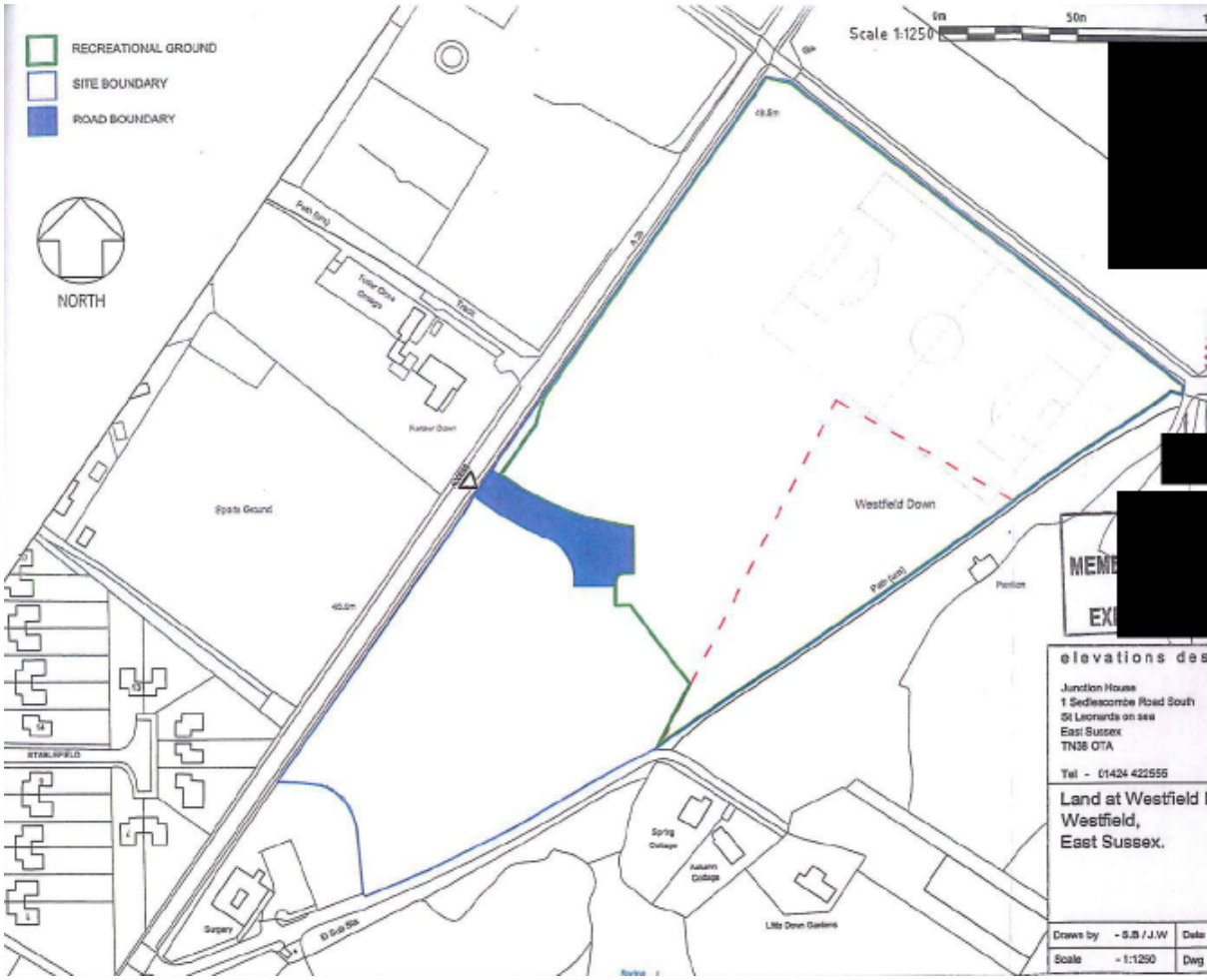
SITE PLAN RR/2022/2935/P	WESTFIELD Westfield Down – Land at, Main Road



