

13 April 2021

**Report to:** South Cambridgeshire District  
Council Planning Committee

**Lead Officer:** Joint Director of the Greater  
Cambridge Planning Service

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## **20/02098/S106A – Land Between Church Lane And Ermine Street South, Papworth Everard**

Proposal: Modification of planning obligations (Community Building) contained in a Section 106 Agreement dated 21 October 2014 pursuant to outline planning permission S/0623/13/FL

Applicant: Flagship Housing Developments Ltd

Key material considerations: Principle of Development  
Section 106 Agreement and Infrastructure Contributions

Date of Member site visit: None

Is it a Departure Application?: No

Decision due by: EOT agreed until 20<sup>th</sup> April.

Application brought to Committee because: Papworth Everard Parish Council requests the application is determined by Planning Committee

Officer recommendation: Approval

Presenting officer: Aaron Coe, Principal Planning Officer.

### **Executive Summary**

1. This application seeks the modification of planning obligations for the Community Building contained in a Section 106 Agreement dated 21 October 2014 pursuant to outline planning permission S/0623/13/FL.
2. Consent was granted under planning applications S/0623/13/FL and S/0623/13/CA. The mixed use redevelopment was considered to reflect the aims of Policy H/4 with a good proportion of community, employment and residential uses that would contribute to the continued invigoration of the village centre.
3. This application seeks the modification of the planning obligations to ensure the progress of the planned delivery of the new homes on the site in tandem with progressing the work on the community building, in which the delays suffered has meant that the delivery of homes has overtaken the community building.

## Relevant planning history

4. **S/0623/13/FL-** Outline planning permission for the demolition of existing buildings & the erection of up to 58 dwellings (Class C3) access car parking & associated works open space landscaping & a children's play area all matters reserved except for access and full planning permission & conservation consent for the partial demolition of the existing printworks building & the conservation and re-use of the retained building to provide a brewhouse (B2) bakery (B1) floor area for the consumption of food and drink (A3/A4/A5) and community rooms (D2) associated access car parking & landscaping and eight units of accommodation to be used either as housing (C3) and/or business uses (B1a)- Approved.
5. **S/0623/13/CA-**Partial Demolition of Printworks Building-Approved.
6. **S/2859/16/VC-** Variation/removal of conditions 6-18, 21-22, 25027, 30-32, 34-42, 44, 49 and 51 of planning permission S/0623/13/FL- Approved.
7. **S/0307/17/RM-** Reserved matters application relating to the matters of layout scale appearance and landscaping for 53 dwellings on land at Church Lane Papworth Everard pursuant to outline planning permission S/0623/13/FL.

## Planning policies

### 8. National Guidance

National Planning Policy Framework (NPPF) 2019  
National Planning Practice Guidance (NPPG)  
National Design Guide 2019  
Planning Practice Guidance Circular 11/95 – The use of conditions in Planning Permissions (Annex A)

### 9. South Cambridgeshire Local Plan 2018

S/1 – Vision  
S/2 – Objectives of the Local Plan  
S/3 – Presumption in Favour of Sustainable Development  
S/5 – Provision of New Jobs and Homes  
S/7 – Development Frameworks  
CC/1 – Mitigation and Adaptation to Climate Change  
CC/3 – Renewable and Low Carbon Energy in New Developments  
CC/4 – Water Efficiency  
CC/6 – Construction Methods  
CC/7 – Water Quality  
CC/8 – Sustainable Drainage Systems  
CC/9 – Managing Flood Risk  
HQ/1 – Design Principles  
HQ/2 – Public Art and New Development  
NH/4 – Biodiversity  
NH/14 – Heritage Assets  
H/4 – Papworth Everard West Central  
H/8 – Housing Density  
H/9 – Housing Mix  
H/10 – Affordable Housing  
H/12 – Residential Space Standards

SC/2 – Health Impact Assessment  
SC/6 – Indoor Community Facilities  
SC/7 – Outdoor Play Space, Informal Open Space and New Developments  
SC/9 – Lighting Proposals  
SC/10 – Noise Pollution  
SC/11 – Contaminated Land  
SC/12 – Air Quality  
TI/2 – Planning for Sustainable Travel  
TI/3 – Parking Provision  
TI/8 – Infrastructure and New Developments  
TI/10 – Broadband

