

Planning Committee 23 April 2019
Report of the Interim Head of Planning

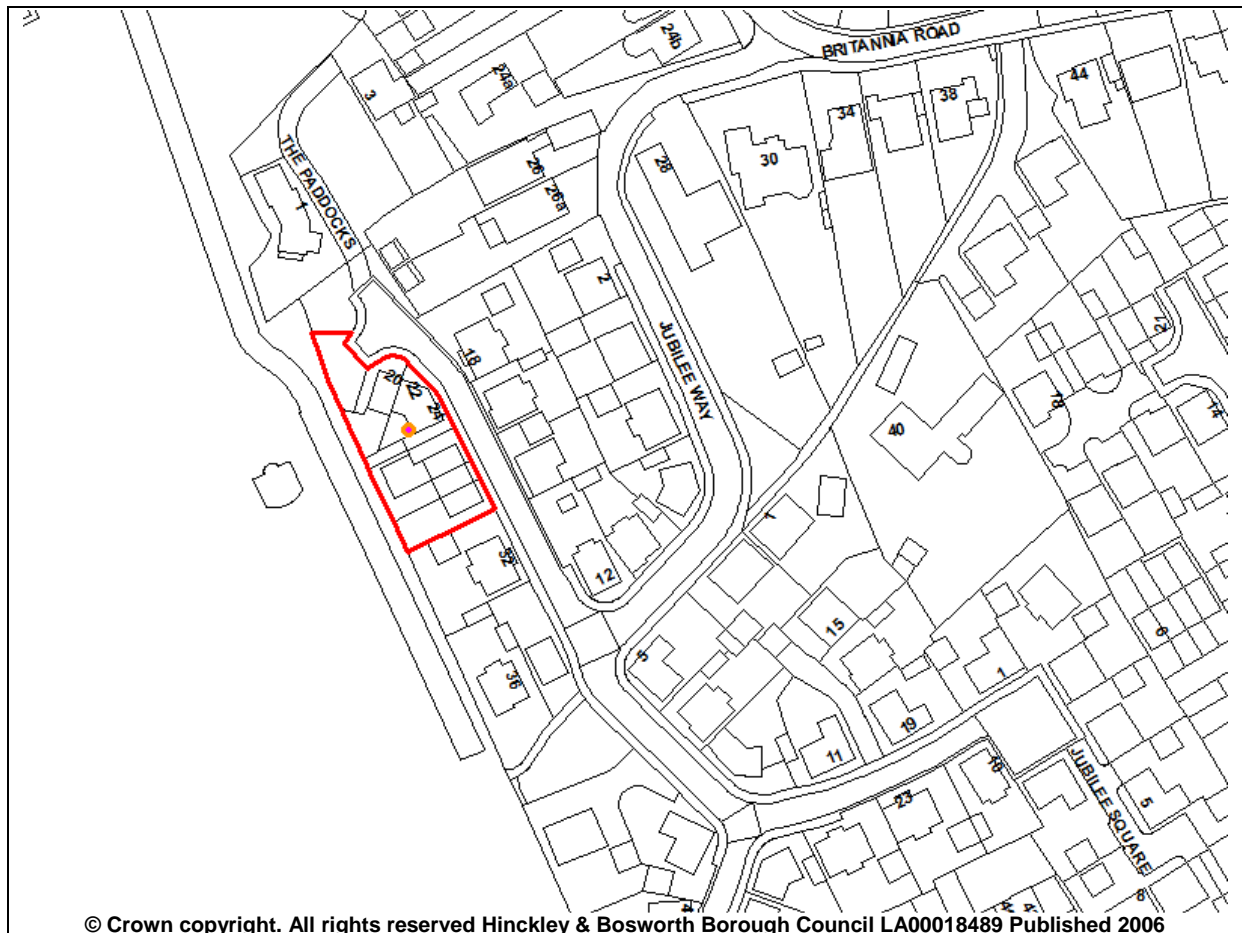
Planning Ref: 19/00264/S106
Applicant: Holly Edwards
Ward: Burbage Sketchley & Stretton



Hinckley & Bosworth
Borough Council

Site: Land South Of 26 To 28 Britannia Road Burbage

Proposal: Deed of variation to amend section 106 agreement relating to application 12/00154/FUL to provide the provision of right to buy for no. 22 Jubilee Way



1. Recommendations

- 1.1. Refuse modification to S106 agreement relating to planning permission 12/00154/FUL for the reason given at the end of this report.**

2. Planning Application Description

- 2.1.** Full planning permission was granted in 2012 for the erection of 52 dwellings with garages and infrastructure at land south of 26 to 28 Britannia Road, Burbage. A S106 agreement accompanied that permission and the current application seeks to amend the S106 agreement as set out below:

- Amend the section 106 agreement to provide the provision of right to buy for no. 22 Jubilee Way, Burbage.

- 2.2. None of the other obligations within the original Section 106 agreement are affected by this application.

