



NORTHAMPTON
BOROUGH COUNCIL
Planning Committee

PLANNING COMMITTEE: 27th October 2020

DEPARTMENT: Planning Service

DIRECTOR OF PLANNING: Peter Baguley

APPLICATION REF: N/2020/1106

LOCATION: Parklands Middle School, Devon Way

DESCRIPTION: Variation to S106 Agreement to vary the mortgagee exclusion and reinvestment clauses

WARD: Parklands Ward

APPLICANT: Sage Housing

AGENT: N/A

REFERRED BY: Director of Planning and Sustainability

REASON: Major application requiring S106 agreement

DEPARTURE: No

APPLICATION FOR DETERMINATION:

1 RECOMMENDATION

- 1.1 That the Committee **AGREE** that the Director of Planning and Sustainability be given delegated authority to agree the variation of the Section 106 Agreement dated 18 March 2019 in order to amend the wording of the mortgagee exclusion and reinvestment clauses and relevant definitions together with any consequential amendments as are considered necessary.

2 THE PROPOSAL

- 2.1 The application requests variations to the S106 agreement dated 18 March 2019 (relating to the development of land at former Parklands Middle School) to amend the mortgagee exclusion and reinvestment clause relating to the affordable housing obligation.

3 SITE DESCRIPTION

- 3.1 The application site comprises the former site of Parklands Middle School, which has been demolished. It is located to the north of the Parklands residential area and is accessed off Devon Way. It is bounded to the southern side by residential gardens serving bungalows on Devon Way, Druids Way and Stoke Walk. The site is neighboured by open space to the north, east and west. Parklands Park is located to the east of the site and includes a community centre, playing pitches and children's play facilities accessed off Devon Way. Moulton Park industrial estate is located

some 25 metres to the north of the site, beyond a strip of park land that includes a shared pedestrian/cycle way.

4 PLANNING HISTORY

- 4.1 N/2018/0904: Outline application with all matters reserved except access for up to 132no dwellings. Permitted.
- 4.2 N/2019/0591: Reserved Matters Application pursuant to Outline Planning Permission N/2018/0904 (Outline application with all matters reserved except access for up to 132no dwellings) for the development of 132no dwellings, public open space and associated development. Permitted.
- 4.3 N/2020/0070: Non Material Amendment to Planning Permission N/2019/0591 (Reserved Matters Application pursuant to Outline Planning Permission N/2018/0904) to add a conservatory to Plot 7 Cambridge. Approved.
- 4.4 N/2020/0158: Non Material Amendment to Planning Permission N/2019/0591 (Reserved Matters Application pursuant to Outline Planning Permission N/2018/0904) to update 'Marlow' house type. Approved.
- 4.5 N/2020/0860: Non Material Amendment to Planning Permission N/2019/0591 (Reserved Matters Application pursuant to Outline Planning Permission N/2018/0904) to apply a curve to the boundary screen walls on the corner plots and alterations to a private drive. Approved.
- 4.6 N/2020/0922: Non Material Amendment to Planning Permission N/2019/0591 (Reserved Matters Application pursuant to Outline Planning Permission N/2018/0904 (Outline application with all matters reserved except access for up to 132no dwellings) for the development of 132no dwellings, public open space and associated development) to update Amberley, Cambridge, Oxford, Shaftesbury and Sunningdale house types. Approved.
- 4.7 N/2020/1100: Non Material Amendment to Planning Permission N/2019/0591 (Reserved Matters Application pursuant to Outline Planning Permission N/2018/0904 (Outline application with all matters reserved except access for up to 132no dwellings) for the development of 132no dwellings, public open space and associated development) to add a conservatory to plot 6. Pending consideration at time of drafting report.

5 PLANNING POLICY

- 5.1 None

6 CONSULTATIONS / REPRESENTATIONS

- 6.1 **Housing Strategy:** No objections.

7 APPRAISAL

- 7.1 On the 18 March 2019, a S106 agreement was entered into in connection with application N/2018/0904 for outline permission with all matters reserved except access for up to 132no dwellings at land relating to the former site of Parklands Middle School. The application was determined by the Planning Committee and planning permission was granted. The completed S106 agreement includes various obligations and the current application seeks to amend the mortgage exclusion and reinvestment clauses relating to the affordable housing obligation.

