

Agenda Item A9	Committee Date 26 June 2017	Application Number 17/00333/VLA
Application Site Former St Patricks Catholic Church St Johns Road Heysham Lancashire		Proposal Variation of legal agreement attached to planning permission 06/00666/FUL to alter the affordable housing provisions
Name of Applicant Mrs Carla Clarke		Name of Agent -
Decision Target Date 18 May 2017		Reason For Delay Assessment of the application and committee scheduling
Case Officer		Ms Charlotte Seward
Departure		No
Summary of Recommendation		Approval to progress to Deed of Variation

1.0 The Site and its Surroundings

1.1 This application site relates to 8 St Johns Road, Heysham. This property forms 1 of 14 affordable dwellings on the site that used to form part of St Patricks Catholic Church. The 14 dwellings are located on the corner of Fairfield Road and St Johns Road within a residential part of Heysham.

The dwellings were built following planning permission granted in 2006 (06/00666/FUL). This application was subject to a Section 106 Legal Agreement (S106 Agreement) dated 2 September 2006 that requires that the owner shall not permit the occupation of the dwelling otherwise than by a designated person under an Affordable Rent Tenancy or a Shared Ownership Lease. The dwellings were sold on the basis of 70% purchaser equity and 30% freehold equity.

2.0 The Proposal

2.1 This application seeks to vary the legal agreement in relation to 8 St Johns Road to allow for the current owner of the 70% purchaser equity and the 30% owner equity to sell the property as a 100% market dwelling. The current owner's circumstances have changed and they wish to be able to sell the house to enable them to be free to purchase a dwelling that meets their current needs. This can potentially be done under Section 106A of the Town and County Planning Act where the parties agree to renegotiate.

3.0 Background to the Application and Site History

3.1 The S106 Agreement was signed in 2006 between the Lancaster Roman Catholic Diocesan Trustees and Northern Affordable Homes Ltd. It should be noted that Northern Affordable Homes were not a Registered Provider so the wording of the Section 106 Agreement reflects this. Since the S106 Agreement was signed there has been change in ownership of the 30% freehold for the 14 dwellings (In 2010 Northern Affordable Homes collapsed and the freehold ownership was purchased by two private individuals). In addition there have been a number of changes to the context of how lenders deal with the sale of shared ownership homes. Together the issues, including the original

S106 Agreement lack of restriction on the freehold owner and changes in lending criteria, has resulted in the current S106 Agreement preventing the sale of 8 St Johns Road.

