

PLANNING COMMITTEE: 28th July 2020
DEPARTMENT: Planning Service
DIRECTOR OF PLANNING: Peter Baguley

APPLICATION REF: N/2020/0667

LOCATION: University of Northampton Park Campus, Boughton Green Road

DESCRIPTION: Application for a variation to the S106 agreement to amend mortgagee clause

WARD: Obelisk Ward

APPLICANT: Persimmon Homes Midlands
AGENT: N/A

REFERRED BY: Director of Planning and Sustainability
REASON: Amendment to S106 Agreement

DEPARTURE: No

APPLICATION FOR DETERMINATION:

1 RECOMMENDATION

- 1.1 That the Committee **AGREE** to vary the Section 106 Agreement dated 19 December 2018, to allow the amendment of the mortgagee exclusion clause and relevant definitions in the Agreement as set out in the report.
- 1.2 That the Borough Secretary and Monitoring Officer in consultation with the Director of Planning and Sustainability be given delegated authority to agree the amended wording of the mortgagee exclusion clause and relevant definitions and any consequential amendments as are considered necessary.

2 THE PROPOSAL

- 2.1 Application relates to a request to vary the Section 106 Agreement to amend the mortgagee exclusion clause in the Section106 Agreement dated 19 December 2018.

3 SITE DESCRIPTION

- 3.1 The application site consists of the former Northampton University Park Campus at Boughton Green Road, which is currently being redeveloped for residential use, following the grant of outline planning permission in 2014 as varied in 2017. It should be noted from the planning history below

that a number of applications for reserved matters have now been submitted and the site is progressing.

4 PLANNING HISTORY

- 4.1 N/2014/0475 – Outline application (with all matters reserved, except access) for the demolition of the existing University facilities and erection of new buildings comprising residential accommodation (Use Class C3) of up to 800 units, associated car parking, retail unit, landscaping and open space with accesses from Boughton Green Road – Approved 19/09/2014
- 4.2 N/2016/1593 – Variation of Condition 6 of N/2014/0475 (Outline permission for the demolition of the existing University facilities and erection of new buildings comprising residential accommodation (Use Class C3) of up to 800 units) to amend wording of condition to ensure the provision of an average of two parking spaces per dwelling (up to a maximum of 800 dwellings) – Approved 20/12/2018
- 4.3 N/2018/0688 – Reserved Matters Application pursuant to Outline Planning Permission N/2014/0475 (Demolition of the existing University facilities and the erection of new buildings comprising residential accommodation (Use Class C3) of up to 800 units, associated car parking, retail unit, landscaping and open space with accesses to Boughton Green Road) for Phase 1 of the development site for a total of 147 dwellings and associated infrastructure – Approved 10/09/2018
- 4.4 N/2018/1484 - Reserved Matters Application pursuant to Outline Planning Permission N/2014/0475 for Phase 2 of the development site for a total of 182no dwellings and associated infrastructure. Approved 11/04/2019
- 4.5 N/2018/1563 - Reserved Matters Application pursuant to Outline Planning Permission N/2014/0475 for switching substation for Phase 2 of the former University of Northampton Park Campus site and associated infrastructure. Approved 29/01/2019
- 4.6 N/2019/0179 - Reserved Matters Application pursuant to Planning Permission N/2016/1593 for an Attenuation Pond. Approved 11/04/2019
- 4.7 N/2019/1599 - Reserved Matters Application pursuant to Planning Permission N/2016/1593 (Development of up to 800 dwellings) for Phase 3 development of 346 dwelling units and associated works. Undetermined.
- 4.8 Various other applications have been submitted that relate to works to trees that are the subject of Preservation Orders on the site, during since the grant of outline consent.

5 PLANNING POLICY

5.1 Statutory Duty

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 Development Plan for the purposes of this application comprises the adopted West Northamptonshire Joint Core Strategy (2014), Northampton Local Plan (1997) saved policies.

6 National Policies

- 6.1 **National Planning Policy Framework (NPPF)** sets out the current aims and objectives for the planning system and how these should be applied. In delivering sustainable development, decisions should have regard to the mutually dependent social, economic and environmental roles of the planning system. The NPPF should be read as one complete document. However, the following sections are of relevance to this application:

Paragraphs 7-12 - Presumption in favour of sustainable development.