#### 10. South Cambridgeshire Supplementary Planning Documents (SPD):

District Design Guide SPD - Adopted March 2010  
Trees & Development Sites SPD - Adopted January 2009  
Listed Buildings SPD 2009  
Development Affecting Conservation Areas SPD 2009  
Landscape in New Developments SPD - Adopted March 2010  
Open Space in New Developments SPD - Adopted January 2009  
Affordable Housing SPD – Adopted March 2010  
Biodiversity SPD - Adopted July 2009  
Health Impact Assessment SPD – Adopted March 2011  
Sustainable Design and Construction SPD – Adopted January 2020  
Cambridgeshire Flood and Water SPD – Adopted November 2016

#### Consultations

##### 11. Papworth Everard Parish Council-

###### **As submitted- Objections.**

See application file online for a full copy of the comments received from Papworth Everard Parish Council on 25<sup>th</sup> May 2020 to the original proposal.

The comments of Papworth Parish Council received on 25<sup>th</sup> May 2020 are summarised as follows:

The Birkett's letter demonstrates the lack of effort and intent shown by the applicant in fulfilling the legal requirement to refurbish the printworks building prior to the expected date of the occupation of the first dwelling on the site. To the Parish Council, it appeared that they set aside the printworks, to be dealt with later and concentrated solely on building houses. Flagship do not seem to appreciate that the refurbished printworks building is a fundamental element of the development which will go some way to recreating the balance that once existed in this central part of the village between employment, community and residential uses.

Given the current economic recession and continued uncertainty caused by the corona virus epidemic in the UK, if the current application were granted there would be no certainty as to when, or even if, the applicant would provide the community building. By refusing the application- ie. By ensuring the applicant met their current legal obligations now – there is far more certainty that the community building will be delivered in a timely manner.

It must be an entirely commercial decision to delay provision of the community building. The applicant knew from the outset, when the site was purchased, the legal requirements placed upon it by the S106 Agreement.

The Parish Council feel that if the requested modification to the legal obligations is allowed, this will set unfavourable precedents for future adherence to the S106 Agreements in South Cambridgeshire.

The community needs this facility. For at least the last 8 to 10 years the Parish Council has been pressed by residents about the obvious lack of progress on the promised building.

### **As Amended (1) Objections.**

See application file online for a full copy of the comments received from Papworth Everard Parish Council on 3<sup>rd</sup> February 2021 to the amended proposal.

The comments of Papworth Parish Council received on 3<sup>rd</sup> February 2021 are summarised as follows:

There is a long-standing policy, Policy H/4 for the enhancement of the community and employment provision in the Papworth West Central Area of Papworth Everard. This policy underpins the preparation of the S106 Agreement. A pre-occupation clause was included in the S106 Agreement to ensure timely delivery of a policy which is already more than 10 years old. The printworks is the only development in Papworth West Central which will address the policy requirement for community use and employment. Despite the legal agreement, the applicant has yet to start construction of the former printworks.

The date on which the renovation work on the printworks will start remains uncertain. Concern is raised that houses are now built but the printworks remains an eyesore. Under the proposed amended triggers, the timescales to get to the point of opening the building would decrease by 6 months however the start date is delayed and indeterminate, and the work to complete the building to the required standard and offer the transfer to Allia is estimated to be up to a year away. No reasonable explanation for the delays has been given. The Parish Council considers the proposed opening of the community building could be up to 3 years away.

By retaining the existing S106 clauses and requiring the completion of the renovation of the shell of the former printworks building, before occupation of any new houses on Church Lane to Ermine Street, the Parish Council considers the printworks would be ready for fit out in a maximum of six to eight months and the houses on the development could then be added to the District Council's housing land supply.

No information as to why a sum of £60,000 has been offered towards the cost of preparing the building for opening has been provided. No explanation for the inclusion of this figure or how it was calculated. The Parish considers £60,000 would make a small contribution to the total costs of the fit-out.

Altered terms for the transfer of the building in the event of Allia's withdrawal, the freehold former printworks building would be passed to the Parish Council or another body for the sum of £1.00. The amended terms according to the letter submitted details this would be replaced by a leasehold at market value. Meaning if the Parish or similar body did not have sufficient funds for the cost of the fit-out and the market

value purchase of the building, the community building would not be delivered and Local Plan Policy H/4 not fulfilled.

