

TWC/2010/0828

Land at Ironstone, Lawley, Telford, Shropshire

Variation of condition 16 of outline planning permission W2004/0980 to exclude the areas comprised within reserved matters application ref TWC/2010/0627 and within plots G4 and G5 as defined within the phasing plan drawing number 006 rev L from the effect of condition 16 (amended description)

APPLICANT

Lawley Village Developer Group

RECEIVED

21/07/2021

PARISH

Dawley Hamlets, Great Dawley, Lawley
and Overdale

WARD

Horsehay and Lightmoor,
Wrockwardine

THIS DEED OF VARIATION WAS DEFERRED AT PLANNING COMMITTEE 25 AUGUST 2021 TO SEEK FURTHER INFORMATION AND CLARIFICATION ON THE VIABILITY REPORT

1.0 BACKGROUND TO DEFERRED DEED OF VARIATION

- 1.1 This application for a Deed of Variation (DoV) to the Section 106 was heard at the previous Planning Committee Meeting on 25 August 2021 whereby it was agreed by Members that the application would be deferred in order to request further information and clarification regarding the Viability Appraisal (VA) submitted in support of the application. The report can be found here: [\[view Phase 10 Approach & Overview to Viability Assessment \(Dec 2019\)\]](#)
- 1.2 Members specifically requested clarification on the following paragraph from Section 6 of Appendix 1 of the VA, which consists of a letter by Rider Levett Bucknall (RLB) to Turley, the Council's viability consultant, and provides a detailed review of the abnormal costs submitted by the Applicant to support their evidence that Phase 10 is an unviable development site:

"6. PREVIOUS PHASES

RLB has previously reviewed Phase 11 only and has not reviewed any of the other earlier phases on the development. As previously stated the LVDG report includes allowances for abnormal costs (foundations etc.), but it is not clear if these costs were included in previous viability submissions. If these costs had been included blended across all phases of development, then given the developer has claimed the plot specific abnormal costs for this phase, then there may be an overstatement of cost."

Members sought clarification and further information over whether the abnormal costs for Phase 10 had been included in previous VAs for other phases of Lawley SUE and, if they had, whether apportioning them now to Phase 10 alone would amount to an exaggeration of the abnormal costs associated with Phase 10.

1.3 This Deed of Variation (DoV) was previously presented to Planning Committee at the meeting held on 30 June 2021 whereby Members Resolved to Grant the Deed of Variation albeit for a reduction in the Affordable Housing from 25% to 10% rather than the 0% now being sought. Members are asked to note that the VA and supporting viability information submitted in June is the same as submitted for the August committee and as presented now. The findings of the VA conclude that there is zero viability in the Phase 10 site and a provision of 0% Affordable Housing on site is justified. Members accepted these findings of the VA in June when they resolved to Grant the Deed of Variation. The Applicants seek a 0% affordable housing provision on site in line with the findings of the VA. The Developers however are committed to work with WHG and Homes England to apply for grant funding and deliver 10% affordable housing which is only available outside of the provisions of the S106 agreement.

2.0 BACKGROUND TO VIABILITY APPRAISAL (VA)

2.1 As noted in the original committee report, Outline Planning Permission for Lawley SUE was granted in Oct 2005 with a Section 106 requiring 25% Affordable Housing on site, and an offsite affordable housing commuted sum of £180k, and further obligations to the value of circa £13m. This was before the financial crisis of 2008.

2.2 The Reserved Matters consent for Phase 10 specifically was approved in March 2019 with an Affordable Housing allocation of 12.5%, which the developers are seeking to reduce to 0% through this Deed of Variation to the Section 106. The applicants presented viability evidence, which was assessed by Turley, an independent Consultant appointed by the Council, to support their case that Phase 10 is not viable and cannot support the provision of Affordable Housing.