Section 5 - Housing Supply

Section 8 - Promoting healthy and safe communities.

Section 9 - Promoting sustainable transport

Section 11 - Making effective use of land

Section 12 - Achieving well designed places

Section 15 - Conserving and enhancing the natural environment

6.2 **West Northamptonshire Joint Core Strategy (2014)**

The West Northamptonshire Joint Core Strategy (JCS) provides an up to date evidence base and considers the current Government requirements for plan making as it has been prepared in full conformity with the NPPF. Policies of particular relevance are:

Policy S1 - The Distribution of Development
Policy S3 - Scale and Distribution of Housing Development
Policy S10 - Sustainable Development Principles
Policy H1 - Housing Density and Mix and Type of Dwellings
Policy H2 - Affordable housing
Policy RC2 - Community Needs
Policy BN2 - Biodiversity
Policy BN9 - Planning for Pollution Control
Policy INF2 - Contributions to infrastructure requirements

6.3 **Northampton Local Plan 1997 (Saved Policies)**

Due to the age of the plan, the amount of weight that can be attributed to the aims and objectives of this document are diminished, however, the following policy is material to this application:

Policy E20 – New development

7 **CONSULTATIONS/ REPRESENTATIONS**

7.1 None.

8 **APPRAISAL**

- 8.1 Mortgagee in possession clauses (also known as mortgagee exclusion clauses or mortgagee protection clauses) are standard in Section 106 Agreements which provide for the provision of affordable housing. These clauses provide for circumstances where a Registered Provider defaults on loan payments and the mortgagee takes control of the Registered Provider's interest in the affordable housing units as assets against which their loan is secured.
- 8.2 Such clauses allow for another Registered Provider or the Council to purchase the affordable housing units within a specified timeframe under a prescribed procedure. Where the affordable housing units are not purchased within this period, they are released from affordable housing tenure, enabling the mortgagee to dispose of the units to regain some, or all, of the loan that they have provided.
- 8.3 The wording of a mortgagee in possession clause affects the level of funding that a Registered Provider is able to secure against the affordable housing units to fund the provision of additional affordable housing as part of their delivery programme.
- 8.4 Where a mortgagee in possession clause does not provide sufficient protection for the funder and they would be bound by the affordable housing restrictions in the Section 106 Agreement, the funding value would be limited to Existing Use Value for Social Housing. The best possible funding value is Market Value Subject to Tenancies, where the funder would be able to sell on the open market, to either a Registered Provider or a non-regulated purchaser, and neither the lender nor successors in title would be bound by the affordable housing restrictions in the Section 106 Agreement.
- 8.5 In this instance the wording of some of the relevant definitions, and the mortgagee in possession clause in the Section 106 Agreement are such that the value of the affordable housing units is limited to Existing Use Value – Social Housing. Accordingly, it is proposed that these are amended

to enable the property to be charged at Market Value Subject to Tenancies. This will enable a Registered Provider to obtain maximum value and reinvest in further affordable housing schemes.

- 8.6 In effect, to amend the mortgagee clause would allow the Registered Provider to obtain higher value funding from their funders, which in turn would allow them to fund further developments and deliver more affordable housing units elsewhere, but it would not affect the level of provision of the affordable units for this development in any event. No other amendments to obligations, financial or otherwise are sought, so will remain as set out in the S106 agreement of 19 December 2018.

9 CONCLUSION

- 9.1 The proposed amendment is in line with more recent practices and allows a Registered Provider to seek funding which will enable investment in further developments and it is considered to be an acceptable request.

10 BACKGROUND PAPERS

- 10.1 N/2020/0667.

