

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 6
DATE OF MEETING:	15 NOVEMBER 2022	CATEGORY: DELEGATED
REPORT FROM:	HEAD OF PLANNING AND STRATEGIC HOUSING	RESTRICTED
MEMBERS' CONTACT POINT:	SARAH BEEBY Sarah.beeby@southderbyshire.gov.uk	DOC:
SUBJECT:	SECTION 106 VARIATION – HENSHALL DRIVE, CHELLASTON	REF: DMPA/2021/0627
WARD(S) AFFECTED:	ASTON	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That the Committee approves the request to amend the Section 106 Agreement (S106) by means of a DoV to include a standard Mortgagee in Possession (MiP) clause into the agreement.
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the amendments to be secured under the DoV.

2.0 Purpose of Report

- 2.1 To inform the Committee of the proposed changes to the S106, the inclusion of a MiP clause.

3.0 Background

- 3.1 The site, known as Land off Henshall Drive, Chellaston was granted planning permission in May 2022 for 8 homes. The original S106 agreement called for a tenure mix of no less than 50% of the affordable homes provided as affordable rented homes and the remainder to be provided as intermediate (shared ownership) homes.
- 3.2 To date, the developer has not started construction yet on site.

4.0 Discussion

- 4.1 The Strategic Housing Team have been approached by the Affordable Housing Provider (AHP) who are in contact to purchase the affordable homes on the site. They would like to propose a variation to the formally agree affordable housing definitions across the site by means of a DoV.

- 4.2 The proposed change would include a standard MiP clause, which means that in the unlikely instance that the AHP defaults on their loan payments or mortgage terms, their lender can take control of their affordable housing assets against which the loan is secured.
- 4.3 In such instances, the clause offers protection and allows for another AHP, including the Council, to purchase the affordable homes within a specified time period, however, in circumstances where a buyer cannot be found, the lender is free to sell the homes without the affordable housing restrictions to allow them to regain some or all of the loan provided.
- 4.4 The Council now includes the MiP as a standard clause in all S106 agreements in order to allow an AHP to borrow money to purchase the S106 affordable homes on sites. This S106 agreement pre-dates the use of this clause, and therefore these changes seek to rectify this.

5.0 Financial Implications

- 5.1 There are no financial implications associated to the Council for this change as the costs of the DoV will be paid for by the AHP.

6.0 Corporate Implications

- 6.1 None.

7.0 Community Implications

- 7.1 There would be the same number of affordable homes delivered on the site.

8.0 Background Information

- a. Section 106 Agreement: [Planning Application: DMPA/2021/0627 \(force.com\)](#)