

## Rother District Council

Report to	-	Planning Committee
Date	-	14 April 2022
Report of the	-	Director – Place and Climate Change
Subject	-	Application RR/2019/2194/P
Address	-	Foundry Close - Land East, Foundry Close, HURST GREEN
Proposal	-	Deed of Variation request: variation to Section 106 agreement regarding residential development of 20 houses, associated parking and landscaping (application RR/2019/2194/P).

[View application/correspondence](#)

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**RECOMMENDATION:** It be **RESOLVED** to **APPROVE THE PRINCIPAL CHANGES FOR THE DEED OF VARIATION AND GRANT DELEGATED AUTHORITY TO THE DIRECTOR – PLACE AND CLIMATE CHANGE TO AGREE THE FINAL TERMS**

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**Applicant:** Optivo Housing

**Parish:** HURST GREEN

**Ward Members:** Councillors Mrs M.L. Barnes and G.S. Browne

**Reason for Committee consideration:** Financial implications associated with the Deed of Variation request.

**Statutory 8-week date:** None

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### 1.0 SUMMARY

1.1 The housing developer Optivo has acquired the above-mentioned site and is seeking to build it out with 100% affordable housing. There is an existing Section 106 Agreement in place in respect of planning permission RR/2019/2194/P. Optivo is seeking a Deed of Variation to the Section 106. The proposed Variation is in respect of those issues concerning the provision of affordable housing. However, there are also financial implications for the Council associated with the loss of Community Infrastructure Levy (CIL) payments that would have been received through the market housing.

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### 2.0 SITE

2.1 The application site (0.83 hectares) is located on the eastern side of Hurst Green to the rear of properties fronting the A21, London Road, Hurst Green.

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### **3.0 PROPOSAL**

- 3.1 The proposal is a request for a Deed of Variation to the Section 106 Planning Obligation (Agreement) that was put in place prior to planning permission being granted.
- 3.2 There is no formal application for seeking variations to Section 106 Agreements that are less than five years old and the matter is dealt with (considered) on the basis of a written request. Consequently, there is no separate planning reference relating to this.
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### **4.0 HISTORY**

- 4.1 RR/2019/2194/P Residential development of 20 houses, associated parking and landscaping on vacant land – approved (with Section 106 Agreement in place).
- 4.2 RR/2021/2558/MA Non-material amendment to planning permission RR/2019/2194/P to allow the removal of rooms in the roof (plots 6, 7 and 8) and internal amendments to Plot 3 to make them 3-bedroom properties – approved.
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### **5.0 POLICIES**

- 5.1 The following policy of the Rother Local Plan Core Strategy is relevant to the proposal:
- LHN1: Achieving mixed and balanced communities
- 5.2 The following policy of the Development and Site Allocations Local Plan is relevant to the proposal:
- DHG1 Affordable Housing
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### **6.0 APPRAISAL**

- 6.1 Planning permission has been granted for the erection of 20 dwellings on land at Foundry Close, Hurst Green. Planning permission (RR/2019/2194/P) was granted subject to a Section 106 Agreement, which included a requirement that eight of the dwellings would be provided as affordable housing on the site (comprising two units affordable shared ownership and six units affordable rented). The remaining 12 dwellings would be open market housing.
- 6.2 The housing developer Optivo has since acquired the site and is seeking to build it out but with 100% affordable housing across the site (comprising an affordable housing mix of 14 units shared ownership and six units affordable rented).

- 6.3 As part of this, Optivo is seeking a variation to the terms of the Section 106 Agreement. The proposed variations are described as follows:
- i. Reference to the agreed mix of affordable housing in side letter dated 19 November 2021.
  - ii. Removal of the reference to Rural and Designated Protection Area.
  - iii. Removal of the local connection restrictions for the Shared Ownership units to comply with Homes England grant funding requirements.
  - iv. Amendments/clarification to the Mortgagee in Possession clauses to meet lender's requirements.
  - v. Reference to the recent approved Non-Material Amendment approval RR/2021/2558/MA.
  - vi. Naming Optivo as the registered provider.
  - vii. Amendments to allow Optivo to manage the Open Space rather than a private management company.

#### Community Infrastructure Levy

- 6.4 The provision of open-market housing in developments are liable for payment under CIL. CIL payments would therefore have been sought in respect of the original 12 market houses. Because no market housing is now being proposed Optivo has submitted an application for full CIL relief. The total amount of CIL money received under CIL is subject to change, including a possible exemption, but the level of payment lost would be in the region of £259,400.

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## **7.0 CONCLUSION**

- 7.1 Approving the Deed of Variation to the s106 Agreement would result in the loss of CIL payments for the Council but at the same time it would mean that the development site is brought forward, providing much needed affordable homes within a rural area. There are elements to the variation sought by Optivo in 6.3 above that would require further scrutiny by Legal Services in terms of the detail drafting of the Deed of Variation and in that regard, it is recommended that the Deed of Variation is agreed in principle and that authority is delegated to the Director – Place and Climate Change to agree the final terms of the variation.

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## **RECOMMENDATION: APPROVE (DEED OF VARIATION IN PRINCIPLE)**

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