



**Report Reference Number:** 2021/0931/DOV

**To:** Planning Committee  
**Date:** 8<sup>th</sup> September 2021  
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**Lead Officer:** Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2021/0931/DOV	PARISH:	Ulleskelf Parish Council
APPLICANT:	West Farm Developments (Ulleskelf) LLP	VALID DATE:	28th July 2021
		EXPIRY DATE:	22nd September 2021
PROPOSAL:	Request for a Deed of Variation to Section 106 agreement of approval 2016/0403/OUT Outline application for erection of up to 25 dwellings following demolition of existing dwelling and farm-buildings to include access, landscaping and scale (Appeal Reference APP/2739/W/17/31731078)		
LOCATION:	West Farm, West End, Ulleskelf, Tadcaster, LS24 9DJ		
RECOMMENDATION:	<b>Deed of Variation be approved subject to delegation being given to Officers to complete a Deed of Variation to the original Section 106 agreement to reduce the overall provision of an affordable housing commuted sum of £43,800 payable within 7 working days of the occupation of the 12th dwelling on the site (i.e., occupation of 50% of the scheme)</b>		

This matter has been brought to Planning Committee for consideration due to it being a proposal to amend the approach on the provision of Affordable Housing from 40% on-site affordable housing provision as set out in the S106 Agreement signed under Appeal Reference APP/2739/W/17/31731078 to payment of a Commuted Sum for Off Site Provision.

## 1. INTRODUCTION AND BACKGROUND

- 1.1 The applicants intend to development out the site for 25 dwellings on land at West Farm, West End, off New Road Ulleskelf as granted under Appeal Reference APP/2739/W/17/31731078 (dated 14<sup>th</sup> February 2018) and a Reserved Matters submission is under consideration at present under 2020/1113REMM.

- 1.2 A S106 Agreement associated with the Outline Consent requires, amongst other items, that an Affordable Housing Plan shall show not less than 40% of the total number of dwellings to be provided as affordable **or** such alternative lesser percentage of the dwellings as agreed following a viability assessment as part of the Reserved Matters Approvals.
- 1.3 The S106 Agreement also required that prior to the submission of any Reserved Matters submission then the applicants should submit an “Affordable Housing Plan” to the Council and for this to be approved by the Council accordingly.
- 1.4 In accordance with the requirements of the S106 prior to the submission under 2020/1113REMM the Applicants submitted information to the Council under a Pre-Application 2019-0084 pertaining to viability and the ability of the site to provide 40% Affordable Housing. This was subject of discussions and advice from the District Valuer which resulted in the view being expressed by the DVS that 4 units would be viable and an offer being made by the Applicants of 2 units. Officers indicated at this stage that should the scheme come forward with 3 units shown then would on balance be supported by Officers in considering a Reserved Matters submission, and that the tenure of the units was expected to be 2 Social/Affordable Rent and 1 Shared Ownership unit which was considered to also conform to policy which expects a tenure split of 30-50% intermediate tenure and 50-70% Social/Affordable rent. As such at this stage there was an agreed position between Officers and the Applicants on the extent of the provision that should be shown on the Reserved Matters submission when it was forthcoming.
- 1.5 Upon submission of the Reserved Matters submission to the in Council in November 2020, although units were shown on the scheme that could provide affordable units provision, the Applicants however noted that they would be making further viability submissions to seek to reduce the Affordable Housing provision. In February 2021 the developers submitted a viability justification and discussions were then re-opened with the District Valuer. The review of the viability case has led to the submission of this Deed of Variation submission and a request being made by the Developer for a Deed to be agreed to amend the Affordable housing from on-site provision to payment of a commuted sum.

## **2. POLICY CONTEXT**

- 2.1 The pre-amble 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.”
- 2.2 National Planning Policy Guidance on viability (September 2019) states .

