

Minutes of Emergency Committee

Meeting Date: Tuesday, 1 May 2012 starting at 1.45pm
Present: Councillor E M H Ranson (Chairman)

Councillors:

S Hirst
A Knox
R Sherras

In attendance: Chief Executive, Director of Community Services, Head of Legal and Democratic Services and Legal Officer.

918 APOLOGIES

Apologies for absence from the meeting were submitted on behalf of the Director of Resources.

919 DECLARATIONS OF INTEREST

Councillor A Knox declared an interest in the agenda item regarding Primrose Mill.

920 PROPOSED DEED OF VARIATION TO MODIFY THE SECTION 106 AGREEMENT DATED 2 NOVEMBER 2010 RELATING TO LAND AT BARROW BROOK, BARROW

The Head of Planning Services submitted a report asking the Emergency Committee to agree proposed changes to the Section 106 Agreement in relation to all of the affordable properties at phase I of the Barrow Brook development. The Agreement in respect of the affordable units provides details on the number of units, type and tenure as well as criteria for eligibility. In particular, one of the clauses specifies that each and every affordable housing unit shall not be occupied or purchased by any person except an approved person who shall be approved in writing by the Council. It had become apparent that the current terms of the Agreement in this respect were restricting mortgage lenders who had taken issue with the fact that the owners will never be able to sell their property other than to an approved person. The application made to the Council under reference 3/2012/0223/P now sought to add the following clauses by way of a deed of variation to the Agreement.

In marketing each affordable housing unit, the RSL shall for a period of six months from the said affordable housing unit becoming vacant, use all reasonable endeavours to identify a tenant or purchaser (as the case may be) being a person who meets the definition of approved person in this agreement but if at the end of the period of six months in which an affordable housing unit has been marketed, no approved person has been identified, then the RSL may dispose of the affordable housing unit to a person who is not an approved person.

Should the Council and/or the RSL be unable to nominate an approved person to any mortgagee (of either the RSL or a person deriving title from the RSL) who has exercised its power of sale under any mortgage or charge of the property or any affordable housing unit comprised in the property within two months of a request by such mortgagee in possession, then the mortgagee in possession shall be free to sell the affordable housing unit on the open market.

The report highlighted that this issue is time sensitive and as such was in need of an urgent decision, although due to neighbour notification issues, the decision would not be issued until 18 May 2012 at the earliest.

RESOLVED: That Committee agree to the Deed of Variation to the provisions in the Section 106 Agreement dated 2 November 2010 as outlined above and the accompanying planning application reference 3/2012/0223/P.

(Councillor A Knox left the meeting)

921 PROPOSED DEED OF VARIATION TO PROVISIONS IN THE SUPPLEMENTAL AGREEMENT DATED 22 OCTOBER 2010 TO THE SECTION 106 AGREEMENT FOR SITES AROUND AND INCLUDING PRIMROSE MILL FOR RESIDENTIAL DEVELOPMENT

The Head of Planning Services submitted a report asking the Emergency Committee to agree proposed changes to the supplemental agreement to the Section 106 Agreement in relation to some of the affordable properties of the Primrose Village development. The applications on this site are the subject of a Section 106 Agreement that outlines financial contributions in respect of public open space and highway improvements, as well as providing phasing mechanisms for the delivery of those contributions. The Agreement also concerns itself with the provision of affordable housing units on site. The original Agreement was drafted to cover applications 3/2008/0526/P, 3/2010/0054/P and 3/2010/0055/P and were in respect of affordable provision, detailed numbers of units and type of tenure that were envisaged at that time. However, the monies that were forthcoming for the scheme were different from that originally envisaged and a supplemental agreement was issued dated 22 October 2010 that agreed a variation to the tenure to allow 13 rental and 12 low cost home ownership units. It had now become apparent that there were issues being identified by mortgage lenders with some of the clauses in the supplemental agreement that meant prospective purchasers were facing difficulties in securing the necessary finance to acquire the properties. An application had now been submitted to the Council (3/2012/0326/P) to vary the definition of chargee to the following:

“Chargee” any mortgagee or chargee of the affordable housing land or any part thereof or any units within the affordable housing land or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 and for the insertion of an alternate clause 2 detailing with the sale of a property by a chargee in the supplemental agreement as follows:

“2. Any Chargee shall prior to seeking to dispose of the Affordable Housing Land or any part thereof pursuant to any default under the terms of its mortgage or charge shall give not less than 2 months prior notice to the Council of its intention to dispose (“the Notice”) and:

- a) In the event that the Council responds within 1 month from the date of service of the Notice indicating that arrangements for the transfer of the Affordable Housing Land or any part thereof can be made in such a way as to safeguard them as affordable housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure each transfer.*
- b) If the Council does not serve its response to the Notice within 1 month from service of the Notice then the Chargee shall be entitled to dispose free of the restrictions set out in this Deed the Section 106 Agreement and the Supplemental Agreement.*
- c) If the Council or any other person cannot within 2 months of the date of service of the Notice secure such transfer then provided that the Chargee shall have complied with its obligations under this paragraph 2 the Chargee shall be entitled to dispose free of the restrictions set out in this Deed the Section 106 Agreement and the Supplemental Agreement.*

PROVIDED THAT *at all times the rights and obligations in this paragraph 2 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage”*

As the issue was time sensitive with perspective purchasers having mortgage offers in place but only for a limited period of time, a decision was required urgently.

RESOLVED: That Committee agree to the variation of the provisions of the supplemental agreement dated 22 October 2010 as outlined in paragraph 3.3 of this report and the accompanying planning application reference 3/2012/0326/P.

Following a discussion on the variations that had been applied for, it was felt that this was the standard clause that should be included in Section 106 Agreements in the future.

RESOLVED: That Committee agree that the standard clause be that of the ‘Primrose Mill Section 106 Agreement.

The meeting closed at 2.10pm.

If you have any queries on these minutes please contact John Heap (414461).