

**Application Number: 13/11450** Modification or Discharge of Planning Obligation

**Site:** Land At Crow Arch Lane & Crow Lane, Crow, Ringwood BH24 3DZ

**Development:** **Proposed amendments to the Section 106 Agreement to modify the obligation where it relates to the mortgagee exclusion clause**

Mixed development of up to 175 dwellings (Use Class C3); up to 1.5 hectares of small employment (Use Classes B1 & B2); nursing home (Use Class C2); child nursery (Use Class D1); hotel / pub / restaurant (Use Class C1); fitness centre (Use Class D2); retail / professional services / restaurant (Use Class A1/ A2/ A3); open space areas; allotments; accesses on to Crow Lane and Crow Arch Lane; estate roads; footpaths; cycle ways; foul & surface water infrastructure (Outline Application with details only of access)

**Applicant:** Synergy Housing Ltd

<b>RECOMMENDATION</b>	<b>Grant revision to Section 106 Agreement</b>
<b>Case Officer</b>	<b>Jim Bennett</b>

**1 REASON FOR COMMITTEE CONSIDERATION**

Discretion of the Service Manager Development Management

**2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS**

Built-up area  
Cycleway Improvement  
Archaeological Site

**3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES**

**Core Strategy**

CS15: Affordable housing contribution requirements from developments  
CS25: Developers contributions

**Local Plan Part 2 Sites and Development Management Development Plan Document**

RING3 - Land south of Ringwood, west of Crow Lane and adjacent to Crow Arch Lane

**4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE**

Section 38 Development Plan  
Planning and Compulsory Purchase Act 2004

## **5 RELEVANT PLANNING HISTORY**

13/11450 - Mixed development of up to 175 dwellings (Use Class C3); up to 1.5 hectares of small employment (Use Classes B1 & B2); nursing home (Use Class C2); child nursery (Use Class D1); hotel / pub / restaurant (Use Class C1); fitness centre (Use Class D2); retail / professional services / restaurant (Use Class A1/ A2/ A3); open space areas; allotments; accesses on to Crow Lane and Crow Arch Lane; estate roads; footpaths; cycle ways; foul & surface water infrastructure (Outline Application with details only of access) - approved October 2014

Following approval of the outline application, subsequent reserved matters applications have been approved for Phases 1 and Final Phase (2/3). There is also a current application for erection of 24 dwellings within the allocated site under ref. 18/11648 on land to the south of the Castleman Trail.

## **6 PARISH / TOWN COUNCIL COMMENTS**

Ringwood Town Council: agree with the observation to be 'Officer Decision'.

## **7 COUNCILLOR COMMENTS**

Cllr J Heron - considers the wording allows for any mortgagee coming into possession of the property to sell it after three months, as open market housing. "Given the strength of Synergy Ltd's balance sheet and that the proposed wording does not even secure who the property is transferred to concerns are raised if the changes went ahead as currently set out. Legal Services will no doubt review the proposals and I would be obliged if I could be kept informed."

## **8 CONSULTEE COMMENTS**

Housing Development and Strategy Manager: the requested wording and clause has become established as an industry standard following joint work between UK Finance (ex-Council of Mortgage Lenders), Registered Providers, the National Housing Federation (the representative body for Registered Providers) and the legal profession. The existing mortgagee in possession clause within the S106 agreement para 6.11.7 already makes provision for a chargee to dispose of Registered Provider affordable homes under repossession conditions. Coupled with the role that is provided by Homes England (to protect and safeguard the interests of those who are housed by Registered Providers) it is not considered that the introduction of the standard MEC clause would increase any risks that the affordable homes would be either jeopardised or lost. Furthermore, the requested wording and clauses would bring the S106 agreement into line with the currently accepted template that is applied by the Council within new S106 agreements. In light of the above, and with no wish to impede the financial efficiency of Registered Providers, the requested revision is supported.

## **9 REPRESENTATIONS**

None

## **10 ASSESSMENT**

### **10.1 Introduction**

10.1.1 This is an application only to modify a Section 106 Agreement, and not a planning application.

10.1.2 Outline planning permission was granted on the 10<sup>th</sup> October 2014, under reference 13/11450, for a mixed development of up to 175 dwellings; up to 1.5 hectares of small employment; nursing home; child nursery; hotel / pub / restaurant ; fitness centre; retail /professional services / restaurant; open space areas; allotments; accesses on to Crow Lane and Crow Arch Lane; estate roads; footpaths; cycle ways; foul & surface water infrastructure. The application was made in outline, with all matters reserved except access.

10.1.3 An integral part of the outline planning permission was an Agreement under Section 106 of the Town and County Planning Act 1990, which was completed on the 31st July 2014. The Agreement secured the requisite level of affordable housing on site, off-site transport mitigation measures and works, the provision of a range of open space arrangements, allotments and a contribution towards primary education in Ringwood.

10.1.4 This application is made by Synergy Housing Ltd to modify the existing legal agreement. The modification is sought to enhance the organisation's borrowing capacity in respect of the mortgagee exclusion clause relating to affordable housing provision on site. An explanation outlining the reasoning for the modification and the precise amendments to be made to the legal agreement is included in the submission documentation. The applicant had pre-application discussions with the Council's Housing Strategy Section over the proposed changes, who have been consulted for their views on the proposed changes.