### **As Amended (2) - Objections.**

See application file online for a full copy of the comments received from Papworth Everard Parish Council on 7th February 2021 to the amended proposal.

The comments of Papworth Parish Council received on 7th February 2021 are summarised as follows:

Policy H/4 of the adopted Local Plan underpins the requirements for the community building provisions and the triggers to assure timely delivery in the existing S106 Agreement of 21<sup>st</sup> October 2014 entered into by the parties.

The pre-occupation trigger clause and the related subsequent deadlines tied to this trigger were subject of considered and extensive negotiations between the parties and deliberately included in Section 2 of the Third Schedule of the existing S106 Agreement to ensure the timely delivery of the Community Building in accordance with this policy, which remains sound.

Planning committee took a decision at its meeting of 6<sup>th</sup> November 2013 to give Officers delegated powers to approve the application subject to the S106 Agreement securing the delivery of the Community Building in consultation with the Parish Council.

The site is the only development in the Papworth Everard West Central policy area that can and will address the policy requirement for the provision and enhancement of community facilities and employment uses.

The applicant was in full knowledge of the pre-occupation trigger clause and related subsequent deadlines tied to this trigger in the existing S106 Agreement relating to the timely delivery of the Community Building. Progress with construction of the housing has continued throughout the period, in parallel with the necessary discharge of the planning conditions. In stark contrast the same cannot be said for progress with the shell of the Community Building.

The Parish Council is under repeated and vocal pressure resulting from the sheer frustration of its parishioners that the applicant has held the site since 2015 and has been allowed to progress the construction of its housing, but not the shell of the Community Building, despite its legal obligations to do so.

The amendment to the pre-occupation trigger clause which serves to relax its legal requirements on the timeline for delivery of the shell of the Community Building to a later indeterminate point in the future, the sale/occupation of 50% of the dwellings, puts at increased risk the very delivery of the Community Building by Allia in view of the work necessary to complete the shell to the required fit out standard and opening by Allia.

The Parish Council's estimate is that there would be a year or more delay to the initial trigger, if amended and that the direct consequence on the opening of the Community Building is that it would be delayed, and some 3 years from now, despite the houses coming on sale now.

By retaining the existing S106 Agreement in its current form, the pre-occupation trigger requiring the completion of the shell of the Community Building before occupation of any of the houses on the site, the Parish considers the shell of the Community Building could be ready in 6 to 8 months for fit-out by Allia.

The applicant has also failed to provide the information and evidence considered necessary in support of the assertions made in its application.

Altered terms for transfer of the building in the event of Allias withdrawal or failure to meet their reduced timeline. The applicant is seeking to vary substantive terms on what the transfer of the Community Building would be offered in the event of default by Allia.

The Parish Council is unanimous in its recommendation of refusal of this application by the applicant to modify the existing S106 Agreement.

### **As Amended (3)**

Formal re-consultation sent 19<sup>th</sup> March 2021. Comments to be included on the amendment sheet and presented to members at the committee meeting on 13<sup>th</sup> April.

#### **12. Historic Officer- No objections.**

Comments on original application- No material conservation issues with the proposal.

Comments on amendments- No material conservation issues with the proposal.

#### **13. Housing Officer- No objections.**

Comments on original application – No objections.

Supports the application as the relaxation of triggers will allow Flagship Homes to have the funds available through the sale of completed properties and give them the cashflow to develop the Community Building and the remaining site including the delivery of the affordable dwellings. Flagship Homes are committed to the delivery of this scheme, including the Community Building, and are engaged in talks with Allia to take on the Community Building. Flagship Homes, have a track record of delivering many good quality affordable housing schemes in South Cambs. The relaxation of triggers will also ensure that the delivery of the affordable housing is safeguarded, and that Flagship Homes can continue to deliver affordable homes in the district as well

Comments on amendments – The amendments do not appear to have any implications on the delivery of the affordable housing units and therefore there are no further comments to add.

#### **14. South Cambridgeshire District Council S106 officer**

##### **As Submitted**

*What purpose does it fulfil?*

- The proposals continued purpose is to ensure the development continues to comply with Policy H/4 of SCDC Local Plan 2018 and provide a mix of uses including community uses, employment uses and housing.