Mortgage Exclusion Clause

- 7.2 Mortgagee exclusion clauses (also known as mortgagee in possession clauses or mortgagee protection clauses) are standard in Section 106 Agreements which provide for the provision of affordable housing. These clauses provide for circumstances where a Registered Provider defaults

on loan payments and the mortgagee takes control of the Registered Provider's interest in the affordable housing units as assets against which their loan is secured.

- 7.3 Such clauses allow for another Registered Provider or the Council to purchase the affordable housing units within a specified timeframe under a prescribed procedure. Where the affordable housing units are not purchased within this period, they are released from affordable housing tenure, enabling the mortgagee to dispose of the units to regain some, or all, of the loan that they have provided.
- 7.4 The wording of a mortgagee exclusion clause affects the level of funding that a Registered Provider is able to secure against the affordable housing units to fund the provision of additional affordable housing as part of their delivery programme.
- 7.5 Where a mortgagee exclusion clause does not provide sufficient protection for the funder and they would be bound by the affordable housing restrictions in the Section 106 Agreement, the funding value would be limited to Existing Use Value for Social Housing. The best possible funding value is Market Value Subject to Tenancies, where the funder would be able to sell on the open market, to either a Registered Provider or a non-regulated purchaser, and neither the lender nor successors in title would be bound by the affordable housing restrictions in the Section 106 Agreement.
- 7.6 In this instance, the wording of the mortgagee exclusion clauses in the Section 106 Agreement are such that the value of the affordable housing units is limited to Existing Use Value – Social Housing. Accordingly, it is proposed that these are amended to enable the affordable housing to be valued at Market Value Subject to Tenancies. This will enable Registered Providers to obtain maximum value and reinvest in further affordable housing schemes. The amendment will not affect the level of provision of the affordable housing required to be provided.

Reinvestment Clause

- 7.7 The existing reinvestment clause in the Section 106 Agreement requires the Registered Provider, in the event that a tenant on the site exercises the right to buy or acquires 100% of a shared ownership property, to use the proceeds to fund the provision of further affordable housing and to use reasonable endeavours to make such provisions within the Borough.
- 7.8 However, the Registered Provider has advised that limiting the reinvestment to one Borough greatly limits the amount of viable reinvestment opportunities and instead proposes a cascade mechanism. Such a cascade mechanism would seek to reinvest proceeds to fund affordable housing in the following areas (in the priority order listed):

- a) The Northampton Related Development Area (Northampton and the adjoining Sustainable Urban Extensions);
- b) Daventry and South Northants (which will essentially be West Northants);
- c) The remainder of Northamptonshire – Kettering, Corby, East Northants and Wellingborough (which will essentially be North Northants).

- 7.9 The Council's Housing Strategy team have advised that the cascading approach is reasonable.

8 CONCLUSION

- 8.1 The proposed amendment to the mortgage exclusion clause is in line with recent practices and allows a Registered Provider to seek funding which will enable investment in further developments and is considered to be an acceptable request.
- 8.2 The change of the existing reinvestment clause to a cascade mechanism will still result, should a tenant on the site exercises the right to buy or acquires 100% of a shared ownership property, in the Borough being the priority area for reinvestment of proceeds in affordable housing providing that viable opportunities are available. Therefore, the proposed amendment is considered to be an acceptable request.

