



Public Session

Report Reference Number: 2017/1329/MLA

Agenda Item No: 6.2

To: Planning Committee
Date: 11 April 2018
Author: Andrew Martin, Principal Planning Officer
Lead Officer: Ruth Hardingham, Planning Development Manager

APPLICATION NUMBER:	2017/1329/MLA	PARISH:	Hambleton
APPLICANT:	Taylor Wimpey North Yorkshire	VALID DATE:	24 July 2017
		EXPIRY DATE:	
PROPOSAL:	Request for a Deed of Variation to Section 106 agreement dated 02 December 2015 seeking a reduction in the proportion of affordable housing to be provided within scheme for 115 dwellings approved under references 2015/0105/OUT (outline) and 2017/0117/REMM (reserved matters).		
LOCATION:	Main Road, Hambleton, Selby, North Yorkshire		

This matter has been brought to Planning Committee for consideration due to it being a proposal to reduce the percentage of on-site affordable housing from the 40% agreed by Members in 2015.

Summary:

Taylor Wimpey intends to develop out an approved scheme for 115 houses on the north side of Main Road in Hambleton, which was granted outline planning permission in 2015. A section 106 agreement concluded in association with that consent requires, amongst other things, 40% of the total number of dwellings (46 units) to be provided as affordable housing. However, having now undertaken a detailed appraisal, the company finds that the agreed level of provision would render the scheme unviable and would stall the development. It is therefore seeking a deed of variation to reduce the provision of affordable housing to a level where the scheme can proceed unhindered to completion. Taylor Wimpey's initial submission proposed 8% affordable housing (9 units), but after further negotiation it is now proposing 20% (23 units). The tenure split

would remain as originally agreed: 30-50% Intermediate Housing and 50-70% Social/Affordable Rented Housing.

Recommendations:

- i. That the request for a Deed of Variation be approved on the basis that the overall provision of affordable housing is reduced to 20%, but with the original tenure split remaining unchanged.**
- ii. That the Deed of Variation remains effective for a period of three years from the date of first occupation of the 115 dwellings, with any dwellings completed after that date being subject to the provisions of the original section 106 agreement.**

Reasons for recommendation

To establish a level of affordable housing consistent with maintaining the viability of this scheme, thereby allowing it to proceed unhindered to completion and securing its contribution to the District's 5-year supply of housing.

1. Introduction and background

- 1.1. Outline planning permission for residential development of this site was granted on 03 December 2015 (under reference 2015/0105/OUT) and was subject to a section 106 agreement which (amongst other things) secured the on-site provision of 40% affordable housing in accordance with Core Strategy policy SP9. This level of provision was not contested at the time and no viability arguments were advanced by the landowners.
- 1.2. In June of last year Taylor Wimpey applied for approval of reserved matters for a scheme of 115 dwellings on the site, registered under reference 2017/0117/REMM. At the same time it submitted a request for a deed of variation to reduce the affordable housing obligation, supported by a financial appraisal prepared by Great Northern Estates (Consultancy) Ltd (GNEC). That appraisal has been independently reviewed for the Council by District Valuer Services (DVS). In the meantime, the reserved matters application was approved in January of this year and Taylor Wimpey is now working to discharge the requirements of a number of pre-commencement planning conditions in order to implement the permission.
- 1.3. A deed of variation is an agreement between the parties to a Section 106 agreement to alter its terms for mutual benefit. There would be no right of appeal to the Secretary of State if the Council refused Taylor Wimpey's request, but we should nevertheless act reasonably and determine the proposal in the context of the planning policies and other material considerations that apply to the delivery of affordable housing.

