

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

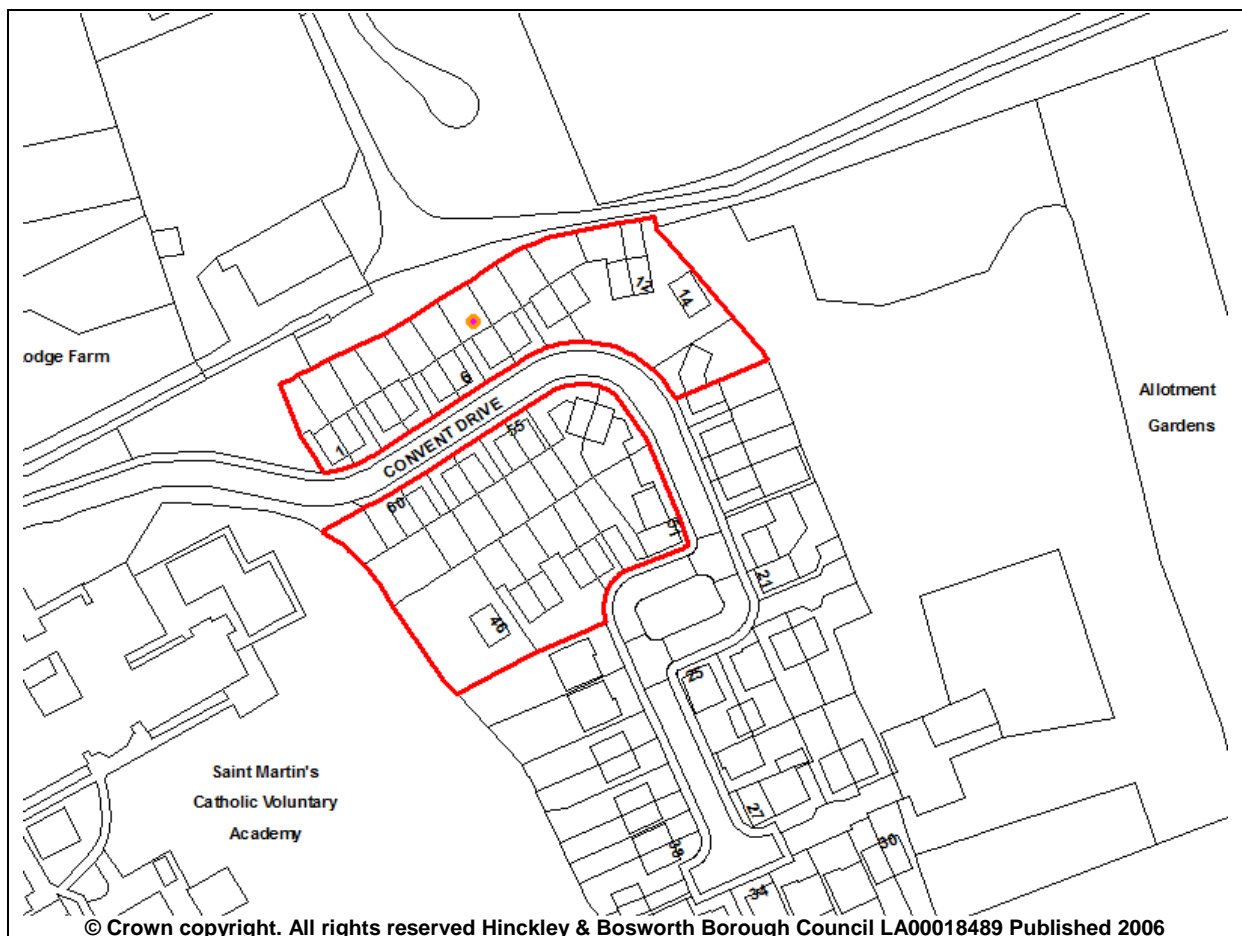
Planning Ref: 19/00013/S106
Applicant: Holly Edwards
Ward: Ambien



Hinckley & Bosworth
Borough Council

Site: St Martins Convent Hinckley Road Stoke Golding

Proposal: Deed of variation to amend section 106 agreement relating to application 10/00358/OUT to provide the provision of right to buy for 8, 9, 14, 51 and 53 Convent Drive



1. Recommendations

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

2. Planning Application Description

- 2.1.** Outline planning permission was granted in 2010 for the residential development of up to 59 dwellings on land at St Martins Convent, Hinckley Road, Stoke Golding. 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 nos. 8, 9, 14, 51 and 53 Convent Drive, Stoke Golding.

- 2.2. None of the other obligations within the original Section 106 agreement are affected or proposed to be modified by this application.

3. Description of the Site and Surrounding Area

- 3.1. The application site extends to 3.2 hectares and is accessed along a drive which runs from Hinckley Road to the rear of St Martin's School. The application site used to be a convent with a number of buildings on the site that has previously been demolished as part of the original planning application.
- 3.2. The application site is located within the settlement boundary of Stoke Golding and is bound to the north by Lodge Farm, to the west and south west by St Martin's Catholic School and to the east and south east by open fields. There is extensive tree cover to the drive and western boundary. The western part of the site is covered by a group Tree Preservation Order.
- 3.3. Site levels fall significantly from north to south by approximately 4 meters. There are a variety of buildings on site. The development is fully completed and occupied.

