



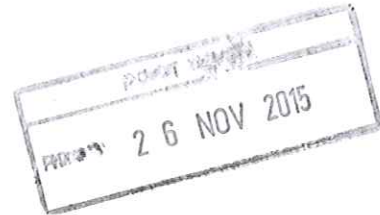
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Your Ref: SMD/2014/0655  
Our Ref: RB/VH/923a

23<sup>rd</sup> November 2015

Rachael Simpkin  
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Staffordshire Moorlands District Council  
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Dear Rachael

**APPLICATION UNDER SECTION 106BA OF THE TOWN AND COUNTRY PLANNING ACT 1990:  
LAND OFF BROOKHOUSE WAY, CHEADLE (LPA REF: SMD/2014/0655)**

**Introduction**

The Growth and Infrastructure Act inserts new Sections 106BA – BC into the Town and Country Planning Act 1990. These introduce a new application and appeal procedure for the review of planning obligations which relate to the provision of affordable housing.

This application is made by HOW Planning on behalf of Danbank Developments ("Danbank") and seeks to vary the Section 106 Agreement dated 3<sup>rd</sup> November 2015 in connection with planning permission SMD/2014/0655, granted on 17<sup>th</sup> November 2015 for a mixed use development comprising a residential development of up to 43 dwellings and up to 1,350 sq.m of employment use.

The following documents are submitted in support of this application:

- Application Form (dated 23<sup>rd</sup> November 2015);
- Original Section 106 Agreement;
- Tracked changed Section 106 Agreement;
- Decision Notice;
- Site Location Plan; and
- Confidential Development Viability Appraisal (Grasscroft, November 2015).

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## Background

Planning Committee Members resolved to grant planning permission for the application proposals in February 2015. Following this decision, Danbank actively pursued the potential of developing the site for employment and residential development, however there had been a disappointing lack of interest by builders, which is primarily due to the site's poor ground conditions. The complexities of developing the land are such that there are considerable abnormal costs involved. The abnormal costs are such that it is not feasible to provide all the obligations sought in the Section 106 Agreement, as evidenced within the submitted confidential Development Viability Appraisal. Danbank discussed the viability concerns with the Council, however given the impending deadline to complete the Section 106 Agreement, it was agreed with the Council that to ensure a timely delivery of the site, a Section 106BA application to remove the affordable housing obligation would follow the grant of planning permission.

The Ministerial Letter issued by the Minister of State for Housing and Planning, Brandon Lewis MP, on 9<sup>th</sup> November 2015 confirms that local planning authorities should be flexible in their obligation requirements, taking into account specific site circumstances and changing circumstances. The letter also reiterates that developers are already entitled to apply to revise the affordable housing element of any Section 106 planning obligation if they can evidence that the affordable housing element is making the scheme unviable and is stalling development. The Minister urges planning authorities to respond constructively, rapidly and positively to requests for such renegotiations and to take a pragmatic and proportionate approach to viability.

## The Application

This application seeks to vary the Section 106 Agreement in respect of the affordable housing element, which in its current form makes the proposal unviable. The Section 106 currently obligates the developer to provide 33% affordable housing across the site. As set out within the submitted confidential Development Viability Appraisal, prepared by Grasscroft, the requirement to provide affordable housing renders the scheme unviable and in order for both the landowner and the developer to remain incentivised to bring forward the development, the requirement to provide on-site affordable housing should be removed in its entirety. The purpose of this application therefore is to apply for the affordable housing requirement of 33% contained in the Section 106 Agreement to be removed, as the affordable housing requirement makes the scheme unviable.

Table 1 identifies the changes that are required to be made to the Section 106 Agreement as a result of this application.

