

Rother District Council

Report to	-	Planning Committee
Date	-	14 November 2019
Report of the	-	Executive Director
Subject	-	Developer Re-Negotiations of Section 106 Agreements in Relation to Affordable Housing

Recommendation: It be **RESOLVED:** That the report be noted.

Head of Service: Tim Hickling

Introduction

1. At Planning Committee on 12 September 2019 it was resolved that a report be submitted to the Planning Committee confirming the current arrangements in relation to the renegotiation of affordable housing in Section 106 Agreements and an analysis of the affordable housing element of the Section 106 Agreements that have been re-negotiated detailing how many and the quantum in the past two years.

Current arrangements for renegotiation of affordable housing in Section 106 Agreements

2. A planning obligation (i.e. a Section 106 Agreement) can be modified or discharged by agreement (at any time) between the appropriate authority and the person or persons against whom it is enforceable (as set out in Section 106A(1)(a) of the Town and Country Planning Act 1990 (as amended)).
3. Alternatively, Section 106A(3) of the Act provides that a person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply for the obligation (a) to have effect subject to such modifications as may be specified in the application; or (b) to be discharged.
4. For the purposes of Section 106A(3) 'relevant period' means five years beginning with the date on which the obligation is entered into.
5. Therefore, planning obligations can be amended at any time with the agreement of the Local Planning Authority (LPA). Or, where the LPA does not agree and the planning obligation is more than five years old, the developer can make a formal application under Section 106A(3) to modify or discharge the agreement.
6. Where an application is made under Section 106A(3) and it is refused by the LPA, Section 106B of the Act states that such applications can be appealed to the Secretary of State (SoS) (i.e. The Planning Inspectorate).
7. Notwithstanding that set out in the Act, whether agreed or not and regardless of whether it is more than five years old or not, when a developer approaches

the LPA wishing to renegotiate the level of affordable housing in their schemes officers advise them to make an application to modify or discharge their planning obligations.

8. These applications are then considered on their merits, having regard to development plan policy, the National Planning Policy Framework and Planning Practice Guidance. Where a reduction in affordable housing is proposed, we ask that the applications are accompanied by viability information. This viability information is then independently verified either by the District Valuer Services (DVS) or by another viability consultant appointed by the LPA.
9. When agreement has been reached between the applicant, the DVS/appointed viability consultant, and the LPA about a reduction or removal of the affordable housing requirement of a planning obligation the modification application is then reported to Planning Committee who take the final decision. This is done in accordance as per the officer delegation at paragraph 3.1.10 of the Council's Constitution: Delegations to Officers, which states:

Acting in conjunction with the Solicitor to the Council to authorise Section 106 Planning Obligations or authorise the modification of existing Section 106 Planning Obligations which relate to planning control matters. (Any Obligations that relate to financial matters are to be reported to Planning Committee). All such Obligations to be concluded within a six month period of the authorisation unless extended at the discretion of the Service Manager – Strategy and Planning, Development Manager or Solicitor to the Council. Function also to be exercised by the Team Leader & North Bexhill Manager and Major Applications and Appeals Manager.

Re-negotiated Section 106 Agreements within the last two years

10. There have been no re-negotiated planning obligations within the last two years.

Dr Anthony Leonard
Executive Director