3. Description of the Site and Surrounding Area

- 3.1. The entire application site for application reference 12/00154/FUL measures approximately 2.21 hectares and used to comprise two separate fields bisected by a public right of way. The ground levels fall to the south of the site and there are field boundary hedgerows and sporadic trees around the perimeter. Britannia Road Recreation Ground lies to the west, agricultural fields lie to the south and part east and residential development lies to the part north and part east of the site. The development is fully completed and occupied.
- 3.2. The application site this relates to is 22 Jubilee Way, which is a two bedroom dwelling and secured as an affordable rented unit within the agreed Section 106.

4. Relevant Planning History

09/00915/OUT	Erection of 62 dwellings and associated access	Refused – Appeal Allowed	23.03.2010
10/00381/OUT	Development of 62 no residential dwellings including access	Withdrawn	25.06.2010
11/00823/FUL	Erection of 52 no. Dwellings with garages and associated infrastructure	Refused – Appeal Withdrawn	08.02.2012
12/00154/FUL	Erection of 52 dwellings with garages and associated infrastructure	Permission	14.05.2012
12/01026/FUL	Erection of 9 dwellings (part re-plan of permission 12/00154/FUL (plots 40-45 and 47-49)	Refused – Appeal Allowed	05.04.2013
12/01079/FUL	Erection of 9 dwellings and associated infrastructure	Refused – Appeal Allowed	05.04.2013
13/00314/FUL	Substitution of house types plots 48 and 49 of planning permission 12/00154/FUL	Permission	28.06.2013
13/00595/CONDIT	Variation of condition 2 and 4 of planning permission 12/00154/FUL - the erection of 52 dwellings with garages and associated infrastructure. Amendments to materials	Permission	18.10.2013

5. Publicity

- 5.1. A site notice was posted within the vicinity of the site and a notice was displayed in the local press.
- 5.2. No comments received.

6. Consultation

- 6.1. No objection in principle from Burbage Parish Council subject to the clarification on the potential availability of S106 resulting from the modification/sale.

7. Policy

- 7.1. Core Strategy (2009)
- Policy 4: Development in Burbage
 - Policy 15: Affordable Housing
- 7.2. Site Allocations and Development Management Policies DPD (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM3: Infrastructure and Delivery
- 7.3. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2019)
 - Planning Practice Guidance (PPG)
- 7.4. Other relevant guidance
- Affordable Housing SPD (2011)
 - Emerging Burbage Neighbourhood Plan

8. Appraisal

- 8.1. Under section 106A of the Town and Country Planning Act 1990 a planning agreement may be modified by agreement between the local planning authority and the person against whom the planning obligations are enforceable. National Planning Practice Guidance provides that planning obligations can be renegotiated at any point, where the Council and the Developer agree to do so.
- 8.2. Policy 15 of the Core Strategy states that to support the provision of mixed, sustainable communities, a minimum of 2090 affordable homes will be provided in the borough from 2006 to 2026. It should also be noted that the Annual Monitoring Report 2016-2017 identifies that 954 affordable dwellings were delivered since 2006. This is less than half of the required affordable housing units however we are over half way through the current plan period.
- 8.3. Policy 15 seeks the provision of 20% affordable housing on all sites in Burbage of 15 dwellings or more or 0.5 hectares or more with a tenure split of 75% for social rent and 25% for intermediate tenure.
- 8.4. The original section 106 agreement (dated 14 May 2012) secured affordable housing units at 25% of the total number of dwellings to be constructed as part of the development with the split being 9 Social Rented Dwellings and 4 Intermediate Housing.
- 8.5. There have been the following Section 106 Agreements and Deed of Variations on the Site:
- Application Number 12/00154/FUL
 - Section 106 Agreement Dated 14 May 2012
 - Deed of Variation Dated 27 November 2013
 - Application Number 12/01079/FUL
 - Section 106 Agreement Dated 2 October 2013

