



Report Reference Number: 2018/1424/DOV

To: Planning Committee
Date: 16 January 2019
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Lead Officer: Ruth Hardingham, Planning Development Manager

Request for a Deed of Variation to Section 106 agreement dated 2 December 2015 seeking the removal of the affordable housing requirement associated with a scheme for residential development with all matters reserved approved under reference 2015/0433/OUT on land to the west of Mill Hill Cottage, Hull Road, Osgodby

This matter has been brought to Planning Committee for consideration due to it being a proposal to amend the affordable housing contribution agreed by Members on 9 September 2015.

Summary:

The applicant has submitted a reserved matters application for the erection of a residential development of 9 No. dwellings with layout, scale, appearance, landscaping and access for consideration at land to the west of Mill Hill Cottage, Hull Road, Osgodby (reference: 2018/1119/REM), pursuant to outline planning permission being granted at the site for a residential development with all matters reserved on 2nd December 2015. A Section 106 agreement in association with the outline consent requires [amongst other things] 40% of the total number of dwellings to be provided on the site to be affordable housing. This was agreed on the basis that the indicative layout plan submitted with the outline consent demonstrated how the site could be laid out to accommodate 14No. dwellings. However, since the outline consent was granted, the site has been sold onto a Developer, D Noble Ltd, who have submitted a reserved matters application for the erection of a residential development of 9 No. dwellings.

Core Strategy Policy SP9 and the accompanying Affordable Housing Supplementary Planning Document (SPD) sets out the affordable housing policy context for the District and outlines that for schemes of less than 10 units or less than 0.3ha a fixed sum will be sought to provide affordable housing within the District. However, the NPPF is a material consideration and states at paragraph 63 - *“Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount”*. Major development is defined in Annex 2:

Glossary as *“For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more”*.

The submitted reserved matters application (reference 2018/1119/REM) pursuant to outline planning permission reference 2015/0433/OUT is for the erection of a residential development of 9No. dwellings. Given the proposed number of dwellings is below 10 and the site area is less than 0.5 hectares, the proposal is not considered to be major development as defined in Annex 2 of the NPPF. It is therefore considered that having had regard to Policy SP9 of the Core Strategy, the Affordable Housing SPD and the advice contained within the NPPF the application for the erection of a residential development of 9No. dwellings is acceptable without a contribution for affordable housing.

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 remove the requirement for affordable housing associated with a scheme for residential development with all matters reserved approved under reference 2015/0433/OUT on land to the west of Mill Hill Cottage, Hull Road, Osgodby. 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 the guidance contained with the NPPF, 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 the site with all matters reserved was granted on 2nd December 2015 (under reference 2015/0433/OUT) and was subject to a Section 106 agreement which secured [amongst other things] 40% of the total number of dwellings to be provided on the site to be affordable housing in accordance with Policy SP9 of the Core Strategy and the accompanying Affordable Housing Supplementary Planning Document (SPD). This was on the basis that the indicative layout plan submitted with the outline consent demonstrated how the site could be laid out to accommodate 14No. dwellings.
- 1.2 Since the outline consent was granted, the site has been sold onto a Developer, D Noble Ltd, who have submitted a reserved matters application for the erection of a residential development of 9No. dwellings, for which the applicant's consider no affordable housing provision should be sought having had regard to the advice contained within the NPPF, as revised in July 2018. The applicant has therefore requested a deed of variation to the original Section 106 agreement to remove the requirement for affordable housing associated with a scheme for residential development with all matters reserved approved under reference 2015/0433/OUT on land to the west of Mill Hill Cottage, Hull Road, Osgodby.

- 1.3 A deed of variation is an agreement between the parties to a Section 106 agreement to alter its terms. A planning obligation may be modified or discharged at any time by agreement with the Council. If there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application can be made to the Council to change the obligation if it “no longer serves a useful purpose”. If this results in a refusal, an appeal can then be made. Accordingly, if the Council refuses the applicant’s request there is no prospect of an appeal at this stage but we should nevertheless act reasonably and determine the proposal in the context of the planning policies and other material considerations and consider whether the obligation continues to serve a useful purpose.