Rother District Council

Report to	-	Planning Committee
Date	-	20 July 2023
Report of the	-	Director – Place and Climate Change
Subject	-	Application RR/2022/2935/P
Address	-	Westfield Down – Land At, Main Road, Westfield
Proposal	-	Application to modify a Section 106 Planning Obligation to allow amendments for the affordable housing and purchasing requirements related to applications RR/2009/322/P, RR/2007/545/P and RR/2011/2114/P

View application/correspondence

RECOMMENDATION: It be **RESOLVED** to **APPROVE MODIFICATION OF THE SECTION 106 PLANNING OBLIGATION DELEGATED SUBJECT TO COMPLETION OF DEED OF VARIATION**

Director: Ben Hook

Applicant: **Optivo (now Southern Housing)**
Agent: **Capsticks Solicitors LLP**
Case Officer: **Mr E. Corke**
(Email: edwin.corke@rother.gov.uk)
Parish: **WESTFIELD**

Ward Members: **Councillors B.J. Coupar and C.R. Maynard**

Reason for Committee consideration: Director – Place and Climate Change referral: Modification of Planning Obligation with implications for housing mix and tenure mix

Statutory 13 week date: 06/02/2023
Extension of time agreed to: To be agreed

1.0 SUMMMARY

1.1 This application is made under Section 106A of the Town and Country Planning Act 1990 and relates to a development of 39 dwellings and associated recreational works (provision of senior football pitch, changing room building, recreational land and access road etc.), which are currently under construction and nearing completion. The housing scheme was granted planning permission with 24 market houses and 15 affordable dwellings (eight affordable housing for rent and seven as shared ownership units), as shown in the approved tenure and site plans and secured in the associated Planning Obligation.

1.2 The proposed modification of the Planning Obligation primarily relates to the delivery of a 100% affordable housing scheme with 23 of the dwellings delivered as affordable housing for rent and 16 delivered as shared ownership units. This would be secured by a Deed of Variation (DoV). A separate (but related) Section 73 application to vary conditions imposed on the reserved matters approval (Ref: RR/2017/1293/P), primarily to amend the tenure mix to deliverer a 100% affordable housing scheme has also been submitted and is to be considered in tandem with this proposal, RR/2023/919/P refers.

1.3 The modifications set out in the draft DoV would support the delivery of a 100% affordable housing scheme and the Planning Obligation would continue to serve a useful purpose with them in place. As such, it is recommended that the proposed modifications are supported. The final version of the DoV will be agreed with input from the Council's legal team.

2.0 SITE

2.1 The application relates to a development of 39 dwellings and associated recreational works (provision of senior football pitch, changing room building, recreational land and access road etc.) in the High Weald Area of Outstanding Natural Beauty, which are currently under construction and nearing completion. The development lies to the north-east of the village, on the south-eastern side of the A28 (Main Road). The housing scheme was granted under outline planning permission RR/2009/322/P and the subsequent approval of reserved matters RR/2017/1293/P. The associated recreational works have been granted under successive planning permissions (see 'History' section of report below for details).

2.2 The site was allocated for housing and recreation purposes in the Rother District Local Plan 2006. In relation to the housing element of the allocation, Policy VL11 of that Plan said proposals will be permitted where:

"(ii) at least 22 dwellings are provided at the southern end of the site, of which 40% are affordable."

2.3 At the preparation stage of the current Development and Site Allocations (DaSA) Local Plan 2019, the planning permission for 39 houses at Westfield Down had not been implemented. The land was therefore re-allocated for housing and recreation purposes under Policy WES1. In relation to the housing element of the allocation, the policy says proposals will be permitted where:

"(ii) some 39 dwellings are provided within the identified residential area as shown on the Detail Map, of which 40% are affordable."

