

Subject:	Kings House, Grand Avenue, Hove Request to vary the Heads of Terms of Section 106 Agreement in connection with planning permission BH2020/03583.		
Date of Meeting:	2 November 2022		
Report of:	Liz Hobden, Head of Planning		
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Ward(s) affected:	Central Hove		

1. PURPOSE OF THE REPORT

- 1.1 To consider a request to vary the Heads of Terms of the Section 106 Agreement dated 5 April 2019 in connection with planning permission BH2020/03583 to allow amendments to the affordable housing provision. The development will ultimately provide for 60% affordable housing and as such it is considered reasonable to allow the following amended terms:
- The removal of the requirement to undertake a review of viability;
 - The removal of the requirement to pay a commuted sum of £265,492 towards affordable housing.

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 Deed of Variation to the following Head of Term for the S106 Agreement in respect of Affordable Housing in order to remove the requirement for a commuted sum and remove the requirement for a review mechanism.

3. BACKGROUND INFORMATION

- 3.1 Members were Minded to Grant full planning permission at Planning Committee on 07 November 2018 for the following application:

BH2018/00868 (*Kings House, Grand Avenue, Hove*) - Demolition of existing office building (B1) fronting Grand Avenue. Conversion of existing (B1) building fronting Queens Gardens to 69no dwellings (C3) with associated alterations and extensions. Erection of a 10 storey building over basement carpark comprising of 72 flats on Grand Avenue and erection of a 6 storey building comprising of 28 flats on second avenue. Associated underground parking, landscaping, cycle storage, bins and recycling points. The decision was issued on 10 April 2019.

- 3.2 This application was then varied under application BH2021/00850 and then BH2020/03583 which approved various minor alterations to the design and the layout.
- 3.3 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: Provision of 28 units on site comprising 15 rent units and 13 shared ownership, and a contribution of £265,492 towards off-site provision. On-site affordable housing to be ready for occupation prior to 50% occupation of private residential accommodation,
 - Review of viability,
- 3.3 Planning Permission on the original application was granted on 10 April 2019 following completion of the S106 agreement. The Legal agreement was carried through with the grant of the most recent approved application (BH2020/03583) on 15 October 2021.
- 3.4 The s106 agreement secured 28 affordable units (16% of the total), comprising 15 Affordable Rent units and 13 Shared Ownership units, to be located within the Second Avenue block, in addition to a commuted sum of £265,492 to provide affordable housing off-site.
- 3.5 The developer wrote to the Council on 3 December 2020 confirming that the majority of the units in the two new-build blocks, had been sold to the Southern Housing Group which are one of the Council's partners in the Affordable Housing Development Partnership. It is therefore intended that the affordable provision would be increased to provide a total of 92 units (54%) including 28 Affordable Rent units within the Second Avenue block, and 64 Shared Ownership units within the Grand Avenue block.
- 3.6 A proposal for a deed of variation to increase the affordable housing element from 28 to 92 units (54% overall) and a request for the affordable housing commuted sum and review mechanism be removed was agreed by planning committee on 10 March 2021.

4. PROPOSAL

- 4.1 The developer has now written to the Council again to request that the affordable housing commuted sum and review mechanism be removed but the original total of 28 affordable units in the s106 agreement is to be retained.

5. COMMENT

- 5.1 The s106 agreement linked to the planning permission at Kings House (BH2018/00868) provides for delivery of 28 affordable units (15 affordable rent and 13 shared ownership) together with a contribution of £265,492 towards off-site provision. This level of provision was agreed based on a viability assessment submitted by the applicant which was reviewed independently by the DVS. Since the agreed level of affordable housing fell short of the of Policy CP20 requirement for 40% affordable housing, the s106 included provision for a Review Mechanism requiring that an updated viability appraisal was to be undertaken at a specified point following commencement of the development.
- 5.2 Southern Housing Group have now acquired both new build blocks which totals 100 residential units. Of these 72 are to be shared ownership and 28 for affordable rent. Overall, 100 out of the 169 residential units within the entire development would be affordable homes, with a percentage of 60% overall.
- 5.3 The overall percentage of affordable homes would be greater than the 54% affordable housing which was proposed in a deed of variation agreed by committee in March 2021.
- 5.4 Of the 100 units acquired by Southern Housing Group the 28 units secured in the original s106 legal agreement (13 affordable rent and 15 shared ownership) have been bought outright by the registered provider with their own funds.
- 5.5 The remaining 72 units have been acquired solely with funding from Homes England. Details of the funding and land registry details have been provided to the council.
- 5.6 Homes England is a non-departmental public body that funds new affordable housing in England. Homes England does not provide funding for affordable housing secured within a legal agreement. They only provide funding for any additionality. As such the s106 is not to be varied in respect of the level of affordable housing secured. The 28 affordable homes to be secured will not be altered.
- 5.7 Whilst the 72 additional affordable homes acquired with Homes England funding are not to be secured within the s106 legal agreement, under the terms of the funding agreement between Homes England and Southern Homes they will be required to be occupied and retained as affordable housing. Overall, the scheme would provide for 100 affordable units which would be 60% of the entire scheme. The LPA is satisfied that all 100 homes purchased by Southern Housing would be affordable housing. As such, the development overall would provide significantly more than the 40% affordable housing required in CP20 of City Plan Part One. In the circumstances, it is not deemed reasonable to seek a review mechanism to re-test the viability of the scheme as more than 40% of the scheme would be affordable housing. Furthermore, it would not be reasonable to seek the additional commuted sum of £265,492 towards

affordable housing in the agreement as the percentage of affordable housing on site would be greater than 40%.

- 5.8 Overall, whilst only 28 affordable homes are secured in the legal agreement the proposal would ultimately provide for 100 affordable homes (60% affordable housing) with 72 additional homes secured through Homes England funding. As such request to remove the viability review mechanism and the additional commuted sum for affordable housing are considered acceptable. These changes and are therefore recommended for approval.