

Subject:	Land South of Ovingdean Road Brighton		
Date of Meeting:	5th July 2023		
Report of:	Liz Hobden, Head of Planning		
Contact Officer:	Name:	Mick Anson	Tel: 01273 292354
	Email:	mick.anson@brighton-hove.gov.uk	
Ward affected:	Rottingdean and West Saltdean		

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to consider a request to vary the S106 Agreement dated 24th April 2018 in relation to an outline planning permission for the construction of 45 dwellings at the above site under ref: BH2016/05530. Schedule 3 Part 4 of the S106 requires the following:

“The Affordable Housing Units shall be constructed to meet the Development Standards as outlined in the Council’s “Affordable Housing Brief” which requires all new homes to be built to the new building regulation standard relating to ‘accessible and adaptable’ housing (Part M4(2)).”

- 1.2 Outline planning permission was granted in June 2018 on appeal following a public inquiry. The site has been under construction for approximately 2 years by Brookworth Homes Limited who are not the original land owner or applicants. Brookworth Homes are now seeking to vary Schedule 3 Part 4 of the S106 on the grounds that it is not possible for one of the dwellings to comply with Part M4(2) of the Building Regulations to be an accessible and adaptable home as it is first floor flat in a two storey building.

- 1.3 An caveat allowing an exception is proposed to be added (underlined below) to Schedule 3 Part 4 of the S106 agreement which would therefore read:

“The Affordable Housing Units shall be constructed to meet the Development Standards as outlined in the Council’s “Affordable Housing Brief” which requires all new homes to be built to the new building regulation standard relating to ‘accessible and adaptable’ housing (Part M4(2) with the exception of the first floor flat shown as plot 24 on the Affordable Housing Land, where the nature of this approved unit would make M4(2) compliance unachievable.”

- 1.4 The definition of ‘Affordable Housing Land’ in the S106 agreement (Section 1.1) would also require amendment by updating the drawing number of the attached Layout Plan.

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 **AGREE** to the Deed of Variation to the proposed S106 Agreement.

3. BACKGROUND INFORMATION

- 3.1 City Plan Part 2 Policy DM1 (Housing Quality, Choice and Mix) states that the council will seek the delivery of a wide choice of high quality homes to contribute to the creation of mixed, balanced, inclusive and sustainable communities....
- 3.2 City Plan Part 2 Policy DM1 d) states that *all residential units should as a minimum be accessible and adaptable in accordance with Building Regulation M4(2).*
- 3.3 In addition, policy DM1 requires that for schemes of this scale (10 or more dwellings) 10% of the affordable residential units and 5% of all residential units should be suitable for occupation by a wheelchair user in accordance with building regulation M4(3).
- 3.4 At the time of the appeal decision, there was a similar policy requirement in the retained policies of the adopted Brighton and Hove Local Plan 2005 under HO13 which stated that permission would be granted for new residential dwellings that were built to Lifetime Homes standards. Under the S106 agreement, a 5% proportion of new dwellings and 10% of affordable units were also required to be built to wheelchair accessible standards (M4(3) which could be occupied immediately as fully accessible. The supporting text sought the same percentage as policy DM1 currently does, but it is now set out in the main policy.
- 3.5 The Council's Affordable Housing Brief in 2018 required that all new housing units should be built to the then, relatively new, Part M of the Building Regulations standard for accessible and adaptable dwellings (M4(2)). The requirement was secured through Schedule 3 Part 4 of the S106 legal agreement.
- 3.6 The S106 agreement also sets out in Schedule 3 Part 3 the numbers and mix of the 18 affordable housing units (40%) provided of which two would be the 1 bedroom flats in question at plots 23 and 24. This agreement was submitted unsigned to the public inquiry as part of the appeal.
- 3.7 Within the S106 agreement, there is a proposed site Layout Plan attached that identifies both the affordable housing units and the market housing on the site by plot numbers.

