

Application No:	23/1641/FH
Location of Site:	Highview School, Moat Farm Road, Folkestone CT19 5DJ
Development:	Application to vary Unilateral Undertaking associated with planning permission Y19/0704/FH to reduce the affordable housing from 100% to 22%
Applicant:	Folkestone and Hythe District Council
Agent:	N/A
Officer Contact:	Sue Head

SUMMARY

This report considers whether a variation to the Unilateral Undertaking associated with Y19/0704/FH, for the erection of 30 residential units, should be granted to reduce the amount of affordable housing from 100% to 22%.

At the time the planning permission was granted, it was the intention that the scheme would be delivered directly by the Housing Revenue Account (HRA) within the Council, and that the 100% affordable housing would go towards the Council's affordable housing targets. Policy CSD1 of the Core Strategy 2022 requires developments of 15 or more dwellings to provide 22% affordable dwellings on-site, but given that the application was proposing 100% affordable, the applicant submitted a Unilateral Undertaking to secure it.

The applicant has made a case for reducing the affordable housing to policy compliant 22% on the basis that it is no longer affordable. The report considers the case made by the applicant and concludes that it would be acceptable to vary the Unilateral Undertaking in this case to provide a policy compliant 22% affordable housing.

RECOMMENDATION:

That permission be granted to vary the terms of the Unilateral Undertaking associated with planning permission Y19/0704/SH to allow for 22% affordable housing.

1. INTRODUCTION

- 1.1. The application is reported to Committee because it is a Council application.
- 1.2. The application to which the Unilateral Undertaking refers (Y19/0704/FH) was reported to Committee in February 2022, and that report is attached as Appendix 2. Where appropriate, Members will be referred to that report.

2. SITE AND SURROUNDINGS

- 2.1. Please refer to the equivalent section of the original report, attached at Appendix 2.
- 2.2. A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

- 3.1 Planning permission Y19/0704/FH was granted for the erection of 30 dwellings on this site, with access road, footpaths and associated landscaping in August 2022. It was a Council application.
- 3.2 At the time the planning permission was granted, it was the applicant's intention that the scheme would be delivered directly by the Housing Revenue Account (HRA) within the Council, and that the 100% affordable housing would go towards the Council's affordable housing targets. Policy CSD1 of the Core Strategy 2022 requires developments of 15 or more dwellings to provide 22% affordable dwellings on-site, but given that the application was proposing 100% affordable, the applicant submitted a Unilateral Undertaking to secure it.
- 3.3 The applicant has now put forward a case to vary the Unilateral Undertaking to amend the amount of affordable housing from 100% to 22%. They state that the significant increase in construction costs, interest rates and other HRA capital commitments have resulted in the development no longer being affordable to the HRA budget. The scheme was put to Cabinet in February 2023 which resolved that officers should explore the potential sale of the site with the benefit of planning permission.
- 3.4 Following on from that, some soft market testing has been carried out with registered housing providers and developers. There is confidence that a sale of the land can be achieved provide the 100% affordable tenure is changed to a policy compliant one of 22%, and the BLRF grant funding is passed on to developers. If this is not done, they say that there appears to be no viability for prospective purchasers, resulting in the site remaining undeveloped for the near future.

4. RELEVANT PLANNING HISTORY

- 4.1 The relevant planning history for the site is as follows:

Y19/0704/FH	Erection of 30 residential units with access road, footpaths and associated landscaping.	Approved
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5. CONSULTATION RESPONSES

- 5.1 No consultation requirement.

6. PLANNING POLICY

- 6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Review Local Plan 2022.
- 6.2 The relevant development plan policies are as follows:-

Core Strategy Review (2022)

CSD1 – Balanced Neighbourhoods

CSD2 – District Residential Needs

6.3 The following are also material considerations to the determination of this application.

Government Advice

National Planning Policy Framework (NPPF) 2021

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following sections of the NPPF are relevant to this application:-

Paragraph 11 - Presumption in favour of sustainable development.

Paragraph 47 - Applications for planning permission be determined in accordance with the development plan.

7. APPRAISAL

- 7.1 In light of the above the main issue for consideration is whether the variation to the amount of affordable housing acceptable in policy terms.
- 7.2 Core Strategy Policy CSD1 requires development of 15 or more dwellings at any location in the District to provide 22% affordable dwellings on site. Notwithstanding this, as stated in the Proposal section above, the proposed development was originally to be delivered directly by the Housing Revenue Account (HRA) within the Council, with the proposal to provide 100% affordable units for the Council's own stock. The applicant submitted a Unilateral Undertaking (Planning Agreement) to that effect.
- 7.3 The applicant has made the case that although initial market testing demonstrated interest, since then, the significant increase in construction costs, rise in interest rates and other HRA capital commitments have resulted in the proposed development no longer being affordable within the HRA budget. As a result of this, in February 2023, Cabinet resolved for officers to explore the potential sale of the site with the benefit of planning permission.
- 7.4 The applicant advises that soft market testing since then has demonstrated that it is not viable with the affordable housing at 100%, but there is interest in the site if the affordable housing is reduced to 22%. Indeed, paragraph 7.43 of the original report (Appendix 2) indicated that the overprovision of affordable housing would inevitably have an impact on the viability of the scheme, but it was reacting to an acknowledged need in this area. This was not however, an overriding consideration at the time the original application was determined.
- 7.5 As stated above, the policy requirement for affordable housing is 22%, which for 30 dwellings would result in 7 affordable units. If the UU is not amended, it is unlikely that the site will be developed for the foreseeable future and no affordable housing will come forward. If the UU is amended, it will result in 7 affordable units, plus 23 smaller family homes that will contribute to the Council's housing delivery.

- 7.6 As members will see from the report appended as Appendix 2, when the original planning permission was granted, it was considered acceptable in all respects and the approval was not dependent on it being 100% affordable. Had it been policy compliant in terms of the affordable housing at the time, the recommendation would still have been to approve. Given that the proposal now seeks to amend the scheme to make it policy compliant, there is no reason to withhold the agreement to amend the UU.

Environmental Impact Assessment

- 7.7 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

Local Finance Considerations

- 7.8 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy. There is no CIL requirement for this development.
- 7.9 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. *The CIL levy in the application area is charged at £x per square metre for new residential floor space with the exception of the 7 No. affordable / self-build housing units which are exempt.

Human Rights

- 7.10 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

Public Sector Equality Duty

- 7.11 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

DCL/23/26

- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Working with the applicant

7.12 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

8. CONCLUSION

8.1 The site is allocated for residential development in the PPLP 2020, and planning permission has been granted for 30 residential units. That permission was intended to be 100% affordable at the request of the applicant, but circumstances since then means the site must be sold with indications being that affordable housing at 100% makes the scheme unviable. The policy position is that affordable housing should be at 22%, and it is considered that there is no planning justification to insist that the scheme stays at 100%.

8.2 It is therefore recommended that the Unilateral Undertaking attached to permission Y19/0704/FH be amended to reduce the affordable housing to 22%.

9. BACKGROUND DOCUMENTS

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATIONS

That the Unilateral Undertaking attached to planning permission Y19/0704/FH be amended to reduce the amount of affordable housing from 100% to policy compliant 22% and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the legal agreement.

Appendix 1 – Site Location Plan