



**Report Reference Number:** 2018/1402/DOV

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**To:** Planning Committee  
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**Lead Officer:** Ruth Hardingham, Planning Development Manager

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**Request for a Deed of Variation to Section 106 agreement seeking a reduction in the proportion of affordable housing to be provided within scheme for up to 60 dwellings approved under references 2016/1256/OUTM (outline) at Pinfold Garth Sherburn in Elmet**

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 June 2017.

**Summary:**

The applicant intends to develop out an approved scheme for 60 houses on land at Pinfold Garth Sherburn in Elmet under 2016/1256/OUTM and a Reserved Matters submission is under consideration at present under 2018/0385/REMM. A section 106 agreement in association with the Outline 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 7% affordable housing (4 units), but after further negotiation it is now proposing 20% (12 units). The tenure split would be split circa of 50/50 between shared ownership (Plots 33 / 34 / 35 / 36 / 12 / 13 / 14 and 15) and Social Rent (Plots 38 / 39/ 40/ / 43 / 44 / 45/ 46).

**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 25%, with tenure split as per Plan PA-HL-18 shared ownership and social rent. 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 July 2017 (under reference 2016/1256/OUTM) 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. As part of the submissions made by Stonebridge Homes to agree the reserved matters pursuant to the Outline Consent the developer 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 60 dwellings as per the reserved matters submission. The appraisal was completed based on a 7% affordable housing contribution and gave profit levels below the normal 20% benchmark. 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 that apply to affordable housing and consider whether the obligation continues to serve a useful planning purpose.

### **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 policy guidance on viability was revised in July 2018. The guidance on viability and decision making is as follows:-

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

*Where up-to-date policies have set out the contributions expected from development, planning applications that 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.*

*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.”*

The 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, any change in site circumstances 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. The initial viability appraisal presented by the developer showed that the scheme would only be able to provide 7% affordable provision, this was not accepted by the District Valuer in advising the Council.
- 3.2. Further submissions were made by the applicants in rebuttal to the stance of the District Valuer looking at the construction costs, the land values and the abnormal costs, ultimately resulting in an increase in the offer to 25% of units based on a split as follows:

*Shared Ownership – Plots 33 / 34 / 35 / 36 / 12 / 13 / 14 and 15; and  
Social Rent - Plots 38 / 39/ 40/ / 43 / 44 / 45/ 46).*

- 3.3. Officers have considered the submissions made by the developer and consider that the provision of 25% of the units as affordable as per the above splits is acceptable. Officers have formed this view in light of the submissions made by the developer of the site who acquired the site post the outline consent secured by the landowners and has also undertaken full technical assessment of the delivery of the site.
- 3.4. 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. 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 60 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 it is accepted that provision of 40% contribution is unsustainable, but considers that the development could support a contribution of 25%. Officers also accept this view and consider that planning obligations that provide for a 40% affordable housing contribution no longer serve a useful planning purpose.

- 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 25% as per Plan PA-HL-18 shared ownership and social

rent and ensure that this variation shall be time limited for a period of 3 years from the date of the decision.

**6. Background Documents**

Outline planning permission ref. 2016/1256/OUTM

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**Appendices:** None