

## Rother District Council

Report to	-	Planning Committee
Date	-	16 January 2020
Report of the	-	Executive Director
Subject	-	Developer Re-Negotiations of Section 106 Agreements in Relation to Affordable Housing

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### **Recommendation:** It be **RESOLVED:** That:

- 1) the practice to report any variations to Section 106 Agreements that relate to financial matters (including affordable housing) to the Planning Committee for decision continues;
  - 2) where an applicant has submitted a proposal to the Local Planning Authority (LPA) to vary Section 106 agreements within five years of the original agreement (under Section 106 (1)(a)) the decision as to whether the LPA accept and consider the submission is made by the Planning Committee; and
  - 3) the criteria in which the Planning Committee consider proposals under Recommendation 2 above to be agreed by officers in consultation with the Chairman and Vice-Chairman of the Planning Committee.
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### **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. A report was then presented to Planning Committee on 14 November 2019 - *Developer Re-Negotiations of Section 106 Agreements in Relation to Affordable Housing* (Minute PL19/85 refers).
2. The Chairman of Planning Committee has now requested a report seeking to change the rules so that decisions to agree to modify Section 106 Agreements in relation to financial matters, affordable housing or financial contributions in relation to affordable housing come to the Planning Committee. Furthermore where an applicant has submitted a proposal to the Local Planning Authority (LPA) to vary Section 106 agreements within five years of the original agreement (under Section 106 (1)(a)) the decision as to whether the LPA accept and consider the submission is made by the Planning Committee.
3. Currently, there is an 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).*

4. A planning obligation (i.e. a Section 106 Agreement) can be modified or discharged by agreement (at any time) between the Council as Local Planning Authority (LPA) and the person(s) against whom it is enforceable (as set out in Section 106A(1)(a) of the Town and Country Planning Act 1990 (as amended)) i.e. where both parties agree
5. Alternatively, Section 106A(3) of the Act provides that a person(s) against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period (which is 5 years from when the agreement was entered into), apply for the obligation (a) to have effect subject to such modifications as may be specified in the application; or (b) to be discharged. If this 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).
6. In summary, planning obligations can be amended at any time with the agreement of the 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.
7. An alternative approach to the above open to applicants is for them to submit a fresh planning application (either outline or full) and seek to re-negotiate any obligation requirements as part of a new proposal. This is likely to result in further expense to both the LPA (possible free submission) and an applicant which may impinge further on the viability of the scheme. There is a right of appeal if such an application is refused by the LPA (through the Planning Committee).

## **Conclusion**

8. It is proposed to continue the practice that all variations to Section 106 Agreements that relate to financial matters (including affordable housing) are to be reported to the Planning Committee for decision.
9. Where an applicant has submitted a proposal to the Local Planning Authority (LPA) to vary Section 106 agreements within five years of the original agreement (under Section 106 (1)(a)) the decision as to whether the LPA accept and consider the submission is made by the Planning Committee, and the criteria in which the Planning Committee consider proposals to be agreed by officers in consultation with the Chairman and Vice-Chairman of the Planning Committee.

Dr Anthony Leonard  
Executive Director

## **Risk Assessment Statement**

It is important that legal advice is received on variations made by applicants to vary the Section 106 Agreement to ensure the Council does not expose itself to legal challenge.