- *Would it serve that purpose 'equally well' if it has effect subject to the proposed modifications?*
- As submitted the application does not propose any other modifications including shortening (a) the time within which Allia would have to take transfer of the Community Building (b) the time within which Allia would have to complete the fit out of the Community Building or (c) the time within which Allia would have to open the Community Building to the public. It would in my view be illogical to conclude that the purpose of the obligation would continue to be served "equally well" if it had effect subject to the proposed modification sought by Flagship Homes and which would have the direct effect of potentially delaying the opening of the Community Building for an indeterminate period of time (but perhaps 12 months). Having said that, if the application had also proposed to reduce the length of time which Allia were to take transfer of the Community Building and have it open for public use (i.e. where the chain of events for completion of the Community Building remained limited to 30 months or preferably less) then I would suggest such an application containing all amendments could be considered to satisfy this final test.
- In order to convince the District Council and Parish Council that such modification would still have the effect of delivering the Community Building within the revised timetable I would expect the applicant to submit such supporting evidence including (but not limited to): 1. Details of the construction company appointed to deliver the Community Building (including a copy of the contract) 2. Building Regulation drawing submission and approval for the Community Building 3. Construction delivery plan for the dwellings 4. Details of the arrangements for transfer of the Community Building to Allia (including copy of the completed or draft contract)
- It is my view that an amended application which also seeks to reduce the possible periods for Allia taking ownership of the Community Building then fitting it out and making it publicly accessible, and which is supported by relevant documentation demonstrating a continued commitment to deliver the Community Building, would have led to a more informed assessment and potentially more positive recommendation of support. Such an amended application could even include proposing a trigger for construction of the Community Building commencing.

### **As Amended -**

The applicant has proposed several modifications to the application since first submitted. The final proposal, insofar as the Community Building is concerned, can be summarised as follows:

1. 40 of the dwellings on the blue land permitted to be sold before the Community Building is completed and offered to Allia.
2. £60,000 to be paid to the Council prior to the occupation of any dwelling on the blue land which will be used to help fit out the Community Building.
3. Introduction of triggers/occupation restrictions for the delivery of the Community Building
4. Reduce the time from 24 months to 18 months within which (following transfer) Allia must open the Community Building to the public
5. Improvements to the Community Building Specification

Previous concerns I had expressed related predominantly to the impact that the first obligation (i.e. to complete the Community Building and offer the freehold transfer to Allia) had on the overall timetable for the opening of the Community Building to the

public which in my view is the objective of the policy. These concerns have been addressed by the applicant in 2 ways.

First the applicant is seeking to reduce from 24 months to 18 months the time that Allia would have to open the Community Building to the public from the date that it completes the transfer. Second the applicant is offering to subsidise, in the form of a £60,000 payment, works to the Community Building to help facilitate its earlier opening to the public.

In my view a decision taker could now conceivably conclude that the purpose of the obligation would continue to be served "equally well" if it had effect subject to the proposed modifications.

## **15. Representations from members of the public**

### **Allia- Objections.**

16. Comments that there must be a reliance on the provisions of the existing Section 106 Agreement where no market housing can be occupied until the building is completed and offered to Allia and where Allia have a sufficient period of time to proceed.

### **Dernford Holdings Ltd-**

17. Gives property advice to Allia and assists on specific project. Has had discussions on behalf of Allia with Flagship. Following the suggestion of Flagship to change the specification of the community building, it was suggested that they deliver a shell building, but one that was fitted out with floor coverings, lighting, heating and other basic works which would have created a flexi space suitable for a wide range of community and other uses which would have enabled Allia to be able to commit to take the building at its practical completion date. This was declined by Flagship. After discussions, Flagship offered a capital contribution of £60,000 to which Allia proposed an alternate sum of £125,000. This was rejected. It was then made clear by Flagship that they would not entertain any further changes and it was accepted that they would deliver the building when they were going to deliver it and Allia would rely on its discretionary powers in terms of whether it could take it on or not.

## **18. The site and its surroundings**

19. The site is located within the Papworth Everard Village development framework and is partly within and between the Conservation Area. The site totals some 2.07 hectares in area.

Planning consent was granted under application reference S/0623/13/FL which was considered as a 'hybrid' planning application. The scheme secured outline planning permission for the erection of up to 58 dwellings (blue land) and full planning permission for the works to the community building as well as 8 residential units (pink land).

