

- 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:

10 Affordable Housing Units, of which 5 shall be used for Affordable Rented Housing and 5 shall be used for Shared Ownership Housing.”

- 3.3 Planning permission was granted on 14th November 2017, following completion of the S106 Agreement.

- 3.4 An application (BH2019/03517) was submitted and subsequently approved on 24th December 2019 for the following:

Non-material amendment to BH2017/01108 to change the development description to: Erection of 5 to 8 storey building to provide self-contained flats (C3) (mix of one, two, and three bedroom units) incorporating balconies and terraces with associated access from Sackville gardens, car parking spaces, cycle parking, plant and associated works.

- 3.5 A Deed of Variation was then sought to the s106 Agreement to amend the tenure to provide seven affordable units, of which three were to be used for Affordable Rented Housing and four were to be used for Shared Ownership Housing. This, and the accompanying planning application (BH2020/00355), were approved on 2nd June 2020.

- 3.6 This proposal was originally taken to the 10th March 2021 meeting of the Planning Committee, but it was deferred for clarification on whether the review mechanism could capture the difference between the cost of the Affordable Rented and the Shared Ownership / Shared Equity Housing units, and whether this would be money paid to the Council.

- 3.7 A more detailed response was therefore sought with input from the Legal and Housing Strategy teams, as set out in Section 6 below.

4. PROPOSAL

- 4.1. Having been unsuccessful in securing any of the Council's preferred Registered Providers (RPs) to take on the affordable housing units, the applicant is now seeking to use Landspeed Homes Ltd. who would provide intermediate homes for sale through an Equity Sale product, which would still fall within the national definitions of affordable housing for sale. The current definition of RP does not extend to other organisations specialising in the delivery of affordable housing, such as Landspeed.

- 4.2. It is now also proposed that all seven units are provided as Shared Ownership Housing and/or Shared Equity Housing in order to facilitate Landspeed to deliver the affordable housing on-site.

4.3. The change to the tenure is solely to allow the provision of the required affordable housing units on-site by Landspeed, rather than a Registered Provider (RP). Landspeed have not registered formally as a RP because they do not directly deliver rented accommodation or require government financial subsidy. They have, however, delivered nearly 300 units of intermediate affordable housing since 2005.

4.4. Housing Officers note the process by which affordable housing is delivered by Registered Providers in the city:

“Affordable housing secured through S106 Agreements have historically been sold to a Registered Provider (RP) at a below market price in order for them to be provided as affordable homes (affordable rent or shared ownership). The Council has a number of partner RPs based on presence in and commitment to the city as confirmed via rent levels agreements etc.

If an RP purchaser is not found among the partners the developer can bring forward an alternative provider but they will need will to meet the conditions of the Council’s proposed S106 Agreement.”

4.5. The developer has stated that there was a lack of interest in the affordable units from the Council’s list of preferred RPs and the only offer received (from Landspeed) was subject to all 7 units being shared ownership. Therefore, they have proposed the change in tenure and definition of RP. Full evidence of this lack of interest from RPs has been provided in the table in the next section.

5. CONSULTATION

5.1 **Housing Strategy: No objection.**

5.2 October 2020 – the developers approached the Council with confirmation that the affordable housing element had been marketed to all the Council’s partner RPs plus Sage Housing and St Arthur Homes (below), and all of whom had rejected the homes proposed. Evidence of this was provided with an e-mail from the marketing company, Reehs DC Ltd. The reasons given are summarised below. The key factors that came up across all RPs were: too few units (not viable) and the flats being leasehold within a larger block.

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| Hyde Housing | They sold the site to the developer |
| Orbit | Do not operate in Brighton & Hove |
| Southern Housing Group | Too small |
| Moat | Too small (minimum 20 units) |
| Clarion | Too small (minimum 50 units) |
| Guinness | Too small |
| Sage Housing | Too small |
| Optivo | Only interested in offering for the whole site or just the private units |
| St Arthur Homes | The number of shared ownership |

