Planning Services
Horsham District Council
Park Side, Chart Way
Horsham
West Sussex
RH12 1RL

Our Ref: EYG/SOU49/1047

24 September 2024

Dear Sir/Madam

Application to vary the S106 agreement dated 6 March 1998 made between Horsham District Council (1) Westwood Estates Limited (2) and Tower Housing Association Limited (3) relating to Land on the south-east side of A29 Stand Street, Billingshurst, West Sussex. Planning Ref: BL/91/97

Name and Address of Applicant:

Southern Housing
Fleet House
59-61 Clerkenwell Road
London
EC1M 5LA

Name and Address of Agent:

Devonshires Solicitors LLP
The Octagon
27 Middleborough
Colchester,
CO1 1TG
Name for contact: Emma Gibby
[redacted]

Address of the Site and Property:

Land on the south-east side of A29 Stand Street, Billingshurst, West Sussex. The applicant purchased part of the land freehold under title number WSX221008 being 1-5 (inclusive) and 7-24 (inclusive) Bridgewater Close, Billingshurst RH14 9EQ. We enclose copies of the title register and title plan.

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Planning Obligation which the applicant wishes to have modified and the reasons why they need to be modified:

When a registered provider is securing property to a lender the property will be given one of two values:

• Market Value Subject to Tenancy ("MV-STT") which assumes that a property can be sold on the open market subject to a pre-existing tenant. A valuation on this basis is usually around 66% of the open market value of the property. So assuming a three bed house has an open market value of [redacted], if the property is secured to a lender on an MVST basis the applicant will receive a value of [redacted]

• Existing Use Value - Social Housing ("EUV-SH") which assumes that a property may only ever be used as social/affordable housing in perpetuity. This restricts the value of the property to approximately 33% of the open market value of the property. So assuming a three bed house has an open market value of [redacted], if the property is secured to a lender on an EUV-SH basis the applicant will receive a value of [redacted]

From the example above it is clear why the applicant would like to ensure that they receive an MV-STT valuation for the properties. In order for an MV-STT valuation to be issued, any mortgagee exclusion clause (MEC) in a Section 106 Agreement, nomination agreement or other document needs to effectively carve out any ongoing requirement for a lender (following a default from our client) to use the property as affordable housing.

The applicant's Property is subject to a Section 106 Agreement dated 6 March 1998. An adequate MEC is required as at present the property is restricted in value to EUV-SH without one. The inclusion of the industry standard MEC will not change the existing and current use of the property whilst it is in the ownership of our client or any other RP. It is only required in the event that our client should ever default on their loan and the lender takes possession or appoints a receiver, which is extremely unlikely and has never happened in the history of the social housing sector. The sector is seen as very safe for lenders to lend money, who are very risk adverse.

We propose to delete Clauses 6.4 to 6.8 (inclusive) in their entirety and replace them with Clause 6.4 below:

6.4 The social housing provisions in this Agreement shall not be binding on any mortgagee or chargee or any receiver (including an administrative receiver appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Dwellings or any persons or bodies deriving title through such mortgagee chargee or Receiver PROVIDED THAT:

6.4.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Dwellings; and

6.4.2 shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Dwellings to another registered social landlord or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

6.4.3 if such disposal has not completed within the three month period, the mortgagee or chargee or Receiver shall be entitled to dispose of the Dwellings free from the social housing provisions in this Agreement which provisions shall determine absolutely."

Clauses 6.5 to 6.8 (inclusive) shall be noted as *"NOT USED".*

The applicant's Property is also subject to a Nominations Agreement dated 6 March 1998 which again restricts to EUV-SH.

We propose to insert a new Clause 7 as follows:

"7. The provisions in this Deed shall not be binding on any mortgagee or chargee or any receiver (including an administrative receiver appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Rented Units or any persons or bodies deriving title through such mortgagee chargee or Receiver PROVIDED THAT:

7.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Rented Units; and

7.2 shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Rented Units to another registered social landlord or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

7.3 if such disposal has not completed within the three month period, the mortgagee or chargee or Receiver shall be entitled to dispose of Rented Units free from the provisions in this Deed which provisions shall determine absolutely".

We should be grateful if you could please progress with this application to vary the Section 106 Agreement and Nominations Agreement (which can be dealt with within the same deed of variation) and we look forward to hearing from you at your earliest convenience.

Yours faithfully

Devonshires Solicitors

[redacted]

ENCs:
Office Copy Entries & Title Plans for Title Numbers