



Report Reference Number 2016/0492/MLA (8/35/479B/PA)

Agenda Item No: 6.2

To: Planning Committee
Date: 9 May 2018
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Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2016/0492/MLA	PARISH:	Cawood Parish Council
APPLICANT:	Daniel Gath Homes	VALID DATE: EXPIRY DATE:	28 April 2016 26 May 2016
PROPOSAL:	Application to modify a section 106 planning obligation under section 106BA following approval of 2015/0518/OUT Proposed outline application for the residential development (access and layout to be approved all other matters reserved) for 17 dwellings with garages, creation of access road and associated public open space following demolition of existing garages at land to the north west		
LOCATION:	Land off Castle Close, Cawood, Selby, North Yorkshire		

This application has been brought before Planning Committee for consideration due to the applicant seeking a lower affordable housing contribution than what Members agreed to on the original outline consent planning reference: 2015/0518/OUT which was a 40% on-site affordable housing contribution.

Summary:

Outline Planning permission 2015/0518/OUT was granted for a residential development of 17 dwellings (access and layout included and all other matters reserved) on land off Castle Close, Cawood on the 3rd December 2015. Under Section 106BA of the Planning Act 1990 developers were able to seek to modify their obligations that may have been agreed with local planning authorities. In this case the applicant has sought to modify the agreement so that they can provide less affordable housing on site. Such cases should be determined on the basis of what amount of affordable housing can be accommodated without making the scheme unviable. The evidence used is therefore financial in nature and the Council sought the input from the District Valuer to provide specialist advice. The application has sought to initially reduce the on-site 40% affordable housing contribution to zero. However, the applicant has now agreed a contribution of 23.5% on-site affordable housing as advised by the DVS which the scheme can viably provide and equates to 4 Affordable Housing Units.

Recommendation

The application is recommended to be **APPROVED** subject to delegation being given to Officers to complete a Deed of Variation to the original Section 106 agreement to reduce the on-site affordable housing contribution to 23.5%. This variation shall be time limited for a period of 3 years from the date of the decision.

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 The following historical applications are considered to be relevant to the determination of this application.

2015/0375/OUT (WDN - 13.05.2015) Outline application including access and layout for residential development of 17 dwellings with garages, creation of access road and associated public open space on land to the North West of Castle Close off Wolsey Avenue

Planning permission 2015/0518/OUT was issued on the 3 December 2015 for the following:

"Outline planning permission for residential development (access and layout to be approved, all other matters reserved) for 17 dwellings with garages, creation of access road and associated public open space following demolition of existing garages at land to the north west."

The permission was subject to a S106 agreement securing the delivery of

- Affordable Housing On Site at 40% of Units arising from the development
- Provision of On Site Recreational Open Space
- Waste and Recycling Contribution

2. Policy Context

2.1 The relevant development plan policy is SP9 of the Selby District Core Strategy. 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.”

Scope of Submissions and Consideration under S106BA

- 2.2 The Growth and Infrastructure Act 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. Obligations which include a "requirement relating to the provision of housing that is or is to be made available for people whose needs are not adequately served by the commercial housing market" are within scope of this new procedure.
- 2.3 In April 2013 the Department of Communities and Local Government (DCLG) issued a Guidance Document entitled "Section 106 affordable housing requirements", and sets the context for the associated legalisation. It notes that:
- "The Government encourages a positive approach to planning to enable appropriate, sustainable development to come forward wherever possible. The National Planning Policy Framework establishes that the planning system ought to proactively drive and support sustainable economic development. It also requires that local planning authorities should positively seek to meet the development needs of their area.*
- 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".*
- 2.4 It is also stated in the Guidance that "The application and appeal procedures do not, in any way, replace existing powers to renegotiate Section 106 agreements on a voluntary basis. The application and appeal procedure will assess the viability of affordable housing requirements only. It will not reopen any other planning policy considerations or review the merits of the permitted scheme."
- 2.5 The ability to make submissions under the above noted sections was subject to subject to a 'sunset clause' killing off the changes after 30 April 2016 unless otherwise extended.
- 2.6 On the 11th April 2016 DCLG confirmed that any application or appeal underway as of the 30th April 2016 under section 106BA should still be considered by the Local Planning Authority or Planning Inspectorate.
- 2.7 Although the ability to make a new application under S106BA no longer exists, this application has been on hold at the applicants request due to the developer withdrawing from the scheme. The landowner, sought to continue with the application and the lengthy time has been due to negotiations between the owner and the previous developer over information, the need for updated information and re-consultation with the District Valuer.

3.0 Assessment

Summary of Appellants Case on Submission under S106BA

- 3.1 The applicant in their supporting statement argue that the current returns at 40% affordable housing provision renders the site unviable and it is therefore a

significant barrier to the delivery of the development within the five year period including that of market and affordable housing.

- 3.2 An updated viability assessment was prepared by GNEC on behalf of the applicants which continues to assess the site as unviable unless there is no affordable housing. The DVS have been re-consulted. All the viability information submitted by the applicants is marked as confidential and commercially sensitive and has not been placed on public file. However, some certain information is released in order to aid Members consideration.