4. PROPOSAL

- 4.1 It is proposed that the signed S106 is varied to acknowledge the impracticality that unit no. 24 on the first floor cannot meet current M4(2) performance standards to be accessible and adaptable. Schedule 3.4 would retain the requirement for all remaining units on site (44no.) to meet M4(2) performance standards.

5. CONSULTATIONS

- 5.1 **Strategic Housing:** No objection.
- 5.2 The Strategic Housing officer has accepted the impracticality of not being able to meet the M4(2) standard for each and every unit on site and that an exception can be made for this first floor flat. It is also noted that this does not affect the required provision of two fully accessible wheelchair units to be provided on site which would also be affordable units. Thus, it would ensure compliance with the S106 agreement in Schedule 3 Part 5 that 10% of affordable housing units should be built to M4(3) wheelchair accessible standard. These 2 units would be on plots 15 and 16 which are single dwelling houses.

6. COMMENT

- 6.1 The sole consideration in the determination of this application relates to the acceptability of varying the legal agreement at Schedule 3 Part 4 that one unit out of the 45no. approved units would not be required to meet the building regulations M4(2) accessible and adaptable. The requirement of M4(2) is that the dwelling should make *“reasonable provision for most people to access the dwelling and incorporate features that make it potentially suitable for a wide range of occupants including older people, those with reduced mobility and some wheelchair users.”*
- 6.2 Brookworth Homes have considered many options to meet the standard in respect of unit 24 which is a flat on the first floor. It has, however, proven to be impractical and the Approved Inspectors will not confirm compliance with Part M4(2) of the Building Regulations. Brookworth Homes have referred to the inherent conflict in the S106 agreement (accepted by the Planning Appeal Inspector), that it was not possible to meet the Council’s Housing Brief requirements in providing 100% M4(2) units as well as provide the affordable housing unit types set out in Schedule 3 in the S106 and agreed.
- 6.3 The Building Regulations set out what is ‘reasonable provision’ within Part M4(2) for most people to access the dwelling so that it is potentially suitable for a wide range of occupiers including older people, those with reduced mobility and wheelchair users. There should be step free access to the WC and other accommodation within the entrance storey (which is the storey that has the private front door), *and* to any associated private outdoor space, communal space and car parking space directly connected to the entrance storey. The Regulations also state that there should be step-free access for occupants and visitors between a living area, WC and principle private entrance (i.e. the private front door).
- 6.4 In this case, the property has a private garden and its own parking space but being at first floor level, access to them is not step free. The internal accommodation is all step free but not step free from the front door at ground level.
- 6.5 Part M of the Building Regulations has been amended since the planning permission was granted, and Brookworth Homes consider that, in their

experience, the 'reasonable provision' is now less flexibly applied by building inspectors, hence their not being able to meet the requirement. However, the changes to Part M first came in about the time that the original application was submitted in 2016 and have been amended since.

- 6.6 It is also a material consideration that at the time that planning permission was granted on appeal, that the retained local plan policy HO13 was less robust than the recently adopted CPP2 policy DM1 and relied upon its supporting text and the Affordable Housing Brief at the time to negotiate and secure Part M4(2) accessibility provision.
- 6.7 Brookworth Homes had already long since entered into a legal agreement with a housing association based upon the signed S106 agreement of 2018 and are now contractually obliged to hand over the specified units as per the affordable housing schedule. As set out above, it is a material consideration that at the time of planning permission being granted
- 6.8 All of the remaining 44no. units including the ground floor flat (Plot 23) are still required and will meet the building regulations M4(2) standards for provision of accessible and adaptable homes.
- 6.9 It is agreed that there is a contradiction in what was required by the S106 for all of the units to meet Part M4(2) of the regulations when this clearly was not possible, and the schedule of accommodation, which include 2 flats, allowed by the Planning Inspector on appeal. Given that agreements have been signed in all good faith with the affordable housing provider and the passage of time, that it is therefore recommended that the Deed of Variation is permitted.

7. BACKGROUND DOCUMENTS:

Planning Application BH2016/05530 and accompanying S106 Agreement dated 24th April 2018.