

**Proposed variation to Section 106 agreement of
planning application OL/TH/14/0050 – Land at
Haine Road/Manston Road, Ramsgate (“Manston
Green”)**

Planning Committee – 18 March 2020

Report Author **Iain Livingstone, Planning Applications Manager**

Status **For Decision**

Classification: **Unrestricted**

Previously Considered by **Planning Committee 17th June 2015
Planning Committee 15th July 2015**

Ward: **Thanet Villages and Newington**

Executive Summary:

This report concerns the outline planning permission for development of the strategic allocation site known as “Manston Green” and proposes to vary the requirements of the extant Section 106 agreement to reduce the provision of on-site affordable housing on the basis of viability evidence, and to introduce a “clawback” mechanism which will enable the Council to potentially clawback a contribution at two points in the development to be used towards affordable housing. The clawback mechanism is also required to facilitate the provision of a grant from Homes England for £6.3 million towards a roundabout at the junction of Haine Road and Manston Road which forms part of the development.

Recommendation:

Members agree:

1 To delegate authority to the Head of Legal, in consultation with the Planning Applications Manager to negotiate, enter into and sign a deed of variation under Section 106A of the Planning Act to the existing Section 106 agreement dated 13th July 2016 under outline planning permission reference OL/TH/14/0050 (Land known as Manston Green), in order to:

- reduce the amount of on-site affordable housing in phase 2 of the development to 10% of that phase and in phase 3 of the development to 30% of that phase.
- Include a “clawback mechanism” to assess development viability at two points in the development, at the end of phases 1 and 2, and at the end of phase 3 of the development, following agreement of the baseline viability appraisal to be submitted to the Council prior to the execution of the deed.

2 To confirm that the viability appraisals will be based on a land valuation to be fixed in agreement with Homes England and that any surplus will be split 50/50 between the Council and developer, and shall be used by the Council towards housing delivery in the district.

CORPORATE IMPLICATIONS	
Financial and Value for Money	<p>Any planning obligation involving the receipt of a financial contribution will be held in an interest-bearing account, with the spending of the obligation controlled and monitored by both a Finance Manager and the Planning Applications Manager.</p> <p>Any external grant received by the Council will be subject to “External Funding and Grant Procedure”, with overall responsibility for use of external funding held by the Council’s Section 151 Officer.</p>
Legal	<p>The modification of an existing Section 106 agreement, by agreement between the appropriate authority and the person or persons against whom the obligation is enforceable, is permitted by Section 106A of the Planning Act. Any modification must be agreed by all previous signatories or/and those with an interest in the land (in the event of a change in ownership of the land between execution of the original Section 106 and modification). Any deed of variation will need to be assessed by the Council’s legal department or appointed solicitors to ensure it adequately secures the obligations and binds all interested parties to the provisions of the deed and the original Section 106 agreement. Once agreed and signed by all parties, the deed of variation would be registered as a ‘Local Land Charge’ on the Local Land Charges Register for the land.</p>
Corporate	<p>The delivery of new housing through the Local Plan and planning applications supports the Council’s priorities of supporting neighbourhoods ensuring local residents have access to good quality housing, and promoting inward investment through setting planning strategies and policies that support growth of the economy.</p> <p>The Council’s Corporate Statement and core business objectives outline that the Council will “lobby for infrastructure improvements..to support inward investment, local enterprise and housing growth”. The Housing Infrastructure Fund provides an opportunity for direct grant funding towards road infrastructure through partnership with Homes England in accordance with the Council’s corporate aims.</p>
Equalities Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p>

	<p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <p>The opinion of the author of this report the Public Sector equality duty is not engaged or affected by this decision.</p>
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1.0 Introduction