2. Policy Context

- 2.1 Core Strategy Policy SP9 and the accompanying Affordable Housing Supplementary Planning Document (SPD) sets out the affordable housing policy context for the District and outlines that for schemes of less than 10 units or less than 0.3ha a fixed sum will be sought to provide affordable housing within the District.
- 2.2 However, the NPPF, as revised in July 2018, is a material consideration and states at paragraph 63 - *“Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount”*. Major development is defined in Annex 2: Glossary as *“For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more”*.

3. Assessment

- 3.1. Outline planning permission for residential development of the site with all matters reserved was granted on 2nd December 2015 (under reference 2015/0433/OUT) and was subject to a Section 106 agreement which secured [amongst other things] 40% of the total number of dwellings to be provided on the site to be affordable housing in accordance with Policy SP9 of the Core Strategy and the accompanying Affordable Housing Supplementary Planning Document (SPD). This was on the basis that the indicative layout plan submitted with the outline consent demonstrated how the site could be laid out to accommodate 14No. dwellings.
- 3.2 Since the outline consent was granted, the site has been sold onto a Developer, D Noble Ltd, who have submitted a reserved matters application (reference 2018/1119/REM) pursuant to outline planning permission reference 2015/0433/OUT is for the erection of a residential development of 9No. dwellings with layout, scale, appearance, landscaping and access for consideration. Given the number of dwellings proposed under the reserved matters application is below 10 and the site area is less than 0.5 hectares, the proposal is not considered to be major development as defined in Annex 2 of the NPPF.

- 3.2 No further reserved matters applications can now be submitted pursuant to outline planning permission reference 2015/0433/OUT, as Condition 2 attached to outline planning permission reference 2015/0433/OUT required applications for the approval of reserved matters to be made within a period of three years from 2nd December 2015, that being before 2nd December 2018.
- 3.3 It is therefore considered that having had regard to Policy SP9 of the Core Strategy, the Affordable Housing SPD and the advice contained within the NPPF, as revised in July 2018, the application for the erection of a residential development of 9 No. dwellings would be acceptable without a contribution for affordable housing and the planning obligation would not serve a useful planning purpose.

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. 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. Outline planning permission for residential development of the site with all matters reserved was granted on 2nd December 2015 (under reference 2015/0433/OUT) and was subject to a Section 106 agreement which secured [amongst other things] 40% of the total number of dwellings to be provided on the site to be affordable housing in accordance with Policy SP9 of the Core Strategy and the accompanying Affordable Housing Supplementary Planning Document (SPD). This was on the basis that the indicative layout plan submitted with the outline consent demonstrated how the site could be laid out to accommodate 14No. dwellings.
- 5.2 Since the outline consent was granted, the site has been sold onto a Developer, D Noble Ltd, who have submitted a reserved matters application (reference 2018/1119/REM) pursuant to outline planning permission reference 2015/0433/OUT is for the erection of a residential development of 9No. dwellings with layout, scale, appearance, landscaping and access for consideration. Given the proposed number of dwellings is below 10 and the site area is less than 0.5 hectares, the proposal is not considered to be major development as defined in Annex 2 of the NPPF.

- 5.3 No further reserved matters applications can now be submitted pursuant to outline planning permission reference 2015/0433/OUT, as the Condition 2 attached to outline planning permission reference 2015/0433/OUT required applications for the approval of reserved matters to be made within a period of three years from 2nd December 2015.
- 5.4 It is therefore considered that having had regard to Policy SP9 of the Core Strategy, the Affordable Housing SPD and the advice contained within the NPPF the application for the erection of a residential development of 9No. dwellings would be acceptable without a contribution for affordable housing.
- 5.5 Having regard to the above, Officers agree that it is reasonable to remove requirement for affordable housing and this variation shall be time limited for a period of 3 years from the date of the decision.

6. Background Documents

Planning Application file reference 2015/0433/OUT and associated documents.

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Appendices: None