- 3.2 The 2012 Mortgage Review resulted in a change to how high street lenders provide mortgages on shared ownership homes. The result was that lending on shared ownership homes is restricted to properties where the freehold equity is in the ownership of a Registered Provider or Local Authority, and properties which allow the leaseholder to increase the equity share of the property from the 70% to 100%. Additionally, lenders require that, in the event that the leaseholder has defaulted on the mortgage and the lender is seeking the repossession of the property, the mortgagee can sell the property without restriction.
- 3.3 The Section 106 Agreement affecting 8 St John Road, and the other 13 properties, does not require the freehold to be owned by a registered provider and is currently owned by two private individuals. Furthermore, it is standard requirement of mortgage lenders, that a mortgagee is possession clause is included in legal agreements that provide a waiver for affordable housing requirements not to apply in the event of mortgage repossession, which allows the lenders to sell properties free from restrictions to recover the debt as quickly as possible. Combined with the current freehold ownership, this in effect makes the leaseholders' 70% equity of the 14 properties that are subject to the Section 106 Agreement unsaleable.
- 3.4 This has had a direct impact on the owners of the purchaser of the 70% equity at 8 St Johns Road who wish to sell the leaseholders equity to enable them to purchase a house that meets the needs of the family. In 2013 the property was put on the market. An eligible purchaser for the 70% equity was identified and a sale agreed. However the sale of the house was not able to proceed on the basis of the restrictions within the S106 Agreement and the changed requirements of lenders. As a result the leaseholders of the property find themselves in the unenviable position of not being able to sell their property.
- 3.5 Following approach from the freehold and leaseholder owners, the Council's Housing Strategy Officer has explored a number of options to facilitate the sale of 8 St Johns Road and the remaining 13 dwellings in the future.
- 3.6 The first option considered was to secure the purchase of the 14 houses by a Registered Provider. The Council's Housing Strategy Officer approached a number of Register Providers to determine whether there was interest in the purchase of the houses. In, 2013, Adactus Housing Group, as an existing provider of shared ownership units, were identified as the most appropriate Registered Provider to enter into negotiations with the freehold owners. Although some limited negotiations took place, these subsequently broke down because the freehold owners were more interested in a mechanism that would allow them to retain a longer-term interest in the 14 dwellings, and they wished to further pursue alternative options.
- 3.7 The second option considered sought to allow a mechanism within the S106 Agreement that allowed the existing leaseholders to increase their percentage equity share from 70% to 100%, thus allowing the subsequent sale of the property free from restrictions. However, the freehold owners were insistent that they were only willing to sell the 30% retained equity on a leasehold basis, and were intending to set a ground rent which would be applied to the properties. Subsequent negotiations regarding an appropriate and fair notional value also broke down. Had this option been pursued, this arrangement would have required the freehold owners to substantially alter the existing lease to facilitate and implement this arrangement.
- 3.8 A third option considered was for the 30% freehold owners to purchase the 70% leaseholder equity from those residents who have an immediate need to sell their property, subject to the Council agreeing to remove the affordable housing requirements that currently apply to every property. By doing so, the freehold owners would own 100% freehold ownership of those units they acquire and they would then be free to dispose or sub-let the property without restrictions in the same way as any other open market housing unit. As the freehold owners have previously indicated their desire to maintain a longer term interest in the properties, it is envisaged that they would sub-let properties acquired on a market rent.

- 3.9 The freehold owners of the property previously submitted a Variation of Legal Agreement in 2015, reference 15/01046/VLA. This application sought to remove the “*those affordable housing provision which are an obstacle to the lessee obtaining a mortgage thus enabling the lessee to sell and move*”. However, whilst it was originally thought that a deed of variation could be entered into by all parties who have an interest in the land (freehold owners, leaseholders and mortgagees), given there are 14 different parties involved with a number of different mortgage lenders, this will inevitably lead to further delays. Furthermore, the Housing Strategy Officer was contacted by a number of residents and informed that some residents do wish to continue living at their properties on a shared ownership basis and have no imminent intention to move, and see no immediate need for their position to be altered. On that basis, some residents may not have been prepared to enter into such an agreement. As such this was not considered a viable option.
- 3.10 Following lengthy negotiations and deliberations to identify a suitable option to facilitate the sale of the property, it was agreed that the most practical approach would be for leaseholders to apply on an individual basis for the removal of the affordable housing on the basis of a “buy back option” subject to a number of criteria being met. The first criteria would be that the leaseholder owner is willing to sell the 70% equity and that the freehold owner is willing to purchase. The second criteria requires agreement between the leaseholder and the freehold owner of the purchase price for the 70% equity. This purchase price would need to be informed by two independent valuations. It is considered that the current application is the most practical option to allow for the sale of 8 St John (and the remaining 13 dwellings covered by the S106 Agreement as and when the need arises in the future). It is considered that the wording of the Section 106 Agreement can be amended to allow individual leaseholders to exercise a buy back option and seek for the removal of the affordable housing provision for that property, subject to specified criteria.
- 3.11 On the basis of the approach as set out in paragraph 3.10 being considered to be the optimum approach, and following agreement from the freehold owners and the leaseholder of 8 St Johns Road for the freehold owner to “buy back” the 70% equity subject to the removal of affordable housing restrictions, the 2015 Variation of Legal Agreement application has been withdrawn and this application relating only to 8 St Johns has been submitted. It is understood that a purchase price for the 70% equity was negotiated and an acquisition cost has now been agreed between the freehold and leasehold owner informed by two independent valuations.