3.0 PROPOSAL

Background

3.1 Outline planning permission (with some matters reserved) was granted for the housing development in 2014 and this was subject to a Section 106 Planning Obligation which, amongst other things, secures the provision of

15 affordable housing units (equating to some 38% of the total number of dwellings), and a payment in lieu for 0.6 of a unit to ensure a policy compliant scheme. The affordable units are secured in a 50/50 split between affordable housing for rent and shared ownership units (unless varied by agreement with Rother District Council). The remaining 24 dwellings (equating to some 62% of the total number of dwellings) are defined as "market dwellings(s)" (i.e. any dwelling which is not an affordable housing unit) in the Planning Obligation.

3.2 An approval of reserved matters was subsequently issued in 2018 and the tenure plan approved under Condition 1 shows eight of the affordable units as affordable housing for rent and seven as shared ownership units. The approved site plan also highlights which of the dwellings are affordable units.

3.3 In addition to securing the affordable housing provision, the Planning Obligation secures the delivery of the associated recreational works so that both the housing development and recreational element proceed in tandem. This includes a provision to not allow occupation of more than 14 of the market dwellings included in the planning permission unless the recreational works have been fully completed to the reasonable satisfaction of Rother District Council.

Current proposal

3.4 The current application is made under Section 106A (modification and discharge of planning obligations) of the Town and County Planning Act 1990 and seeks to modify the Section 106 Planning Obligation, primarily to deliver a 100% affordable housing scheme. In this regard, 23 of the units would be delivered as affordable housing for rent with 16 delivered as shared ownership units. There would be no changes to the approved layout and design and nor would there be any changes to the approved mix of 1, 2, 3 and 4-bedroom dwellings (as amended under non-material amendment application RR/2021/110/MA).

3.5 With regard to the 23 units of affordable housing for rent, the proposed new site plan shows that these would be clustered in the central and western areas of the site and the accommodation schedule is as follows:

- 4 x 1-bed flats.
- 2 x 2-bed flats.
- 1 x 2-bed bungalow.
- 5 x 2-bed houses.
- 9 x 3-bed houses.
- 2 x 4-bed houses.

3.6 With regard to the 16 shared ownership units, the new site plan shows that these would be clustered in the north-eastern and south-eastern areas of the site and the accommodation schedule is as follows:

- 4 x 2-bed houses.
- 10 x 3-bed houses.
- 2 x 4-bed houses.

3.7 The proposed modifications to the Planning Obligation would be secured by a DoV. At the Council's request, a draft DoV, supporting statement and plan showing the tenure split for the affordable housing units has been provided

and all have been available to view on the public website. The proposed amendments are detailed as follows in the supporting statement:

"The current proposal is for amendments to the Section 106 agreement only. The proposed amendments do not result in any amendments to the design of the scheme. The layout and number of units will remain as approved under the current planning permission.

The amendments involve changing certain definitions and clauses so that the scheme can be delivered as 100% affordable housing. The agreement currently secures 15 units of affordable housing and a payment in lieu for 0.6 of a unit to ensure a policy compliant scheme. As the current proposal seeks to deliver the scheme as 100% affordable housing, it is proposed to remove the payment in lieu requirement. The nominations agreement included at the Fourth Schedule is also due to be replaced with RDCs current standard nominations agreement. All other requirements and contributions will remain as per the current agreement (with triggers updated as necessary). A full list of the proposed amendments is included at Appendix A. A draft DoV document has also been prepared and submitted in support of the application.

In accordance with National Planning Policy Framework, there are a number of different types of affordable housing. For this scheme it is intended to deliver the scheme part as affordable rent (AR) and part shared ownership (SO). The split between these two tenures will be 23 x AR and 16 x SO.

AR homes are offered to those in need at rental levels that are capped at 80% of local private rent levels. SO homes provide a route to home ownership for those unable to purchase a property on the open market. The purchaser is able to buy a share of the property with the remainder being retained by the housing association. The owner then pays a reduced rent on the share owned by the housing association."

