

Request to Dispense with S.106 for Housing Association Allocation

Wickhambrook Parish Council has been asked on two occasions in the past year to consider requests for a dispensation of the existing S106 agreement on Housing Association properties at Nunnery Green. In both cases, the requests related to mutual exchanges under applications for housing swaps. In July 2020, there was insufficient information (Min 20.07 refers) to reach a determination, in May 2021, the request was approved (Min.21.05. refers).

Planning **obligations**, also known as **Section 106** agreements (based on that **section** of The 1990 Town & Country Planning Act) are private agreements made between local authorities and developers and can be attached to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms.

The Section 106 Agreement for Nunnery Green, Wickhambrook requirements are that a proposed tenant:-

- i. has been nominated by the Housing Department of the Council (being local Housing Authority in respect of the Land) or
- ii. has been resident in Wickhambrook (herein after called “the designated area”) for at least two years immediately prior to the allocation of such dwellings; or
 - a. is a previous resident for at least 5 years of the last 10. Immediate descendant of a person so currently resident.
 - b. Is retired, having previously worked on a full-time basis in the designated area for at least 5 of the last 10 years prior to allocation
 - c. has worked full-time in the designated area for at least 2 years immediately prior to the allocation
 - d. has a grandparent, child, grandchild, brother or sister (whether blood or marriage) living within the designated area who has done so for at least 5 years immediately prior to the allocation

A copy of the S.106 agreement is attached as Appendix A to this report.

Subsequent to these considerations, the Housing Association has contacted the parish council suggesting that a published policy on dealing with requests for dispensations would be advisable for the purposes of clarity and transparency. A draft policy is attached as Appendix B to this report.

Recommendation:

That the parish council adopt the draft policy set out at Appendix B of WPC.21.07.03 setting out how it will deal with future requests for dispensations to the S.106 agreement.

(Return to it ESN)

THIS DEED OF VARIATION is made the 17th day of

~~September~~ 1996 BETWEEN THE COUNCIL OF THE BOROUGH OF

ST. EDMUNDSBURY of Borough Offices Angel Hill Bury St. Edmunds

Suffolk IP33 1XB ("the Council") of the one part and SUFFOLK

HOUSING SOCIETY LIMITED of Old Mission House St Botolph's Lane

Bury St. Edmunds Suffolk IP33 2AX ("the Company") of the other part

WHEREAS :-

(1) By an agreement ("the Agreement") made pursuant (inter alia) to Section 52 of the Town and Country Planning Act 1971 dated 24th August 1989 and made between the Council of the one part and the Company of the other part the development and use of approximately 0.6 of an acre of land at Nunnery Green Wickhambrook Suffolk as shown for the purposes of identification only edged red on the plan annexed hereto ("the Land") was regulated by certain restrictions and provisions set out in Clause 4 of the Agreement.

(2) The purpose of the restrictions was to ensure that each dwelling within the development on the Land was allocated to persons who met the criteria set out in Clause 4 of the Agreement

(3) Having completed the development on the land in accordance with the Agreement the Company has established and the Council acknowledges the need to widen the restrictions to include persons in need of accommodation and who qualify under the criteria but who are resident in the surrounding parishes.

(4) For that reason the Company and the Council have agreed to vary the Agreement by the inclusion of additional wording set out in Clause 1(1) below

(5) In all other respects the Agreement shall remain in force and full effect

1. IT IS HEREBY AGREED AND ACKNOWLEDGED that:-

1. the Agreement shall henceforth be varied by the inclusion of the following wording at the end of clause 4:-

WHS
S.S.2
AGM!

I hereby certify this to
be a true copy of the original
Lynn Aisbett
Borough Solicitor - Secretary

THIS AGREEMENT is made the 24th day of August 1989
BETWEEN THE COUNCIL OF THE BOROUGH OF ST. EDMUNDSBURY of Borough
Offices Angel Hill Bury St. Edmunds Suffolk (hereinafter called
"the Council") of the one part and SUFFOLK HOUSING SOCIETY LIMITED
of Estate Office Jubilee Court Nowton Road Bury St. Edmunds
aforesaid (hereinafter called "the Company") of the other part

W H E R E A S :

1. The Company has entered into an Agreement with the Council to purchase approximately 0.6 of an acre of land at Nunnery Green Wickhambrook Suffolk shown for the purposes of identification only edged red on the plan annexed hereto (hereinafter called "the Land")
2. The Council is the local planning authority in respect of the Land and for the purposes of the Town and Country Planning Act 1971
3. The Company submitted to the Council an application for planning permission to develop the Land by erecting eleven dwellings thereon as more particularly described in Planning Application No. E/89/2166/P (hereinafter called "the development")
4. On the sixth day of July 1989 the Council decided that planning permission be granted subject to the completion of an agreement with the Council regulating the development in manner hereinafter appearing

