

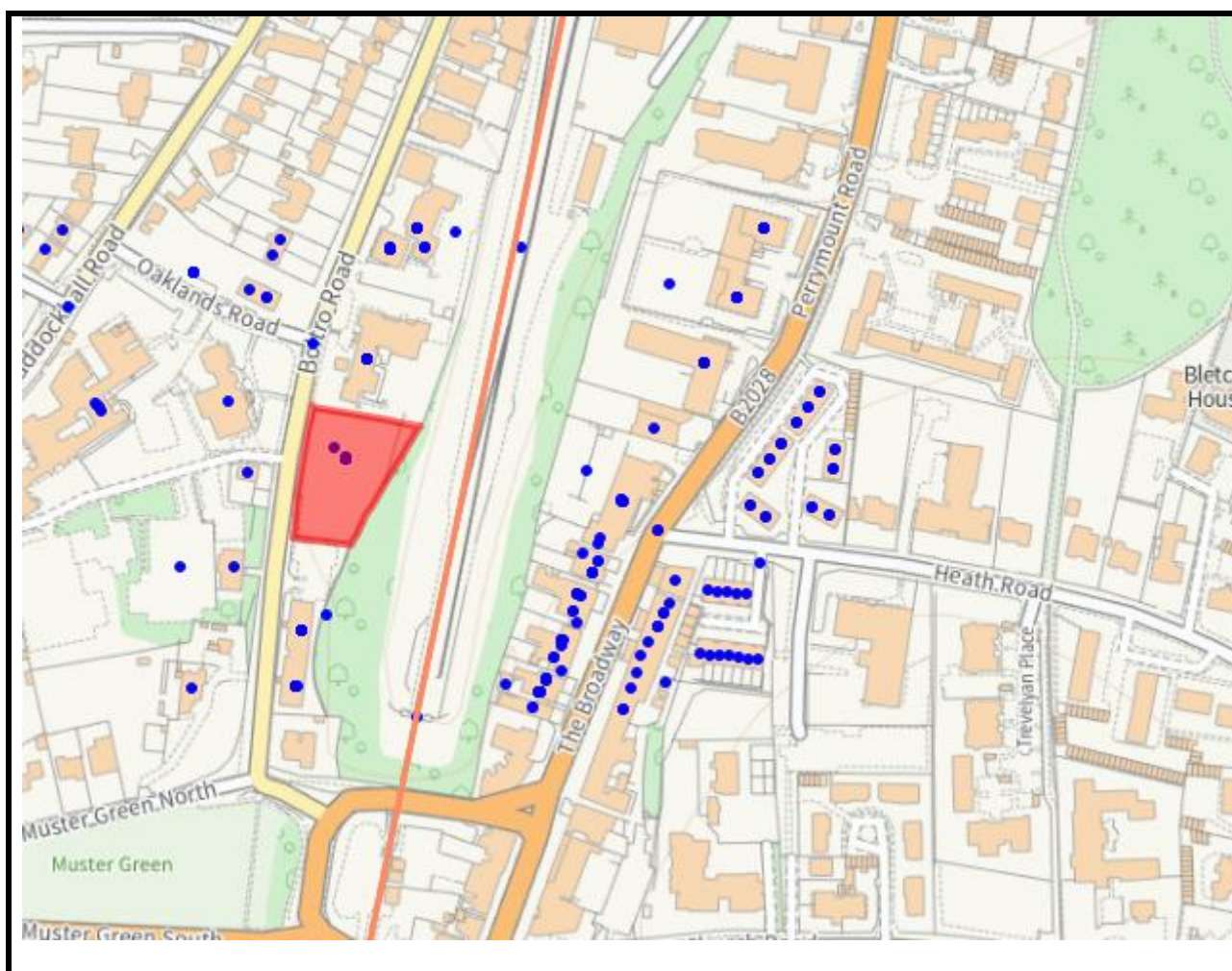
District Planning Committee



Recommended for Permission

15th October 2026

DM/26/0679



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Site:	Site Of Former Maxwellton House 41 - 43 Boltro Road Haywards Heath West Sussex
Proposal:	Modification of S106 agreement relating to DM/25/2462 which (modified the original planning permission DM/22/2218) to remove Clause 4 of the First Schedule so as to remove the requirement to pay the affordable housing contribution.
Applicant:	McCarthy And Stone Retirement Lifestyles
Category:	Not Required
Target Date:	6th November 2026