3.8 The full list of proposed amendments to the existing Planning Obligation are set out in the draft DoV which is provided as a separate **APPENDIX DOCUMENT** to this Committee Report.

3.9 Further to the above, a separate (but related) application (Ref: RR/2023/919/P) has been made under Section 73 (determination of applications to develop land without compliance with conditions previously attached) of the Town and County Planning Act 1990. It primarily seeks to amend the tenure mix to deliverer a 100% affordable housing scheme and is to be considered in tandem with this proposal.

4.0 HISTORY

4.1	RR/2007/545/P	Change of use of land to sports and community use – GRANTED.
4.2	RR/2009/322/P	Outline: residential development incorporating up to 39 dwellings and formation of new vehicular access – GRANTED.

4.3	RR/2010/1111/P	Renewal of extant planning permission RR/2007/545/P for change of use from former agricultural land to sports and community use – GRANTED.
4.4	RR/2011/2114/P	Proposed changing rooms and associated parking on land at Westfield Down – GRANTED.
4.5	RR/2011/2114/MA	Non-material amendment to RR/2011/2114/P – to reduce width of access road; addition of parking bay; parking re-arranged – GRANTED.
4.6	RR/2013/1286/P	Replace extant planning permission RR/2010/1111/P to change of use from former agriculture land to sports and community use – GRANTED.
4.7	RR/2014/2764/P	Renewal of Planning Permission for proposed changing rooms and associated parking on land at Westfield Down (previously approved under RR/2011/2114/P) – GRANTED.
4.8	RR/2017/1293/P	Approval of reserved matters following outline approval RR/2009/322/P - layout, scale, appearance and hard and soft landscaping – GRANTED.
4.9	RR/2018/761/P	Change of use of the land from agricultural to sports and community use – GRANTED.
4.10	RR/2018/766/P	Construction of off-site drainage works required in association with the residential development approved under planning ref: RR/2009/322/P – GRANTED.
4.11	RR/2019/1067/P	Proposed changing rooms and associated parking (previously approved under RR/2011/2114/P and RR/2014/2764/P) – GRANTED.
4.12	RR/2021/110/MA	Non-material amendment to RR/2017/1293/P to allow removal of garages & replacement with cycle stores and change five 4-bed 7-person units to five 3-bed 6-person units – GRANTED.
4.13	RR/2021/1757/P	Variation of Condition 2 (approved plans) of planning approval RR/2019/1067/P to allow for revised design of changing rooms building – GRANTED.
4.14	RR/2023/919/P	Variation of Condition 1 of reserved matters approval RR/2017/1293/P (approved pursuant to outline planning permission RR/2009/322/P) to amend the tenure mix to deliverer a 100% affordable housing scheme – NOT YET DECIDED.
4.15	RR/2023/1142/P	Changes to ground levels of recreational land (retrospective) and drainage works (part retrospective) – NOT YET DECIDED.

5.0 LEGISLATION AND POLICIES

5.1 The Town and Country Planning Act 1990:
- Section 106A

5.2 The following policy of the Rother Local Plan Core Strategy 2014 is relevant to the proposal:
- LHN1 (Achieving Mixed and Balanced Communities)

5.3 The following policies of the Development and Site Allocations Local Plan 2019 are relevant to the proposal:
- DHG1 (Affordable Housing)
- WES1 (Land at Westfield Down, Westfield)

5.4 The following documents are also material considerations:
- Council's Technical Advice Note 2 (TAN2) 100% Affordable Housing 2023
- Hastings Borough Council and Rother District Council Housing and Economic Development Need Assessment (HEDNA) 2020
- The National Planning Policy Framework
- The Planning Practice Guidance (PPG)

5.5 The Rother District Local Plan 2006 is relevant insofar as the outline planning application was determined having regard to the policies of that Plan; in particular Policy VL11 (Land at Westfield Down, Westfield).

