

Land At Guillemont Park Sun Park, Minley Road, Farnborough

1. Introduction

Phase I of the Sun Park residential redevelopment is complete. The purpose of this report is to seek authority to vary the terms of the legal agreement relating to affordable housing

2. Background

The site is located to the west of Sandy Lane and was formerly part of Guillemont Barracks. It straddles the boundaries of Rushmoor Borough Council and Hart District Council, with the majority of the site being within Hart.

In November 2014 (Hart District Council) and January 2015 (on appeal by the Planning Inspectorate following refusal of planning permission by Rushmoor Borough Council in April 2014) planning permissions were granted for the demolition of the existing part built structures and erection of 150 dwellings, construction of internal roads, provision of open space, school parking area, landscaping and associated infrastructure, formation of a new access onto Sandy Lane and closure of the existing access from the Minley Road roundabout except for emergency vehicles (Phase I)

These permissions were subject to a legal agreement which secured affordable housing, financial contributions towards sports ground provision, transport, education and Thames Basin Heaths Special Protection Area mitigation, the completion of a travel plan and associated fees, the provision of a management and maintenance of all communal areas, the provision, operation, management and maintenance of parents car park together with details of the management company to be set up by the developer to be responsible for these matters; a provision to preclude further vehicular access into the site from the existing Sun Park site, administration and monitoring costs and a leisure contribution towards a site in Hart. All financial contributions due to Rushmoor have been paid in full.

In January 2018 Hart District Council granted planning permission for the demolition of the existing office buildings and comprehensive redevelopment of the site for the construction of 313 residential dwellings along with internal roads, open space, landscaping and associated infrastructure with existing access from the Minley Road (Sun Park Phase II). This site is wholly within Hart and is in the process of construction.

3. Proposed amendments to the legal agreement

The Registered Affordable Housing Provider (RP) for this site (Synergy Housing Limited part of the Aster Group) has reviewed the section 106 agreement and advised that the definition of Registered Provider Mortgagee and the Mortgagee in Possession clauses do not satisfy their lenders requirements for securitisation purposes.

4. Planning considerations

The planning permission secured the provision of 40% affordable housing units across the site (this higher figure was achieved to reflect Hart's affordable housing policy at that time).

The solicitor acting for Aster explains that the change to the clause is required as:

“The objective of the variation is that, when Aster charge the property shortly, they will be able to maximise valuation upon charge. At present, because the mortgagee exclusion clause (MEC) is outdated and not in line with the Securitisation Working Group wording published by the NHF (Officer note National Housing Federation), the lender will limit valuation to existing affordable housing use. The variation should facilitate a higher market valuation (subject to tenancies) which can be in excess of 40% higher.

The risk of the MEC ever being enforced and a lender selling on the open market is negligible as no lender to an RP has ever exercised power of sale. This is about hypothetical risk from a lender perspective.”

The Strategy and Enabling team have been consulted on the proposed changes. They would support Aster's application to pursue a Deed of Variation to the mortgagee exclusion clause in the original Section 106 to align this clause with the published NHF version, recognising that the wording is necessary to be able to secure funding against the properties.

As the original agreement included Hart as one of the signatories, their views have been sought on the proposed change and are awaited. An update will be given to the meeting although it is understood that Hart has agreed to this change and is in the process of completing a separate deed of variation.

5. Recommendation

That the request to vary the existing 106 agreement with a deed of variation, with detailed wording to be in consultation with the Council's Strategy and Enabling team, as outlined above be AGREED subject to the Council's costs to be paid by the applicant.

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