4.0 Consultation Responses

- 4.1 The following responses have been received from statutory and non-statutory consultees:

Consultee	Response
Strategic Housing Officer	Support: The council’s Housing Strategy Officer supports this application having been involved with longstanding discussions and negotiations with the owner of 8 St. Johns Road and the freehold owners, as well as consulting Legal Services who obtained counsel’s advice to develop this solution.
Senior Solicitor	Comments that the Section 106 Agreement does need to be varied to enable the dwellings on this site, which are subject to the Section 106, to be sold. The Section 106, as currently worded, means Banks/Chargees will not lend money on these dwellings.

5.0 Neighbour Representations

- 5.1 There is no statutory requirement to publicise application to vary legal agreements. A letter has been sent to all the residents a copy of which is attached. At the time of writing this report, no representations have been received.

6.0 Principal National and Development Plan Policies

- 6.1 National Planning Policy Framework
- Paragraph 205 (Planning conditions and obligation)

6.2 Local Planning Policy Overview – Current Position

At the 14 December 2016 meeting of its Full Council, the local authority resolved to undertake public consultation on:

- (i) The Strategic Policies and Land Allocations Development Plan Document (DPD); and,
- (ii) A Review of the Development Management DPD.

This enabled progress to be made on the preparation of a Local Plan for the Lancaster District. Public consultation took place from 27 January 2017 to 24 March 2017. Whilst the consultation responses are currently being fully considered, the local authority remains in a position to make swift progress in moving towards the latter stages of: reviewing the draft documents to take account of consultation outcomes, formal publication and submission to Government, and, then independent Examination of the Local Plan. If an Inspector finds that the submitted DPDs have been soundly prepared they may be adopted by the Council, potentially in 2018.

The **Strategic Policies and Land Allocations DPD** will replace the remaining policies of the Lancaster District Core Strategy (2008) and the residual 'saved' land allocation policies from the 2004 District Local Plan. Following the Council resolution in December 2016, it is considered that the Strategic Policies and Land Allocations DPD is a material consideration in decision-making, although with limited weight. The weight attributed to this DPD will increase as the plan's preparation progresses through the stages described above.

The **Review of the Development Management DPD** updates the policies that are contained within the current document, which was adopted in December 2014. As it is part of the development plan the current document is already material in terms of decision-making. Where any policies in the draft 'Review' document are different from those adopted in 2014, and those policies materially affect the consideration of the planning application, then these will be taken into account during decision-making, although again with limited weight. The weight attributed to the revised policies in the 'Review' will increase as the plan's preparation progresses through the stages described above

6.3 Development Management Development Plan Document (DPD)

- DM41: New Residential Development

6.4 Other considerations

- Meeting Housing Needs SPD (Feb 2013)
- Lancaster Independent Housing Requirements Study (Part 1) (2015)

7.0 Comment and Analysis

7.1 Section 106A of the Town and County Planning Act 1990 relates to the modification and discharge of planning obligations. S106A (1) states that a planning obligation may not be modified or discharged except-

- (a) By agreement between the appropriate authority and the person or persons against whom the obligation is enforceable; or,
- (b) In accordance with this section and section a106B (appeals).

7.2 The NPPF states at Paragraph 205 that '*where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planning development being stalled*'. Subsequently, it is clear from national planning policy and guidance, local planning authorities should be flexible and should assess any change in circumstances that affect the development.

7.3 The S106 Agreement which relates to 8 St Johns Road and the remaining 13 properties are not able to be sold to potential purchasers who meet the affordable housing criteria as a result of changed restrictions in lending for mortgages. High street mortgage lenders will not provide a mortgage on a shared ownership home unless the freehold owner is a Registered Provider or a Local Planning Authority, and will not provide a mortgage on a shared ownership home which that has restrictions on how properties are re-possessed and disposed of where the leaseholder defaults (mortgagee in

possession clause). The result of this is that the leaseholder of 8 St John is unable to sell and move and has been in this position since 2013.

