

**DARLINGTON BOROUGH COUNCIL**  
**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE:** 17<sup>th</sup> February 2021

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**APPLICATION REF. NO:** 20/01150/FUL

**STATUTORY DECISION DATE:** 26 February 2020

**WARD/PARISH:** Heighington And Coniscliffe

**LOCATION:** Field at OSGR E425853 N523351, School Aycliffe Lane, SCHOOL AYCLIFFE

**DESCRIPTION:** Modification of Section 106 Agreement attached to planning permission 17/00283/FUL dated 16 December 2017 (Proposed residential development consisting of 101 dwellings with associated parking, access and landscaping) to vary the tenure of 5 no. affordable units from shared ownership to affordable rented units and modify the chargee duty clause (Additional Information received 21 December 2020)

**APPLICANT:** Livin Housing Limited

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**RECOMMENDATION: THAT NO OBJECTIONS BE RAISED TO THE MODIFICATION OF THE SECTION 106 AGREEMENT ATTACHED TO PLANNING PERMISSION REFERENCE NUMBER 17/00283/FUL**

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Application documents including application forms, submitted plans, supporting technical information, consultations responses and representations received, and other background papers are available on the Darlington Borough Council website via the following link: <https://publicaccess.darlington.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=Q82CFLFPLCD00>

**APPLICATION AND SITE DESCRIPTION**

1. Planning permission (reference number 17/00283/FUL) for 101 dwellings at the application site was granted by the Planning Applications Committee in December 2017 subject to planning conditions and a Section 106 Agreement. The housing development is currently under construction and is nearing completion.

2. The development includes the provision of 20 affordable units which meets the guidance set out within the Council’s adopted Supplementary Planning Document – Planning Obligations which states that housing developments should include up to 20% affordable dwellings.
3. The approved site layout plans confirmed that the affordable units would be on Plots 9, 10, 14, 15, 16, 17, 25, 26, 27, 28, 56, 57, 58, 79, 80, 81, 86, 87, 93 and 94. The approved plans included the house types and confirmed that the affordable housing would comprise of 10, 2 bed dwellings and 10, 3 bed dwellings. However, the type and tenure of the affordable dwellings were not known at the time of the planning application being determined and therefore the matter was to be secured as part of the Section 106 Agreement, which is common practice.
4. Under the provision of the Section 106 Agreement, the affordable units were to be ten intermediate affordable dwellings in the form of shared ownership housing units and ten rented affordable units. Clauses were inserted into the Agreement which stated that the intermediate affordable dwellings and the rented affordable dwellings shall remain in perpetuity unless otherwise agreed in writing by the Council.
5. Further clauses were inserted into the Section 106 Agreement which stated that no development shall commence on site until it has been agreed in writing with the Council which of the dwellings within the development would be the affordable units and what the tenure for the dwellings would be.
6. In accordance with the clauses in the Section 106 Agreement, the applicant contacted the Council in January 2018 with a letter and a Schedule detailing the locations of the affordable rent and affordable shared ownership units. The Schedule below was agreed by the Council:

<b>Affordable Rent</b>	<b>Affordable Shared Ownership</b>
Plot 56	Plot 9
Plot 57	Plot 10
Plot 58	Plot 14
Plot 79	Plot 15
Plot 80	Plot 16
Plot 81	Plot 17
Plot 86	Plot 25
Plot 87	Plot 26
Plot 93	Plot 27
Plot 94	Plot 28

7. This application, “a deed of variation”, has been submitted by the applicant, who has acquired all 20 affordable units on the site, to modify the Section 106 Agreement so that the tenure of the dwellings on Plots 16, 25, 26, 27, 28, is revised from shared ownership units to affordable rent units.

8. Overall, the revised affordable housing tenure within the scheme would be 15 affordable rent units and 5 shared ownership units. There would be no external alterations to the dwellings in those Plots as a result of this proposed change of tenure and occupation.
9. It has recently been confirmed that the dwelling on Plot 25 has already been occupied as an affordable rent unit and continues to do so. This is not in accordance with the previously agreed Schedule but if this deed of variation is approved, the issues surrounding its tenure and occupation would be officially rectified.
10. As a further aside, the dwelling on Plot 79 has been occupied as a shared ownership unit (contrary to the Schedule) but this will revert to an affordable rent unit which accords with the agreed Schedule.
11. Ward Hadaway, who are acting on behalf of the applicant, has submitted some additional information in support of this application about the marketing strategy for the shared ownership units.
12. The applicant commenced their marketing of the shared ownership units in March 2019, prior to the handover of the units, and continued with that marketing up until July 2020. The units were advertised on RightMove, the Help to Buy website, and Livin's own website.
13. There was initially a good level of interest in the site and the first 5 shared ownership units were sold by November 2019. However, interest has significantly dropped off, in respect of the 2 bedrooomed properties (Plots 16, 27, 28).

### **MAIN PLANNING ISSUES**

14. The main planning consideration for this submission is whether the proposed development, with the revised affordable housing tenure, meets the Council's policy on affordable housing. It must be stressed that the form of tenure for the affordable element is not a reason to turn down this request. Furthermore, the introduction of a higher proportion of rented homes within the affordable homes could be argued to improve the affordable offer on the site.

### **PLANNING POLICIES**

15. The relevant planning policy is CS4 of the Darlington Core Strategy Development Plan Document 2011 which seeks to ensure that new developments include affordable housing provision and Supplementary Planning Document – Planning Obligations which advises that the requirement is 20% of the overall housing numbers within a scheme.