6.0 CONSULTATIONS

6.1 Legal Services (Wealden and Rother District Council) – **UNDER DISCUSSION**

6.2 Housing, Enabling & Development Officer (Rother District Council) – **NO OBJECTION**

6.3 Planning Notice

6.3.1 Nine **OBJECTIONS** have been received. The concerns raised are summarised as follows:
- There is already a high level of affordable housing in the village.
- Private owned houses in the village will lose value.
- Significant change which is not in the interests of the village.
- Could potentially have a big impact on the village.
- No justification for 100% affordable housing has been provided, nor any details on nor how it would impact on, or be of any benefit to, the village/community.
- On the basis of the incomplete application and for the sake of public transparency and accountability, this application should be refused.
- A Section 106 Agreement is in place and to alter it would need the consent of all signatories.

- Why should the taxpayer be liable for grants to a housing association who after two years now confess that the site is not viable unless there is 100% affordable housing which will bring no benefit to the village.
- The only reason to alter this agreement is entirely financial (i.e. can only be for profit).
- This matter has been dealt with in a most underhand manner. The application to modify the Section 106 Agreement should have been made at the time it was decided that the development would become 100% affordable housing (i.e. before construction began).
- The changes requested would deny local people to invest in local housing and would not provide the proper social mix suitable for a village setting.
- Three named people on the original Section 106 Agreement are no longer current freeholders of Westfield Down site. According to Land Registry Court Developments Ltd are the current owners. Therefore, Court Developments Ltd should have been named on the planning application amendment when submitted.
- The Section 106 Agreement amendments have been submitted by Optivo when Optivo have recently merged with Southern Housing Group and are now known as Southern Housing.
- The proposed shared ownership houses were advertised for sale in the public domain before this application was filed or agreed.
- There have been a lot of confusing statements and information regarding this development.
- The amendment has been applied for without any prior consultation to the local community.
- If the Section 106 Agreement is not a legal document then Optivo has no need to apply for this amendment.
- When Court Developments Ltd bought the land surely, there should have been either a legal transference document, signed by the new owners, of the Section 106 or a legal document to discharge the obligation of the Section 106 at the time of ownership.

6.3.2 Six comments of **SUPPORT** have been received. The comments are summarised as follows:

- Proposed amendment to the Section 106 should be seen as a positive for local people who want to remain in the area.
- It is extremely hard to be able to purchase a property in the current market. The shared ownership scheme helps so many people to get on to the property ladder and work towards owning 100% of their own house eventually.
- Affordable rent is also very much needed in our region.
- Councils and parish councils should be encouraging this type of development especially in rural areas so that young people can continue to live in the area they grew up.
- People need homes and this would help some families.
- Is it not about time this planning application was resolved so that families can have peace of mind knowing they have somewhere to live.
- More owners of properties equates to more people who will have a positive investment into the community.
- Will have a very positive impact on the trades in and around Westfield.

6.3.3 One **GENERAL COMMENT** has been received. The comments are summarised as follows:

- Support a mix of affordable, social housing and market properties, be they owned outright or shared ownership.
- Object to is the change to 100% affordable housing which is not what the original planning application proposed and was approved for.
- By removing the Section 106 and negating Westfield PC as signatories is a corporate move by a huge company to ensure absolute control over a site.
- Support truly affordable, social rent that will enable many families to remain in a community that they have supported and grew up in.
- Worry that Southern Housing/Optivo's affordable rented homes will price many of the lowest income families who already reside in the village, out.
- The original mix of 60/40 was good. But like the compromise that the Parish Council has submitted of a mix of 13 Affordable rent, 13 Shared Ownership and 13 Open Market.
- If there is no consensus between RDC, Westfield PC and Southern Housing, do not see how this planning application can be approved, notwithstanding the clear underhanded way that it has come about.
- The houses are ready and there are families who are waiting on a decision from the Council.