2. Policy context

- 2.1. The pre-ambule to Core Strategy policy SP9 acknowledges that securing 40% affordable housing is a “*challenging target*” and that provision from this source will be heavily dependent upon economic circumstances and the health of the private housing market at any one time. It is also acknowledged that “*to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, should enable the development to be deliverable.*” This echoes advice in the paragraph 173 of the NPPF which states:

“To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”

- 2.2. The Growth and Infrastructure Act 2013 inserted Sections 106BA, BB and BC into the 1990 Town and Country Planning Act. These sections introduced a new application and appeal procedure for the review of planning obligations on planning permissions which related to the provision of affordable housing. These sections were repealed in April 2016, but the appeal decisions that emerged from this process provide some useful insights. And the associated Government guidance - *Section 106 affordable housing requirements: Review and appeal* – continues to have relevance where, as in this case, the request for a Deed of Variation is seeking the same objective. The introduction to the 2013 guidance sets the broad context for reviewing Section 106 agreements:

“Unrealistic Section 106 agreements negotiated in differing economic conditions can be an obstacle to house building. The Government is keen to encourage development to come forward, to provide more homes to meet a growing population and to promote construction and economic growth. Stalled schemes due to economically unviable affordable housing requirements result in no development, no regeneration and no community benefit. Reviewing such agreements will result in more housing and more affordable housing than would otherwise be the case.”

3. Assessment

- 3.1. The initial viability appraisal presented by GNEC on behalf of Taylor Wimpey concluded that the development could sustain 8% affordable housing, equating to 9 units. DVS has accepted from the start that this scheme cannot support a contribution of 40% affordable housing; its original appraisal indicated (subject to caveats in respect of the calculation of abnormal costs) that a contribution of approximately 23% (27 units) was more realistic. This significant difference of opinion reflected different assumptions on many of the variables underpinning the appraisals, including build costs and sales values. However, GNEC and DVS have subsequently exchanged evidence from their experiences with other projects and, as a consequence, have reached agreement on many of the key issues. The latest GNEC appraisal supports an affordable housing contribution of 19%, which Taylor Wimpey is proposing to increase to 20%. The remaining gap between the appraisals is due to different approaches in calculating the

developer's profit. This is discussed further below, along with further consideration of the abnormal costs.

- 3.2. All of the information submitted by Taylor Wimpey is marked as “..*confidential and commercially sensitive*..” and has not been placed on the public file. However, the company has agreed to certain information being released in order to aid Members' consideration of the following points.

Profit

- 3.3. Taylor Wimpey's expectation of profit is calculated as 20% of the total gross development value (GDV), whereas DVS favours a “blended” figure of 16.9%, which represents 17.5% applied to the market housing and 7% applied to the affordable housing, where the risks are judged to be much lower. Both parties have offered evidence in support of their differing positions: DVS through examples of other projects that it has worked on and Taylor Wimpey through (amongst other things) reference to two recent appeal decisions in the District made under Section 106BC: York Road in Barlby and Flaxley Road in Selby¹.

- 3.4. The Government's 2013 guidance states that:

“Profit levels (developers' return) varies significantly between projects to reflect the size and risk profile of the developer and the risks related to the development project.”

In other words there is no “one size fits all” level of return to the developer; it will depend upon the circumstances of each case.

- 3.5. Were the Council to insist on the 16.9% blended profit level then, other issues aside, the latest DVS calculations conclude that the scheme could support 23% affordable housing. At a 20% profit level DVS calculates that the contribution would drop to 18.26%.
- 3.6. Taylor Wimpey maintains that the DVS position on profit is unrealistic. The company's Land Manager has stated that:

“Any level of profit below [20%] would make the scheme commercially unviable from our perspective and hence prevent us from being able to develop the site, which would result in housing delivery from the site stalling.”

And in support of this position Taylor Wimpey points to the two appeal decisions referred to above. In both cases the inspector accepted 20% as an appropriate level of profit, justified on the basis that the schemes were stalled and that they would only be unlocked by a higher level of developer return.

1 (a) Appeal Ref: APP/N2739/S/17/3168721, Land north of The Laurels, York Road, Barlby, Selby YO8 5JH & (b) Appeal Ref: APP/N2739/S/16/3149425, Land off Flaxley Road, Selby YO8 4BW

