, it is concluded that a commuted sum in lieu of on-site provision is acceptable and preferable, and in accordance with planning policy and guidance. The commuted sum would be put towards the Council's affordable housing programme within the city which includes homes for affordable rent, which has the benefit of providing homes with greater levels of affordability than the two shared ownership units that were to be provided on-site.
- 6.9. The 18 affordable units to be provided include 6 one bed, 8 two bed and 4 three bed homes in accordance with the preferred mix for affordable units set out in the Affordable Housing Brief. The commuted sum has been arrived at in accordance with the formula set out within the Developer Contributions Technical Guidance (June 2020) and the Schedule for Commuted sum payments for calculating affordable housing contributions (May 2021). The resulting figure is £159,000 for each one bed, £207,750 for each two bed and £256,500 for each three-bed unit. The overall total to be secured is £3.642M. The Housing Strategy Team have confirmed that the total offered by the applicant is in accordance with the guidance.
- 6.10. The second part of the proposal is the request to allow for the shared ownership affordable housing units to come forward as either shared ownership or shared equity affordable ownership.
- 6.11. A Shared Equity scheme is a scheme of affordable ownership which offers qualifying applicants discounts of at least 25% of open market value and does not charge rent on the discounted element (as in shared ownership purchase).
- 6.12. Shared Equity Housing falls within the national definitions of affordable housing for sale as 'other low-cost homes for sale' within the NPPF. The national ownership eligibility criteria is the same as for shared ownership affordable housing. In this instance Landspeed also apply a local connection as an additional eligibility criterion, which is not a national rule, but is supported by the Council.
- 6.13. The third request is to amend the required financial contribution of £46,200 for the Local Employment Scheme and instead require these monies for additional offsite affordable housing contribution and monitoring of the LES.
- 6.14. The Local Employment Scheme provides training for the benefit of the construction industry as a whole, to mitigate the impact of the predicted skills shortage in the sector and is necessary to meeting policy objectives in respect of Social Infrastructure in providing suitably trained individuals required for demolition or construction services for new development.

- 6.15. The training provision would be for people living within the administrative boundary of Brighton & Hove, and directly related to the employment needs of the development with the aim to increase opportunities to develop local skills and business performance and expand employment provision.
- 6.16. In this instance, the application site is adjacent to significant developments under construction at Sackville Trading Estate and Ellen Street. With over £360,000 for training and employment initiatives already secured in these areas there is a potential overprovision of employment contribution which would be difficult to spend during the construction phase. As such it is proposed to amend the requirement to provide the full contribution (of £46,200) for the LES. A reduced sum is now required with a total of £6,027 required for monitoring of the scheme.
- 6.17. As the original scheme failed to provide for a policy compliant level of 40% affordable housing it is required that the sum of £40,173 (the leftover sum from the LES) is put towards additional affordable housing provision. In this instance it is considered that the sum of £40,173 should be added to the overall offsite affordable housing contribution total.
- 6.18. In conclusion, it is considered that the applicant's proposal to vary the legal agreement to provide a commuted sum, in lieu of the onsite affordable rented portion of the affordable housing, is acceptable and would accord with the thrust of relevant planning policy and the aims of the Council. Shared equity is an acceptable form of affordable housing as set out in the NPPF and it is also agreed that the s106 legal agreement should be varied to allow either shared ownership or shared equity affordable housing for this part of the affordable housing offer. It is also agreed that the Local Employment Scheme contribution (excluding monitoring fees) is not required in this specific case and as such the requires monies should be put towards additional offsite affordable housing. It is therefore recommended that the Deed of Variation is permitted.

7. BACKGROUND DOCUMENTS: Planning Application BH2018/03356.