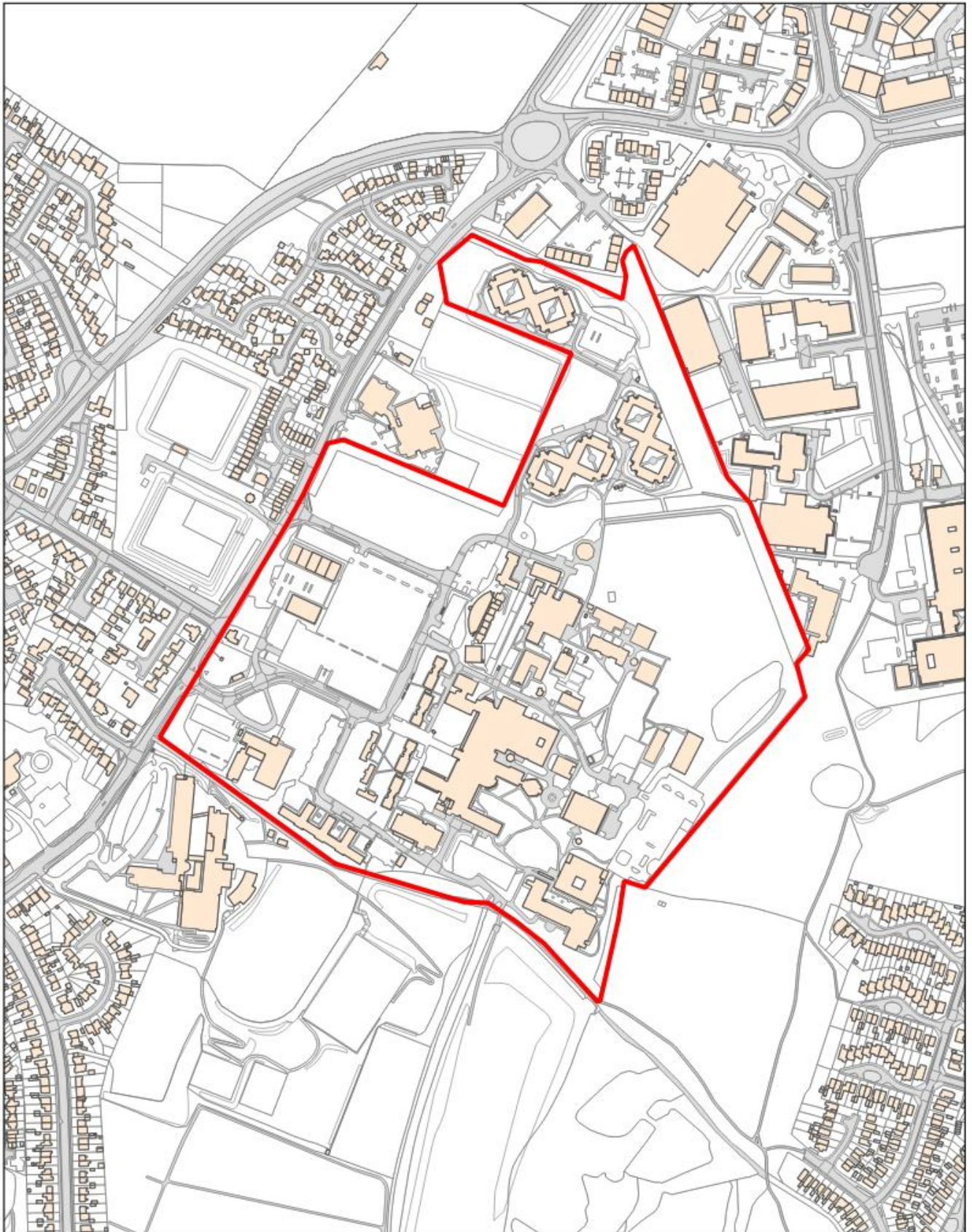
11 LEGAL IMPLICATIONS

- 11.1 The Social Housing Regulator monitors the financial viability of Registered Providers and can intervene in the management of a Registered Provider in financial difficulty. There are few examples of Registered Providers falling into financial difficulties and where this has been the case Registered Providers have to date been taken over by another Registered Provider. There are no known cases of mortgagee in possession clauses being triggered in relation to assets owned by Registered Providers.

- 11.2 Taking these issues into account it is considered that any risk associated with a Registered Provider defaulting on a loan and the affordable housing units not being secured by the Council or another Registered Provider is limited and is outweighed by the factors referred to above.

12 SUMMARY AND LINKS TO CORPORATE PLAN

- 12.1 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.



Title: **UON Park Campus, Boughton Green Road**

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Date: 17-07-2020

Scale: 1:5,000

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