Abnormal costs

- 3.7. Abnormal costs in this context refer to site-specific requirements over and above those costed within standardised build rates. In this case those additional costs now amount to £3.7m, which include: (a) financial contributions towards other Section 106 requirements (education, waste recycling and monitoring of the travel plan); (b) the costs of highway infrastructure including the construction of a new site entrance (incorporating a new right-hand turn lane on the A63) and the widening of the approach arms to the A162/A63 roundabout; and (c) various works within the site itself including the diversion of electrical infrastructure and the construction of a sustainable urban drainage system (SUDS). Although abnormal costs vary considerably from site to site, £3.7m is comparatively high for a greenfield site, a point noted by DVS in its assessment.
- 3.8. Taylor Wimpey's initial submission included very limited evidence to support these costs, although it has now submitted a series of contractors' quotes which support many of the figures contained within GNEC's appraisal. In fact, this revised information has pushed the abnormal costs up by an additional £100K, to the £3.7m now cited.
- 3.9. The author of the DVS report has accepted the abnormal costs at face value, but has made the point that given their significant impact on the overall viability of the scheme the Council may wish to have them scrutinised by an independent quantity surveyor.

4. Legal/Financial Controls and other Policy matters

Legal Issues

- 4.1. Even though this is not an application under the Planning Acts this recommendation has been made in the context of the planning policies and other material considerations relevant to the delivery of affordable housing. If agreed, a deed of variation will be required.

Financial Issues

- 4.2. Financial issues are not material to the determination of this application.

Impact Assessment

- 4.3. It is not anticipated that the proposed deed of variation will lead to discrimination or inequality in respect of any particular groups. Nor will it impact upon human rights.

5. Conclusion

- 5.1. The 115 houses proposed in this development represent a significant contribution to the Council's current 5-year housing supply and it is important that the scheme is implemented as soon as possible. The developer is clearly gearing up to make a start, but has stated unequivocally that this will not happen if the obligation to

provide 40% affordable housing is maintained. DVS concurs that a 40% contribution is unsustainable, but considers that the development could support a contribution of 23% at its favoured developer profit level of 16.9%. Taylor Wimpey considers that the scheme would not be viable at a profit level of less than 20% and is citing appeal decisions within the district as having established a precedent. Its advisers have re-run their viability appraisal adjusting most of the other assumptions in line with the views of DVS and at a 20% profit level they conclude that the development could support 19% affordable housing, which Taylor Wimpey has increased to 20%. This is higher than the 18.26% which DVS has calculated when inputting a 20% profit margin into its own appraisal.

- 5.2. Although this development has not stalled in the manner of the schemes subject of the two quoted appeal decisions, officers consider that there is insufficient evidence to maintain an argument for a developer's profit level less than 20%. Indeed, in the face of Taylor Wimpey's assertion that the deliverability of the scheme would be compromised by a lower figure any other position would probably be judged unreasonable.
- 5.3. The abnormal costs associated with this development are high and clearly impact upon the ability of the scheme to deliver a higher proportion of affordable housing. Nevertheless, all of the significant costs are now supported by evidence from independent contractors. It is still open to the Council to subject this element of the scheme to scrutiny by an independent quantity surveyor, but that would take time which in itself may impact upon the deliverability of the project.
- 5.4. Overall, officers consider that Taylor Wimpey's latest position is reasonable in all the circumstances.
- 5.5. When Section 106 BC was in force it ensured that if an Inspector were to modify an affordable housing obligation on appeal, that modification would remain valid for 3 years. The associated Government guidance states:

"If the development is not completed in that time, the original affordable housing obligation will apply to those parts of the scheme which have not been commenced. Developers are therefore incentivised to build out as much of their scheme as possible within 3 years. It will not be sufficient to commence one part of the development to secure the revised affordable housing obligation for the whole scheme. If developers are concerned about the viability of their scheme at the end of the 3 years, they can seek to modify the agreement again. This could be done through voluntary renegotiation or by making a new application [to the local planning authority]."

"This 3 year period, and the need to secure as much development as possible in that period, should incentivise developers to build out. Local planning authorities may wish to make similar time-limited modifications or conditions when considering an application ..."

5.6. Taylor Wimpey accepts that this logic should apply to its current request if approved and has agreed to the deed of variation lasting for a period of three years from the date of first occupation of the 115 dwellings.

6. Background Documents

6.1. Outline planning permission ref. 2015/0105/OUT.

6.2. Approval of reserved matters ref. 2017/0117/REMM.

Contact Officer:

Andrew Martin
Principal Planning Officer
amartin@selby.gov.uk