(i) 'Pink Land' - Situated within the Conservation Area, this area of land is occupied by the existing, vacant printworks buildings and full planning permission and conservation area consent is sought for part demolition of the printworks with the front 'saw-tooth' building of 1929 being partly retained to provide a brewhouse (B2 use), bakery (B1 use), restaurant and café (A3, A4 and A5 uses) and community rooms (D2 use). Car parking, access and landscaping would be provided to the south-west

of this retained building, as well as 8 units of accommodation at 2.5 storey height to be used as housing (C3) and/or business office use (B1a).

(ii) 'Blue Land' - The remaining area of the site is situated to the south side of Church Lane and accommodates a vacant two storey dwelling, a block of garages and the disused Tallyn Work centre. Outline consent, with all matters reserved except for access, is sought for up to 58 dwellings, parking and children's play area. Vehicular accesses would be provided off Church Lane and a link through to the rest of site provided for cyclists and pedestrians only. Frontage access would be introduced to each new dwelling immediately facing Church Lane.

## **20. Reason for the proposed variation**

Flagship acquired the site and commenced a tender process in 2016. However, due to the contractor market at the time a viable contract sum could not be achieved which resulted in the scheme being retendered in 2018. A building contract was let in early 2019 and works commenced in July 2019. As works have progressed a series of issues have been uncovered which has resulted in further investigations such as an assessment of temporary works, structural and fabric surveys and steel grade, geo-technical and concrete core testing. Flagship carried out pre application discussions with South Cambridgeshire District Council regarding a new building Community Building rather than refurbishing the existing building. However, the pre application responses did not give Flagship enough certainty that a revised application for a new building would be supported. As such, Flagship had to take the decision to progress with the delivery of the extant permission for the Community Building. Due to the delays suffered whilst the options of providing a new building were explored, the construction of the dwellings has now surpassed the trigger which required the community building to be completed prior to first occupation and therefore, a variation is required.

### **The Proposal**

21. The application as originally submitted was seeking a variation which would enable 50% of the dwellings to be occupied prior to the completion of the community building or offering to the first beneficiary, upgrade the specification of the building and a reduced timescale for the fit out of the building. During the course of the planning application further time has passed and the application has been amended. The amendments involve a revised trigger of 40 dwellings proposed to be occupied prior to the completion of the community building. Further triggers have also been added which relate to the construction phase/ fitting out stages of the community building which will be enforceable. In addition, a contribution of £60,000 to be paid to the Council has been put forward in order to subsidise the fit out cost of the Community Building and help facilitate the earlier opening of the building to the public.

The details of the proposed variation involves the following amendments:

### **First Modification:**

## **22. Original Clause 2.1**

Prior to Occupation of the first Dwelling on that part of the Site coloured blue on Plan 4 the Owners shall have completed the Community Building in accordance with the Community Building Specification and offered to transfer the freehold of the Community Building to Allia free of any encumbrances that would restrict or prevent

the use of the Community Building for the for the Community Facilities for the consideration of £1 substantially on the terms set out in the Seventh Schedule (“the Draft Transfer”).”

**23. Proposed Clause 2.1**

“2.1 In relation to the Community Building the Owner covenants with the Council as follows:

2.1.1 Not to Occupy or allow Occupation of any Dwelling on the Blue Land until the sum of £60,000 has been paid to the Council towards the fitting out of the Community Building for the purposes of providing Community Facilities.

2.1.2 Not to Occupy or allow Occupation of more than 25 Dwellings on the Blue Land until the works for he re-construction of the Community Building have commenced.

2.1.3 Not to Occupy or allow Occupation of more than 30 Dwellings on the Blue Land until the steel frame of the Community Building has been erected and modified for re-construction of the Community Building.

2.1.4 Not to Occupy or allow Occupation of more than 35 Dwellings on the Blue Land until the brickwork of the Community Building has been completed.

2.1.5 Not to Occupy or allow Occupation of more than 40 Dwellings on the Blue Land until the Community Building has been completed in accordance with the Community Building Specification and the Owner has offered to transfer the freehold of the Community Building to Allia free of any encumbrances that would restrict or prevent the use of the Community Building for the Community Facilities for the consideration of £1 substantially on the terms set out in the Seventh Schedule (“the Draft Transfer”).”

