

Agenda Item 8

SUPPLEMENTAL REPORT REGARDING THE VARIATION OF A S106 AGREEMENT IN RELATION TO AFFORDABLE HOUSING AT OLD HOLLOW, MERE.(ref. s/2006/1599)

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The recommendations in the report already published do not make it clear whether the committee is being asked to accept the pricing of the dwellings based the same fixed percentage market value for all the properties or different ones based on the present 'Maximum Selling Price' set out in the S106 agreement. It will not be possible to resolve this until the documents have been revised and further negotiations have taken place with the landowner and mortgagees as to which would be the best formula to retain the affordability of the scheme but also to make the dwellings morgagable. It is therefore suggested that the recommendations in the report to be updated to read:

Recommendations:

That members consider the report and agree to:

- (a) Approve a revised method of calculating the property values in line with a percentage of market value
- (b) It is delegated to officers to agree the detailed percentages for each property in the light of ongoing negotiations
- (c) A mortgagee in possession clause is accepted.
- (d) The Section 106 agreement is varied to take account of the above

BRIEFING NOTE:

Legal Services felt that it would be helpful to provide an explanation as to how a Mortgagee in Possession Clause works

A mortgagee in possession clause is commonly inserted in to Section 106 agreements. Mortgagee means lender.

It works as follows:

1. If a borrower defaults on a mortgage the mortgagee (lender) has a right to take possession of a property and sell it.
2. If there is no mortgagee in possession clause, that sale will take place subject to all the terms of a S106 agreement. Therefore in the case of affordable housing the dwellings would have to be sold as affordable housing only to a Registered Social Landlord/Housing Association (RSL).
3. This has the effect of limiting the price and therefore the value of the lenders's security and in turn the amount that a lender will lend on the property.
4. RSL's have for several years been unable to borrow sufficient funds to deliver affordable housing without having a mortgagee in possession clause included in Section 106 agreements. The Council has therefore had to accept this reality and uses a clause

whereby the lender has to notify the Council of the situation and give the Council time to find another RSL to buy the affordable housing/buy it itself. If that cannot be arranged then the lender would be able to sell on the open market and the affordable dwellings would become open market dwellings. To date the Council no affordable housing has been lost in the District in this way.

5. Purchasers of shared ownership properties are in the same situation as RSL's, in that they can no longer obtain a mortgage unless there is a mortgagee in possession clause in a S106 which specifically applies to their lenders. Whilst this does put the loss of individual shared ownership affordable housing properties at risk, the Council has had no option but to agree this and it is in line with the provisions of the standard leases set by the Housing Corporation (now the Homes and Communities Agency). The Council has included the same safeguards of being able to purchase the individual property/find an RSL to purchase it and is not aware of any properties being lost to the open market in it's District to date.