

# **REPORT**

**Report Subject:** Variation of Section 106 Agreement related to planning approval No: S/2007/1680 for: Erection of 10 Houses Formation of Access and Associated Parking.

## **LOCATION**

Land adjacent to Lady Down View, Tisbury

**Report to:** Southern Area Planning Committee

**Date:** 28 May 2009

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## **1. Report Summary:**

Members are asked to consider the following report which sets out the reasons for the developer wishing to amend the existing Section 106 agreement affecting the site. The developer wishes to amend the sections of the agreement covering the 3 affordable housing units (units 8, 9 and 10) secured under the agreement.

## **2. Background**

In June 2008 Hastoe Housing Association successfully negotiated the purchase of 3 affordable homes from the developers, Kingsley Jones Ltd, as per the requirements of the Section 106 agreement. Originally these homes were to be sold as shared ownership. However, the downturn in the housing market meant that this was no longer a feasible option, and in February 2009 Hastoe Housing Association (Hastoe H A) reached a new agreement with the developer to purchase the properties for affordable rent.

Practical completion was due for 30/4/09. However, on 11/3/09 Hastoe HA advised the developers that they could no longer accept Plot 8 due to various issues with the property which were likely to cause management problems. In particular there was concern over the fact that the garage designated for Plot 7 (open market unit) was positioned on the ground floor level of Plot 8 (affordable unit), creating potential management issues. This and all other issues are detailed in the statement from Hastoe HA which is attached as Appendix 1. This left the developer with the problem of needing to provide a third unit of accommodation for affordable housing in a fairly short time period in order to comply with the Section 106 agreement.

The developer was keen to resolve this situation as quickly as possible, and a meeting was held on 24/3/09 to discuss various options.

### **Options**

1. To try to resolve the potential management issues by including the garage within the sale of Plot 8 (the affordable home). However, there is no alternative space to provide a garage for Plot 7 (the open market home), and this would still not resolve the other concerns raised by Hastoe HA.
2. The developer could provide a financial contribution in lieu of the affordable dwelling, and the contribution could be used on alternative affordable housing within Tisbury. However, the Council does not currently have an adopted policy in respect of accepting off-site contributions, although some work has recently been carried out by a housing consultancy firm with a view to implementing a policy as part of the new Local Development Framework.
3. The developer could purchase an alternative property in Tisbury to provide to Hastoe HA in exchange for Plot 8. However, the property would have to meet the standards set by the Homes & Communities Agency in order to be eligible for any grant funding. It was suggested that the developer makes enquiries regarding availability of any new build properties in Tisbury which were most likely to comply with these requirements.

Since our meeting the developer has made every effort to purchase a new build property in Tisbury, although there has been nothing suitable which was still available. As the developer's finance arrangements are subject to strict timescales, it is not feasible to wait for a suitable property to come onto the market.

4. The developer could sell the properties under their own form of shared ownership / shared equity scheme. However, the housing market and lending issues, combined with open market values of the properties, would make it very difficult to find purchasers who would not only qualify for the scheme, but also be able to raise the sufficient mortgage.

### **3. Conclusions**

Due to the fact that there appear to be no suitable alternative properties to purchase in Tisbury, the fact that the developer is under strict financial constraints and the particular circumstances of this development, it was suggested that the quickest and most effective solution would be for the developer to provide an off-site contribution to be used towards affordable housing provision in Tisbury or, West Tisbury.

For example the contributions could be used on any of the following developments which are either ongoing or schedule to be shortly: :-

- a) provision of an additional affordable housing unit on the forthcoming Hindon Lane development;
- b) Conversion of the tenure of an existing unoccupied shared ownership / intermediate rented unit in Tisbury to a general needs rented unit, for which there is proven demand;

- c) Contribution towards provision of an affordable dwelling elsewhere in Tisbury, or West Tisbury;

As it is not known which project will come on stream or when it is recommended that Officers be given delegated authority to approve the most effective way of utilising the off-site contribution for the provision of affordable housing within Tisbury or West Tisbury once the payment is made to the Council

The S106 agreement will need to be amended to remove the requirement for Plot 7 to be provided as an affordable unit and to accept the financial contribution. It is also recommended that the S106 agreement allows for the off-site contribution to be used anytime within a 10 year time period.