2.1.6 Upon completion of a stage of works or payment of monies required under this Paragraph the Owner will serve upon the Council a Trigger Notice relating to the relevant Community Building Trigger.

2.1.7 The Owner further covenants with the Council not to serve any completion notice or otherwise require any person to take up occupation of a Dwelling in breach of a Community Building Trigger

**Second Modification**

**24. Original Clause 2.3.3**

In the event that:

the Community Building is not opened to the public with Community Facilities operating within 24 months of completion of the transfer to Allia pursuant to paragraph 2.1 of this Schedule."

the owner of the Community Building shall at that time offer to transfer the freehold interest in the Community Building free from encumbrances to the Parish Council or such other person(s) company (ies) body (ies) or organisation(s) that the Council

shall specify to take a transfer of the Community Building ('the Council's Nominee') for the consideration of One Pound (£1.00).

25. **Proposed Clause 2.3.3**

In the event that:

the Community Building is not opened to the public with Community Facilities operating within 18 months of completion of the transfer to Allia pursuant to paragraph 2.1 of this Schedule."

the owner of the Community Building shall at that time offer to transfer the freehold interest in the Community Building free from encumbrances to the Parish Council or such other person(s) company (ies) body (ies) or organisation(s) that the Council shall specify to take a transfer of the Community Building ('the Council's Nominee') for the consideration of One Pound (£1.00).

**Third Modification**

26. Revised Community Building Specification (Sixth Schedule):

The Community Building Specification in the Sixth Schedule is proposed to be brought up to date in line with current Building Regulations. This is an improvement on the specification contained in the original agreement and includes installation of a new floor and upgrade of fire doors to comply with new building regulations.

**Fourth Modification**

27. **Original Clause 7.9:**

This Deed shall not be enforceable against owner/occupiers or tenants of the Dwellings or nor against those deriving title from them and shall not bind any mortgagee of an owner occupier.

28. **Proposed Clause 7.9:**

Clause 7.9 of the Original Agreement is deleted and replaced with:

"7.9 This Agreement shall not be binding or enforceable against owners occupiers or tenants of individual Dwellings nor against those deriving title from them nor their mortgagees or charges SAVE FOR in relation to the obligations relating to the Community Building at Paragraph 2.1 of the Third Schedule where there are restrictions on the Occupation of Dwellings above a prescribed number to prevent Occupation taking place where there would otherwise be a continuing breach because of the non-payment of monies or because of the non-delivery of the Community Building then such restrictions on the Occupation of such Dwellings (but not the substantive obligation to pay monies or deliver the Community Building) shall subject as herein provided bind the owner occupier or tenants of such Dwellings who shall not Occupy any Dwelling in breach of the Community Building Triggers PROVIDED THAT:

7.9.1. where a Dwelling has been lawfully Occupied (i.e. because a Trigger Notice has been served in relation to the phase of Dwellings including the relevant Dwelling or because there has been no breach of an Occupation restriction at the time of completion of the legal transfer (by transfer, lease or letting) of a relevant individual Dwelling) or because of confirmation or deemed confirmation that there has been no breach from the Council then the owner occupier or tenant of that Dwelling (and their successors in title or mortgagees) will not be liable for breach of a Community Building Trigger which occurs after the transfer of the Dwelling and the Community Building Trigger will only be binding on owners occupiers or tenants of those Dwellings which have not been transferred at the time the further Occupation restriction becomes applicable.

7.9.2 the Council may respond in writing to any request from those representing the purchasers of individual Dwellings to confirm whether there is any ongoing breach of the Agreement which would restrict Occupation and for a period of twenty (20) Working Days from the date of the Council's response the individual purchasers shall be entitled where applicable to place reliance on such correspondence confirming no on-going breach (such that this Agreement (but in relation only to the immediate breach of the Occupation restrictions) shall not be binding or enforceable against them) and in the event that the Council fails to respond within ten (10) Working Days then it shall be deemed that there is no occupation restriction application at that time and the purchasers shall be entitled for a period of twenty (20) Working Days following the expiry of the ten (10) Working Day period where there has been no response to place reliance on there being no restriction (such that this Agreement (but in relation only to the immediate breach of Occupation restrictions) shall not be binding or enforceable against them).