### **RESULTS OF TECHNICAL CONSULTATION**

16. Not applicable

### **RESULTS OF PUBLICITY AND NOTIFICATION**

17. Four letters of objection have been received following the Council's publicity exercise. The comments can be summarised as follows:

- *Whilst I appreciate that the homeowner is looking to change this tenure due to the current climate and potential residents struggling to obtain mortgages this is not a reason why residents on the estate should be faced with changes in their living arrangements and future stability, wellbeing and happiness;*
- *We bought our house in the express knowledge that the affordable houses on this family estate would have the tenure of 'Shared Ownership'. If I had known that these properties would have the tenure of Affordable Rented Units, I would NEVER have bought a house on this street*
- *Our concern with the tenure changing to Affordable Rented Units is that the residents may potentially rent the properties on short term arrangements.*
- *There is no assurance that previous problematic individuals will not be placed into these properties. I am concerned that levels of Anti Social Behaviour may rise from people renting these properties which would impact on the wellbeing and safety of current residents who may also incur potential financial penalties*
- *We would encourage Livin Properties to have a little more patience and to revisit their marketing strategy to be able to offer shared ownership to people who have dreams of owning their own property.*
- *This does not seem fair, ethical or transparent. It feels like we have been lied to when purchasing our property, which we have spent a lot of money on.*
- *We love this estate and the concept of shared ownership, which is a fantastic way for young people and young families to get on the property ladder which we want to be a part of and support. The research we have done nationally shows that people residing in shared ownership properties have pride in their homes because they too have a financial investment in them.*
- *We believe that Livin Homes should provide a more in-depth reason why they consider a need for modification to the original plan. It is hoped that financial considerations are not the reason for Livin to set aside their desire to build a strong and balanced community*
- *Livin believes in enabling strong communities. They know that strong communities are economically, socially and environmentally balanced. They also know that communities can suffer from a range of complex social problems if that balance is lacking. They believe that communities should be listened to and their voices heard. We do not believe Livin has applied these tenets to its decision to change the tenure of five of its housing stock from affordable shared ownership to affordable rental units.*
- *I am in full support of shared ownership as a scheme to encourage longer-term home ownership, however, a change to short term leasing tenure substantially alters the potential community at the Oaklands*
- *I am concerned that a change in tenure for the proposed properties will substantially alter the nature of any long-term community*

18. The four contributors were consulted on the submission of the additional marketing information referred to above, and no further objections or comments have been received.

## **PLANNING ISSUES/ANALYSIS**

19. The relevant legal test is set out within section 106A (6) of the Town and Country Planning Act 1990 which is whether the obligations still serves a useful planning purpose. If they do not, they should be discharged, but if they do still serve a useful planning purpose but could serve that purpose equally well subject to the modifications that are proposed then it should take effect subject to those modifications.
20. It is clear that the Section 106 obligation does not in fact require the intermediate units and the affordable rented units to be secured in perpetuity as the clauses expressly allow them to be changed if agreed to by the Council. The clauses have been drafted for precisely the circumstances outlined above where the market economy changes dramatically such that the housing needs might be better met by a different profile of tenure mix and house types.
21. The number and location of the affordable units within the housing development and the house types within the affected Plots would not be altered by the proposed revision to the tenure mix. The proposal would not conflict with the decision that was made by the Members of the Planning Applications Committee in December 2017.
22. The definition of affordable housing within the National Planning Policy Framework 2019, includes affordable housing for rent and housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market, which includes shared ownership. As a result, the proposed mix of housing tenure throughout the development would remain compliant with the NPPF.
23. The Council's Housing Team has advised that shared ownership units in the North, in general, is currently struggling and housing associations are generally looking to convert such units to either Rent to Buy or affordable housing to rent. There is also a demand for rented accommodation in Darlington.
24. It is clear from the additional information submitted on behalf of the applicant in support of the planning application that appropriate and extensive marketing exercises have been undertaken but without success and as a result, the planning obligations no longer serve any useful purpose. Whilst the comments and concerns that have been raised by the objectors are acknowledged, having the dwellings remain as shared ownership units, when there is limited likelihood of them being occupied as such, would result in the units remaining empty which could lead to antisocial behaviour and street scene problems in the future and such a position would prevent the units from meeting the needs of other persons whose needs are not currently met by the market. These are needs that would

be much better and more effectively met if the tenure of the units allowed them to be let for an affordable rent.

25. The proposed amendments to the tenure would better serve the planning purpose of delivering affordable housing and the applicant believes that if the modification is agreed the dwellings would be occupied within 8 weeks of the deed of variation being completed.

#### **THE PUBLIC SECTOR EQUALITY DUTY**

26. In considering this application the Local Planning Authority has complied with Section 149 of the Equality Act 2010 which places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. The proposed revision to the tenure mix would broaden the scope of persons that would be able to occupy the units and help to meet the demand for rental accommodation in the Borough.

#### **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

27. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

#### **CONCLUSION AND RECOMMENDATION**

28. It is evident that despite an extensive marketing regime, five of the shared ownership units remain unoccupied and evidence presented by the applicant suggests that in the current economic climate they will remain empty. As a result, the existing clause in the Section 106 Agreement has no planning purpose. However, the proposed modification to the Agreement will serve the planning purpose of providing affordable units in accordance with the decision made by the Members of the Planning Applications Committee in 2017 and local and national planning policy guidance. The change in tenure would also provide an opportunity to allow for a broader affordable offer. The concerns that have been raised by the objectors would not outweigh the benefit of the units being occupied and the development meeting its requirement to provide 20% affordable housing units.

#### **THAT NO OBJECTIONS BE RAISED TO THE MODIFICATION OF THE SECTION 106 AGREEMENT ATTACHED TO PLANNING PERMISSION REFERENCE NUMBER 17/00283/FUL**