- 1.1 A planning application for outline planning permission including access for the erection of 785 dwellings, highways infrastructure works (including single carriageway link road), primary school, small scale retail unit, community hall, public openspace was granted in July 2016 for land east and west of Haine Road, Ramsgate (reference OL/TH/14/0050). This followed a resolution to approve the development by the planning committee in July 2015, subject to safeguarding conditions and the signing of a Section 106 agreement securing required planning obligations. The Section 106 agreement secured 30% of the housing onsite to be affordable housing across the whole development, alongside a variety of other obligations. Various requirements of the agreement were linked to different phases/parcels of the development, which was split into three; the first phase consisting of 220 dwellings, the second phase around 230 dwellings and the third phase 335 dwellings. The Section 106 agreement stated that that the first phase should provide 10% affordable housing, with the second and third phases providing 37.2% (or different amounts to make the same overall amount), resulting in 30% affordable housing overall. The Section 106 also included provisions for a viability appraisal to be submitted by the applicant to the Council after the first phase of development for consideration.
- 1.2 As part of the outline planning permission, alterations to the road network were approved in full including a new roundabout at the junctions of Haine Road and Manston Road, which would subsume the existing roundabout to create a larger four arm roundabout to serve both the development and the wider Haine Road corridor. This roundabout was required to be completed for use prior to the occupation of any dwelling within the Manston Green development.
- 1.3 Any changes to the agreed planning obligations in the outline planning permission must be agreed by the Planning Committee, as this was the body that agreed the heads of terms in the determination of application OL/TH/14/0050.
- 1.4 Subsequent to the outline planning permission, a reserved matters application was submitted in April 2019 for the development of 220 homes as phase one of the wider scheme (reference R/TH/19/0499). Permission was granted on 18th October 2019. The site is allocated for residential development in the new Thanet Local Plan under Policy SR13, which matches the approved development on the site (up to 785 dwellings, 2.05 hectare two-form entry primary school, small-scale retail for convenience needs of residents etc). The plan projects the delivery of the site at a rate of 50 units in the financial year 2020/21, then 100 dwellings each year until 2028/29 when the remaining 35 units would be provided. There is currently no housing developer for the site.

- 1.5 In September 2017, the Council submitted a bid to Homes England (then the Homes and Communities Agency) for funding towards the Haine Road roundabout under the Housing Infrastructure Fund (HIF). The aim of the HIF is to fund the final pieces of infrastructure for sites to be unblocked and is designed to get housebuilding started quickly on sites where the upfront costs of putting in the infrastructure mean that sites do not come forward. This bid followed initial discussions with the land promoter about the failure of the housing site to be delivered. The Council was informed that the bid was successful in January 2018, and further discussion and clarifications about the project has been ongoing between the land agent for the site and Homes England with the aim to secure the funding. The original bid was for £2.3million, however this has been increased to up to £6.3million following a full assessment of costs (with contingency built in). In December 2019 an agreement was signed between Thanet District Council and Homes England for the grant award, with a series of pre-conditions to be completed by the Council prior to use of funds towards the construction of the roundabout, which includes the need for a mechanism to recovery funding from the development from any uplift in value as a result of improvements in the local market or saving in construction costs.

2.0 Review of viability of approved development

- 2.1 The relevant current Local Plan Policy for considering affordable housing is Policy H14. Policy H14 states that for development of the scale proposed, the Council will negotiate with the developer for the inclusion of an element of affordable housing on-site. The planning application for Manston Green was approved with 30% on site affordable housing overall, with 10% of phase one being affordable. This was on the basis of initial viability information through the local plan process at the time, which indicates a short term viability issue with the site. The Section 106 agreement attached to the permission also included a mechanism to review the level of affordable housing at the end of phase one if both the Council and developer were in agreement.
- 2.2 Section 106A of the Planning Act allows for modification of a Section 106 agreement where agreed between the authority by whom the obligation is enforceable (Thanet District Council as Local Planning Authority) and the person or persons against whom the obligation is enforceable as an instrument executed as a deed. The National Planning Practise Guidance (NPPG) states that “Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so.”
- 2.3 Planning decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Assessing viability requires a realistic understanding of the costs and the value of development in the local area and an understanding of the operation of the market, and should be based on current costs and values. The NPPG states that where viability of a scheme is in question, “local planning authorities should look to be flexible in applying policy requirements wherever possible”.
- 2.4 As part of the HIF process, the land agent for the delivery of the development submitted a financial appraisal showing that the site was not viable at 10% affordable housing across the whole site, taking into account projected development costs, expected profit and development sales values for the whole site. This appraisal was