7.9.3 where a period of twenty (20) Working Days has expired pursuant to a request under this Clause 7.9 and the relevant purchaser has not legally completed their purchase of the relevant Dwelling then no reliance can be placed upon an earlier response or lack of response unless a fresh request is made in which case the operative provisions of this paragraph 7.9 shall apply BUT FOR THE AVOIDANCE OF DOUBT the provisions of this Clause 7.9.3 shall not affect the ability of a purchaser to rely on a valid Trigger Notice.

### **Fifth Modification**

#### **29. Mortgagee in possession clause to be updated in line with current practise**

1.8

1.8.1 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 Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Dwellings; and
- b) shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another registered provider 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

c) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in this paragraph 1 of the Third Schedule of this Agreement which shall determine absolutely.”

1.8.2 for the avoidance of doubt the provisions of this Third Schedule shall not be enforceable against any of the following:

a) a purchaser of a dwelling under the Right to Buy;

b) a 100% Staircaser;

c) any mortgagee or chargee of a Lease lawfully exercising the mortgagee protection provision within that Lease; or

d) any person or body deriving title from any of the above.”

## **Planning assessment**

### **30. Principle of Development**

31. The principle of development was established under the approved planning applications S/0623/13/FL and S/0624/13/CA.

32. As mentioned above planning application S/0623/13/FL was a hybrid application which consisted of two areas of land (pink and blue land). Within the blue land outline permission was granted for up to 58 units and within the pink land full planning permission was granted for 8 units with a community facility that would include a bakery, brewhouse and community room. The development is within a Minor Rural Centre which allows up to 30 dwellings to be permitted however Policy H/4 exceptionally allows planning permission to be created for development above the scale permitted in a Minor Rural Centre. This policy is aimed at the continued invigoration of the village centre with the principle of providing a mix of uses including community uses, employment uses and housing development. The policy goes on to say that any scheme for redevelopment must: (a) be well related to, and respect the character of, Papworth Everard village centre; and (b) integrate with surrounding development including the new residential development to the south.

33. Planning application S/0623/13/FL with the composition of mixed use redevelopment of the site was considered a positive reflection of the aims of Policy H/4 with a good proportion of community, employment and residential uses that would contribute to the continued invigoration of the village centre. The proposed community building was considered to be a key provider of the commercial and community uses in this application S/0623/13/FL.

### **Section 106 Agreement and Infrastructure Contributions**

34. The S106 Obligation agreed as part of planning application S/0623/13/FL was submitted by the developer confirming financial contributions towards education, outdoor play space and householder waste receptacles. The obligation also includes details of the delivery of the community building and the delivery of on-site affordable housing provision and Local Area of Play (LAP) area.

35. In respect of the first proposed modification Clause 2.1 is proposed to be varied (as detailed in paragraph 23) to introduce new triggers and milestones. In terms of the revised schedule, the first trigger is the payment of £60,000 towards the fitting out of

the community facilities prior to any occupation, the second trigger involves the commencement of the re-construction of the community building prior to the occupation of more than 25 dwellings, the third trigger is for the steel frame of the building to be constructed and modified prior to the occupation of 30 units and fourth trigger is the Owner must complete the community building in accordance with the Community Building Specification and offer the transfer of the freehold of the building to Allia.

36. The applicant has faced various challenges in delivering the development on site and the reasons the development of housing has outpaced the delivery of the community building are as a result on the following:

1. The time spent exploring better solutions to the extant planning proposal for the community building with the potential to provide a brand new building and to incorporate more affordable homes.

2. COVID19 Lockdown 1 restrictions delayed the design progression of the community building.

3. The delay in the formal agreement of the S106 specification changes for the community building established following the design progression, required to enable the re-construction works on the Community Building to commence.

4. The contractual obligation to the building to provide continuous construction progression, the works to the house phases were able to continue with minimal disruption as they were fully designed and procured before COVID19 lockdown came into effect.

37. The applicant states that it has been necessary to continue to progress the planned delivery of the new homes on the site in tandem with progressing the work on the community building, in which the delays suffered has meant that the delivery of homes has overtaken the construction of the community building. It is stated that if no variation to the existing trigger is agreed, this would affect housing supply and delivery in the local area, including the provision of affordable housing.

