



Report Reference Number: 2018/1074/DOV

To: Planning Committee
Date: 9th October 2019
Author: Jenny Tyreman, Senior Planning Officer
Lead Officer: Ruth Hardingham, Planning Development Manager

Request for a Deed of Variation to Section 106 agreement dated 27th 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 back to Planning Committee following consideration at the 24th April 2019 meeting, where Members resolved “To refuse the application and to ask Officers to reconsider the application with a view to the level of affordable housing being renegotiated with the applicant and the District Valuer”.

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 at 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 submitted viability assessment undertaken by GNEC. The applicant therefore sought a deed of variation to reduce the percentage of on-site affordable housing from the 40% agreed by the Planning Inspectorate in December 2016 to 0%. This proposal was taken to Planning Committee in April 2019.

The submitted viability assessment set out that the scheme could not viably provide any affordable housing units. The Local Planning Authority instructed the District Valuer to independently review the viability assessment undertaken by GNEC and the District Valuer advised that the scheme could not viably provide any affordable housing but could contribute towards the required CIL/Section106 contributions of £109,831.

At the April 2019 Planning Committee, Members expressed their disappointment that no affordable housing was being offered in relation to the scheme, but acknowledged the District Valuer's assessment that that the scheme could not viably provide any affordable housing. However, Members were of the opinion that the application should be refused and the developer given the opportunity to consider their offer further. Officers confirmed that the application could be looked at again with the applicant and the District Valuer with a view to renegotiating the level of affordable housing being offered. .

Since the April 2019 Planning Committee, Officers have had discussions with the applicant regarding the level of affordable housing and the applicants have come back with a revised offer to provide 3No. Discounted for Sale units each at 30% discount to market value. This equates to a 10% affordable housing provision, which is comparable to the level of affordable housing at the Yorvik Homes scheme at Eggborough (which is currently being built out under planning permission reference 2016/0875/FUL), although the percentage discount in this case is higher to ensure the homes are truly affordable. The Discounted for Sale unit route offers homeowners the benefit of a freehold ownership of their home whilst being more affordable on a day to day basis than other affordable tenures. While the market is somewhat untested in relation to 3 bed properties which are 30% discount to market value in Eggborough, the evidence provided by the applicants would suggest that the units would genuinely be more affordable on a day to day basis than market units with Help to Buy. Officers consider this revised proposal to be acceptable.

Recommendation:

- i. That the request for a Deed of Variation be approved and for delegation to be given to Officers to complete a Deed of Variation to the original Section 106 agreement for planning consent 2016/0124/OUT to reduce the level of affordable housing from 40% affordable housing provision to provide 3No. Discounted for Sale units each at 30% discount to market value. 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. The three year time limit is to incentivise the Developer to build out as much of their scheme as possible within that period.

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 to 0%. The application was accompanied by a viability assessment undertaken by GNEC which set out that the scheme could not viably provide any affordable housing units. The Local Planning Authority instructed the District Valuer to independently review the viability assessment undertaken by GNEC and the District Valuer advised that the scheme could not viably provide any affordable housing but could contribute towards the required CIL/Section106 contributions of £109,831.
- 1.4 At the April 2019 Planning Committee, Members expressed their disappointment that no affordable housing was being offered in relation to the scheme, but acknowledged the District Valuer's assessment that that the scheme could not viably provide any affordable housing. However, Members were of the opinion that the application should be refused and the developer therefore given the opportunity to consider their offer further. Officers confirmed that the application could be looked at again and the level of affordable housing renegotiated with the applicant and the District Valuer.
- 1.5 Since the April 2019 Planning Committee, Officers have had discussions with the applicant regarding the level of affordable housing and the applicants have come back with a revised offer to provide 3No. Discounted for Sale units each at 30% discount to market value. This equates to a 10% affordable housing provision at the site, which is comparable to the level of affordable housing at the Yorvik Homes scheme at Eggborough (which is currently being built out under planning permission reference 2016/0875/FUL), although the percentage discount is higher in this case to ensure the homes are truly affordable.
- 1.6 A deed of variation is an agreement between the parties to a Section 106 agreement to alter its terms. A planning obligation runs with the land and remains enforceable until it is performed, varied or discharged by agreement. 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 obligation was entered into is over 5 years old, an application can be made to the Council to modify the obligation or if the obligation no longer serves a useful purpose discharge it. Accordingly, if the Council refuses the applicant's request there is no appeal rights at this stage. 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.

