

**4/02561/15/VAR - VARIATION OF LEGAL AGREEMENT.  
SYMBIO HOUSE, WHITELEAF ROAD, HEMEL HEMPSTEAD, HP3 9PH.  
APPLICANT: CORONA PROPERTIES - MR A SINGH.**

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[Case Officer - Andrew Parrish]

## PURPOSE OF REPORT

To seek approval for a voluntary Deed of Variation of the Section 106 Agreement dated the 24<sup>th</sup> June 2015 to vary the affordable housing provision on site to a commuted sum to be used by Dacorum Borough Council for the provision of affordable housing elsewhere.

## IMPLICATIONS

### **Key Policies, General Policies and Financial**

#### National Policy Guidance

NPPF (paras. 173, 188 and 205)  
NPPG  
TCPA 1990 (s106A and s106B)  
Growth and Infrastructure Act 2013

#### Adopted Core Strategy

CS19 - Affordable Housing  
CS35 - Infrastructure and Developer Contributions

#### Saved Policies of the Dacorum Borough Local Plan

#### Policy 13 - Planning Conditions and Planning Obligations

Providing affordable housing is one of the Council's key corporate priorities and this will be retained under the Deed of Variation, albeit as a financial contribution rather than provision in kind.

All other contributions agreed as part of the completed s106 agreement will remain.

The proposals will provide a competitive return to the developer in the form of a viable scheme to ensure delivery.

## BACKGROUND AND PROPOSAL

1. Following the resolution of the Development Control Committee of 18 December 2014 to delegate to the Group Manager Development Management and Planning with a view to approval subject to a s106 agreement, on 26 June 2015 outline Planning Permission was granted under reference 4/02320/14/MOA for Construction of 16-storey and four basement level building comprising of up to 208 flats, offices, retail, leisure space and 228 car parking spaces following demolition of existing office (Class B1) building (all matters reserved).
2. A s106 agreement was completed to secure a package of community benefits and

financial contributions as follows:

<b>Provision of Community Benefits:</b>	<b>Financial Contributions towards:</b>
Affordable Housing (35%) of which 75% Affordable Rent and 25% Shared Ownership	Allotments - £9,389 Outdoor pitches - £68,428 Cycles - see Sustainable Transport Child play space - £238,464 Natural green space - £3,726 TravelSmart - see Sustainable Transport
Green Travel Plan	
Fire Hydrants	
	Primary Education - £157,970 Secondary Education - £84,915 Youth Facilities - £2,329 Libraries - £22,105
	Sustainable Transport - £96,197
	Travel Plan Monitoring - £6,000
	Canal towpath and ped links - £75,000

3. During the course of negotiations the applicant advised the Council that it was having difficulties securing a registered social landlord to take on the affordable housing component. Registered providers were unable or unwilling to engage with the scheme. This is summarised below:

<b>Housing Association:</b>	<b>Response:</b>
Circle Housing	Not a project of interest since HH is not a target area and the specification would produce service charge levels that would not be suitable for an affordable housing customer
Affinity Sutton Trust	Not a project of interest since they do not work in HH and the number of apartments is not sufficient for them and they work on projects that are without competition from other social housing associations
Hightown Praetorian and Churches HA	Not a project of interest since they currently have a considerable number of flats in HH in the pipeline
Guinness Trust	No response received
Hastoe HA	Not a project of interest since they work with Dacorum Council only for rural housing and HH does not come under rural area
Aldwyck HA	No response received
North Herts Homes	No response received
CDS Housing	No response received

Dacorum Borough Council  
Paradigm Housing

No response received  
Meeting held with the housing association.  
Decision not received post submission of  
services charges

