



**Report Reference Number:** 2018/1074/DOV

---

<b>To:</b>	<b>Planning Committee</b>
<b>Date:</b>	<b>24<sup>th</sup> April 2019</b>
<b>Author:</b>	<b>Jenny Tyreman, Senior Planning Officer</b>
<b>Lead Officer:</b>	<b>Ruth Hardingham, Planning Development Manager</b>

---

**Request for a Deed of Variation to Section 106 agreement dated 27<sup>th</sup> September 2016 seeking a reduction in the proportion of affordable housing to be provided within scheme for up to 34 residential dwellings with all matters reserved except for access approved on appeal under reference 2016/0124/OUT on land to the north of Weeland Road, Eggborough**

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% required by a Planning Inspector on appeal the Planning Inspectorate in December 2016.

**Summary:**

The applicant intends to develop out a scheme for residential development comprising up to 34 dwellings on land to the north of Weeland Road, Eggborough, which was granted outline planning permission on appeal in December 2016 (under reference 2016/0124/OUT). This was subject to a Section 106 agreement which (amongst other things) secured 40% of the total number of dwellings to be provided on the site to be affordable housing units.

Since the outline planning permission was granted, the applicant (Glade Developments Ltd) have instructed Savills to market the site and there has been interest from regional and local housebuilders. However, the applicant has advised that the quantum of affordable housing to be provided on the site means that it would not deliver a competitive return, as demonstrated in the accompanying viability assessment undertaken by GNEC. The applicant is therefore seeking a deed of variation to reduce the percentage of on-site affordable housing from the 40% agreed by the Planning Inspectorate in December 2016. The accompanying viability assessment sets out that the scheme cannot viably provide any affordable housing units.

The Local Planning Authority have instructed the District Valuer to independently review the viability assessment undertaken by GNEC. The District Valuer has advised that the

scheme cannot viably provide any affordable housing but can contribute towards the required CIL/Section106 contributions of £109,831.

### **Recommendation:**

- i. **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 up to 34 residential dwellings with all matters reserved except for access approved on appeal under reference 2016/0124/OUT on land to the north of Weeland Road, Eggborough. 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 the site comprising up to 34 dwellings with all matters reserved except for access was granted at appeal in December 2016 (under reference 2016/0124/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 level of provision was not contested at the time and no viability arguments were advanced by the landowners.
- 1.2 Since the outline planning permission was granted, the applicant (Glade Developments Ltd) has instructed Savills to market the site and there has been interest from regional and local housebuilders. However, the applicant has advised that the quantum of affordable housing to be provided on the site means that it would not deliver a competitive return.
- 1.3 In September 2018 the applicant requested a deed of variation to reduce the percentage of on-site affordable housing from the 40% agreed by the Planning Inspectorate in December 2016. The application has been accompanied by a viability assessment undertaken by GNEC which sets out that the scheme cannot viably provide any affordable housing units.
- 1.4 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 the Council 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 Planning Practice 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."*

- 2.3 The National Planning Practice 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 accompanying viability assessment, undertaken by GNEC on behalf of the applicant, demonstrates that without any affordable housing factored in, the scheme would return a profit equivalent of 20% of gross development value. On this basis, the viability assessment concludes that the scheme cannot viably provide any affordable housing units.

- 3.2 The Local Planning Authority have instructed the District Valuer to independently review the viability appraisal undertaken by GNEC. The District Valuer's final report demonstrates that without any affordable housing factored in and taking into account a profit equivalent of 20% of gross development value, the scheme cannot viably provide any affordable housing but can contribute towards the required CIL/Section106 contributions of £109,831.

#### **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. Other than issues of viability, 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 34 dwellings granted in this development represent a valuable contribution to the Council's 5-year housing land supply and it is important that the scheme is implemented as soon as possible. Negotiations have taken place and on the basis of the viability assessment undertaken by GNEC on behalf of the applicants, the District Valuer concurs that 40% provision of affordable housing on the site is unsustainable. The District Valuer concludes that the scheme cannot viably provide any affordable housing but can contribute towards the required CIL/Section106 contributions of £109,831. Officers 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 stated:

*"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 Having regard to the above, officers are recommending that this variation should be time limited for a period of 3 years from the date of the decision.

## **6. Background Documents**

Planning Application file reference 2016/0124/OUT and associated documents.

**Contact Officer:** Jenny Tyreman, Senior Planning Officer

**Appendices:** None