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED as follows:

1. This Agreement is made pursuant to Section 52 of the Town

and Country Planning Act 1971 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 which sections shall apply to all covenants hereinafter contained

2. The Company for itself and its successors in title the owners for the time being of the land hereby covenants with the Council not to permit the occupation of any part of the development otherwise than strictly in accordance with the procedures set out in the following clauses

3. The development shall at all times be occupied and if let shall be managed in accordance with the objects of the Company and in accordance with such published housing waiting list and allocation system as may be adopted by the Company from time to time

4. The Company shall upon completion of the development and at all times subsequently allocate each dwelling within the development to a person who is considered by the Company to be in need of such accommodation and who:

(i) has been nominated by the Housing Department of the Council (being the local housing authority in respect of the Land), or

(ii) has been resident in Wickhambrook (hereinafter called "the designated area") for at least two years immediately prior to the allocation of such dwelling; or

(iii) has been a previous resident of the designated area for at least 5 of the last 10 years prior to the allocation and is an immediate descendant of a person currently so resident;

or

(iv) is retired, having previously worked on a full-time basis in the designated area for at least 5 of the last 10 years prior to allocation; or

(v) has worked full-time in the designated area for at least two years immediately prior to the allocation; or

(vi) has a parent grandparent child grandchild brother or sister (whether by blood or marriage) living within the designated area who has done so for at least 5 years immediately prior to the allocation

PROVIDED THAT if within eight weeks of any dwelling within the development becoming available for sale on a shared equity basis or for letting whether on practical completion of the development or at any time subsequently the Company is unable to fill any vacancy arising in accordance with the provisions of paragraph (i) - (vi) above then the Company may allocate any such vacant dwelling to any person who is considered by the Company to be in need of such accommodation

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be hereto affixed the day and year first before written

Policy for Considering Requests for Dispensation of S106 Agreement in Respect of Housing Allocations

The clerk to the parish council will only refer a request to the next parish council meeting for a dispensation under s.106 for housing allocation(s) where:

1. The housing association confirm that any and all parties to the proposed exchange have supplied all necessary and sufficient information on which the housing association may reach its decision; and
2. The housing association has supplied to the parish council a summary of the proposed exchange advising whether or not it supports the proposal, and its reasons
3. Parties to the exchange confirm their assent to the publication of any identifying information, or clearly state which identifying information they wish to have redacted from:
 - a. Public documents
 - b. Any documents circulated to councillors

Where all necessary information is received not later than 7 working days before the next scheduled meeting, a report (which is a public document) will be prepared, summarising:

- The proposed exchange
- The support (or otherwise) of the housing association and its reasons

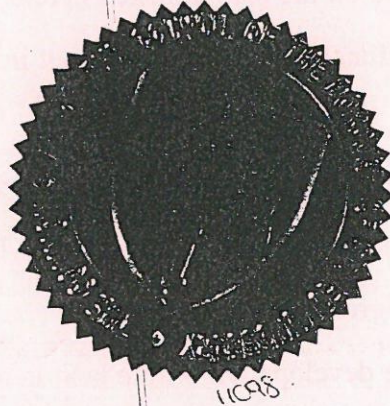
which will be circulated to parish councillors with the Summons (agenda) not later than 3 clear days before the meeting. The report (including any redacted identifying information) will also be published to the parish council website.

All parties to the proposed exchange, and the relevant housing association officer, will be invited to the parish council meeting, receive a copy of the agenda and the report, and have an opportunity to speak at the meeting.

The parish council, on reaching a determination, will give reasons for its decision, and the decision will be advised in writing.

"AND PROVIDED THAT in the event that no such person qualifying under the criteria set out in clause 5.1 above shall be identified by the Company at such time then such criteria shall be applied by the Society to any person who is considered by the Society to be housing need as if in substitution for the Parish of Wickhambrook in sub-paragraphs (i)-(vi) of clause 4 above there shall be substituted the names of the parishes of Ousden Lidgate Cowlinge Stradishall Denston Stansfield Depden or Hargrave

2. The Agreement shall otherwise remain in full force and effect
IN WITNESS whereof the Council and the Company have executed this document as their Deed by affixing their respective seals the day and year first before written



(THE COMMON SEAL of THE COUNCIL OF
(THE BOROUGH OF ST EDMUNDBURY was
(hereunto affixed in the presence
(of:-

Lynn Asbott
Director of Law and Administration
[Signature]
Assistant Director (Administration)

(THE COMMON SEAL of THE SUFFOLK
(HOUSING SOCIETY LIMITED was hereun
(affixed in the presence of:-

Board Member *[Signature]*

Secretary *[Signature]*