- 7.4 The purpose of the S106 Agreement was to provide defined person's access to a shared ownership housing product and so facilitate opportunity for home ownership for persons in housing need. The S106 Agreement was never intended to prevent families for being able to sell the leasehold and move up the housing ladder, which has been the effect of the changing lending requirements. As such there is a compelling and pressing requirement for the S106 Agreement to be amended to facilitate the sale of 8 St Johns Road, and any of the remaining 13 properties in the future as this need arises, whilst also ensuring that the leaseholder who want to remain under the current agreement have their existing rights protected. It is clear that officer's, together with the freehold and leasehold owners, have fully considered and negotiated the most practical solution to facilitate the sale of 8 St John whilst protecting the leaseholder rights of the 13 remaining properties.
- 7.5 The effect of negotiated position would result in the sale of 8 St John's Road to the freehold owner who would then own the property 100% outright, and this property would be free of affordable housing restriction. The intention of the S106 Agreement was in this case to ensure that shared ownership homes would be available to the market in perpetuity. The development has to date facilitated 14 households into home ownership which is has contributed to meeting the Districts housing needs.
- 7.6 National and local policy position seeks to boost the supply of housing and plan for a mix of housing to appropriately meet local needs and demands. Furthermore the Meeting Housing Needs SPD (2013) and the Lancaster Independent Housing Requirements Study (Part 1) (2015) clearly identify an outstanding affordable housing need including for shared ownership homes. Indeed, whilst not directly relevant to existing developments subject to S106 Agreements, policy position (DM41) is clear that proposals for new residential development that would result in a net loss of existing affordable dwellings must provide replacement dwellings on site or where this cannot be achieved then appropriate alternative site, further it sets out where restrictive conditions are removed financial contributions to affordable housing should be made. As such, it is only in exceptional circumstances can the removal of affordable housing provision be considered.
- 7.7 Given that this is a completed development which maximised the development of the site an on-site provision would not be possible. Whilst an off-site provision or financial contribution may be theoretically possible, it would be unreasonable to require that this be provided as it would only result in the likely refusal of the freehold owner to purchase the leaseholders 70% equity share or it may result in the potential market value of the leaseholders 70% equity share being negatively affected. Removing affordable housing provisions is not a decision that should ever be taken lightly, but is considered that the extenuating circumstances of this case involved and the limited control that officers can exercise in arriving at an alternative solution, that this is the only practical solution.

8.0 Planning Obligations

- 8.1 This application seeks in principle approval for the Local Planning Authority to reword the S106 Agreement to facilitate a "Buy-Back" option to allow for the freehold owner to purchase the 70% leaseholder equity to allow 100% freeholder ownership free of any affordable housing restrictions, subject to the agreement of the freehold owner and leasehold owner to enter into such an agreement, and agreement between the freehold owner and leasehold owner to an appropriate purchase price for the 70% equity informed by two independent valuations.

9.0 Conclusions

- 9.1 Due to changes in the lending criteria for mortgages the existing S106 Agreement prevents the sale of the 8 St John's Road, and the remaining 13 properties subject to this agreement, to an eligible purchaser. This has resulted in the leasehold owners of 8 St John Road being unable to sell and upsize since 2013. The change in market conditions since 2006 and the freeholder ownership being with private individuals rather than a Register Provider has resulted in exceptional circumstances that can only be practically be resolved to the satisfaction of the Local Planning Authority, the freeholder and leasehold owners of the 14 properties at St Johns Road with the proposed "buy back" option. On this basis it is recommended that the approval be given for Officer's to proceed to negotiate a Deed of Variation. This case shall be closed once the Deed of Variation has been executed and sealed by the Council.

Recommendation

That Members are recommended to **approve** the following;

- (i) A Deed of Variation to make provisions to allow for a leaseholder “buy back option” to be exercised on 8 St Johns Road and for the resulting 100% freehold ownership to be free of any affordable housing restrictions.
- (ii) Any future applications for Variation of Legal Agreements to the remaining 13 properties constructed under 06/00666/FUL to be delegated to Officer’s to determine.

Background Papers

None.