2.3 As part of assessing the viability evidence in March 2020, the Council's Viability Consultant, analysed the costs, profit returns and land values which the Applicants had put forward as part of their case and found the following:

- The Applicants' market pricing and sales expectations for the open market dwellings were fair and commensurate with similar activity in the local housing market;
- The agreed sale price of Affordable Housing to Wrekin Housing Trust at 62% market value is fair and commensurate with industry method for evaluating Affordable Housing;
- When compared with Building Cost Information Service (BCIS) data the costs presented by the developers for building the dwellings were based on unit prices at the lower end of the price spectrum, i.e. the cost projection was fair, reasonable and not overinflated;
- Fees, contingencies, funding/finance figures were provided at the lower end of the market rate, i.e. the cost projection was fair, reasonable and not overinflated;

- Allocating the cost of wider Strategic Infrastructure on a pro rata basis to each Phase was a fair and reasonable approach;
- There had been a substantive escalation in abnormal works costs on Phase 10 arising from delivery of the Reserved Matters approval;
- Costs were evidence-checked against other companies and industry knowledge and found to be fair and commensurate;
- The profit return for the applicants would be 16% of Gross Development Value (GDV) for the open market housing and 6% for the Affordable Housing, which is at the lower end of the spectrum when contrasted against the provisions made within the NPPF and Planning Practice Guidance for developer returns to be in the region of 15-20% for open market housing and 6-7% for Affordable Housing;
- Even when the value of the land to the developer is calculated to be nearly half what it should reasonably be (as set out by Planning Practice Guidance) Phase 10 still proves unviable. This value is known as the Benchmark Land Value (BLV) and it is used as the threshold for determining a site's viability. The value of land to a developer needs to be taken into account in order to establish what the potential profitable return might be, i.e. in theory the lower a land value is the more profit there is to be made, which in turn can have an impact upon what is available for planning contributions. Within Planning Practice Guidance, provisions are made for developers to base their profit margins on a fair and reasonable Benchmark Land Value of £85,000-£100,000 per gross acre. In the case of Phase 10, once abnormals had been taken into account the BLV worked out as £55,000-£60,000 per gross acre, contrasting sharply with the figure which developers can reasonably expect of up to £100,000 as provided for within Planning Practice Guidance. In other words, even with a drastically reduced land value there is still a minimal profitable return in the site (of 16% GDV as explained above).

- 2.4 Taking all the above information into account the Council's Viability Consultant concluded that, should Phase 10 deliver the 12.5% Affordable Housing, it would result in a viability deficit (or loss) to the developers of £1,033,869 (see para. 6.3.2 in original Committee Report below).
- 2.5 When the Council's Viability Consultant assessed the viability evidence in terms of 0% Affordable Housing on Phase 10, the viability deficit reduced (to £447,313) but still remained a deficit (or loss) to the developers (see para. 6.3.3 in original Committee Report below).
- 2.6 On this basis the Council's Viability Consultant concluded that the site proves unviable with or without the provision of any Affordable Housing. It is the Viability Consultant's recommendation to the Council that provision of 0% Affordable Housing within the proposed development of the Phase 10 site is accepted (see para. 6.3.4 in original Committee Report below).
- 2.7 Members are advised that, in order to make the case for the applicants to provide Affordable Housing on Phase 10, the Council would need to be able to identify cost savings or anomalies within the viability evidence of £447,313

or more. Further analysis and explanation of potential cost savings or anomalies are presented in Section 3.0.

3.0 CLARIFICATION IN RESPECT OF ABNORMAL COSTS

3.1 As set out in para. 1.1 above, Members requested further information concerning whether the abnormal costs for Phase 10 have been accurately apportioned as part of the VA. The applicant has responded as follows:

“We complete viability studies in isolation to the relevant phases, and the scope of works required to develop those phases. Therefore we can confirm that no Phase 10 costs or Phase 11 costs would be previously allowed for in earlier phase appraisals.”

“All of the viability submissions on all phases have been consistent in terms of approach. Each one has included:

- A proportion of the site-wide Strategic Infrastructure costs (based on site area);*
- The specific abnormal costs are bespoke to that phase based on the actual ground conditions and site constraints of the land being brought forward.*

We have been meticulous in ensuring that the two sets of costs are totally separate and can be validated and quantified independently. The stand-alone abnormal costs for Phase 10 have been reviewed by RLB and confirmed as being reasonable.”