subsequently considered by Homes England within the HIF bid with further clarifications on figures provided in 2018. Separately, an updated financial viability appraisal proposing a reduction in the affordable housing provision on site from 30% to 10% was submitted to the Council. This considered the scenarios of the development as approved (30% on site affordable housing and all stated contributions), and the proposed reduction (10% on site and all stated contributions). This appraisal was subject to an independent review by consultants instructed by the Council which raised a number of issues with the appraisal, primarily that the longer term nature of the scheme and its development cycle (with certain costs up front but not spread over the whole development) meant that fixing a reduction in affordable housing to 10% across the whole of the development was not justified given the number of assumptions raised regarding development costs and sales values. Additional matters were raised in relation to stated revenue in sales values of properties, profit level, marketing and construction costs in the appraisal. Subsequently the developer agreed for an uplift in sales value assumptions for the new dwellings and amended the sale and marketing costs following the viability review within the appraisal. This led to broad agreement on the figures within the viability appraisal that the scheme would not be viable with 30% on site affordable housing across the whole site. However the approach of fixing the proportion of affordable housing across the whole development at 10% was not agreed due to the potential differences between estimates and actual cost/values throughout the lifetime of the development.

- 2.5 The appraisal submitted was also based on a benchmark land value for the site. As outlined in the National Planning Practise Guidance (NPPG) “a benchmark land value should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner. The premium for the landowner should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. The premium should provide a reasonable incentive, in comparison with other options available, for the landowner to sell land for development while allowing a sufficient contribution to fully comply with policy requirements. Landowners and site purchasers should consider policy requirements when agreeing land transactions. This approach is often called ‘existing use value plus’ (EUV+)”. The submitted viability appraisal considered a value of £100,000 per acre as an appropriate benchmark land value. As part of the HIF work following the award of grant funding, Homes England have stated that an appropriate benchmark land value for this site is the EUV plus 20% (of the EUV), which is less than the £100,000 per acre considered by the Council previously and a new viability appraisal reflecting this land valuation is currently being prepared for submission to the Council by the land agent. From the previous appraisal evidence, this is anticipated to show marginal viability for the development.

3.0 Proposed changes to Planning Obligations

- 3.1 Officers are in agreement with the proposed reduction to the proportion of affordable housing secured within the Section 106 agreement for the development, which is to be 10% on phase one, and a reduction to 10% on phase two and 30% on phase three, through a deed of variation to the original Section 106 agreement. Officers are proposing that a “clawback” mechanism be included within the deed of variation, which would require the development to be re-appraised on the basis of actual costs and revenue values from the development, but including the Homes England agreed

land valuation. The viability appraisal prior to commencement would be used as the base appraisal against which future appraisals would be compared to with an agreed benchmark land value (Existing use value plus 20% as agreed with Homes England). This means that if the development is more profitable through reduced development cost or increased housing prices, a proportion of this surplus would be recouped by the Council through this obligation, to be used towards housing delivery in the district, such as additional off-site affordable housing provision. This type of mechanism has been utilised by other Kent authorities on large scale housing developments with multiple phases and is considered an appropriate method of driving delivery of an allocated housing site where it has challenging viability at the current time, but with the potential for off-site contributions toward delivery of housing in the district by the Council if circumstances change in the future.

