

Subject:	Westerman Complex, School Road, Hove, BN3 5HX		
	Request to vary the terms of the Deed of Variation to the Section 106 agreement relating to planning permission BH2018/02583 (Application for variation of condition 1 of BH2016/02535 to allow amendments to the approved drawings including alterations to the car parking layout and internal layouts. Variation of condition 4 regarding the layout of the units to provide one additional one-bed unit, and one less two-bed unit and condition 6 regarding the maximum building heights to state that other than lift overruns the maximum buildings heights shall be as stated in the condition) as amended by BH2020/03810.		
Date of Meeting:	10 August 2022		
Report of:	Executive Director Economy, Environment and Culture		
Contact Officer:	Name: Russell Brown	Tel: 07394414471	
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Wards Affected:	Wish		

1. PURPOSE OF THE REPORT

- 1.1. To consider a request to vary the Heads of Terms of a Deed of Variation to the Section 106 Agreement signed in connection with planning application BH2018/02583, in order to amend the affordable housing unit mix and tenure from 7 to 14, one bed affordable rent units; from 19 to 11, one bed shared ownership units; and to provide a three bed affordable rent unit.

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** a second Deed of Variation to the S106 Agreement so that the developer is obligated to provide 14, one-bed affordable rent units; ten two-bed affordable rent units; a three-bed affordable rent unit; eleven one-bed shared ownership units; and five two-bed shared ownership units.

3. BACKGROUND INFORMATION

Relevant History

- 3.1. Members were Minded to Grant full planning permission at Planning Committee on 12 July 2017 for the following development:
“BH2016/02535 Outline application for Demolition of existing mixed use buildings and erection of 104 dwellings (C3) and 572 Sqm of office space (B1) and approval of reserved matters for access, layout and scale.”

- 3.2. The granting of permission was subject to the completion of a S106 Agreement containing the following Head of Term (amongst others), as set out in the original Committee report:
“40% affordable housing (56% shared ownership (24 units) and 44% (17 units) affordable rent), comprising 26 one-bed units and 15 two-bed units”
- 3.3. Planning permission was granted on 3rd August 2018, following completion of the S106 Agreement.
- 3.4. An application (BH2018/02583) was submitted and subsequently approved on 15th March 2019 for the following:
Application for variation of condition 1 of BH2016/02535 (Outline application for Demolition of existing mixed use buildings and erection of 104 dwellings (C3) and 572 Sqm of office space (B1) and approval of reserved matters for access, layout and scale.) to allow amendments to the approved drawings including alterations to the car parking layout and internal layouts. Variation of condition 4 regarding the layout of the units to provide one additional one-bed unit, and one less two-bed unit and condition 6 regarding the maximum building heights to state that other than lift overruns the maximum buildings heights shall be as stated in the condition.
- 3.5. A Reserved Matters application (BH2018/02561) was submitted and subsequently approved on 3rd September 2019 for the following:
Reserved matters application pursuant to outline permission BH2018/02583 for approval of appearance and landscaping.
- 3.6. A Deed of Variation was sought to the s106 Agreement in connection with the above application to amend the unit mix, providing one additional one-bed unit, and one less two-bed unit. This was signed on 29th August 2019.
- 3.7. Another application (BH2020/03810) was submitted and subsequently approved on 21st May 2021 for the following:
“Variation of Conditions 15 (Residential Soundproofing), 17 (Commercial Soundproofing), 22 (Refuse/Recycling), 24 (Bicycle Parking), 25 (Motorcycle Parking) & 26 (Disabled Car Parking) of application BH2018/02583 (Application for variation of condition 1 of BH2016/02535 - Outline application for Demolition of existing mixed use buildings & erection of 104 dwellings (C3) & 572 Sqm of office space (B1) & approval of reserved matters for access, layout & scale.) to allow for a phased occupation of the development.”

