

Officer's Assessment Sheet

Application Number: 12/00400/AS

Stat. Class: n/a

Application Date: 23/04/2021

Case Officer: Faye Tomlinson
8/13 week date: N/a

Applicant: Chilmington Management Organisation
Correspondent: Mr J Cox, Anthony Collins Solicitors LLP, 134 Edmund Street, Birmingham, B3 2ES

Location: Land at Chilmington Green, Ashford Road, Great Chart

Proposal: To approve a replacement revised rentcharge deed for the rentcharge deed appended to the s106 agreement dated 27 February 2017 at schedule 31 (which was previously revised on 29 August 2019)

MATERIAL CONSIDERATIONS

Policies IMP4 of the ALP 2030

SAFEGUARDING

Conservation Area	None
Listed Building	None

ENVIRONMENTAL IMPACT ASSESSMENT

Is an E/A required?	No
Is formal screening opinion required? N	N/A
Has screening opinion been issued? N	N/A

Proposal

In 2019 the recently incorporated Chilmington Management Organisation (the '**CMO**') resolved to update and replace the Rentcharge Deed appended to Schedule 31 of the s.106 agreement dated 27 February 2017 ('2017 Edition') for the development approved under reference 12/00400/AS in respect of land at Chilmington Green, Ashford Road, Great Chart.

The updated 2019 version (the '**2019 Edition**') was subsequently the subject of a submission to the Local Planning Authority (the 'LPA') that was approved under delegated powers.

The reason for the further updated proposal subject of this submission to the LPA is set out below.

THE REASON FOR THE CHANGES: HOMES ENGLAND & 'HELP TO BUY'

Pursuant to the 2019 Rentcharge Deed and Section 121 Law of Property Act 1925, the CMO has powers to enforce payment of the rentcharge. In the '2019 Edition' Rentcharge Deed, the CMO voluntarily restricted those powers.

Homes England, as a term of funding the Help to Buy: Equity Loan 2021 - 2023 Programme, does not permit rentcharge owners to be able to use Section 121 Law of Property Act 1925 or any other express means of enforcement of rentcharges enabling re-entry, the granting of a lease or repossession of a property for whose purchase 'Help to Buy' was used.

The CMO has therefore now agreed to amend the existing restrictions on enforcement, to reflect the requirements of Homes England so that 'Help to Buy' ('**HTB**') funding will be available to purchasers. The proposed changes the LPA is requested by the applicant to approve – being a revised 2021 'Help to Buy' Rentcharge Deed (the '**2021 HTB**' Rentcharge Deed 1) - are detailed further below.

THE APPLICATION DOCUMENTS

1. Application letter from Anthony Collins Solicitors dated 22/04/2021 received by the LPA 23/04/2021.
2. New Rentcharge Deed 1 ('RCD1') wording.
3. Explanatory note of proposed changes – see section further below for further information in this respect.
4. Consultation Statement in respect of proposed RCD1 for 'Help to Buy' with all relevant parties – see section further below in this respect.
5. The document to be approved – the '2021 HTB' Rentcharge Deed 1.

THE PROPOSED CHANGES

Clause 2 – Rentcharges

This clause has been amended so the CMO promises: -

- not to enforce its powers under section 121 of the Law of Property Act 1925 nor enforce its rights by way of any express enforcement rights enabling forfeiture, the grant of a lease over or repossession of the property the subject of the rentcharge; nor
- not to enforce any other rights it may have without giving the property owner and any lender two months' notice of any breach of the Rentcharge Deed (so that they may have an opportunity to correct any breach); and
- if the CMO proceeds to enforce those other rights, to notify any lender.

Clause 4 – Manager's Covenants

Here there is an additional promise by the CMO that, should it transfer the benefit of the rentcharge to any third party, it will obtain promises in the same or similar form by the new rentcharge owner in favour of property owners who have entered into Rentcharge Deeds. Minor amendments to the definition of "Plot", and to Part 2 of Schedule 1, reflect the fact that this promise will apply to properties subject to both the 2019 Rentcharge Deed and this revised '**2021 HTB**' Rentcharge Deed 1.

There are no other changes to substantive provisions.

The requirement to use the 2019 Edition and the revised 2021 Edition is to take effect immediately upon the approval of the LPA for all disposals within Schedule 4 of the s.106 agreement dated 27 February 2017.