Advice from District Valuer (DVS) to Local Planning Authority

- 3.3 The DVS previously assessed the viability of this scheme in June 2016 on the basis of the information submitted by the original developer. The conclusion at that time was that the scheme could viably support the on-site provision of 40% affordable homes, the required waste & recycling contributions together with a ransom strip payment.
- 3.4 Since the original viability assessment time there has been two appeal decisions (York Road in Barby and Flaxley Road in Selby) in relation to viability in this District Council and more specifically relating to the appraisal inputs of profit and benchmark land value and there has also been ongoing negotiations in connection with the ransom strip (for which the Council are the beneficiary).
- 3.5 The ransom strip payment is in relation to land owned by Selby District Council and which is required in order to access the site. The site comprises a rectangular field, the field is landlocked and there is only one plausible point of access being via the site of the two timber garages/ domestic outbuilding that have fallen into disrepair located between 11 Castle Close and 12 Bishop's Close, this access is owned by Selby DC.
- 3.6 This has been independently valued for SDC and that valuation has been accepted by the applicants. A revised viability appraisal has been received which incorporated into their updated viability assessment the agreed value of the ransom strip and the implication for profit and benchmark values from the above appeal decisions.
- 3.7 Following submission of the updated Viability Appraisal to the Authority in August 2017 the DVS District Valuer (Cecilia Reed) was instructed to review the updated submission and to advise the Council.
- 3.8 Advice received from the DVS set out a number of areas of agreement and some areas of disagreement, the greatest being the impact of the ransom on the land value and thus the viability. Another main area of difference is the Gross Development Value (GDV) in which the applicants figure incorrectly does not include affordable housing. Generally the applicants assessment on market value, construction costs, contingency costs professional costs are broadly in agreement. The DVS also consider a flaw to be the fact that the applicants' surveyor has not adjusted the land value for the cost of the ransom.
- 3.9 The DVS ultimately concluded that a scheme fully compliant with planning policy (40%) is now unviable. However the DVS concluded that this scheme can viably

provide the whole of the required Section 106 contributions and 23.5 % on site affordable housing (equating to 4 of the 17 units proposed). The DVS opinion takes into account the recent planning appeal decisions approach to the appraisal inputs of profit and benchmark land value advised by the Inspector in the recent appeal decisions.

- 3.10 The DVS conclusion on the 23.5% is on the basis that the abnormal costs identified by the applicant are correct. They state that the level of abnormal costs which have been identified by the applicant do impact on the viability of the scheme and its ability to comply with the planning policy requirements of the Local Authority. The abnormal costs arise from 'renewables' and 'flood resilience measures' which are a consequence of requirements under the planning permission and so these are accepted. The remaining abnormal costs are a net figure per developable acre and are stated to 'appear reasonable' by the DVS with the caveat that the professional integrity of the applicants surveyor is relied upon. It is suggested that if viability is contested (either now or at appeal) and abnormal costs be a significant contributing factor, the matter could be independently reviewed by a DVS Quantity Surveyor or another advisor to the Council. Re-appraisal is advised in the event that construction work commences beyond 12 months from the date of the report in case market conditions have changed. If on-site AH housing provision is preferred to other contributions such as open space, then a re-appraisal would also be necessary.
- 3.11 The applicant is prepared to accept the recommended 23.5% contribution without a further viability rebuttal. As such, given the small scale of this development and the high costs of a further appraisal by a QS of elements which are stated to appear reasonable by the DVS it is considered reasonable to accept the DVS recommendation in this case. As such it is officer opinion that no further review by a QS is necessary or should be required at this stage unless the applicant decides to appeal this decision.

4.0 Conclusion

- 4.1 Criteria B of Policy SP9 of the CS sets out that in pursuit of the aim to achieve 40/60% affordable/general market housing ratio, the Council will negotiate for on-site provision of affordable housing up to the maximum of 40% of total new dwellings on all market housing sites at or above the threshold of 10 dwellings (or sites of 0.3 ha) or more. Officers consider that this approach is in accordance with relevant local and national policy and guidance.
- 4.2 Negotiations have taken place and on the basis of the applicants updated viability appraisal and the response of the DVS; it is considered that the provision of 4 affordable housing units at a rate of 23.5% of the total new dwellings is acceptable and consistent with the aims of Policy SP9 of the CS.
- 4.3 Given the above, Officer's therefore consider that a pragmatic approach should be taken to agree a contribution of 23.5% for on-site affordable housing which would also ensure that a significant barrier to the delivery of this development within the five year period is reduced.

5.0 Recommendation

The application is recommended to be **APPROVED** and subject to delegation being given to Officers to complete the Deed of Variation to the original Section 106 agreement to reduce the on-site affordable housing to 23.5%. This variation shall be time limited for a period of 3 years from the date of the decision.

6.0 Legal Issues

6.1 Planning Acts

This application has been determined in accordance with the relevant planning acts.

6.2 Human Rights Act 1998

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

6.3 Equality Act 2010

This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

7.0 Financial Issues

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

8.0 Background Documents

8.1 Planning Application file references 2015/0518/OUT and 2016/0492/MLA and associated documents.

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Appendices: None