- 8.6. The current section 106 agreement on the site ensures that nothing shall prevent the Registered Provider from disposing of it or any part thereof under Section 16 of the Housing Act 1996 and any statutory extension, amendment or replacement thereof. Section 16 of the Housing Act 1996 provided a right for the tenant to acquire the dwelling; however, Section 16 of the Housing Act 1996 has been revoked and the right to acquire is no longer in place.
- 8.7. Central government have introduced a pilot scheme, The Voluntary Right to Buy Midland Pilot, within the Midlands. Qualification criteria and financial discounts for the scheme work in the same way as the right to buy scheme for council tenants but during the pilot the application process operates in a different way to the statutory Right to Buy Scheme currently in force. Tenants of Registered Providers for the pilot have a window of time to register their interest, and after the closing date the successful tenants are picked at random, and given a reference number. They then make an application for right to buy to their landlords using their reference number.
- 8.8. As the Voluntary Right to Buy is currently only being piloted in a specific geographical area, landlords could choose whether or not they wish to participate in the pilot, and those that do have flexibility on properties they will or will not include in the voluntary right to buy. However those tenants who are successful in applying for right to buy, but whose property is not included in the right to buy pilot, should be offered an alternative property.
- 8.9. The applicant, Stonewater Homes, which is the Registered Provider for the affordable housing properties on Jubilee Way, has chosen to participate in the Voluntary Right to Buy pilot, and currently 1 of their tenants on Jubilee Way has been successful in their bid to qualify under the pilot scheme. Other tenants may register their interest in future bid rounds.
- 8.10. The current wording of the section 106 agreement dated 14th May 2012 would not allow the properties they occupy to be used for owner occupation and therefore although they qualify for voluntary right to buy this can only be executed by amending the S106 agreement. This application therefore seeks a variation to the section 106 agreement to allow their tenants to buy the home they currently occupy.
- 8.11. The proposed amendment to the Section 106 would ultimately result in the loss of affordable housing properties within the borough of Hinckley and Bosworth. The loss of stock for affordable and social rent is considered to be significant, especially given the pressures on the Council's housing register, which currently (14 March 2019) has 1525 applicants waiting for rehousing. As identified above the council has a requirement to deliver 2090 affordable dwellings over the plan period. The council is currently under-delivering affordable housing provision in the borough, in 2016/17 the delivery of affordable dwellings over the plan period was 954 dwellings which is 196 less than the expected 1150 by 2016/17.
- 8.12. The loss of affordable housing is significant for this borough, due to the needs for affordable housing in the area. This amendment to the Section 106 would result in the loss of a social rented dwellings delivered as part of this development and also result in an overall net loss to the borough, The Affordable Housing SPD states in paragraph 7.5 *'The council wishes to ensure that affordable housing remains affordable and is occupied by local people in housing need in perpetuity'*. This proposal would be contrary to this aim and therefore contrary to Policy 15 of the Core Strategy.
- 8.13. Under the Voluntary Right to Buy pilot the capital receipt received by the Registered Provider for the sale must be reinvested in affordable housing. However this does not necessarily have to be reinvested in the area in which the sale was made, or

even the borough of Hinckley and Bosworth. Although the applicant is actively increasing their supply of affordable housing in the borough, there is no guarantee that the sale/loss of these affordable housing units would be recycled into the borough. Therefore the assessment must assume that there would be a net loss of affordable dwellings within the borough as a result of this scheme.

- 8.14. Consideration has also to be given to this scheme providing an opportunity for the existing tenants to meet their housing aspirations when they may not be able to enter owner occupation by any other means. In addition, it would allow the tenants to remain in their community where buying a property might otherwise be out of reach.
- 8.15. It is considered however, that the minor benefits of the pilot scheme identified above do not outweigh the significant impacts of the loss of an affordable housing unit within the borough, especially where this loss is not mitigated. This is emphasised further given that the borough's affordable housing delivery is considerably below the affordable housing target over the recent plan period. In addition, if this modification is agreed, this could lead to further registered providers requesting similar modifications which would further result in a loss net of affordable housing units. Although this modification would result in the loss of a 1 property on the development site, other tenants may come forward to apply for the voluntary right to buy scheme.
- 8.16. The Voluntary Right to Buy Midland Pilot is not supported by legislation or local policy and is by its very name a pilot. Local Planning Authorities are not required to release affordable housing secured by Section 106 if they do not determine it is appropriate to do so. In this instance the proposal would result in the net loss of an affordable unit with no guarantee that this would be recycled within the borough at a time when the delivery of affordable housing units is below the council's targets. The benefits of this proposal for existing tenants to meet their housing aspirations to own their own home is not considered to outweigh the significant harm identified to the loss of affordable housing stock for the borough. As such, the proposed amendment is considered to be contrary to Policy 15 of the Core Strategy and the Affordable Housing SPD.

9. Equality Implications

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-
 - (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.
- 9.3. There are no known equality implications arising directly from this development.
- 9.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which

makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1. It is considered that the proposed amendment to the existing Section 106 agreement and subsequent deed of variation for planning permissions 12/00154/FUL and 12/01079/FUL to secure the affordable housing obligations would result in the loss of affordable housing units that would be contrary to the council's targets and policies relating to affordable housing provision. The benefits identified are not considered to outweigh the harm and as such, the modification is recommended for refusal, in line with the provisions of Policy 15 of the Core Strategy and the Affordable Housing SPD.

11. Recommendation

- 11.1. **Refuse modification to S106 agreement relating to planning permission 10/00358/OUT** for the reason given at the end of this report

11.2. Reasons

1. The modification to the section 106 agreements relating to planning permissions 12/00154/FUL and 12/01079/FUL would result in the net loss of an affordable unit with no mitigation or guarantee that this affordable dwelling would be replaced within the borough of Hinckley and Bosworth at a time when the delivery of affordable housing units is below the council's targets. As such, the proposed amendment is considered to be contrary to Policy 15 of the Core Strategy and the Affordable Housing Supplementary Planning Document (2011).

11.3. Notes to Applicant

1. This modification has been considered in accordance with the submitted details as follows:

Application Form,
Section 106 Agreement,
Title Plan,
Title Register,
Part 2 Notice – Certificate B
received by the local planning authority on 1 March 2019

Deed of Variation
received by the local planning authority on 5 March 2019

Title Plan
received by the local planning authority on 8 March 2019.