Representations

The Principal Solicitor (Strategic Development) & Deputy Monitoring Officer is satisfied on behalf of the Head of Legal and Democracy that the '2021 Edition' is in substantially the same form as the 2019 Edition for use for all schedule 4 disposals from the date of approval of the same and that the 2021 edition enables prospective purchasers to access 'Help to Buy' funding.

Consultation

There is no consultation required by the LPA with the relevant parties in respect of the proposal as this has, helpfully, been carried out in advance of the application that has been made. The applicant states:-

'We Osborne Clarke LLP confirm that we have consulted all the respective solicitors acting for all of respective land owning developers on the estate known as Chilmington Green which is the subject of agreement dated 27 February 2017 pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) between (1) Hodson Developments (Ashford) Limited and others (2) Ashford Borough Council; and (3) the Kent County Council concerning the use of an alternative Estate Rentcharge Deed to be used on at Chilmington Green (principally by those developers selling to purchasers funded by Homes England under their Help to Buy Scheme) as annexed to this statement (dated 13th April 2021). The solicitors have been made aware that Ashford Borough Council will approve the use of this alternative with immediate effect from that approval.'

Details of that consultation are as follows:-

<u>Developer</u>	<u>Firm</u>	<u>Date Draft RCD1 sent</u>	<u>Approved (Y/N)</u>
Hodson Dev (Ashford) Ltd	Gowling WLG	14/04/2021	Y
BDW Trading Ltd	Osbourne Clarke LLP	14/04/2021	Y
Chelmden Ltd	Tees Law	15/04/2021	Y
Malcolm Jarvis Homes Ltd	Hallett & Co	15/04/2021	Y

Assessment & conclusion

The s.106 agreement does allow for the approval of alternative Rentcharge Deeds, such as now proposed, by the LPA. The consultation carried out with all relevant parties in advance of the application being made to the LPA confirms that said parties approve of the proposal. No other consultation is necessary by the LPA prior to consideration of the proposal.

The (Acting) Strategic Development & Delivery Manager has delegated power to approve in writing the '2021 HTB' Rentcharge Deed 1 as per clause 1.1 of the s106 agreement as "an estate rentcharge deed that is substantially the same form as the draft estate rentcharge deed at schedule 31" pursuant to the provisions of the Council's Constitution (paragraph 18.16 Part 3 'Responsibility for Functions' Appendix 5 to the Constitution which is "to exercise all powers in connection with and under any planning obligations").

Policy IMP4 of the Ashford Local Plan requires governance to be agreed with the Council in respect of community space and facilities at development sites. The CMO is the agreed governance vehicle in respect of this development.

The '2021 HTB' Rentcharge Deed 1 changes build on the '2019 Edition' amendments previously agreed and have the benefit of assisting with the funding arrangements for purchasers wishing to utilise the 'Help to Buy' scheme to enable occupation. There are no material considerations to my knowledge that would suggest that this evolution of the governance arrangements for this site in this regard would have adverse impacts on the locality or existing / future residents of the development. I therefore conclude that the proposal is acceptable.

Human Rights

In reaching my Recommendation below, I have considered human rights and have concluded that the proposal represents an appropriate balance between the interests and rights of an Owner (to enjoy their land subject only to reasonable and proportionate controls by a public authority) and the wider public interest.

Recommendation

My recommendation is that the Head of Planning approves the '2021 HTB' Rentcharge Deed 1 (attached pdf – first page shown below) for use with immediate effect.

Signed: **Faye Tomlinson** (Case Officer)
Position: Team Leader Strategic
Development

Dated: 23/04/2021

Approved

Signed: **Roland Mills**
Position: (Acting) Strategic Development &
Delivery Manager

Dated: 23/04/2021

'2021 HTB' Rentcharge Deed 1 (attached document – first page)

2021 "Help to Buy" form of Rentcharge Deed to be sent by CMO to Ashford BC requesting ABC's written approval of it as an alternative "Rentcharge Deed" to be used as required by the Deed of Agreement under Section 106 of the Town & Country Planning Act dated 27 February 2017 and made between Hodson Developments (Ashford) Ltd. And others (1) Ashford BC (2) and Kent CC (3).

DATED 20[]

CHILMINGTON MANAGEMENT ORGANISATION

and

[OWNER]

RENTCHARGE DEED
[Plot No.]
[Property Address if known]
(Rentcharge Deed 1 HTB)

22 April 2021

Anthony Collins Solicitors LLP

134 Edmund Street

Birmingham

B3 2ES

Reference : JDC 48103.0003

Anthony Collins
solicitors