

Planning Committee

Item

8

Date 9th March 2023

Report of	Place and Client Services	Author	Chris Harden
Title	Deed of Variation to the Legal Agreement for Planning Application 191830 Land at School Road, Langham.		
Wards affected	Langham		

This report relates to a proposed Deed of Variation to the legal agreement of previously approved planning application 191830 for the erection of 46 dwellings.

1. Decision(s) Required

1.1 Members are asked to endorse the proposed Deed of Variation to the Legal Agreement relating to approved application 191830. The report is put to members to ensure complete transparency of the decision process.

1.2 The application 191830 was previously approved on 17.12.20 following presentation at the Planning Committee in March 2020. The application was for: Erection of 46 dwellings, public open space and associated infrastructure at School Road, Langham.

1.3 At the Planning Committee the following recommendation was agreed: "APPROVAL of planning permission subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990, within 6 months from the date of the Committee meeting to secure the contributions set out in the report."

1.4 The latest application is for the deed of variation of s106 agreement(191830):

Schedule 2 Affordable Housing Paragraph 1 - to be amended in accordance with the approved Affordable Housing Schedule of Accommodation as referred to in condition 19 of the permission dated 17.12.20. Paragraph 4 - please refer to annotated site layout.

[Condition 19: With the exception of plot 29, the affordable housing and associated degree of accessibility standards and building regulations compliance shall be provided in accordance with the Affordable Housing Schedule of Accommodation (dated 28/2/20), unless otherwise agreed in writing by the LPA. Reason: To ensure an appropriate level of accessible dwellings are provided within the site.]

Schedule 4 Community Facilities

Contribution Paragraph 1 - list of projects to be amended at request of Parish Council.

Schedule 5 Parks and Recreation Contribution Paragraph 1 - list of projects to be amended at request of Parish Council.

- 1.5 The abovementioned variations to the Legal Agreement are outlined in Appendix 1 of this report which contains a submitted Draft Deed of Variation.

2. Reasons for Decision(s)

- 2.1 With regard to amending the affordable housing trigger (see appendix 1) the applicant has put forward the following justification:

“As per the attached decision notice which partially discharges condition 21**, we currently have permission to commence and occupy 23 plots – 1-13 and 15-24. This includes 19 private and 4 affordable plots. The S106 does not permit the occupation of more than 50% of private dwellings (16 no) until all affordable dwellings (14 no) have been constructed and transferred to the Approved Body. This means that if we build and occupy all 19 private plots that currently have permission, we would trigger the requirement to deliver all affordable plots, 10 of which are currently not permitted to be commenced by the partial discharge of condition 21. Consequently, we are currently unable to commence and occupy 3 private plots that we have permission for.

Due to the location of the remaining 10 affordable plots (28-37), it is not feasible to construct and build the 3 remaining plots from this group, as they would have to be accessed through a working construction site which is not safe. We are therefore seeking to amend the affordable housing delivery trigger to permit occupation of 60% of private plots, to allow us to construct all 19 private plots that we currently have approval for and contribute to housing delivery. It's important to note that whether we build 16 or 19 private plots, the partial discharge of condition only allows the construction of 4 affordable plots at this time (21-24).

***Condition 21 - Prior to the commencement of the development the developer shall acquire and provide to the LPA, written confirmation from the Environment Agency and from the relevant statutory provider that adequate waste water and sewage treatment capacity is available to serve the development.*

- 2.2 Given the fact that the developer has only received permission to proceed to build 23 plots of the 46 units approved owing to a current lack of sewage treatment plant capacity (Condition 21), which causes the above detailed operational problems, it is considered acceptable to vary Para 4 of Schedule 2 of the legal agreement to permit not more **60%** occupation of market dwellings “*until such time as all of the Affordable Housing Dwellings*” as opposed to 50%. This will avoid having to access new dwellings through a current working construction site in order to build the remaining 3 plots as this is not considered to be safe.
- 2.3 The amendment relating to Building Regulation compliance concerning accessibility (as outlined in Appendix 1) Schedule 2 Affordable Housing Paragraph 1 - to be amended in accordance with the approved Affordable Housing Schedule of Accommodation as referred to in condition 19 of the permission dated 17.12.20. Paragraph 4 – is accordingly also acceptable as this would tie-in with the amended construction arrangements as detailed above in Paragraph 2.2 and will ensure an appropriate level of accessible dwellings are provided within the site in accordance with Condition 19.
- 2.4 The other variation requested relates to:
Schedule 4 Community Facilities

Contribution Paragraph 1 - list of projects to be amended at request of Parish Council.

