

Item No.	Application and Parish	No.	Statutory Date	Target	Proposal, Location, Applicant
(2)	22/02695/MDOPO2 Hungerford Town Council		23 rd 2022 ¹	December	Request under section 106A subsection (1)(a) to modify the planning obligations within the section 106 legal agreement dated 16th November 2018 in relation to planning permission 16/03061/OUTMAJ - To amend the mortgagee exemption clause so that it will be satisfactory to the Registered Provider's lender to ensure that they will be able to secure the maximum amount against the Affordable Housing Units so as to facilitate the ongoing delivery of affordable housing within the area Land South Of Priory Road, Hungerford Synergy Housing Ltd
¹ Extension of time agreed with applicant until 21 st July 2023					

The application can be viewed on the Council's website at the following link:
<http://planning.westberks.gov.uk/rpp/index.asp?caseref=22/02695/MDOPO2>

Recommendation Summary: To **DELEGATE** to the Development Control Manager to **GRANT APPROVAL** of the deed of variation

Ward Member(s): Councillor Dennis Benneyworth, Councillor Denise Gaines, Councillor Tony Vickers

Reason for Committee Determination: Development Control Manager Call-in

Committee Site Visit: Not required

Contact Officer Details

Name: Cheyanne Kirby
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1. Introduction

- 1.1 This application requests under section 106A subsection (1)(a) to modify the planning obligations within the section 106 legal agreement dated 16th November 2018 in relation to planning permission 16/03061/OUTMAJ. The application seeks to amend the mortgagee exemption clause so that it will be satisfactory to the Registered Provider's lender to ensure that they will be able to secure the maximum financial amount against the Affordable Housing Units so as to facilitate the ongoing delivery of affordable housing within the area.

2. Planning History

- 2.1 The table below outlines the relevant planning history of the application site.

Application	Proposal	Decision Date	/
16/03061/OUTMAJ	Outline planning application for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338.	Approved 30.11.2017	/
19/00911/NONMAT	Non material amendment to planning consent 16/03061/OUTMAJ - Outline planning application for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338. Amendment to conditions 3, 7, 8, 10, 11, 12, 13, 14, 17 and 18. to allow delivery of the main access as a first phase of development.	Approved 03.05.2019	/
19/01279/COND1	Application for approval of details reserved by Conditions (6) - Construction method statement and (9) - Access of approved application 16/03061/OUTMAJ - Outline planning application for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338.	Approved 16.09.2019	/
19/01406/RESMAJ	Approval of reserved matters application following outline permission for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338. Matters to be considered: Appearance, Landscaping, Layout and Scale.	Approved 17.02.2020	/
19/01328/COND2	Approval of details reserved by Condition 18 - Archaeology of approved application 16/03061/OUTMAJ.	Approved 16.09.2019	/
19/03019/COND3	Application for approval of details reserved by Conditions 3 - Drainage, 7 - Fire Hydrants, 8 - Suds, 11 - Water Impact, 13 - Footway	Approved 29.05.2020	/

	and 18 - Archaeological Works, of planning permission reference 16/03061/OUTMAJ.	
20/00165/COND4	Application for approval of details reserved by condition (6) construction method statement of approved 16/03061/OUTMAJ - Outline planning application for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338.	Approved / 03.03.2020
20/00630/COND1	Application for approval of details reserved by conditions (12) arboricultural method statement and (13) supervision of approved 19/01406/RESMAJ - Approval of reserved matters application following outline permission for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338. Matters to be considered: Appearance, Landscaping, Layout and Scale.	Approved / 29.05.2020
20/01023/MDOPO	Modification of planning obligations - Amendment to Schedule 2 Part (b), (c) and (d), of planning permission 16/03061/OUTMAJ.	Refused / 12.05.2021
20/01039/COND2	Application for approval of details reserved by condition (3) Materials, of approved 19/01406/RESMAJ - Approval of reserved matters application following outline permission for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338. Matters to be considered: Appearance, Landscaping, Layout and Scale.	Approved / 02.07.2020
20/01638/COND3	Application for approval of details reserved by condition (3) material of approved 19/01406/RESMAJ - Approval of reserved matters application following outline permission for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338. Matters to be considered: Appearance, Landscaping, Layout and Scale.	Approved / 05.08.2020
20/01749/COND5	Application for approval of details reserved by Conditions (12) Refuse Disposal, (14) Cycle Storage and (17) EV charging points of approved 16/03061/OUTMAJ - Outline planning application for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338.	Approved / 12.01.2021