Parish:	Haywards Heath
Ward Members:	Cllr Abdul Bashir / Cllr Paul Lucraft /
Case Officer:	Joanne Fisher

Link to Planning Documents:

<https://pa.midsussex.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=TC1X9JKT04L00>

1.0 Purpose of Report

- 1.1 To consider the recommendation of the Interim Assistant Director for Planning and Sustainable Economy on the application to amend a section 106 legal agreement.

2.0 Introduction

- 2.1 Planning permission was granted under reference DM/22/2218 for the redevelopment of Maxwellton House to provide a development of 50 retirement living apartments, associated parking, landscaping and amenity provision. There was a section 106 legal agreement with that planning permission which secured a financial contribution towards affordable housing.
- 2.2 Members are being asked to determine whether to accept a modification of the legal agreement in relation to the commuted affordable housing figure previously agreed.
- 2.3 This matter is before members as the variation is considered to be a significant change from that originally considered by members when they determined the original planning application for the development of the site under planning reference DM/22/2218 and set out in the completed legal agreement which accompanies that permission.

3.0 Relevant Planning History

- 3.1 DM/22/2218 - Redevelopment of site to provide a development of 50 retirement living apartments, associated parking, landscaping and amenity provision. Approved.
- 3.2 Various applications have been submitted and approved in relation to the discharge of planning conditions attached to the above permission.
- 3.3 DM/23/2513 – Advert consent for proposed Non illuminated hoardings with (x2) flags and (2x) Non illuminated sign boards. Approved.
- 3.4 DM/25/2093 - Non-Material Amendment to planning application DM/22/2218 - Amendment to description of development to remove reference to submission of amended plans. Approved.
- 3.5 DM/25/2462 - Variation of condition no 2 relating to planning application DM/22/2218 - to enable the substitution of plans to allow for changes to the material finish of the building elevation - primarily the change from glazed balcony balustrades to railings. Approved.

4.0 Assessment

- 4.1 An application for the modification of the S106 agreement relating to DM/25/2462 (which modified the original planning permission DM/22/2218) to remove Clause 4 of the First

Schedule has been submitted seeking to remove the requirement to pay the affordable housing contribution.

- 4.2 Section 106A (11) of the 1990 Town and Country Planning Act states that a planning obligation can be modified or discharged by agreement (at any time) between the appropriate authority and the person or persons against whom it is enforceable. An agreement to modify or discharge a planning obligation can be made at any time (and can only be entered into by Deed, by virtue of section 106A (2)).
- 4.3 Policy DP31 of the District Plan relates to affordable housing and requires schemes of 11 dwellings or more to provide a minimum of 30% on-site affordable housing. In certain circumstances a commuted affordable housing contribution can be accepted in lieu of on-site housing as set out in the Councils Affordable Housing Supplementary Planning Document.
- 4.4 The Councils Development Viability Supplementary Planning Document sets out where the Council are satisfied that developer contributions cannot be met in full due to financial viability, that the affordable housing requirement can be negotiated through reducing commuted sums.
- 4.5 Policy DM5 of the NPPF relates to development viability. Policy DM5(2) states that *'There may be circumstances in which a viability assessment demonstrates that it would not be possible for development to proceed on a policy compliant basis. In such circumstances, the submission of a viability assessment as part of a development proposal may be justified to ensure that the proposed development makes the maximum possible contribution to affordable housing and other infrastructure.'*
- 4.6 The legal agreement currently requires an off-site affordable housing contribution of £913,000. In addition, to this the completed legal agreement requires the following financial contributions:
- Libraries - £14,547
 - Total Access Demand - £66,335
 - Formal Sports - £28,941
 - Community Buildings - £25,522
 - Local Community Infrastructure - £28,964
 - Health - £58,573
- 4.7 The library, Total Access Demand, formal sports, community buildings, local community infrastructure and health contributions have been paid in full in accordance with the Section 106 Agreement. The affordable housing contribution has not yet been paid.
- 4.8 As set out in Clause 4 of the First Schedule of the legal agreement, 50% of the affordable housing contribution is required to be paid prior to the Build Start (post demolition and ground works but before any above ground works), and the remaining 50% prior to the first Occupation of any Dwellings in the Development.
- 4.9 A covering letter accompanying the application sets out that the scheme is currently unviable with the required financial contributions. It sets out that *'since the granting of the planning permission McCarthy Stone, as well as most retirement housing developers, have experienced multiple impacts outside of their control which have severely impacted the ability to redevelop sites such as the former Maxwellton House. The wholesale increase in the cost of materials and labour has had a dramatic impact in increasing the*