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| | units was too small |
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- 5.3 RPs have to assess the affordability and viability of such purchases and the factors outlined in the table above are all elements that are included in that assessment, alongside risk regarding sale of shared ownership homes.
- 5.4 December 2020 – a draft Deed of Variation, a letter from Landspeed detailing the organisation’s activities, a letter from REEHS DC Ltd setting out the marketing of the affordable housing and an excel spreadsheet containing further information of the responses received to the marketing were provided.
- 5.5 In this instance, paying a commuted sum is not possible because the developer has confirmed that affordable housing has to be provided on site as a condition of funding, which reflects the Council’s in-perpetuity position on affordable housing. Furthermore, this development is already on site and the developer is keen to avoid delays.
- 5.6 Housing Officers also note that consideration is given as to whether the Council could purchase the homes, but highlight that *“any risk and suitability assessment of the homes on offer would be undertaken along the same lines as that of the RPs, with viability then assessed through the Home Purchase model based on cost of purchase and projected rent levels.”*
- 5.7 Purchase of S106 homes is an active project and consideration is now given to this at an earlier stage of the planning process. This will allow properties to be assessed against a standard set of risks and checked for viability based on the cost of the homes against the rent levels the Council intends to charge and any subsidy required.
- 5.8 The cost is not the only factor and may not be the deciding 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.
- 5.9 In this instance with all factors above taken into consideration, a change in tenure and to the definition of RP remain the most practical outcomes for this scheme. The provision of affordable rented is still the city’s greatest need in terms of affordable housing.

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 all seven units on site to be provided as Shared Ownership Housing and/or as Shared Equity and for the definition of a RP to be changed.

- 6.2 It is considered that the implementation of the development would deliver planning and economic benefits, including much-needed private housing, in a sustainable location, with good access to shops and services, and sustainable transport links. With the variation, it would also deliver a viable amount of affordable housing. The s106 also commits the developer to £196,609 of contributions towards local education services, recreation facilities and employment schemes.
- 6.3 The legal agreement accompanying this proposal secures the submission of an Updated Viability Analysis either 5 years from commencement or 6 months after completion, which would capture any surplus in the sales values generated by the development based on values achieved and costs incurred. If the Council and the applicant don't agree on its findings then this would be the subject of an independent review. The Updated Viability Analysis shall include:
- (i) Predicted gross sales values for the remaining un-sold private dwellings within the proposed development at the agreed date;
 - (ii) Actual sales values achieved for all the private dwellings sold as confirmed by a solicitor experienced in legal conveyancing;
 - (iii) Confirmation of the amount of the development surplus (if any); and
 - (iv) Confirmation of the amount of affordable housing contribution.
- 6.4 The Updated Viability Appraisal carried out post-construction will be in substantial accordance with the Viability Assessment carried out in 2020 to support the change from five Affordable Rented Housing units and five Shared Ownership Housing units to three of the former and four of the latter. Although a difference in the tenure of affordable housing may make a difference in the original viability assessment prior to the involvement of a RP, the actual price paid for the affordable housing and the actual total cost of the development are taken into account and therefore any difference between the values as a result of the tenure changing should be captured at the time the Updated Viability Appraisal is carried out.
- 6.5 The Council would receive 60% of the development surplus if any is available after the Updated Viability Appraisal. At this stage, there is no way of knowing whether this would be enough to provide an additional affordable housing unit. Whilst account can be taken of delivering an increased amount of affordable housing on-site with a development surplus generated by the late stage review process, the practical implications of this means that a commuted sum contribution towards off-site affordable housing provision would be acceptable. Therefore, in summary, that the difference between the cost of the Affordable Rented and the Shared Ownership / Shared Equity Housing units would be captured through the legal agreement.
- 6.6 It is considered that the developer has provided sufficient justification and evidence to demonstrate that Landspeed are the only organisation that are prepared to deliver the affordable housing on-site in the form of Shared Ownership Housing and/or Shared Equity.

- 6.7 Landspeed deliver affordable homes to qualified applicants at discounts of no less than 25% to open market and, unlike some other provider, do not charge rent on the discounted element. There is no loan to repay and their purchasers' outgoings can be less than equivalent units in the sector.
- 6.8 The Shared Ownership Housing or Shared Equity product falls within the national definitions of affordable housing for sale and the shared ownership criteria that will be applied to applicants is below:
- Earnings of no more than £80,000 a year
 - The only home of the purchaser
 - First time buyer (or previous owner now unable to afford a suitable property)
- 6.9 Those already living in affordable intermediate (shared ownership or shared equity) accommodation are also eligible. Landspeed also apply a local connection as an additional eligibility criteria, which is not a national rule, but is supported by the Council.
- 6.10 In conclusion, the continued provision of on-site affordable housing through changing the tenure and the definition of a RP has, in this case, been adequately justified and is therefore considered acceptable in compliance with City Plan Part One Policy CP20. The proposed variation would allow a financially viable and successful housing development to be achieved. As such, it is recommended to vary Clause 1.1, Schedule 2 paragraph 2, Schedule 2 paragraph 4 and Schedule 5 paragraph 7 of the Deed of Variation dated 2nd June 2020 to the S106 dated 14th November 2017.

Background Documents:

Planning Application BH2017/01108

Planning Application BH2020/00355