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 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 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, 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 When the site was granted outline planning permission for the residential development of up to 34 dwellings with all matters reserved except for access (under reference 2016/0124/OUT) the applicant has advised that they were unaware of the site specific abnormal costs associated with developing the site. The applicant has advised that this was the reason that the 40% affordable housing provision was not contested at the time of the outline application. Since the outline planning permission was granted, the applicant has instructed Savills to market the site and there has been interest from regional and local housebuilders. However, the applicant has advised that the combination of relatively low sales values within Eggborough and the abnormal costs specific to this site have meant the quantum of affordable housing to be provided on the site would render the scheme unable to deliver a competitive return.
- 3.2 The viability assessment, undertaken by GNEC on behalf of the applicant, demonstrated that without any affordable housing factored in and taking into account the relatively low sales values within Eggborough and the abnormal costs specific to this site, the scheme would return a profit equivalent of 20% of gross development value. On this basis, the viability assessment concluded that the scheme could not viably provide any affordable housing units.

- 3.3 The Local Planning Authority previously instructed the District Valuer to independently review the viability appraisal undertaken by GNEC. The District Valuer's final report demonstrated that without any affordable housing factored in and taking into account a profit equivalent of 20% of gross development value, the scheme could not viably provide any affordable housing but could contribute towards the required CIL/Section106 contributions of £109,831. It would therefore follow that any revised offer to provide some level of affordable housing provision at the site would be considered acceptable by the District Valuer.
- 3.4 Since the April 2019 Planning Committee, Officers have had further discussions with the applicant regarding the level of affordable housing. The applicants have advised that as agreed with the District Valuer, nothing within the initial appraisal could be changed to enable a traditional affordable offering, and so an alternative offer had to be identified. The applicants have therefore come back with a revised offer to provide 3No. Discounted for Sale units each at 30% discount to market value. This equates to a 10% affordable housing provision, which is comparable to the level of affordable housing at the Yorvik Homes scheme at Eggborough (which is currently being built out under planning permission reference 2016/0875/FUL), although the percentage discount is higher in this case to ensure the homes are truly affordable.
- 3.5 The higher percentage discount is to ensure that the comparatively low sales values in Eggborough do not enable purchasers to buy market units more cost effectively using Help to Buy. This was an unforeseen issue at the Yorvik Homes scheme at Eggborough (which is currently being built out under planning permission reference 2016/0875/FUL). By way of explanation, under the Help to Buy scheme the buyer only needs a 5% deposit, as opposed to the 10% required by most standard mortgage providers; not an insubstantial difference, particularly at this entry level property. The 30% discount to market value offered would ensure that the units are genuinely more affordable on a day to day basis than market units with Help to Buy.
- 3.6 The applicants have advised that in order to ensure that the scheme would be deliverable with this level of affordable housing provision, the proposal has been shared with all parties who had previously expressed an interest in the site. As a result of that exercise, Jones Homes have confirmed that they would be prepared to deliver the scheme with the 3No. Discounted for Sale units, in the context of wishing to establish a presence in Selby District.
- 3.7 Officers have discussed the revised proposals regarding the level of affordable housing with the Council's Affordable Housing Officers. The Council's Affordable Housing Officers are of the view that following the District Valuer's assessment that 0% affordable housing on this site would be acceptable, any newly proposed affordable housing would be viewed positively. The Council's Affordable Housing Officers note that there have been unforeseen issues at the Yorvik Homes scheme at Eggborough (which is currently being built out under planning permission reference 2016/0875/FUL) in terms of Discounted for Sale units, however those units were 2 bed properties which were 20% discount to market value, while the proposals put forward in this instance are for the units to be 3 bed properties which are 30% discount to market value. While the market is somewhat untested in relation to 3 bed properties which are 30% discount to market value in Eggborough, the evidence provided by the applicants would

suggest that the units would be genuinely more affordable on a day to day basis than market units with Help to Buy.

- 3.8 Officers consider this revised proposal to be acceptable as it would 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. A three year time limit is considered reasonable to incentivise the Developer to build out as much of their scheme as possible within that period.

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 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 concluded that the scheme could not viably provide any affordable housing but could contribute towards the required CIL/Section106 contributions of £109,831. Officers accept this view. However, following the resolution of the Planning Committee in April 2019, Officers have held further discussions with the applicant as to the level of affordable housing being offered. The applicants have advised that as agreed with the District Valuer, nothing within the initial appraisal could be changed to enable a traditional affordable offering, and so an alternative offer has been identified. This alternative offer is to provide 3No. Discounted for Sale units each at 30% discount to market value. This equates to a 10% affordable housing provision at the site. Officers consider this revised proposal to be acceptable as it would 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.

- 5.2 The 'Growth and Infrastructure Act 2013' inserted new sections 106BA, BB and BC into the 'Town and Country Planning Act 1990' to introduce a new application and appeal procedure, to review affordable housing obligations on the grounds of viability. Section 106 BC 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 Sections 106BA, 106BB and 106BC of the Town and Country Planning Act 1990 sunset at the end of April 2016, however, a three year time limit is considered reasonable in this instance to incentivise the Developer to build out as much of their scheme as possible within that period.

6. Background Documents

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

Contact Officer: Jenny Tyreman, Senior Planning Officer
jtyreman@selby.gov.uk

Appendices: Appendix 1 - Report to Planning Committee April 2019