build cost of the development. This drastically increased cost is further exacerbated by the retirement housing market going through a period of stagnant growth, far below that of open market housing. This combination of unfavourable forces mean that the site is not viable to bring forward within the immediate future and to that end all works have regrettably been ceased at this time.

Assessments have been undertaken in order to try to revive the scheme but the only way in which a suitable scheme can be brought forward is to seek a reduction in some of the payments due to be made under the Section 106 Agreement. This is a means of last resort but is seen as the only way a viable scheme can come forward as all other value engineering opportunities have been taken. To this end, a recent application amending the original scheme was approved by the Council in December 2025, which saw a change in materials which allowed for some savings while still ensuring the appropriate building quality is provided.'

- 4.10 The application as originally submitted was for the Affordable Housing contribution to be varied to nil. Following consideration of an updated Financial Viability Assessment by the Council's Viability Consultant and negotiations, it has been agreed that the Affordable Housing contribution be reduced to £658,000. This represents a reduction of £255,000 from the originally agreed contribution.
- 4.11 The Council's Viability Consultant has reviewed this revised offer and considers that based on the details set out in the revised submitted viability report from the applicant that the reduction in the affordable housing contribution for the site is acceptable.
- 4.12 The Council's Principal Housing Enabling Officer has considered the proposal and the comments from the Council's Viability Consultant and supports the reduction in the affordable housing contribution. Your Planning Officers have no reason to come to a different view in relation to this.
- 4.13 Whilst the reduction in the affordable housing contribution is regrettable, the proposal accords with Policy DP31 of the District Plan in relation to affordable housing and viability, the requirements of the Council's Affordable Housing SPD and Development Viability SPD and Policy DM5 of the NPPF.
- 4.14 In accordance with the Council's Development Viability SPD, the viability of the scheme will need to be reassessed at a later stage in the project when accurate information about actual build costs and values will be able to be provided. This Advanced Stage Viability Review will be undertaken on the sale / letting of 75% of the units. It will determine whether any additional value has been generated since the current viability assessment was undertaken, which would enable a further contribution to be paid towards the cost of off-site affordable housing provision.
- 4.15 Whilst the reduced figure for the affordable housing contribution of £658,000 is accepted, the payment terms of 50% prior to the build and 50% on completion remains in the varied s106. As works are progressing on the site, there will be a requirement that the first half of this contribution to be paid within 10 days on completion of the legal agreement.

5.0 Recommendation

- 5.1 It is recommended that Members agree to the modification of the s106 agreement in relation to a reduced affordable housing contribution figure of £658,000. Such a deed of variation should include a late-stage viability review on the sale / letting of 75% of the flats on the site in order to ensure that if there is any additional value generated in the sale of the development that a further contribution is payable.