4. PROPOSAL

- 4.1. The developer has written to the Council to request that the unit and tenure mix of affordable housing on site is amended as follows:

	Approved	Proposed
1-bed affordable rent	7	14
1-bed shared ownership	19	11
3-bed affordable rent		1

- 4.2. The Deed of Variation to the S106 would also remove reference to Intermediate Housing (because is no longer defined in the NPPF) and replaces it with Shared Ownership, as well as reinstating staircasing.
- 4.3. The developer (Hyde Housing) has stated that these variations to the unit and tenure mix are necessary so that the legal agreement aligns with how they are intending to deliver the scheme on site.

5. CONSULTATION

- 5.1. **Housing Strategy:** It increases the amount of affordable rent units which are much needed in the city.

6. COMMENT

Planning Policy

- 6.1. City Plan Part One Policy CP20 indicates that the Council will only accept not providing affordable housing on-site in exceptional circumstances.
- 6.2. 40% affordable housing is still being provided, only now in a ratio of 61% (25 units) shared ownership to 39% affordable rented (16 units) is proposed. This was previously 56% shared ownership to 44% affordable rented. No changes to the 41 affordable housing units are proposed.
- 6.3. Paragraph 4.213 of City Plan Part One Policy CP19 states that an estimated 65% of the overall need / demand (for both market and affordable homes) will be for two and three bedroom properties. A three bed affordable dwelling and one less one bed affordable dwelling is proposed.
- 6.4. The main considerations in the determination of this application relate to the principle of varying the legal agreement to allow for 14 x 1 bed affordable rent units, 11 x 1 bed shared ownership units and a three bed affordable rent unit to be provided on site in place of the agreed mix.
- 6.5. It is considered that the implementation of the development would deliver planning and economic benefits, including much-needed affordable housing, in a sustainable location, with good access to shops and services, and sustainable transport links. With the variation, it would also deliver more affordable rent units, which are in demand in the city. The s106 also commits the developer to £666,087.69 of contributions towards public art, local education

services, employment schemes, sustainable transport improvements, recreation facilities and wheelchair housing.

- 6.6. The definition of “Affordable Housing” changes to:
“means housing for sale or rent, provided to Eligible Households whose needs are not met by the market (including housing that provides a subsidised route to home ownership) as defined in the NPPF. Eligibility is determined with regard to local incomes and local house prices and Affordable Housing should include provision for the home to remain at an affordable price for future Eligible Households”
- 6.7. The definition of “Affordable Rent” changes to:
“means the rent set at no more than the Local Housing Allowance or 80% of the Local Market Rent, whichever is the lower (including service charges where applicable) (and annual increases shall be restricted to RPI-X plus 0.5%)”
- 6.8. The definition of “Shared Ownership Lease” would be as follows:
“means a lease substantially in a form approved or published by Homes England whereby the tenant having paid an initial premium calculated by reference to a minimum of 25% and a maximum of 75% of the Open Market Value of the particular Affordable Housing Unit pays a rent in respect of the remaining equity held by the owner plus (if appropriate) a reasonable service charge and whereby the tenant may in successive tranches purchase up to 100% of the equity in the dwelling (Staircasing) PROVIDED THAT the rent per annum will;
(a) be at a level not exceeding 2.75% of the Open Market Value of the Registered Provider’s retained share of the relevant dwelling; and,
(b) not be at a level which is in conflict with any applicable Homes England restrictions relating to charges payable by the tenant; and
(c) annual rent increases shall not exceed RPI-X Index + 0.5%”
- 6.9. The definition of “Staircasing” would be as follows:
“means the purchase by an owner-occupier of additional equity in the Shared Ownership Housing Unit in accordance with the arrangements as agreed by the Registered Provider with the Owner/Council;”
- 6.10. In conclusion, the continued provision of on-site affordable housing through changing the unit and tenure mix is considered acceptable and to accord with City Plan Part One Policies CP19 and CP20. The proposed variation would allow a financially-viable and successful housing development to be achieved. As such, it is recommended to vary Clauses 1.1 and 3.4.1; Paragraphs 2, 3(iii) and 4 of Schedule 3; and paragraph 5(i) of Schedule 2 of the S106 dated 1st August 2018 amended by the Deed of Variation dated 29th August 2019.

Background Documents:

Planning Application BH2016/02535

Planning Application BH2018/02561