Table 1: Schedule of Amendments to the Section 106 Agreement

Section 106 Reference	Proposed Amendment
<b>INTRODUCTION</b>	
Definition of 'Affordable Housing or Affordable Houses' (Page 1)	Delete
Definition of 'Affordable Housing Scheme' (Page 2)	Delete
Definition of 'Affordable Housing Mix'	Delete



(Page 2)	
Definition of 'Affordable Units' (Page 2)	Delete
Definition of 'Affordable Rented Housing' (Page 2)	Delete
Definition of 'Chargee' (Page 2)	Delete
Definition of 'Disposal' (Page 4)	Delete
Definition of 'Equity Share and Rental Share' (Page 4)	Delete
Definition of 'First Disposal' (Page 4)	Delete
Definition of 'Grant Funding and Recycled Grant' (Page 4)	Delete
Definition of 'Homes and Communities Agency' (the HCA) Page 4	Delete
Definition of 'Housing Manager' Page 4	Delete
Definition of 'Open Market Value' (Page 5)	Delete
Definition of 'Registered Provider' (Page 6)	Delete
Definition of 'Rent' (Page 7)	Delete
Definition of 'Shared Housing Unit' (Page 7)	Delete
Definition of 'Shared Ownership Terms' (Page 7)	Delete
Definition of 'Shared Ownership Rent' (Page 7)	Delete
Definition of 'Specification' (Page 7)	Delete
Definition of 'Staircase' (Page 7)	Delete
Definition of 'Suitable Offer(s)' (Page 7)	Delete
<b>MISCELLANEOUS</b>	
7.14 (a) Deletion of the word "commercial"	Delete
7.14 (b) Owners of occupiers of the Shared Ownership Housing Units who have Staircased to 100% equity	Delete
7.14 (c) Any mortgage or charge of any Shared Housing Unit or receiver appointed by any of them in the event of default under a mortgage or charge obtained by an individual to enable the purchase of a Shared Ownership Housing Unit for their own personal occupation.	Delete
7.15 A Chargee of the Registered Provider (or receiver appointed by such Chargee) pursuant to any default under the terms of its mortgage or charge may dispose of the Affordable Units related to such	Delete

mortgage or charge free from the provisions of paragraphs 4, 5, 6 and 7 of the First Schedule of this Deed relating to Affordable Housing provided that: (a) It has first given the Council not less than three months written notice of its intention to dispose of the Affordable Units; (b) It has used reasonable endeavours to dispose of the Affordable Units to a Registered Provider(s) subject to the terms of this Deed and for an appropriate price PROVIDED however that nothing in this Deed shall require or be deemed to require a Chargee (or any receiver appointed thereby) to dispose of the Affordable Units at a price which is less than that necessary to redeem the mortgage or charge then outstanding; and (c) together with written notice given under clause 7.15(a) it has provided evidence to the Council of its reasonable endeavours to dispose of the Affordable Units to a Registered Provider(s) subject to the term of this Deed and for an appropriate price.	
<b>THE FIRST SCHEDULE – PART 1</b>	
3.3 Deletion of the word "commercial"	Delete
4. Affordable Housing Parts 4.1 to 4.11	Delete
5. Provisions relating to the Affordable Rental Units once transferred to the Registered Provider Parts 5.1 to 5.5	Delete
6. Provisions relating to Shared Ownership Housing once transferred to the Registered Provider Parts 6.1 to 6.12	Delete
7. Provisions relating to Sale Proceeds once transferred to the Registered Provider	Delete

In summary, Danbank's confidential Development Viability Appraisal demonstrates that the affordable housing requirement contained in the original Section 106 Agreement means that the development is not economically viable and that the affordable housing requirement should be removed. This application seeks to remove the affordable housing requirement from the Section 106 Agreement to ensure the scheme's viability and the delivery of the consented scheme.

Danbank respectfully requests that the Section 106BA application is determined within 28 days, in accordance with the provisions of the 1990 Act, unless an extension of time is agreed by both parties. I look forward to receiving confirmation of receipt and should you require any clarification on any of the information submitted in support of this application, please do not hesitate to contact me.

Yours sincerely,



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