Planning Department
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 13 November 1997 made between Bryant Homes Southern Limited, West Sussex County Council, Benjamin Charles Farhall and Kim-Jean Farhall (1) Bryant Homes Southern Limited (2) West Sussex County Council (3) and Horsham District council (4) relating to Land at: Forest Road Horsham West Sussex. Planning Ref: HU/357/96

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 at Forest Road Horsham West Sussex. The applicant purchased the Freehold land under Title Number: WSX222194 being 2, 4 and 19 – 49 (odd) Owlbeech Way.

We enclose copies of the title register and title plan.

Lexcel Practice Management Standard Law Society Accredited

Devonshires and Devonshires Solicitors are the trading names of Devonshires Solicitors LLP, registered in England and Wales at the address above with company number OC397401.
A list of members is open for inspection at our offices. This firm does not accept service by electronic mail or facsimile.
This Firm is authorised and regulated by the Solicitors Regulation Authority under the name of Devonshires Solicitors LLP and registration number 619881

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 13 November 1997. 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 amend Clause 4.7 to include *"(other than by way of legal mortgage or charge)"* after the words 'dispose of' and after the words 'disposal of'

We propose to delete Clauses 4.10 to 4.13 (inclusive) and replace them with the following Clause 4.10:

"4.10 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 Social Housing Land or any persons or bodies deriving title through such mortgagee chargee or Receiver PROVIDED THAT:

4.10.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Social Housing Land; and

4.10.2 shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Social Housing Land 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

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

Clauses 4.11 to 4.13 (inclusive) shall be noted as *"NOT USED".*

We should be grateful if you could please progress with this application to vary the Section 106 Agreement 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