

RIBBLE VALLEY BOROUGH COUNCIL

REPORT TO PLANNING AND DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: THURSDAY, 24 MAY 2012
title: 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
submitted by: DIRECTOR OF COMMUNITY SERVICES
principal author: SARAH WESTWOOD – SENIOR PLANNING OFFICER

1 PURPOSE

1.1 To inform Members of the decision taken by an Emergency Committee convened on Tuesday, 1 May to agree proposed changes to the supplemental agreement of the Section 106 Agreement in relation to some of the affordable properties of the Primrose Village Development.

1.2 Relevance to the Council's ambitions and priorities:

- Council Ambitions – To make people's lives safer and healthier by implementing established policy. Also insisting the Council to protect and enhance existing environmental qualities.
- Community Objectives – The report relates to issues affecting the delivery of affordable housing in the borough.
- Corporate Priorities – To facilitate the occupation of additional affordable homes.
- Other Considerations – To ensure a consistency of approach in the determination of planning applications where a quota of affordable housing is required.

2 BACKGROUND

2.1 Planning and Development Committee have considered applications concerning the regeneration of sites around and including Primrose Mill for residential development, including improved site access, highway improvements and provision of public open space under various applications since 2008 (see Background Papers for list of all such applications).

2.2 These applications 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.

3 ISSUES

3.1 The original Agreement was drafted to cover applications 3/2008/0526/P, 3/2010/0054/P and 3/1010/0055/P and 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 (originally it had been envisaged as 25 rental units).

- 3.2 It has become apparent that there are issues being identified by mortgage lenders with some of the clauses in the Supplemental Agreement and thus prospective purchasers are facing difficulties in securing the necessary finance to acquire the properties.
- 3.3 An application was submitted to the Council on 4 April, and given the reference 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 dealing 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”

- 3.4 The Housing Working Group considered the request to amend the Section 106 Supplemental Agreement and agreed that the proposed amendments are necessary and appropriate to ensure purchasers can secure mortgages on the affordable units. They therefore supported the application to vary the Agreement.
- 3.5 Although the Section 106 Agreement itself and its Supplemental Agreement is covered by delegated powers, the essential accompanying planning application is not.

- 3.6 This matter was brought before an Emergency Committee as the issue was time sensitive with prospective purchasers having mortgage offers in place but only for a limited period of time.
- 3.7 The Emergency Committee agreed the variation of the provisions in 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.
- 4 **RECOMMENDED THAT COMMITTEE**
- 4.1 Note the content of this report.

DIRECTOR OF COMMUNITY SERVICES

BACKGROUND PAPERS

- 1 3/2008/0526/P – Proposed regeneration of sites around and including Primrose Mill for residential development including improved site access, highway improvements and provision of public open space. Approved with conditions 24 March 2010.
- 2 3/2010/0054/P – Proposed regeneration of open land (including former EA Depot part) for residential development (25 affordable units) to form part of a wider Primrose housing scheme (application 3/2008/0526/P) including access link to existing Contour housing scheme. Approved with conditions 24 March 2010.
- 3 3/2010/0055/P – Proposed regeneration of the existing commercial site(s) for residential development (25 units) being Phase 1B of the Primrose residential project including improved vehicular access to Woone Lane (6 home buy affordable units and 19 market/full sale units). Approved with conditions 24 March 2010.
- 4 3/2010/0756/P – Reserved matters application for Phase 1C of the proposed redevelopment comprising of 30 residential units. Approved with conditions 28 March 2011.
- 5 3/2010/0838/P – Proposed application for the modification of Section 106 Agreement to clarify the affordable housing obligations following the granting of funding by the Homes and Communities Agency and vary elements of the wording associated with the future letting and management of the affordable housing to be developed on the site at the request of our housing partner. This includes the addition of a clause to provide protection to a future mortgagee of the affordable housing and to enable the Association to raise private finance against the new homes. Approved with conditions 22 October 2010.
- 6 3/2010/0897/P – Regeneration of existing mill site for residential development for 12 apartments and 2 dwellings. Amendments to approved residential scheme reference 3/2008/0526/P. Approved with conditions 3 November 2011.

- 7 Section 106 Agreement dated 24 March 2010 relating to 3/2008/0526/P, 3/2010/0054/P and 3/2010/0055/P.
- 8 Supplemental Agreement to the Section 106 Agreement dated 22 October 2010 pertaining to the affordable elements.

For further information please ask for Sarah Westwood, extension 4516.