4. This was followed up with a viability assessment carried out by Bespoke Property Consultants, a firm experienced in evaluating such matters and the results were presented to the Council. This was used to justify the level of financial contributions that could be paid in lieu of provision in kind whilst allowing the applicant a return as allowed for by Para. 173 of the NPPF.
5. At a meeting of 21st April 2015, it was agreed that a commuted sum would be acceptable and a figure of £3.285 million to be paid by Corona Properties Ltd to Dacorum Borough Council was finally agreed.
6. At the meeting it was also agreed that the s106 agreement should, despite the above, proceed on the basis of the original resolution to provide affordable housing in kind in order to prevent further delays as officers' would have had to revert to the Planning Committee for a further resolution, resulting in uncertainty for the applicants and the potential of also not meeting the CIL deadline of 1 July 2015. As it stood, delays were inevitable anyway in the negotiation of the s106 because of the introduction of pooling rules from April 2015.
7. The applicants were advised to seek a voluntary Deed of Variation to change the affordable housing to a commuted sum after the permission had been issued.
8. There are three options for varying s106 Agreements.
  - Voluntary negotiations where the signatories simply agree to a Deed of Variation.
  - Formal application through s106A and s106B after 5 years from date of signing the agreement on the basis the agreement no longer serves a useful purpose.
  - Formal application through s106BA, which was introduced by the Growth and Infrastructure Act 2013 to allow s106 obligations to be modified in respect of the affordable housing obligations where this was deemed to be making the development unviable (s106BA and s106BC)
9. The two formal methods to apply via s106 of the TCPA 1990 also give the applicants the right to appeal.
10. Neither of the two formal methods are being followed in this case and, instead, the applicant is applying for a voluntary Deed of Variation. The first of the formal methods is not available anyway in this case as the agreement is only a few months old.
11. Based on its discussions with Dacorum Borough Council officers the following variations to the s106 agreement are being proposed for agreement:

**Section:**

**Proposal:**

3.2/3.3/3.4 - Affordable Housing

Delete requirement for provision of affordable housing in kind. Substitute with a requirement for a financial payment in favour of Dacorum Borough Council of £3.285 million for the provision by DBC of affordable housing elsewhere within the Borough.

Make necessary consequential amendments to definitions and other sections.

12. Relevant and affected parties have been consulted.

## REPRESENTATIONS

### **Strategic Housing**

The applicant has provided evidence to show registered providers are not interested in the scheme. Strategic Housing therefore supports the application to vary the on-site affordable housing contribution to a commuted sum payment.

The applicant has stated that a commuted sum payment of £3.28m will be paid in lieu of affordable housing. After reviewing a viability appraisal submitted by the applicant the Council agreed to a affordable housing commuted sum payment of £3.285m. The payment in lieu of affordable housing should therefore be £3.285m.

## CONSIDERATIONS

The NPPF states that planning obligations should be set at a level which is flexible and which does not result in developments being stalled. It also makes it clear that it is a legitimate part of planning that developers and landowners should be able to achieve competitive returns in order to ensure viability, and ultimately deliverability.

The difficulty of getting an RSL on board to take on the affordable units would threaten the viability of the development and make any housing on the site undeliverable. This is not considered to be in the best interests of housing provision in Dacorum, as the shortfall would potentially need to be made up elsewhere.

In pre-application discussions, agreement has been reached with Planning and Housing officers to the provision of a financial payment in lieu of on-site affordable housing provision. The amount of the contribution at £3.285 m has been viability tested and accepted by the Strategic Housing Team.

It is clear that without this compromise, the scheme would not be delivered. It is considered important that the Council should have the scheme delivered but it is also important to Corona Properties that it is able to provide a viable development in order to complete the housing scheme.

Based on the above, and from the information received in support, including a detailed viability assessment, it is considered reasonable in this instance to allow a variation to the legal agreement as tabled. It is noted that no objections from the Housing Department have been received.

## RECOMMENDATION

That authority be given for a deed of variation to the Section 106 Agreement dated 24<sup>th</sup> June 2015 to vary the agreement such that a sum of £3.285m is paid in lieu of direct affordable housing provision on the site to be used by DBC for the provision of affordable housing within the Borough as deemed necessary and appropriate.