



Report Reference Number: 2015/1405/OUT

Agenda Item No: 6.6

To: Planning Committee
Date: 10 October 2018
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Lead Officer: Ruth Hardingham, Planning Development Manager

Title: Request for a Deed of Variation to Section 106 agreement dated 25 May 2017 seeking a reduction in the proportion of affordable housing to be provided within scheme for up to 45 dwellings approved under references 2015/1405/OUT (outline) at Selby Road, Camblesforth

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:

The applicant intends to develop out an approved scheme for 45 houses on land at Selby Road, Camblesforth, which was granted outline planning permission in May 2017. A section 106 agreement in association with that consent requires, amongst other things, 40% of the total number of dwellings to be provided as affordable housing. However, having now undertaken a detailed appraisal, the applicant 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. The applicant's initial submission proposed 0% affordable housing (0 units), but after further negotiation it is now proposing 22.22% (10 units). The tenure split would be split circa of 70/30 between affordable rent and intermediate.

Recommendation:

That the request 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 affordable housing to 22.22%, with tenure split circa of 70/30 between affordable rent and intermediate. 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. Outline planning permission for residential development of this site was granted in May 2017 (under reference 2015/1405/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 May 2018 the applicant requested a deed of variation to reduce the housing obligation supported by a Viability Appraisal together with sales comparisons. The appraisal submitted was based on a mix of 45 dwellings as the applicant would expect the Council to seek as part of any RMA submission. The appraisal was completed based on a 0% affordable housing contribution and gave profit levels below the normal 20% benchmark (namely 15.35% Profit on GDV and 18.14% Profit on Cost).
- 1.3. A deed of variation is an agreement between the parties to a Section 106 agreement to alter its terms. There would be no right of appeal to the Secretary of State if the Council refused the applicant'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-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. 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 Jennions and Co showed that (without any affordable housing factored in) the scheme would return a profit equivalent to 15.35% of revenue. Therefore Jennions therefore concluded that the scheme can be regarded as marginally viable, even more affordable housing is factored in. On this basis, they conclude that the affordable housing provision should be reduced to zero in order to aid deliverability of the scheme.
- 3.2. David Newham, the Council’s independent expert on viability has considered the applicant’s assessment and concluded that having run a policy compliant scheme incorporating various appraisal inputs the scheme returns a land value significantly below the agreed figure of £450,000. On this basis, it is agreed by David Newham that the scheme is unable to support the full affordable provision of 40%. It was also concluded that the scheme would be able to viably deliver 11 affordable housing units (equivalent to 24.44% of the total dwellings) with a tenure split circa of 70/30 between affordable rent and intermediate.
- 3.3. In response to this the applicant provided a rebuttal and through subsequent negotiations between the two parties agreement was reached that 10 affordable units equating to 22.22% would be a reasonable figure. Officers accept this view.

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 45 houses proposed in this development represent a valuable contribution to the Council's current 5-year housing supply and it is important that the scheme is implemented as soon as possible. Negotiations have taken place and on the basis of the applicant's submitted viability appraisal David Newham concurs that a 40% contribution is unsustainable, but considers that the development could support a contribution of 22.22%. Officers also accept this view.
- 5.2. 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 ..."

- 5.3 Therefore given the above Officers agree that it is reasonable to reduce the affordable levels to 22.22% and ensure that this variation shall be time limited for a period of 3 years from the date of the decision.

6. Background Documents

- 6.1. Outline planning permission ref. 2015/1405/OUT

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