

Subject:	Whitehawk Clinic Whitehawk Road Brighton BN2 5FR		
Date of Meeting:	5 July 2023		
Report of:	Liz Hobden, Head of Planning		
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Ward affected:	Whitehawk and Marina		

1. PURPOSE OF THE REPORT

- 1.1. The purpose of this report is to consider a request to vary one of the Heads of Terms of Section 106 Agreement dated 19 July 2018 in connection with planning permission BH2017/01665 (as amended by BH2020/03619). The planning permission allowed the replacement of the clinic with a five storey building (over basement) containing 38 dwellings, along with carparking and landscaping.
- 1.2. It was approved subject to a s106 legal agreement with various Heads of Terms including the following relating to affordable housing:
“40% affordable housing (8 units for affordable rent and 7 properties for shared ownership sale, comprising 5x one-bedroom units, 7x two bedroom units and 3x three-bedroom units.)”
- 1.3. The applicant is seeking to vary this to provide all 15 of the affordable housing units as affordable rented. The varied Head of Terms would therefore require:
“40% affordable housing (15 units for affordable rent comprising 5x one-bedroom units, 7x two bedroom units and 3x three-bedroom units.)”

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 Section 106 Agreement dated 19 July 2018 in connection with planning permission BH2017/01665, subject to a review mechanism.

3. BACKGROUND INFORMATION

- 3.1. Planning permission was granted in August 2018, following a decision by Planning Committee in November 2017, for the following:

BH2017/01665 - Demolition of Clinic building (D1) and erection of a 5 storey building over basement containing 38no. dwellings (C3), 18no parking spaces, cycle parking and associated landscaping.

- 3.2. The permission allowed the replacement of a vacant NHS clinic with a five-storey building containing 38 flats.
- 3.3. The application secured, via the s106 legal agreement, 15 affordable units (39.5%), of which 8 would be affordable rent and 7 in shared ownership.
- 3.4. An application to amend the approved drawings was submitted and approved in March 2021, allowing the removal of the solar array and the provision of air source heat pumps (ref. BH2020/03619).
- 3.5. In 2022, the applicant sought to vary the s106 legal agreement to provide ten (rather than 15) affordable housing units on site, along with a commuted sum of £55,664. This request was refused by the Planning Committee on 2 November 2022.
- 3.6. Brighton & Hove City Council are now seeking to purchase the dwellings, which are provided in a single block within the site. However, to do so, the units all need to be affordable rented dwellings rather than in shared ownership. A separate report has gone before the Housing and New Homes Committee on 21 June 2023 setting out the proposal to purchase the units and the detailed background in terms of the technical surveys and specialist reports, confirming that they would provide general needs housing providing new permanent social housing in the city, including two wheelchair accessible units (the outcome of this meeting is not known at the time of writing so will be confirmed verbally) .

4. PROPOSAL

- 4.1. The s106 Legal Agreement requires that 15 affordable housing units are provided comprising eight affordable rented units and seven shared housing units. The applicant now wishes to provide all 15 units as affordable rented.

5. CONSULTATIONS

- 5.1. **Housing Strategy:** Support. Please refer to recommendations in report to Housing & New Homes Committee meeting on 21 June 2023, concluding the following:

“The purchase of Kubic Apartments enables the Council to pursue its aims to increase affordable housing in the city. It provides an opportunity for the council to purchase affordable homes secured through the planning process. Financial viability assumptions have demonstrated that this purchase will provide value for money as outlined in Part 2 of this report.”

[Link to full report provided at Section 7]

6. COMMENT

- 6.1. The main consideration in the determination of this application relates to the acceptability of varying the legal agreement to change the tenure of affordable housing on site.
- 6.2. Policy CP20 of City Plan Part 1 states that “Affordable housing provision should incorporate a mix of tenures. The exact tenure split on each site will be a matter for negotiation and should be informed by up to date assessments of local housing need and individual site and/or neighbourhood characteristics.”
- 6.3. In this case, the amendment would allow for the affordable housing to be entirely affordable rented, and to ensure that it remains as affordable housing. As set out in the report to the Housing and New Homes Committee, the developer could not find a Registered Provider interested in the dwellings. Amending the legal agreement would allow the Council to purchase them (with Homes England funding), providing fifteen affordable rented units for the City.
- 6.4. The current Affordable Housing Brief outlines that the preferred option of affordable housing delivery is on site via a Registered Provider partner. If this is not possible then council purchase of the some or all of the affordable homes is then considered and where this is also not possible a commuted sum is sought to enable affordable housing for rent to be provided elsewhere in the city through one of the council’s housing supply programmes. These homes are being provided as part of the extended Home Purchase policy and the viability includes the use of commuted sums as outlined above.
- 6.5. Strategic Housing Team have explored purchase of a number of homes through this route where there has been no Registered Provider take up over the past few years. These assessments are based on a number of factors including: suitability of the homes; purchase value and viability. There are also budgetary considerations. Not all developments will be suitable for this course of action but schemes will continue to be assessed and the cascade of options outlined in 6.4 above will still apply, including the option of moving to commuted sum where suitable.
- 6.6. In conclusion, it is considered that the applicant’s proposal to vary the legal agreement to allow for the provision of fifteen affordable rented units rather than a mix of affordable rented and shared ownership units is acceptable and accords with Policy CP20 of City Plan Part 1.
- 6.7. It is therefore recommended that the Deed of Variation is permitted.

7. BACKGROUND DOCUMENTS:

Reports Pack for Housing and New Homes Committee 21 June 2023:

[\(Public Pack\)Agenda Document for Housing & New Homes Committee, 21/06/2023 16:00 \(brighton-hove.gov.uk\)](#)