10.1.5 The only matters for consideration under this application are whether the proposed amendments to the legal agreement are acceptable or not.

## 10.2 The proposal

10.2.1 The applicant proposes to replace clause 6.11.7 (i) of the Planning Agreement. which relates to the mortgagee exclusion clause (MEC) relating to affordable housing provision on site and reads as follows:

- *'a Chargee of all or any part of the RP Affordable Housing Land whose power of sale has arisen and become exercisable at any time following the Transfer of such land to the Registered Provider or any successor in title to such Chargee PROVIDED THAT the Chargee shall use All Reasonable Endeavours to Transfer the housing concerned to another Registered Provider'.*

10.2.2 The applicant explains that the current MEC is not in line with current lending requirements and is likely to result in a reduced Existing Use valuation. The potential shortfall in valuation has a significant impact in terms of borrowing capacity. Ultimately, a higher valuation secured against the development will enable the applicant to increase the supply of funding for affordable housing in the area. In order to maximise the possibility of securing a higher valuation, the applicant requests replacement of the wording of clause 6.11.7 (i) with the following form of wording:

- *'The [affordable housing provisions] in this Agreement [ at clause/paragraph [ ]] shall not be binding upon a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the [affordable dwellings] or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:*

- *such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the [affordable dwellings] and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the [affordable dwellings] to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and*
- *if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the [affordable dwellings] free from the [affordable housing provisions] in this Agreement which provisions shall determine absolutely'*

### 10.3 Assessment

10.3.1 The applicant had pre-application discussions with the Council's Housing Strategy Section over the proposed changes, prior to submission of this formal application to vary the legal agreement, when the principle of the proposed changes were broadly agreed. Having assessed the wording sought by this application, the Case Officer, Housing Development and Strategy Manager and Legal Section are in agreement that the wording sought has become established as an industry standard. Furthermore, the requested wording would bring the S106 agreement into line with the Council's current S106 template.

10.3.2 Cllr J Heron raises concerns that the existing Agreement already makes provision for a chargee to dispose of Registered Provider affordable homes under repossession conditions. Coupled with the role that is provided by Homes England (to protect and safeguard the interests of those who are housed by Registered Providers) it is not considered that the introduction of the standard MEC clause would increase any risks that the affordable homes would be either jeopardised or lost. The risk of social rented housing being disposed of under such circumstances is remote as Homes England protect such tenants interests very closely. In practice, if a Registered Provider got into unresolvable financial difficulty, then the Housing Corporation would be likely to step in to see the stock transferred to another Provider. There are greater risks to shared ownership (to which this case refers) from lenders who demand the ability to act quickly if homes are repossessed. However, if this Council wants to see affordable home ownership provided, then we have to accept that home ownership (with private mortgages) is higher risk.

10.3.3 In light of the above, and with no wish to impede the financial efficiency of Registered Providers, the requested revision is supported. It is therefore proposed to vary the wording of the agreement by substituting the wording of clause 6.11.7 (i) (ii) and (iii) with the Council's most up to date MEC wording as follows:

- *'None of the provisions in this clause 6 or paragraph 1.2 (e) of the Second Schedule shall apply to or be binding upon:-*
- *(a) a mortgagee or chargee (or any receiver (including an administrative receiver)) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") of the whole or any part of the Affordable Housing Land (following the transfer of the whole or any part of the Affordable Housing Land to an RP) or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:*

- *(i) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Land and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Land to another RP or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and all reasonable costs and expenses; and*
- *(ii) if such disposal has not completed within the three month period stated in subparagraph (i) above, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Land free from the provisions in this clause 6 or paragraph 1.2 (e) of the Second Schedule which provisions shall determine absolutely*
- *(a) a lessee of an Affordable Housing Dwelling let by an RP under a shared ownership or shared equity lease who has exercised his right to staircase to 100% and its mortgagees chargees and successors in title*
- *(b) a tenant of a RP who has exercised a statutory right under the right to acquire provisions of the Housing Act 1996 (or any legislation amending or replacing the same) or right to buy in respect of an Affordable Housing Dwelling and its mortgagees chargees and successors in title*
- *(c) any mortgagee or chargee holding a mortgage or legal charge over an individual Shared Ownership Unit if either a power of sale has arisen and become exercisable in favour of the mortgagee or such mortgagee or its receiver enters into possession PROVIDED THAT the mortgagee or chargee shall use reasonable endeavours to make the dwelling available to an Eligible Person'*

#### 10.4 Conclusion

In conclusion, Officers consider that the revised form of wording as proposed in the Assessment Section above is acceptable and accords with the Council's current S.106 template in relation to this issue which has now been in use for some time and this request does not alter the level of affordable housing provision secured by the original agreement.

## 11 **RECOMMENDATION**

That the current Section 106 agreement be varied as set in paragraph 10.3.3 above

### **Further Information**

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**New Forest**  
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**Planning Development  
Control Committee**  
April 2019

**Item No: 3a**

Land at Crow Arch Lane  
& Crow Lane  
Crow Ringwood  
13/11450

Scale 1:3000

N.B. If printing this plan from  
the internet, it will not be to  
scale.