- 3.2 This change would mean that a reduced provision of affordable housing would occur within phase 2 of the development, notionally from 37.2% of affordable housing on that phase (as agreed in the current agreement) to 10%, and reducing from 37.2% affordable housing on phase 3 to 30%. Using the notional figures on the land parcel parameter plan (Annex 6), this would amount to a reduction from 86 affordable units to 23 on phase 2 and from 125 affordable units to 101 on phase 3, with the precise numbers to be agreed through reserved matters submissions. It is considered that this reduction in affordable housing on site, with the provision for a review and potential contribution to assist in the Council's delivery of off-site affordable housing projects, is appropriate in this specific instance. This is agreed on the basis of the viability evidence, with a final appraisal showing an agreed land valuation to be submitted, but also to assist in the delivery of the site as a strategic allocation within the Council's local plan which has currently stalled, in accordance with the provisions of the NPPG.
- 3.3 The agreement associated with the HIF grant between the Council and Homes England requires a mechanism to recover the cost of the roundabout from surpluses achieved by the developers/landowners through the development of the planning permission, on the basis of a land valuation agreed by Homes England. As outlined in the above section, any reduction in the policy required amount of affordable housing would also be on the basis of a viability review throughout the development.
- 3.4 It is proposed that appraisals are carried out at two points during the construction of overall development, upon completion of phases 1 and 2 of the development (east of the existing Haine Road) and upon completion of phase 3 of the development (west of the existing Haine Road), and that the viability appraisal will be run using the land valuation as agreed by Homes England (proportionate to the size of the site of the different phases). This means that the development can be adequately tracked after the first two phases, and would mean that in the event that phase three of the development does not come forward to full completion within a development under the existing planning permission, a meaningful review of the viability of the scheme can still occur, with any surplus recouped for use towards affordable housing provision. Any surplus would be split 50/50 between the developer and the Council, and any surplus to be paid to the Council would be up to, but not exceed, the actual cost of the roundabout paid by Homes England.

4.0 Next steps

- 4.1 Under delegated authority, officers would negotiate the wording of the deed of variation including the clawback mechanism with the current land agent, whilst, upon receipt of a new viability appraisal from the land agent, assess the land valuation and any updated figures until we agree the baseline appraisal against which to base future appraisals.
- 4.2 Separately officers will continue work to complete the pre-commencement conditions for the HIF grant, with the baseline appraisal provided to Homes England for agreement.
- 4.3 If these changes are not agreed, there is a risk to the Council that the allocated housing site does not get delivered, or is significantly delayed in its delivery until viability improves. It is anticipated that without the inclusion of the mechanism within the deed of variation, the Council would not comply with the pre-conditions attached to the HIF grant, meaning that the grant would be likely to be withdrawn, also affecting the likelihood of the site being delivered in its current form.

5.0 Options

- 5.1 Members agree for alterations to the Section 106 agreement signed 13th July 2016 for outline planning permission reference OL/TH/14/0050, to amend the amount of affordable housing with a reduction on phase 2 of the development to 10% and on phase 3 to 30%, on the basis of the receipt of a satisfactory deed of variation requiring review of development viability upon completion of phases 1 and 2 of the development (east of the existing Haine Road) and upon completion of phase 3 of the development (west of the existing Haine Road) against an agreed benchmark land value, with a proportion of any surplus contributed to housing delivery in the district.
- 5.2 Members do not agree to the change to the planning obligations associated with outline planning permission reference OL/TH/14/0050.

6.0 Recommendations

- 6.1 Officers recommend that members of the Planning Committee agree option 5.1 for the reasons set out in this report.

Contact Officer:	Iain Livingstone, Planning Applications Manager
Reporting to:	Bob Porter, Head of Housing and Planning

Background Papers

Annex 1	Manston Green OL/TH/14/0050 Planning Application Decision notice Planning Application OL/TH/14/0050
Annex 2	Manston Green OL/TH/14/0050 Planning Committee Report June 2015
Annex 3	Manston Green OL/TH/14/0050 Agenda Item July 2015
Annex 4	Section 106 Agreement for OL/TH/14/0050
Annex 5	Phasing Parameter Plan for OL/TH/14/0050
Annex 6	Land parcel Plan for OL/TH/14/0050
Annex 7	Site Plan of Proposed Roundabout

Corporate Consultation

Finance	Matthew Sanham, Corporate Finance Manager - Members to be updated by officers at Planning Committee
Legal	Estelle Culligan, Head of Legal and Democratic Services 9th March 2020