### **3.1 Amount of off site contribution**

In order to calculate a figure for the off-site contribution, information was obtained from Hastoe Housing Association regarding the valuation of Plot 8, together with the proposed price that Hastoe HA would have paid for that particular property. In addition a calculation was made based on the guidance notes prepared by Adams Integra in 2008 for the purposes of off-site contributions, and a figure of £69,322 was calculated. The developer has been consulted regarding the proposed figure, and has made no objections.

## **4. Recommendation**

The Committee is therefore requested to:

1. approve the principle of a financial contribution from the developer,
2. It is delegated to officers to decide how the contribution is spent
3. The Section 106 Agreement is amended as necessary

This will allow the developer to comply with the terms of the S106 agreement which will be amended to reflect the changes and will also enable the handover of two completed units of affordable housing, together with the additional funds for affordable housing elsewhere in the vicinity.

## APPENDIX I

### Tisbury II, Lady Down View Three units of Affordable Housing from Kingsley Jones Plots 8, 9 & 10

#### **Report on issues with Plot eight**

Plot eight is a 3 bed, 5 person (91.4m<sup>2</sup>) property with a double garage below. This is to be used by a third party (plot 7, which is yet to be built).

#### Access

The property is accessed by a bridge at 1<sup>st</sup> floor level (which is ground level at the front of the unit), this does not provide a level access. No other access is provided into the property. Assuming parking is available at the rear, occupants will have to walk up and around the sloping access road to get into their front door.

Developer has assured HHA that building regs have been met, but housing management have some concerns regarding fire escape routes; as windows are at 1<sup>st</sup> floor level and there is no alternative access.

#### Parking

Two parking spaces are allocated for the three affordable houses; these are clearly for plots nine and ten. Developer assures HHA that there is space within the turning head for a further car, but this does not seem to provide an acceptable solution to the problem. Frazer Garner notes “this would mean one vehicle parking on the hammer head which is the only area to allow large vehicles to turn at the end of the cul-de-sac. This does not provide a particularly satisfactory arrangement.”

Housing Management is not happy with this parking solution.

We have since spoken to the developer, he has amended one of the drawings to show a third parking space next to plot 10, it still does not provide a completely satisfactory solution, and I am concerned that this change may require a minor amendment to the planning permission?

#### Garage

The garage at floor level from the rear (sloping site has meant a large retaining wall has been built adjacent plots 8, 9 & 10). This is to serve, the as yet un built, plot 7.

There are 3 options on how to deal with this, if we were to acquire the unit, see below for summary:

- (i) Hastoe purchase the freehold of the whole unit, including the garage, and lease it out to the private owner of plot 7  
Housing Management is concerned about dealing with the leasehold to a private third party, of a garage below one of our properties. Noise and neighbourhood disputes have to be considered.

- (ii) Hastoe purchase the long-term leasehold of the top 2 floors of the property, i.e. the developer retains ownership of the property, leases Hastoe floors 1&2, and plot 7 the garage.  
Again, above points need to be considered, however it is unlikely that the Developer will accept retaining the head lease of this property.
- (iii) (iii) Hastoe Purchase a flying freehold.  
Our solicitors have recommended we do not do this.

Housing Management is not happy with any of the above solutions. If the garage was to be for plot eight, access will still not be available to the house, except from the 1<sup>st</sup> floor access at the front. Accumus have been contacted and there are no insurance implications to Hastoe with regard to the above.

#### Leasing the garage

Maintenance costs and repair liability will need to be agreed with the leaseholders of the garage.

#### Section 9 Consent

This will be required if Hastoe lease out the garage.

#### Garden

At present it is not clear if plot eight has an outside space, although this has been assured by the developer.