

Application Number	22/00999/S106
Site Address	4-14 Mayfield Road, Worcester, WR3 8NT
Description of Development	Application for a deed of variation to amend the section 106 agreement of planning approval 20/00246/FUL, to remove the affordable housing contribution.
Applicant	Platform Housing Ltd
Agent	Miss Michaela Burrell
Case Officer	Paul Round
	paul.round@worcester.gov.uk
Ward	Rainbow Hill Ward
Reason for Referral to Committee	Variation of S.106 with reduced or removed financial contributions
Web link to application	https://plan.worcester.gov.uk/Planning/Display/22/00999/S106
Recommendation	The Corporate Director - Planning and Governance recommends that the Planning Committee gives delegated authority to the Corporate Director - Planning and Governance to prepare and complete a Deed of Variation in accordance with the draft heads of terms in Appendix 1.

1. Background

- 1.1 The request to vary the S.106 was registered on 14 November 2022. The request has been referred to the Planning Committee in accordance with the adopted Scheme of Delegation.

2. The site and surrounding area

- 2.1 The application relates to the former Rainbow Hill Working Men's Club, off Mayfield Road, together with part of the rear garden of an end terraced house (no. 14 Mayfield Road), near to the junction with Astwood Road/Rainbow Hill. The 0.16ha site sits in an established residential setting, with existing neighbouring residential properties on 3 sides and a garage court to the rear. The site slopes down from south-west to north-east by approximately 3-4m.
- 2.2 The site is currently in the construction phase of the implementation of the approved planning permission for 22 residential apartments.

3. The proposals

- 3.1 This application is a request under Section 106 (referred to as s.106 hereafter) of the Town and Country Planning Act 1990 (as amended) to vary the legal agreement that was originally imposed. The proposed amendments relate to the removal of financial contributions in respect of affordable housing replacing the obligation with full policy compliant provision on site along with any consequential amendments that are required.
- 3.2 In accordance with Article 15 (7) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), full details of the application have been published on the Council's website. As such, Members will have had the opportunity to review the submitted plans and documents in order to familiarise themselves with the proposals prior to consideration and determination of the application accordingly.

4. Planning Policy

- 4.1 The Development Plan for Worcester City comprises:
- The South Worcestershire Development Plan (SWDP) which was adopted February 2016, and;
 - The Worcestershire Waste Core Strategy, which was adopted on December 2012.
 - The Worcestershire Minerals Local Plan which was adopted in July 2022.

South Worcestershire Development Plan

- 4.2 The following policies of the SWDP are considered to be relevant to the proposal:
SWDP 15 Meeting Affordable Housing Needs

Material Considerations

- 1. National Planning Policy Framework**
- 2. National Planning Practice Guidance**
- 3. Supplementary Planning Documents**

- 4.3 The following Supplementary Planning Documents (SPD) are relevant to the application proposals:-
- Affordable Housing SPD

Relevant Legislation

- 4.4 The following legislation is also relevant and has been taken into account when considering this application:-
- Town and Country Planning Act 1990 (as amended)
Planning Act 2008
The Human Rights Act 1998.

5. Planning History (of relevance)

- 5.1 The site has been the subject of the following planning applications:

20/00246/FUL Redevelopment of site to include demolition of existing building and construction of 22no. residential apartments with associated car parking and amenities.

Approved - Jun 24 2021

22/00720/FUL - Application for minor-material amendment to planning permission ref: 20/00246/FUL, dated 24.06.21, to allow changes to external site car/cycle parking layout, internal buildings layout and external appearance of the buildings.

Approved - Dec 12 2022

23/00632/NMA - Amendments to approved CEMP & landscaping to regularise rear builders access and fire access of planning permission 22/00720/FUL.

Approved - Sep 14 2023

6. Consultations

- 6.1 Formal consultation, including display of site notices, has been undertaken in respect of the application. The following comments from statutory and non-statutory consultees and interested third parties have been received in relation to the original and amended proposals and are summarised as follows:

Neighbours and other third-party comments: None received

Housing Enabling Officer: I am in full support of the Deed of Variation to the S106 agreement on this site. Originally, this site was to have no on site affordable housing, as it was deemed to be not financially viable, but there was an affordable housing contribution to assist with providing affordable housing off-site. Since the planning permission for the development was agreed, the owner did not develop the site, but instead put the land up for sale and was acquired by Platform Housing Group. The Council have been fully aware of Platform's intent to develop the site for 100% affordable housing which is fully supported. There is a major shortage of good quality affordable housing in the City and this site will provide a mix of 1 and 2 bed flats in a site close to the city centre. As confirmed by analysis of the Housing For You housing register and the Strategic Housing Market Assessment, Worcester has an increasing need of 1 and 2 bed accommodation which this site will help to provide. Worcester was part of the Government's Voluntary Right to Buy (VRTB) Pilot and this site was chosen by Platform to provide replacement dwellings for those which were sold, and the Council have supported this investment (see supporting document below) which is in accordance with guidance set by the Government for the pilot. If agreed, these properties will provide much needed affordable housing in the City of Worcester, in a sustainable location and for social rent, which is the tenure most needed.

