

Committee: Planning

Agenda Item

Date: 7 March 2012

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Title: UTT/2499/11/FUL. Application to delete Clause 4.1.3 of a supplemental Section 106 agreement as it relates to 44 Ranulf Road, Oakwood Park, Flitch Green

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Item for decision

Summary

1. A request has been received from the owner/occupiers of 44 Ranulf Road to delete Clause 4.1.3 of a supplemental Section 106 agreement dated 1st June 2006 as it relates to their property. 44 Ranulf Road is a low cost open market house, and the clause requires that subsequent transfers be at 90% of the achievable market value.
2. The request is being treated as a formal application under Section 106A of the Town and Country Planning Act 1990 (as amended) to delete the clause. This report sets out the background circumstances to this request, and recommends that the Section 106 agreement should continue to have effect without modification.

Recommendations

3. That the supplemental Section 106 agreement dated 1st June 2006 between the Council, George Wimpey East London Limited and Enodis Property Developments Limited should continue to have effect without modification as it relates to 44 Ranulf Road, Oakwood Park, Flitch Green. The reason is that the deletion of the clause would prejudice the supply of affordable housing in the district contrary to Government advice and adopted Council policy.

Financial Implications

4. None. There are no costs associated with the recommendation.

Background Papers

5. 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.

Letter from S P and J Dolley dated 5th December 2011
Supplemental Section 106 agreement dated 1st June 2006 between the Council, George Wimpey East London Limited and Enodis Property Developments Limited
Original Section 106 agreement dated 25th February 1998 between the Council and Berisford Property Developments Limited

Impact

6.

Communication/Consultation	The Parish Council and neighbours have been notified as required under the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992. One response has been received from a local resident.
Community Safety	None
Equalities	The clause ensures that the benefits of 44 Ranulf Road as a low cost open market house are passed down to subsequent owners.
Health and Safety	None
Human Rights/Legal Implications	Under Section 106B of the 1990 Act, there is a right of appeal to the Secretary of State against a decision that an agreement should continue to have effect without modification.
Sustainability	None
Ward-specific impacts	The request relates to a single property in Oakwood Park.
Workforce/Workplace	None

Situation

- When outline planning permission was granted for Oakwood Park in 1998, part of the Section 106 agreement between the developer and the Council on 25th February 1998 governed the provision of affordable housing. Clause 9.1 of the agreement required the developer:

"To construct at least 42 residential dwellings in total during the First and Second Phase of the Development at a density of not less than 20 dwellings to the acre. Such dwellings shall be located in at least two separate areas not contiguous with each other and shall be of a size design and quality intended to provide low cost market housing within the meaning of Department of Environment Circular 13/96 or any circular revising amending or replacing the same"

Under that agreement, the First and Second Phases were defined as 0-300

dwellings and 301-500 dwellings respectively. Another clause of the agreement required the transfer of 3.5 acres of land to a registered social landlord for the construction of 70 affordable dwellings.

8. On 16th April 2004, reserved matters approval was granted for 120 houses (UTT/1829/03/DFO), and a supplemental agreement was signed on 1st June 2006 to clarify and confirm satisfaction of the provisions of Clause 9.1 of the 1998 agreement. The supplemental agreement required that Plots 25-30 and 32-37 on the layout attached to the agreement be provided as low cost open market housing. Having required that each of the 12 houses be initially transferred to an eligible person at 90% of the achievable market value (as defined in the agreement), Clause 4.1.3 requires that:

"All subsequent transfers of the twelve Low Cost Open Market Housing Units shall be at 90% (ninety per centum) of the Achievable Market Value"

9. 44 Ranulf Road (formerly Plot 35) is a two-storey two-bedroom semidetached house located on the northwest side of the street. Immediately to the southwest is a covered access through to a rear parking courtyard. Information supplied to the Council in 2006 by George Wimpey was that the first sale of the freehold of 44 Ranulf Road was £163,116, which was 90% of the achievable market value of £181,240.

