

**Committee** Planning Committee  
**Date:** 24 August 2011 ▪ **Item**  
**Title:** UTT/1500/09/OP – Unilateral undertaking with regard to social rent- deed of variation **7**  
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## Summary

1. This report recommends that the committee agrees that this Council can enter into a deed of variation to amend a legal agreement concerning the Unilateral Planning Obligation relating to land at the Orchard, Station road, Elsenham. The two changes are as follows:
  - deletes the reference to 21 affordable dwellings and defines the affordable housing provision as 40% of the total number of dwellings that are permitted on the site (in accordance with Policy H9 of the Uttlesford Local Plan); and
  - updates the reference to affordable housing to include the option for either Social Rents and Affordable Rents to be charged on the affordable homes on the site.

## Recommendation

**That the committee agrees to permit the deed of variation subject to paying the Council's costs**

## Financial Implications

2. The owner will be required to pay the Council's costs in varying the agreement.

## Background Papers

3. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
  - Unilateral Planning Obligation by Fairhall Properties and Fairbairn Private Bank Limited
  - Letter from GVA Grimley dated 29/07/11 providing professional advice on the proposal by the landowner to amend the Unilateral Planning Obligation to change the affordable housing to substitute Social Rent with Affordable Rent.
  - Uttlesford DC Affordable Housing Strategy – November 2009

- Uttlesford Affordable Housing Policy Update statement 2011 – 2013 – draft consultation paper.

## Impact

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	Permits implementation of planning permission
Workforce/Workplace	None

## Situation

4. Planning Permission was granted in respect of the development of this site for the demolition of 2 dwellings and the construction of new dwellings and access pursuant to the appeal decision dated 25<sup>th</sup> November 2010 reference no APP/C1570/A/10/2129443/NWF. The Planning Obligation was agreed on the 18<sup>th</sup> October 2010. The Owners are registered as proprietor of the Site at HM Land Registry with Title Absolute under title number EX860034 subject to a charge dated 26<sup>th</sup> November 2010 in favour of the First Mortgagee.
5. The Government introduced a new model for funding the provision of affordable housing in the period 2011 – 15. In essence the model enables registered providers to charge up to 80% of market rents on new housing and a proportion of relets of existing stock. The additional funds generated can be used to service loans taken out by Registered Providers to fund new homes and reduce the level of grant required from central Government. Rents on these properties will be around 20% to 30% higher than those charged as social rents under the previous model.
6. As a result of the introduction of this model, the Council's current Affordable Housing Strategy 2009 is out of date as it refers to a requirement for the 40% affordable housing on new developments being split between 70% social rent and 30% intermediate housing. In response to the changes the Council has carried out a consultation on amending its affordable housing policy in order to provide for Affordable Rent instead of Social Rent and the consultation ended on 29 July 2011. The responses are currently being

considered but there were no significant objections to the overall proposed amendments.

7. Following the introduction of the new funding model, the landowner approached the Council with a proposal to amend the Unilateral Planning Obligation to enable Affordable Rent rather than Social Rent which could make the scheme more attractive to Registered Providers and therefore improve the possibility of the scheme being both viable and deliverable. In addition it was proposed to delete the reference to 21 affordable dwellings and define the affordable housing provision as 40% of the total number of dwellings that are permitted on the site.
8. In response to the proposal by the landowner to apply to make this amendment the Council agreed to seek professional advice from GVA Grimley Limited on the matter and agreed with the landowner that the advice would be binding on both parties. The Council decided to seek this advice as Planning Policy Statement 3 Housing (PPS3 was amended to include Affordable Rent in June 2011) and as no specific grant for funding social rent had previously been secured in relation to the site. In addition there is an expectation from the Government that S106 sites will not receive any grant in future.
9. GVA Grimley responded with the following observations:
  - There will be no change to the overall provision of affordable housing which at approximately 40% of total dwellings is in accordance with Council policy. There will be no change to the split between tenures other than the conversion of Social Rent to Affordable Rent.
  - Planning Policy Statement 3 Housing (PPS3) was amended on 9 June 2011 so as to include Affordable Rented housing in the definition of Affordable Housing at Appendix B.
  - I note that the Council is currently consulting on amending its affordable housing policy in order to provide for Affordable Rent in lieu of Social Rent, with consultation ending on 29 July 2011. It can therefore be reasonably expected that the Council will shortly amend its own policy to allow such a change.
  - It is the HCA's expectation that s106 schemes can be delivered at nil grant input for Affordable Rent. As in this case the Affordable Rent accommodation is part of a s106 provision, it is therefore not necessarily the case that landowners will be better off seeking Affordable Rent.
  - Only Housing Associations which have been approved by the HCA may operate Affordable Rent. Whilst the landowner / developer in question has two offers from existing Housing Associations that have been approved by the HCA, it should be noted that the planning permission and associated Unilateral Undertaking / s106 Agreement runs with the land (for a period of three years for the submission of reserved matters applications and a period of

two years from the date of the approval of the last reserved matter) and that, in this time, the situation may change.

- Given that it is not certain that the consent would be implemented by a Registered Provider working to operate Affordable Rent, I am of the opinion that the parties would be better served by amending the Unilateral Undertaking in such a way as to allow for greater flexibility to deliver either Social Rented or Affordable Rented accommodation and not just one or the other. Greater flexibility will allow the landowner / developer to partner with a range of Housing Associations while complying with current national guidance and the Council's own emerging policy.

10. Following receipt of this advice it is recommended that a deed of variation is made to the Unilateral Planning Obligation to enable an option for either affordable rent or social rent to be charged on this scheme.