4. Relevant Planning History

10/00358/OUT	Residential development for up to 59 dwellings (outline - access only)	Permission	09.09.2010
11/00219/REM	Erection of 59 dwellings (siting, appearance, layout and landscaping)	Permission	24.06.2011
12/00880/FUL	Erection of 20 dwellings (part re-plan of 11/00219/REM)	Permission	14.03.2013
13/00453/CONDIT	Variation of condition 2 of planning permission 11/00219/REM to amend the approved elevations	Permission	09.10.2013
13/00509/CONDIT	10 Variation of condition 2 of planning permission 12/00880/FUL to amend the approved elevations	Permission	22.10.2013
13/00989/NOMAT	Non material amendment of planning permission 13/00453/CONDIT to change Plot 19's patio doors to a bi-fold door	Permission	10.12.2013
15/00845/CONDIT	Variation of condition 2 of planning permission 11/00219/REM to enable relocation of equipped play area	Withdrawn	08.03.2017

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 objections from Stoke Golding Parish Council.

7. Policy

- 7.1. Core Strategy (2009)

- Policy 11: Key Rural Centres
- 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 documents

- Affordable Housing SPD (2011)

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 40% affordable housing on all sites in rural areas of 4 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 2010 permission and its original section 106 agreement (dated 9 September 2010) secured affordable housing units at 40% of the total number of dwellings to be constructed as part of the development with the split between Social Rented and Intermediate Housing to be agreed at a later date.

- 8.5. A viability report was submitted to the local planning authority on 11 October 2011 and a deed of variation was subsequently agreed which result in an amendment to the affordable housing provision on the site. This deed of variation secured affordable housing units at 25% of the total number of dwellings to be constructed, split 11.5% social rented (7 dwellings) and 13.5 intermediate (8 dwellings).

- 8.6. There have been the following Section 106 Agreements and Deed of Variations on the Site:

- Application Number 10/00358/OUT
 - Section 106 Agreement Dated 9 September 2010
 - Deed of Variation Dated 21 December 2011 – this secured an amendment to the affordable housing provision on the site

- Application Number 12/00880/FUL

- Deed of Variation Dated 11 March 2013 – this secured the contributions from the original Outline application to be carried forward within this permission

- 8.7. The current section 106 agreement on the site states 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 House Act 1996 has been revoked and the right to acquire is no longer in place.
- 8.8. Central government have introduced a pilot scheme, The Voluntary Right to Buy Midlands 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.
- 8.9. 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.
- 8.10. The applicant, Stonewater Homes, which is the Registered Provider for the affordable housing properties on Convent Drive, has chosen to participate in the Voluntary Right to Buy pilot, and currently 5 of their tenants on Convent Drive have been successful in their bid to qualify for right to buy. Other tenants may register their interest in future bid rounds.
- 8.11. 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.
- 8.12. 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.
- 8.13. The loss of affordable housing is significant for this borough, due to the needs for affordable housing in the area. As identified earlier in the report this development was unable to deliver the policy requirement of 40% affordable housing and was reduced to 25% due to viability issues which the scheme. This amendment to the Section 106 would result in the loss of an additional 5 social rented dwellings which

would leave 2 social rented dwellings within this development, 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.

- 8.14. 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. The applicant has submitted a letter in support of the application stating that they are currently delivering 63 units within Earl Shilton and also exploring other opportunities in the area. These additional affordable dwellings are being delivered through other developments which are required to provide a provision of affordable housing, therefore it is not considered that these additional dwellings would be a 'net gain' to affordable housing as they are policy required development, not 'in addition to'. 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.
- 8.15. 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.
- 8.16. It is considered however, that the minor benefits of the pilot scheme identified above do not outweigh the significant impacts of the loss of affordable housing units 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.
- 8.17. 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 affordable units 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. The equality implications arising from this application relate to the protected characteristics of the son of one of the tenants within one of the properties that has applied for the voluntary right to buy scheme. The tenant has advised that their son is autistic and this is part of the reasoning as to why the tenant is requesting to buy the property. Notwithstanding that, this is not a material consideration in the provision of affordable units in the borough, the recommendation of refusal of this modification will not result in a threat to the tenants long term tenancy. The tenant is still residing at the property and can continue to do so for the foreseeable future under the provisions of their tenancy from the Registered Provider.

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 variations for planning permissions 10/00358/OUT and 12/00880/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 agreement relating to planning permissions 10/00358/OUT and 12/00880/FUL would result in the net loss of affordable units with no mitigation or guarantee that these affordable dwellings 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 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,
Title Plan,

Title Register,
Section 106 Agreement,
Deed of Variation
received by the local planning authority on 12 December 2018

Part 2 Notice – Certificate B
received by the local planning authority on 11 January 2019

Letter received from the Agent dated 22 February 2019
received by the local planning authority on 28 February 2019.