9 BACKGROUND PAPERS

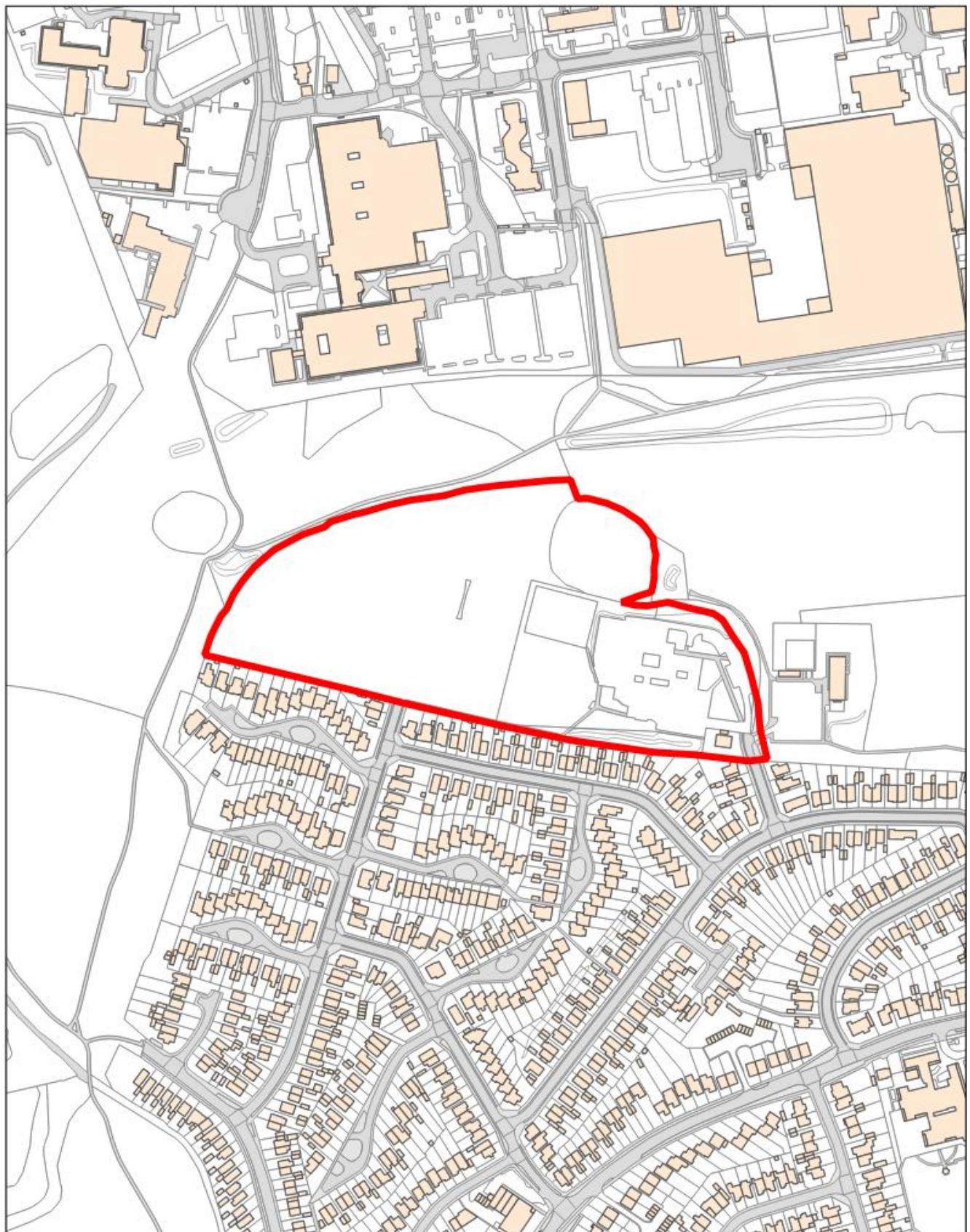
9.1 N/2018/0904.

10 LEGAL IMPLICATIONS

- 10.1 Planning obligations in completed Section 106 Agreements may be varied by agreement at any time and this is reiterated in the Planning Practice Guidance.
- 10.2 The Social Housing Regulator monitors the financial viability of Registered Providers and can intervene in the management of a Registered Provider in financial difficulty. There are few examples of Registered Providers falling into financial difficulties and where this has been the case, Registered Providers have to date been taken over by another Registered Provider. There are no known cases of mortgagee exclusion clauses being triggered in relation to assets owned by Registered Providers.
- 10.3 Taking these issues into account, it is considered that any risk associated with a Registered Provider defaulting on a loan and the affordable housing units not being secured by the Council or another Registered Provider is limited and is outweighed by the factors referred to above.

11 SUMMARY AND LINKS TO CORPORATE PLAN

- 11.1 In reaching the attached recommendations regard has been given to securing the objectives, visions and priorities outlined in the Corporate Plan together with those of associated Frameworks and Strategies.



Title: **Devon Way**

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Date: 16-10-2020

Scale: 1:3,500

Drawn by: -----