38. The amendment to the Section 106 Agreement to redress the delay in the delivery of the Community Building on the scheme and allow homes to be occupied, as stated by the applicant will generate finances from the sale of the homes to pay for the schemes ongoing progression, including the delivery of the community building.

39. The applicant has been working to ensure that the time between the transfer of the community building to Allia and it being made available for use is reduced. Clause 2.3.3 which is proposed to be varied (second modification detailed at paragraph 25) addresses this by reducing the period for opening to the public following its transfer from 24 months to 18 months. The additional £60,000 contribution (included in clause 2.1.1) provided by Flagship would go towards the fitting out of the building to provide the shell and facilities such as toilets, a kitchen and other items in a more timely manner.

40. The sixth schedule to be modified would ensure the specification of the Community Building would be in accordance with current building regulation requirements. This will include the installation of an upgraded flooring as well as new fire doors.

41. To amend the existing owner/occupier exclusion clause at 7.9 of the original agreement to ensure that the obligations not to occupy dwellings bind individual

owners of dwellings and their mortgagees. This offers more protection than the original agreement which was not enforceable against any owner, occupier, or mortgagee of individual dwellings. This is further supported by additional obligations at 2.1 requiring the developer not to serve notice on any buyers which would result in a breach as well as an obligation to advise the council when a trigger has been met and serve a notice. This will enable re-construction and compliance to be closely monitored and give buyers confidence that the obligations are being complied with.

42. The fifth modification (paragraph 29) introduces an amended mortgagee in possession clause for the affordable house. This variation is proposed to update the clause in line with current practise.

### **Planning Consideration**

43. In considering an application for modification of the provisions of a S106 Agreement under Section 106A, the Town and Country Planning Act 1990 (S106a) and Town and County Planning (Modification and Discharge of Planning Obligations) Regulations 1992, Paragraph 6 states that where an application is made to an Authority under subsection (3), the Authority may determine-

- (a) that the planning obligation shall continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

44. The key planning consideration for the application is whether the revised obligations set out within this report continue to meet the relevant tests which are applied when determining an application under Section 106A(1)(b):

- 1) *Does the obligation still serve a useful purpose?*
- 2) *If it does, does it serve that purpose equally well if it had effect subject to the modifications specified in the application?*

45. In respect of the first test, the revised obligations still secures the provision of the Community Building at a stage of the development where a reasonable number of dwellings remain unoccupied to ensure the opportunity for the Council to enforce in the event of any future breach as well as a clear incentive for the developer of the site to carry out the development and comply with the obligations to enable the release of the remaining dwellings.

46. Moreover, the revised wording of Clause 7.9 of the agreement prevents purchasers from obtaining dwellings in breach of the obligations which are now spaced throughout the revised triggers set out in Clause 2.1.1-2.1.7. This will also act as an incentive for the developer to comply and to ensure that dwellings cannot be occupied unless the Community Building has reached the relevant stage of construction and is completed. Officers consider that with the proposed triggers there is enough certainty that the Community Building will be delivered.

47. With regards to the second test, whilst it is acknowledged the revised proposal will result in a further delay in the provision of the completed shell of the Community Building (prior to occupation of more than 40 units), it must be noted that the revised proposal now include a £60,000 contribution towards the construction of the shell which will provide a core, toilets and a kitchen as well as upgraded flooring and fire doors which ensures the Community Building Specification is compliant with Building Regulation requirements. In addition, the reduction from 24 months to 18 months from completion of the transfer to the opening of the building set out in paragraph 25 successfully reduces the delay. A re-construction build out timetable has been submitted as part of the application (within Background Information- submitted 19<sup>th</sup> March 2021).

## **Planning balance and conclusion**

48. Overall, for the reasons set out above it is considered by officers that for the purposes of Section 106A(6) the obligations would continue to serve their purpose equally well if modified as detailed above and would continue to meet the relevant tests as set out above.

## **Recommendation**

49. Officers recommend that the Planning Committee approve the proposed deed of variation application subject to the deed being completed.

## **Conditions**

None.

## **Informatives**

None.

## **Background Papers**

- South Cambridgeshire Local Plan 2018
- South Cambridgeshire Supplementary Planning Documents (SPDs)
- Planning File References:
- S/0307/17/RM- S/2859/16/VC, S/0623/13/FL and S/0623/13/CA

## **Report Author:**

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