



ACHIEVING • EXCELLENCE

APPLICATION TO VARY A S106 PLANNING OBLIGATION

Please Return to:
Planning Application Services
Staffordshire Moorlands District Council
Moorlands House
Stockwell Street
Leek
Staffordshire
ST13 6HQ

Application Number:

Received:

Pre Application discussions

Have you had any discussions / correspondence with Planning Application Services about this proposal?

NO

If YES: Officer Name Our Reference

1. APPLICANT

Name: Staffordshire Housing Association
Limited
Address: 308 London Road, Stoke-on-Trent,
Staffordshire
Postcode: ST4 5AB
Tel: 01782 744533
E-Mail:

2. AGENT

Name: Andrea Bruce
Address: Knights Solicitors LLP, The Brampton,
Newcastle-under-Lyme, Staffordshire
Postcode: ST5 0QW
Tel: 01782 619225 Fax: 01782 712522
E-Mail: andrea.bruce@knightsllp.co.uk

3. ADDRESS OF LAND OR BUILDING(S) TO WHICH THIS APPLICATION RELATES

The boundary of the site must be shown in red on a site plan

Address: Uplands Mill, Biddulph

Postcode: N/A

4. APPLICANT'S INTEREST IN THE LAND

Freeholder / prospective purchaser.

I / we have completed an ownership certificate B and attach it to this application.

5. DETAILS OF PLANNING OBLIGATION TO BE MODIFIED/DISCHARGED

The agreement dated 9 February 2010 and made between the Council (1) the County Council (2) and Selectus Holdings Limited (3) as varied by a Deed of Variation dated 19 November 2012 made between Bovis Homes Limited (1) Staffordshire Moorlands District Council (2) and Staffordshire County Council (3).

Date of Obligation: 9 February 2010 (as varied by a Deed of Variation dated 19 November 2012).

6. REASON(S) FOR APPLYING FOR VARIATION

- 6.1 The Applicant is a Registered Social Landlord to whom the affordable housing provided for in the planning obligation is to be transferred.
- 6.2 There is no mortgagee in protection clause for mortgagees of Intermediate Housing Units which are provided through either shared ownership or shared equity so that if they exercise their power of sale but cannot sell to a RSL or someone else who fulfils the affordable housing criteria within a specified period of time they are released from the affordable housing restrictions of the agreement relating to such Intermediate Housing Units.
- 6.3 Nor is there any provision that owners and occupiers of such Units who have staircased to 100% equity are released.
- 6.4 Without the provisions described at paragraphs 6.1 and 6.2 above a prospective purchaser of an Intermediate Housing Unit on a shared ownership or shared equity basis cannot obtain a mortgage as such provisions are a requirement of mortgagees who provide mortgages for such properties. A briefing from the Council of Mortgage Lenders' dated May 2009 is attached demonstrating this and reference in particular should be made to paragraph 13. Such prospective purchasers require mortgages to be able to acquire dwellings on a shared ownership or shared equity basis and consequently the Intermediate Housing Units cannot be occupied on this basis without a variation to the planning obligation to include the provisions at paragraphs 6.1 and 6.2 above.
- 6.5 Pre-application advice has been sought by the Applicant from Michelle Costello, the Council's Housing Strategy Officer. Suggested drafting for a new clause to be inserted in to the Planning Obligation which provided that if a purchaser meeting the restrictions of the planning obligation could not be found within 3 months the mortgagee would be able to sell free of the restrictions was provided. Ms Costello responded to request the following:

- The said mortgagee or chargee shall use reasonable endeavours to dispose the site to relevant parties including Registered Provider(s) and subject to the terms of this Agreement and for an appropriate price PROVIDED however that nothing in this Agreement shall require or be deemed to require a Chargee (or any receiver appointed thereby) to dispose of the Site at a price which is less than that necessary to redeem the mortgage or charge then outstanding.
- evidence to be provided to the Council of it's reasonable endeavours to dispose of the Site to a Registered Provider(s)
- the said mortgagee or chargee shall give not less than three months written notice to the Council of its intention to exercise its power of sale; 'In the event that the Council responds to the receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer

6.6 The additions requested have been incorporated into the draft deed of variation enclosed with this application

6.7 The clauses in the draft deed of variation submitted with this application is based on the model planning obligation agreed by DCLG and the Law Society, modified to reflect the drafting of the existing planning obligation and the requirements of the Housing Strategy Officer.

6.8 The Applicant has taken a transfer of some but not all of the affordable housing provided for in the planning obligation. The Applicant has not disposed of any of the affordable housing units it has acquired. The affordable housing restrictions of the planning obligation are enforceable only against the affordable housing units. Bovis Homes limited and the Applicants are the only persons interested in the land comprising the affordable housing and against whom the provisions of the planning obligation may be enforced. The planning obligation provides at clause 2.5.2 that the obligation is not enforceable against purchasers of individual dwellings (and their mortgagees) (save in relation to affordable housing) and clause 2.5.3 provides that the obligation is not enforceable against statutory undertakers where there has been a transfer of statutory apparatus.

6.9 The Applicant has served notice of this application on Bovis Homes Limited. Official copies of Bovis' and the Applicant's title are enclosed with this application.

7. Financial viability

Have you submitted a financial viability statement with this application? NOT APPLICABLE

If YES: Who has certified this as true and correct.....

8. APPLYING FOR PERMISSION

I/we apply to vary a planning obligation as described in this application.

Signed Knight Solicitors LLP Date 15 April 2014

On behalf of Staffordshire Housing Association Limited (fill in applicant(s) name if signed by agent).