Schedule 5 Parks and Recreation Contribution Paragraph 1 - list of projects to be amended at request of Parish Council.

2.5 The revised community projects are listed in Appendix 1 below. Given that these projects have been revised at the request of the Parish Council, it is considered the revisions can be supported. This would allow the agreed funding to be spent on projects most needed or desired by the Local Community and the projects represent legitimate facilities in accordance with Local Plan Policy and the CIL Regulations.

2.6 It is requested members grant authority for the Deed of Variation to amend the Legal Agreement as detailed above.

3. Alternative Options

3.1 If Members decide not to accept the suggested Deed of Variation, there could be operational safety problems on site, as explained above and also community funding may not be targeted to facilities most desirable for the Parish Council and Local Community.

4. Supporting Information

4.1 The full Committee report relating to the above application 191830 and Legal Agreement is available online on the City Council's website if more detail on the case is required. See also Appendix 1 below.

5. Strategic Plan References

5.1 The scheme remains compliant with the Strategic Plan as it would facilitate delivery of new homes and the requisite infrastructure to serve the community.

6. Consultation

6.1 Langham Parish Council were consulted - no comments were received at the time of drafting. Any received will be reported to members.

7. Publicity Considerations

7.1 None

8. Financial Implications

8.1 Potential financial implications for the developer and Local Community facilities.

9. Equality, Diversity and Human Rights Implications

9.1 None directly arising from this report.

10. Community Safety and Health and Safety Implications

10.1 On site safety implications if not agreed.

11. Risk Management Implications

11.1 None directly arising from this report.

Appendix 1

Draft:

Variations to the Original Agreement

The Parties agree that the Original Agreement shall be varied as follows:

1. In the definition of “Affordable Housing Dwellings” in Paragraph 1 of Schedule 2, the reference to “Building Regulations 2015 Part M4 Category 3 (2b)” shall be deleted and replaced with “Building Regulations 2015 Part M4 Category 3 (2a)”
2. In the definition of “Construction Certificate” in Paragraph 1 of Schedule 2, the references to “Building Regulations 2015 Part M4 Category 3 (2b)” shall be deleted and replaced with “Building Regulations 2015 Part M4 Category 3 (2a)”
3. The definition of “Community Facilities Purposes” in Paragraph 1 of Schedule 4 shall be deleted and replaced with the following:

“means the use of the Community Facilities Contribution towards:

 - a) the refurbishment of the disabled toilet at the Langham Community Centre; and/or*
 - b) the provision and installation of acoustic panels in the main hall at Langham Community Centre; and/or*
 - c) the installation of a disabled stair lift to the first floor committee room at the Langham Community Centre; and/or*
 - d) the provision of an electrically operated veranda for the rear patio area of the Langham Community Centre.”*
4. The definition of “Parks and Recreation Purposes” in Paragraph 1 of Schedule 5 shall be deleted and replaced with the following:

“means the use of the Parks and Recreation Contribution towards the provision of:

 - e) a Multi-Use Sports Court at Langham Recreation Ground; and*
 - f) new equipment for the Children’s Play Area at Langham Recreation Ground; and*
 - g) new Cricket Facilities at the Langham Recreation Ground.”*

5. Paragraph 4 of Schedule 2 shall be deleted and replaced with:

5.1. *“Not to permit the Occupation of more than 60% of the Market Dwellings until such time as all of the Affordable Housing Dwellings to be provided have been constructed and are available for Occupation and have been transferred to an Approved Body and the Borough Council has received the Construction Certificate for the relevant units.”*

Paragraph 4 originally stated:

Not to permit the Occupation of more than fifty percent (50%) of the Market Dwellings until such time as all of the Affordable Housing Dwellings to be provided have been constructed and are available for Occupation and have been transferred to an Approved Body and the Borough Council has received the Construction Certificate for the relevant units