



**PLANNING COMMITTEE:** 30<sup>th</sup> September 2014  
**DIRECTORATE:** Regeneration, Enterprise and Planning  
**DIRECTOR:** Steven Boyes

**N/2014/0994:** Application to vary section 106 agreement in respect of application 07/0004/OUTWNN, to modify the Mortgagee Clause in relation to the development at the former Princess Marina Hospital site, Weedon Road, Upton

**WARD:** Upton

**APPLICANT:** Spire Homes  
**AGENT:** Perrins Solicitors

**REFERRED BY:** Scheme of Delegation  
**REASON:** Proposes modification of a legal agreement

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**APPLICATION FOR DETERMINATION:**

**1. RECOMMENDATION**

1.1 Planning Committee is recommended to **AGREE** the variation of the Section 106 agreement to modify the mortgagee clause.

**2. BACKGROUND**

2.1 The original outline application for the residential development of the former Princess Marina Hospital site as a whole was approved by WNDC in March 2009 under application reference 07/0004/OUTWNN.

2.2 This was subject to a Section 106 Agreement to secure planning obligations. The legal agreement includes clauses, inter alia, on restrictions on the disposal of the affordable housing units to ensure that these remain as affordable housing.

**3. SITE DESCRIPTION**

3.1 The application site forms a parcel of land within the former Princess Marina Hospital site, which has now been cleared of the former hospital buildings, other than those to be retained. Development of some parts

of the wider site is now complete and other parts are underway following previous reserved matters approvals.

#### **4. PLANNING HISTORY**

- 4.1 The original outline application for the residential development of the site as a whole was approved by WDC in March 2009 under application reference 07/0004/OUTWNN.
- 4.2 Subsequently there has been a renewal of this application to extend the time limit under WDC reference 11/0041/REPWNN and various reserved matters applications.

#### **5. PLANNING POLICY**

##### **5.1 Development Plan**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise. The current Development Plan comprises of the saved policies of the Northampton Local Plan.

##### **5.2 National Policies**

National Planning Policy Framework (NPPF)

##### **5.3 Northampton Local Plan**

H32 – Affordable Housing.

#### **6. CONSULTATIONS/ REPRESENTATIONS**

- 6.1 **Housing Strategy** - No objection to the change proposed. These types of requests are likely to become more prevalent due to the types of funding markets that registered providers are now using. The risk of the chargee invoking the clauses is exceptionally small due to Spire Homes being a registered provider; these are organisations that hold significant assets whilst having proportionately low levels of borrowing. In the event the clauses are invoked the risk to the Council of the properties not remaining as affordable housing should the chargee invoke notice will also be exceptionally small due to other safeguards that are in place to ensure that the housing can be offered to other registered housing providers. Through discussion with Spire the funds that it has raised will be used to support further acquisition of affordable on S.106 sites and its own proposed developments in Northampton which have been supported by the Council and the HCA. Therefore there will be benefit in the longer run in terms of the number of affordable houses in Northampton of supporting the change if it is necessary to attain funding.

- 6.2 The application has been advertised by site notices and a press notice. At the time of writing this report no representations had been received, any which are received will be reported to Committee by means of the Addendum.

## **7. APPRAISAL**

- 7.1 The issues to consider are whether the proposed changes to the mortgagee clause of the Section 106 agreement would result in any material change in the provision of affordable housing.
- 7.2 The proposed changes essentially insert a clause to the effect that in the event that the affordable housing provider defaults on their mortgage (which would only be likely to occur if the provider becomes bankrupt), the properties can be sold by the mortgage provider at a sufficient price to pay off the outstanding debt. It is still a requirement that the affordable units be offered in the first instance to other affordable housing providers, but if this cannot be achieved within three months, they can be sold on the open market.
- 7.3 This differs from the previous clause only in setting a minimum price for the properties. This therefore introduces the possibility that if the properties could not be sold for the minimum price to an affordable housing provider, they would therefore be sold on the open market and lost as affordable housing.
- 7.4 It is considered that the likelihood of an affordable provider going out of business is remote and even if this did occur it is likely that the whole portfolio of the provider would be transferred to other affordable housing providers. It is therefore considered that the risk of allowing this change in terms of losing affordable housing units to the private market would be extremely low.
- 7.5 However, this change is required by the mortgage provider who would otherwise not provide funding for the housing to be built, without the assurance that their money could be recovered in the event of a default on the payment. This is now standard procedure and in the absence of the amendments to this clause, advice is that it is unlikely that any lender would be prepared to lend and to fund the provision of affordable housing. Consequently it is considered that the risk of not amending the clause could be that there would be no funding available to the affordable provider and hence the affordable housing would never be built.

## **8. CONCLUSION**

- 8.1 It is considered that the amendment to the mortgagee clause as proposed would not result in any significant risk in respect of the loss of affordable housing. In the absence of this change it is likely that funding for the affordable housing will not be obtained from the registered provider's lender. This could slow down affordable housing

delivery on this site, as the registered provider will have to find alternative financing to pay for the dwellings. It is recommended, therefore, that the application to vary the Section 106 agreement by amending the mortgagee clause as requested is agreed.

## **9. BACKGROUND PAPERS**

9.1 Application N/2014/0994 and 07/0004/OUTWNN

## **10. LEGAL IMPLICATIONS**

10.1 None.

## **11. SUMMARY AND LINKS TO CORPORATE PLAN**

11.1 In reaching the attached recommendations regard has been given to securing the objectives, visions and priorities outlined in the Corporate Plan together with those of associated Frameworks and Strategies.



Name: Location Plan  
Date: 16th September 2014  
Scale: 1:3000  
Dept: Planning  
Project: Planning Committee

Title

## Former Princess Marina Hospital

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