### *“Should viability be assessed in decision taking?”*

*Where up-to-date policies have set out the contributions expected from development, planning applications that fully comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. Policy compliant in decision making means that the development fully complies with*

*up to date plan policies. A decision maker can give appropriate weight to emerging policies.*

*Such circumstances could include, for example where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan; where further information on infrastructure or site costs is required; where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people); or where a recession or similar significant economic changes have occurred since the plan was brought into force.”*

- 2.3 The National Planning Policy Guidance has this to say about the weight to be attached to viability assessments:-

*“The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, and site circumstances including any changes since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment.”*

### **3. ASSESSMENT**

- 3.1 Ordinarily on a scheme of this size the expectation of Core Strategy policy SP9 is for on-site provision of affordable housing; the policy states that “commuted sums will not normally be accepted [on larger sites] unless there are clear benefits to the community or delivering a balanced housing market by re-locating all or part of the affordable housing contribution.”
- 3.2 The submitted viability information has been subject of detailed advice and discussions with the District Valuer, with the scope of factors being considered including land values, development value, construction costs, sales data from nearby developments, abnormal costs, contingency costs, as well as other contributions via CIL and waste and recycling contributions.
- 3.3 An Executive Summary of the agreed position has been provided as part of the Deed of Variation submissions to the Council.
- 3.4 The initial viability appraisal submitted was in February 2021 (dated October 2020) by the Developer which was then considered by the District Valuer. The Stage 1 Report from the District Valuer dated April 2021 raised a series of aspects upon which it was felt further justification and information was required from the developer. At this stage it was the view at this stage of the DVS that the scheme could support 20% of the units being affordable provision alongside CIL payments and other S106 payments, whereas the developers had argued that the scheme could not support that which had been agreed under the Pre-Application submission and that in their view the site could not support any affordable units.
- 3.5 Following further information being submitted to respond to the Stage 1 Assessment by the Developer, alongside a review of the costings for the scheme by a third-party Quantity Surveyor the District Valuer confirmed in July 2021 that the scheme would support an Affordable Housing Off Site payment of £43,800. On this basis it is proposed that the Deed of Variation is progressed to secure this payment to be made to the Council for off-site affordable housing provision.

- 3.6 As a result of this agreed position between the developer and the District Valuer a Draft S106 Deed of Variation has been provided to the Council and this is being reviewed by Legal Officers. The Draft Deed of Variation includes clauses not only requiring the owners of the site to notify the Council of the whom will be paying the monies within 7 days of the commencements of development it also includes a clause that the monies should be paid to the Council within 7 working days of the occupation of the 12<sup>th</sup> dwelling on the site (i.e. occupation of 50% of the scheme). There is also a proposed clause that upon payment of the monies the owner can then progress to sell any remaining market units on the site.

#### **4. CONCLUSION AND RECCOMENDATION**

- 4.1 Overall, Officers consider that by not agreeing this variation the planning consequences of this would mean that the development would be unlikely to proceed. Therefore, it is the Officers view that that a planning balance needs to be struck between the policy aim of achieving the up to 40% affordable housing target against the benefits of maximising the prospect of housing being delivered.
- 4.2 In addition Officers consider this revised proposal to be acceptable and justified by viability assessment which would maintain the viability of this scheme, thereby allowing it to proceed unhindered to completion and securing its contribution to the District 5-year supply of housing.
- 4.3 On this basis Members are asked to support the recommendation for a Deed of Variation be approved subject to delegation being given to Officers to complete a Deed of Variation to the original Section 106 agreement to reduce the overall provision of an affordable housing commuted sum of £43,800 payable within 7 working days of the occupation of the 12<sup>th</sup> dwelling on the site (i.e. occupation of 50% of the scheme).

#### **8 Legal Issues**

##### **8.1 Planning Acts**

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

##### **8.2 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.

##### **8.3 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.

#### **9 Financial Issues**

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

#### **10 Background Documents**

Planning Application file reference 2021/0931/DOV and associated documents.

**Contact Officer:** Yvonne Naylor (Principal Planning Officer)

**Appendices:** None