- 6.2 Members have been given the opportunity to read all representations that have been received in full. At the time of writing this report no other consultation responses have been received. Any additional responses received will be reported to members verbally or in the form of a late paper, subject to the date of receipt.

7. Officer Assessment

- 7.1 Section 106A of the Town and Country Planning Act 1990 (as amended) provides the ability in which to amend or modify a S.106 Agreement. Under the terms of this section such a request can be considered within 5 years at the discretion of the Council.
- 7.2 The amendment process is a positive way of adapting the requirements of the development to specific circumstances as they arise during or after the construction process.

- 7.3 As part of the consideration of the approved scheme for 232no. residential apartments, it was considered that the 30% requirement under SWDP15 gave a theoretical figure of 6.6 dwellings.
- 7.4 In the submitted Affordable Housing Statement, it was stated that due to high demolition and build costs, it would be unviable to provide affordable housing on the site. After applying the Vacant Building Credit calculation to the affordable housing figure, the level required was reduced to 1.7 units: 1 unit to be provided on site and the other 0.7 to be a financial contribution to be paid for off site provision.
- 7.5 However, the Committee took the views that to get the approval of a Registered Provider (RP) to take on a single dwelling within the scheme was highly unlikely and therefore a financial contribution for off site affordable housing was agreed.
- 7.6 The signed legal agreement provided the following contributions:
- Affordable Housing - £21,754.90
 - Public Open Space - £27,261.62
- 7.7 The Public Open Space contribution has been paid to the City Council on 30th January 2022.
- 7.8 The request to vary the S.106 agreement relates purely to the affordable housing element, seeking to remove the financial requirement in lieu of full affordable housing provision on site. The reality of the situation is that the applicant, Platform Housing, will provide an 100% affordable housing scheme on the site. The tenure of the units to be controlled through the S.106 will be for social rent.
- 7.9 In varying the S.106 agreement consideration should be given to any amendment to ensure that it still meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. These tests are set out as statutory tests in the Community Infrastructure Levy Regulations 2012 and as policy tests in the National Planning Policy Framework.
- 7.10 To meet the policy requirements to make the development acceptable either full on-site provision or financial contribution is required. The proposed amendment provides an acceptable alternative arrangement for delivery of the provision of affordable housing in accordance with the adopted policy and Supplementary Planning Document on Affordable Housing. There is full support for the proposal from the City Council's Housing Team.
- 7.11 Draft Heads of Terms for a s106 Agreement have been agreed with the applicants and are attached as **Appendix 1**.

8. Conclusion and planning balance

- 8.1 The proposed variation of the signed S.106 on the site to provide on site affordable housing is wholly acceptable meeting the requirements of the development plan by delivering affordable housing of a tenure and location where it is most needed. The S.106 in its proposed amended form is required to make the development acceptable and is directly related to the development, being appropriate in scale and kind to the development. The variation is acceptable and can be supported.

Draft Heads of Terms

Application 22/00999/S106 – Mayfield Road

Variation of S.106 (20/00246/FUL) to remove the Affordable Housing Contribution in lieu of 100% Affordable Housing Occupation

1. The following deletions

- a) Definitions – Remove “Affordable Housing Contribution” definition
- b) Third Schedule – (1) Remove “and the Affordable Housing Contribution”
- c) Fourth Schedule – (1) Remove “and the Affordable Housing Contribution”
- d) Fifth Schedule – Title Remove “and the Affordable Housing Contribution”
 - (1) Remove “and the Affordable Housing Contribution”
 - (3) Remove the whole subsection.
 - (4) Remove “and the Affordable Housing Contribution” (occurs twice)
 - (5) Remove “and the Affordable Housing Contribution” (occurs twice)

2. The following clauses to be inserted

- a) A minimum of 30% of the new dwellings (7 units) shall be used and retained for the purposes of affordable housing. (‘the affordable housing element’)
- b) 100% (7 units) the affordable housing element shall be Social Rent Housing managed by a Registered Provider, and these units shall not be occupied unless the City Council has previously given its written agreement to the terms on which they are to be let taking into account the Management Practices and Rent Setting Policies applicable to these unit.

3. The Developer shall provide to the City Council either a solicitor’s undertaking for the reasonable legal costs incurred by the City Council in connection with the preparation and completion of the Agreement or if no solicitor is instructed these fees must be paid direct to the City Council. These fees shall be payable prior to the commencement of any legal work and are payable whether or not the agreement is completed.

4. The Developer covenants with the City Council to pay a Section 106 monitoring fee of £650 to the City Council which shall be paid on or before completion of the Agreement. This fee will be to cover the cost relating to the administration and monitoring of the planning obligations.