20/01756/COND4	Application for approval of details reserved by condition (7) Open Space of approved 19/01406/RESMAJ - Approval of reserved matters application following outline permission for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338. Matters to be considered: Appearance, Landscaping, Layout and Scale.	Approved / 05.02.2021
20/02051/COND5	Application for approval of details reserved by condition (5) Ecology surveys, of approved 19/01406/RESMAJ - Approval of reserved matters application following outline permission for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338. Matters to be considered: Appearance, Landscaping, Layout and Scale.	Approved / 13.08.2021
20/02064/COND6	Application for approval of details reserved by condition (6) footpath provision of approved 19/01406/RESMAJ - Approval of reserved matters application following outline permission for up to 100 dwellings, public open space and landscaping, with all matters reserved except for the access to the A338. Matters to be considered: Appearance, Landscaping, Layout and Scale.	Approved / 12.11.2021

3. Procedural Matters

3.1 Site notice not required.

4. Consultation

Statutory and non-statutory consultation

4.1 The table below summarises the consultation responses received during the consideration of the application. The full responses may be viewed with the application documents on the Council's website, using the link at the start of this report.

Hungerford Town Council:	Object – no erosion of social or affordable housing provision at Lancaster Park.
Housing:	No objections

Public representations

- 4.2 There is no requirement under planning legislation to publicly consult on this type of application. The application is publicly available on the Council's website. No representations have been received.

5. Planning Policy

- 5.1 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The following policies of the statutory development plan are relevant to the consideration of this application.

- Policy CS6 of the West Berkshire Core Strategy 2006-2026 (WBCS).

- 5.2 The following material considerations are relevant to the consideration of this application:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Planning Obligations SPD (2015)

6. Appraisal

- 6.1 The main issues for consideration in this application are:

- Amendment to the mortgage exemption clause

- 6.2 The National Planning Policy Framework outlines that the tests of planning obligations are that they are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. Section 106A of the Town and Country Planning Act 1990 (as amended) states that where an obligation no longer serves a useful purpose it shall be discharged. Where an obligation continues to serve a useful purpose and it can be served equally well subject to the modifications specified then it is modified to have that effect.

- 6.3 As outlined in the introduction the proposed modifications are primarily to update mortgagee in possession clauses related to the affordable housing. The original planning obligations continue to serve a useful purpose and is considered to serve that purpose equally subject to the modifications outlined above.

- 6.4 The affordable housing units are still required under policy CS6 of the Core Strategy. The other matters of the original planning obligation are required in order to make the impact of the development acceptable in its impact. These obligations continue to be necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development.

- 6.5 The mortgage exemption clause is only invoked at a point where a registered provider is in a position where they default on their loans from funders, and as such the funder has taken the affordable housing units in to their possession and is then able to dispose of the units free of the affordable housing obligations. This allows for the funder to recover any costs incurred on the funding arrangement, or market value whichever is the higher. The risk of this situation is considered extremely low and the mechanism

includes that the council or another registered provider can repurchase the homes within a set period.

- 6.6 The inclusion of this specific clause is usual practice and accepted in some form by all local authorities, registered providers and funders. It is noted that the form in use by WBC varies from the industry standard and has evolved over time through various negotiations with registered providers. The form of the clause in use by WBC affords additional protection to Shared Ownership homes that does not exist in the industry standard.
- 6.7 Planning receive a number of requests for older S106 to be varied to include the industry standard of this clause where the clause in use is to some extent out of date for the current accepted standards, or in this case a more recent S106 to revert to the industry standard rather than the normal form of the clause used by WBC.
- 6.8 In this case planning are not agreeing to revert to the industry standard but one that still offers additional protection to shared ownership but should also address the registered providers concerns around maximising borrowing to deliver affordable housing in the District.
- 6.9 Appendix 1 has the detailed wording suggested by the applicant/agent in black and the red is the recommended wording from the housing officer; Appendix 2 has the original S106 wording for reference.

7. Planning Balance and Conclusion

- 7.1 For the reasons set out above it is recommended that the application be approved.

8. Full Recommendation

- 8.1 To delegate to the Development Control Manager to grant approval of the Deed of Variation as outlined in appendix 1.
- 8.2 PROVIDED THAT a Deed of Variation to the Section 106 Agreement has been completed by 21st December 2023 (or such longer period that may be authorised by the Development Control Manager, in consultation with the Chairman or Vice Chairman of the Western Area Planning Committee).