6.4 Westfield Parish Council – **OBJECTION**

6.4.1 Two objections have been received. General concerns raised are summarised as follows:

- The first key issue is the legal legitimacy of this process without having the Parish Council as a signatory to these proposed variations. The Parish Council has received legal counsel who has clearly stated the Parish Council should be signatories to any Section 106 variation. Therefore, it seems unclear how Rother can determine this planning application and for Westfield PC to fully reply until Rother have made their legal position known.
- Based on the legal opinion they received and Rother has received from Westfield PC the Parish Council do not support the deed of variance
- The Parish Council do not and have never supported the 100% affordable housing position.
- No reason has been submitted with the application for the basis of this change from 40 to 100% affordable housing.
- If the mix was to remain at a 40/60 mix and the 15 affordable properties are affordable rented this would be enough housing to house all of the Band A and B housing need for Westfield Parish.
- No evidence has been given either by the Council (as requested back in July 2021 at the full council meeting) nor in the recent meeting with Southern Housing that 100% affordable housing of this size in a rural context has been successful. When questioned Southern Housing deemed the Ticehurst development to be a success. However, Councillors noted that current residents are having to deal with excessive damp, mould and potential subsidence already in these properties. They also noted that Ticehurst Parish Council had not signed the Section 106 over their ongoing concerns about the level of land movement which has resulted in large cracks in the earth on the land they are expected to take ownership of.

- The original policy in the DaSA for the site, the planning application and Section 106 all support a 60% open market and 40% affordable homes.
- The Westfield Down site is subject to its own planning Policy WES1: Land at Westfield Down point (ii) some 39 dwellings are provided within the identified residential area as shown on the Detail Map, of which 40% are affordable. Rother's own planning Policy DHG1: Affordable Housing in the Rural Areas states in Rural Area there is an expectance of 40% on-site affordable housing on schemes of 10 or more dwellings. These policies are both part of the DaSA that was only passed by Council in Dec 2019 so should not be viewed as expired or invalid policies and are part of the Local Plan.
- The current proposed layout of the shared ownership vs the affordable rent also does not follow the 'pepper pot' policy for blind tenure as part of Policy DHG1: Affordable Housing In the Rural Areas.

6.4.2 With regard to the full list of proposed amendments to the existing Planning Obligation, the Parish Council have raised concerns over:

- The proposed change on page 4 of the proposed variation para 1.2 allows the District Council to agree to vary the tenure 'by agreement with the Council'. This could result in the Council varying the tenure and removing all shared ownership properties leaving the Parish Council in a vulnerable position as the legal triggers for the completed works of the recreational ground will be removed in particular para 12.1, part 2 in the Third Schedule. Therefore this should remain as market dwellings to ensure the recreational works are finished.
- The complete removal of clause ten without any reasoning behind this.
- Concerns again for the proposed changes to para 2, part one of the third schedule and the implications this has for the site raised in previous comments.
- The proposed deletion of para 7, part one of the third schedule without any confirmed or binding local lettings plan agreed and linked to the Section 106.
- The fact that the nominations agreement is being proposed to be removed in its entirety. The nominations agreement is being referred to on page 5 of the proposed variations in para 1.13 but nothing has been seen or drafted what this Nominations Agreement will be as the proposal is to remove the existing one without any citing of a replacement agreement.
- Object to schedule 6 being removed as the Parish Council does not support a 100% affordable site.

6.4.3 The Parish Council have suggested a compromise to try and move the matter forward:

"…the Parish Council would support a compromise of 13 affordable rented, 13 shared ownership and 13 open market properties. This would make the site a truly mixed and sustainable site. It would address the significant short fall in the District for open market properties whilst allowing two thirds of the site to be managed for affordable housing units. The Parish Council would also ask that the Section 106 reflected this and the amount of units for affordable rented, shared ownership and open market are confirmed and not able to be varied to avoid further changes to the housing mix on the site. It was also commented that the site should be blind in tenure with properties

pepper-potted throughout the site in accordance to Rother's own planning policies.