The applicants' case, representations and material considerations

10. The applicants' case is as follows:

- i) Upon purchase, they were not informed by either George Wimpey or their solicitors about Clause 4.1.3.

- ii) The price paid reflected the very basic standard of the house - the applicants subsequently spent about £25,000 in fitting out. *(Note: the additional works have included all wood flooring and carpets at ground floor level, a new cooker and additional kitchen units, under-stair cupboard, first floor carpets and a bathroom shower unit. A conservatory has also been added, and the garden laid out).*

- iii) Had they have been made aware of Clause 4.1.3, they could have purchased a finished equivalent house on the development at no extra cost and inconvenience.

- iv) The applicants are in their 70s, and the promised local facilities (doctors' surgery, general shop, pub etc) have not materialised, and only recently has the road been finished with tarmac.

- v) Local estate agents say they have never come across a similar clause.

- vi) They expect to get a realistic price for the house, but during the current climate anticipate losing money. To enable them to move to a similar property with facilities within walking distance would not be possible if Clause 4.1.3 is

retained.

11. A representation has been received from the owner of 48 Ranulf Road observing that when he bought his property in 2006 it also came without the finishing available in other properties, e.g. no carpets or flooring. The George Wimpey salesperson told him that there was no option to purchase these things as extras, which would have been the case had a "full cost" property be being purchased. The owner of Number 48 also points out that over 5 years after completion the local amenities that were part of the original planning agreement are still awaited.
12. Government advice on low cost market housing is contained in PPS3: Housing (June 2010), superseding Circular 6/98, which itself superseded 13/96. One of the Government's key objectives is to provide a variety of high quality market housing, including addressing any shortfalls in supply. Paragraph 26 of PPS3 states that:

"Local Planning Authorities should plan for the full range of market housing. In particular, they should take account of the need to deliver low cost market housing as part of the housing mix".
13. The Draft National Planning Policy Framework refers to steps that local planning authorities should take to deliver a *"wide choice of quality homes and widen opportunities for home ownership"* (Paragraph 111).
14. The adopted Uttlesford Local Plan sets out the Council's strategy for the provision of affordable homes, both to meet anticipated new demand and existing shortfalls. There is the need within the district for 205 new affordable homes per year from 2007 - 2026. In major developments, the Council will seek the provision of up to 40% affordable housing to meet this demand.
15. The applicants' case has been considered, but does not amount to a good enough reason to modify the agreement. The 2006 agreement is on public record, and should have been picked up by the solicitors acting for the applicants at the time of purchase and its implications explained. If it was not, the applicants should take the matter up with the solicitors but this is not a matter for the Council. Furthermore, the applicants would have been aware of the condition of the property as new, and taken that into account when putting in an offer. The Council's Housing Strategy officers have confirmed that the condition of the property as new would be comparable to that of new houses for rent.
16. It is appreciated that the applicants have spent money on home improvements, and if as a result the achievable market value of the house has increased, Clause 4.1.3 will still allow the applicants to receive 90% of the uplifted value. The absence of local facilities is a separate issue, and is the subject of separate planning applications which are yet to be determined by the Council.

Risk Analysis / Conclusion

17. Deleting Clause 4.1.3 would prejudice the Council's affordable housing strategy by denying the discounting benefit to future purchasers and removing 44 Ranulf Road from the affordable housing stock. The original purchaser would benefit disproportionately from the benefit, contrary to the purpose of the clause. The deletion of the clause would prejudice the supply of affordable housing in the district contrary to Government advice and adopted Council policy.

Risk	Likelihood	Impact	Mitigating actions
That the Council fails to make adequate provision for affordable housing.	2. The Council has a strategy for affordable housing provision in its adopted and emerging local plans.	3. There would be a detrimental impact on the deliverability of the affordable housing strategy if existing affordable units were released back into the open market.	Retain all existing affordable units.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.