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Part of the Vistry Group

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Dear Mr Osmond

Town and Country Planning Act 1990

Site Address: Site 3 Land to the West of The Kings School, Allington Lane, Fair Oak, SO50 7DB

Subject: Application to Modify a Section 106 Planning Obligation – Ref: F/21/91132

I am writing to submit an application to modify the existing Section 106 Planning Obligation for the above site. This application is made in accordance with Section 106A of the Town and Country Planning Act 1990 and the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (as amended).

The Background

This request pertains to the Full Planning Permission Ref. F/21/91132 and the S106 dated 27th October 2022. The planning permission was for a development of 35no. houses. The S106 agreement secured a number of obligations but in relation to the affordable housing provision, clause 1.3 of Schedule 6 requires that all of the affordable housing is delivered to M4(2) standard and M4(3) standard in relation to 2no. ground floor flats. The specific wording is as follows;

“1.3 The Affordable Housing Dwellings must be developed to lifetime homes standards (Building Regulations Part M4(2) (and in respect of the 2x ground floor flats also Building Regulations Part M4(3))...”

The Proposed Modification

The approved plans for the site show a flat block containing 6 no. flats (plots 137 to 142) with 2no at ground floor comprising of 1x 1 bed and 1x 2 bed and the same again on the upper floors. Following a review as part of the detailed design and works commencing on this block, this has highlighted a conflict with the approved plans against the S106 obligation noted above.

Firstly, with reference to the upper floor flats, these are shown as M4(2) and the size of these units remains as approved. In discussions with the NHBC, their interpretation of the Building Regulations is that these units require the provision of a lift. This lift is not shown on the approved plans and would result an external lift being added to the building. This has consequential impacts on achieving on site BNG on the site as adding a lift would reduce the quantum of soft landscaping habitat created. We have also discussed this with Abri as the Registered Provider and they do not wish to see a lift installed within this block. They are concerns over the impact on the landscaping and the overall cost implications for maintaining this lift. Whilst this is regrettable, we do not consider that there is a way forward to ensure that these units are fully compliant with M4(2) within the planning permission granted. The size of the units is not changed, the sole issue is the lack of a lift. This does not affect any of the other affordable houses being delivered as M4(2). Therefore it is proposed to amend the S106 to delete the obligation for M4(2) only insofar as plots 139-142.

Secondly, the ground floor flats were identified as M4(3) in the S106 (plots 139-140) but the space requirements for this standard cannot be achieved within the footprint of the building approved and under construction. As noted above, the building as approved is not large enough for the standard and

as this is a highly constrained site, there are limited options to address this issue without causing considerable aligned impacts – visual quality, loss of landscaping, BNG impact.

The Policy Position

Turning to the policy position in the Development Plan, this is set out in Policy DM29;

Policy DM29, Dwellings with higher access standards

1. *The Borough Council requires that development should meet higher national access standards as set out in Part M of the building regulations for new build residential development (or future equivalent):*
 - a. *100% of dwellings meet at least Part M4(1) standard (Visitable dwellings); including*
 - b. *a target of 80% of dwellings on each site meet Part M4(2) standard (Accessible and adaptable dwellings)*

For major new-build development of 40 residential units and above, b. should include:

- i. *at least 2 dwellings or 7% (if higher number) of all market housing meeting the Part M4(3)(2)(a) standard for wheelchair adaptable dwellings;*
 - ii. *at least 1 dwelling or 8% (if higher number) of all affordable housing meeting Part M4(3)(2)(b) standard for wheelchair accessible dwellings;*
2. *100% of all specialist housing for older people and adults with disabilities meet the Part M4(3) standard (Wheelchair user dwellings).*

In relation to Part 1 of the policy, the development does not conflict with the wording of the minimum standard of point 1a. In terms of point 1b, this is a target not a minimum standard. In any case, there are not changes to the development than as agreed with by the Council in the approval of this planning permission. On the affordable housing, the modification of this clause would still provide 6no. M4(2) affordable houses plus the ground floor flats at M4(2) as well as 4no. affordable flats to M4(2) size standards. This would not conflict with the objective which is a target not a minimum.

It is noted that the Council's adopted Policy DM29 relating to the provision of affordable housing only requires the provision of M4(3) on development sites of over 40 units. This planning permission was for 35 units which is below the requirement in this policy. Therefore, there is no policy requirement for any M4(3) to be provided.

Conclusions

We fully appreciate this is not the desirable outcome but given the constraints of the site and what has been approved for this block, we have no option but to request the removal of this obligation.

It should be noted that this change to the S106 does not in any way change the building from what has been shown on the approved plans and agreed by the Council. The development delivers a total of 12no. affordable plots and of which 8no. remain fully M4(2) compliant (6 houses and 2 GF flats). As highlighted above as well, the upper floor flats remain of the required size for M4(2), the issue is the lift and that this is not supported by Arbi as the RP.

Therefore, the proposed modification seeks the removal of the **M4(2)** and **M4(3)** requirements in clause 1.3 of Schedule 6 in relation to plots 137, 138, 139 and 140 only within the Section 106 agreement.

I trust the submitted details will provide the necessary information to support this application. Should you have any questions or require further clarification, please do not hesitate to contact me directly on **07763 874123** or via email at laura.driver@vistry.co.uk.

Thank you for your attention to this matter, and I look forward to your response.

Yours sincerely,


Laura Driver
Head of Planning

Direct Dial: 07763 874123