If Rother would accept such a change then the Parish Council would support a deed of variation but not for 100% affordable as it stands. With the inclusion of the open market properties (or market dwellings as defined in the original Section 106) this will also resolve the issue of removing the triggers referenced in Part 2 and Part 3 of the Third Schedule…"

7.0 APPRAISAL

7.1 The Committee report for the separate (but related) Section 73 application deals with the principle of a 100% affordable housing scheme, tenure mix and financial considerations. It recommends that the proposed amendment to deliver a 100% affordable housing scheme should be supported.

7.2 Turning to this associated application to modify the Planning Obligation, Section 106 Agreement of the Town and Country Planning Act 1990 is relevant. Subsection (6) says:

"Where an application is made to an authority under subsection (3), the authority may determine—

(a) that the planning obligation shall continue to have effect without modification;

(b) if the obligation no longer serves a useful purpose, that it shall be discharged; or

(c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications."

7.3 Having regard to the above, subsection (6)(c) is applicable in this case. The proposed modifications primarily seek to deliver a 100% affordable housing scheme. The Nominations Agreement included at the Fourth Schedule is also due to be replaced with Rother District Council's current standard Nominations Agreement. All other non-housing requirements and contributions will remain as per the current agreement (with triggers updated as necessary).

7.4 The proposed modifications set out in the draft DoV would support the delivery of a 100% affordable housing scheme and the Planning Obligation would continue to serve a useful purpose with them in place. As such, the proposed modifications are supported in principle. The final version of the DoV will be agreed with input from the Council's legal team.

7.5 Westfield Parish Council have queried whether they need to be a party to the DoV. Having regard to the nature of the changes proposed, which primarily seek to deliver a 100% affordable housing scheme and appear not to affect the Parish Council's Obligations, at this time it is not considered that they need to be a party to the DoV. If it transpires that the Parish Council need to be a party to the DoV, then this can be accommodated.

7.6 The Parish Council have raised a number of concerns over the proposed modifications to the Planning Obligation as set out in the draft DoV. These concerns are acknowledged and will be given consideration when finalising the DoV.

7.7 Other Matters

7.7.1 Optivo has been named as the Applicant on the application form. For clarity, they have now become Southern Housing following the merger of Optivo and Southern Housing Group on 16 December 2022.

7.7.2 The original Certificate B submitted with the application incorrectly listed previous owners of the site as persons against whom the Planning Obligation is enforceable. This has now been updated. Optivo (now Southern Housing) is the current landowner (and applicant), and notice has been served on Westfield Parish Council as a party to the original Planning Obligation.

7.7.3 With regard to other concerns raised by local residents, particularly regarding the provision of a 100% affordable housing scheme in the village, the justification for this is set out in the Committee report for the separate (but related) Section 73 application. It should also be noted that loss of property value is not a material planning consideration.

8.0 CONCLUSION

8.1 The proposed modifications to the Section 106 Planning Obligation primarily relate to the delivery of a 100% affordable housing scheme, which is recommended for approval in the Committee report for the separate (but related) Section 73 application. The modifications set out in the draft Deed of Variation would support the delivery of a 100% affordable housing scheme and the Planning Obligation would continue to serve a useful purpose with them in place. As such, it is recommended that the proposed modifications are supported. The final version of the Deed of Variation will be agreed with input from the Council's legal team.

RECOMMENDATION: APPROVE MODIFICATION OF THE SECTION 106 PLANNING OBLIGATION DELEGATED SUBJECT TO COMPLETION OF DEED OF VARIATION

REASON FOR RECOMMENDATION: In accordance with Section 106A(6)(c) of the Town and Country Planning Act 1990, the Local Planning Authority has determined that the Planning Obligation continues to serve a useful purpose, and that it will serve that purpose equally well subject to the modifications specified in the application.