3.2 As part of the original viability review RLB concluded that *“the costs presented for Phase 10 of the development are in line with expected benchmark costs for similar types of development and represent the nature of the works being proposed and are consistent with that presented for Phase 11. There are a small number of discrepancies in the costs presented, but these are generally considered immaterial to the overall estimate. You should satisfy yourselves that contingency is not double counted in the appraisal. The abnormal costs adopted in the VA are, therefore, accepted.”*

3.3 As set out in para. 2.3 above, the Council’s Viability Consultant confirmed that the building unit costs, fees and pro rata distribution of Strategic Infrastructure costs were fair and commensurate with those across the industry.

3.4 Since the August committee meeting the Council’s Viability Consultant has confirmed that the contingency has not been double-counted in the appraisal. Therefore there is no material cost saving to be made in this area.

3.5 Further explanation and discussion on the *“small number of discrepancies”* referred to by RLB in para. 3.2 above is presented in Section 4.0.

4.0 FURTHER INFORMATION REGARDING COSTS OF INFRASTRUCTURE AND ABNORMALS

4.1 Building on Members' request for more information in respect of Section 6 of the RLB letter, Officers have taken their investigations further and asked the applicants for more explanation in respect of Sections 4 and 5, which relate to the costs of infrastructure across Lawley SUE and the costs of abnormalities on Phase 10, respectively.

4.1 Section 4 of the RLB letter provides a commentary on infrastructure costs across the wider Lawley SUE and states:

“Primary Infrastructure Works: As per our review on Phase 10 this appears to have been constructed some time ago. There is provision for settlement of Land Compensation Act claims at 50% of the claimed figure. It is not clear of the status of these claims (£290k) and it is possible that future savings may be made if the claims are not settled.

Off Site Reinforcement & Works: As part of our review of Phase 10 a risk sum for £344k relating to a contractor's claim was identified; we have received no further information since that review as to whether this has been settled and could result in betterment.”

4.3 The Applicants have confirmed that the first of these claims (£290,000) has not been settled or resolved to date and therefore the costs cannot be deducted from the infrastructure costs. The second of these claims (£344,000) is subject to confirmation at the time of writing the report.

4.4 However the Applicants have advised that, subject to confirmation of the status or resolution of these claims, they would apply to the whole of the Lawley SUE and therefore the actual impact upon Phase 10 would be a proportion of this due to how the Strategic Infrastructure Budget has been allocated. Therefore, the applicants advise that the allowance attributable to Phase 10 would be £29,745 and, even if removed in full, would do little to improve the viability deficit of £447,313.

4.5 RLB have been asked to comment on this and any response received by the time of the committee meeting will be reported to Members. However, at the time of writing the report and taking this information into account, Officers are of the view that confirmation of the status of the £344,000 contractor's claim is not material to the determination of this DoV.

4.6 Section 5 of the RLB letter provides a commentary on abnormal cost allowances specifically for Phase 10 and states:

“Piling: This is largely quoted and supporting quotations have been provided in support of the allowance of £1,433,715. Of this we note an allowance of £198,000 is included for Pre-boring based on an estimate of 99 days. Up to 30 July 2020 55 of these days have been utilised and a final confirmation of cost should be sought on conclusion of the works.

Discrepancies: It was previously identified as part of our review of Phase 11 that there were some discrepancies between the LVDG report and the Bridgehouse submission and there has been no change to this. As previously advised generally these are minor and balance each other out. However, in respect of the drainage there is a £200k addition to the costs in the Bridgehouse submission compared to the LDVG report. No explanation has been offered for this, and we remain unable to verify.”

- 4.7 With regards to the costs allocated for piling, the Applicants have advised they have utilised 106 days to date on Phase 10 (as of 12 August 21) and anticipate at least a further 20 days on the balance of the works to complete. This would bring the final cost to in excess of £250,000 thereby exceeding the original abnormal cost allowance of £198,000. This would increase the viability deficit identified to date by approximately £50,000.
- 4.8 With regards to the £200,000 discrepancy pertaining to drainage, the applicants have advised that there was an original allowance for a pumping station and sewer diversion on Phase 8 of the scheme which was not required as ultimately it was decided that the site would be gravity drained. Therefore the figures in the Bridgehouse Property Consultants report are incorrect and the whole scheme figure should have been £840,500 rather than the £1,040,500 suggested. However, due to how the Strategic Infrastructure Budget is allocated, the impact on Phase 10 is only £9,383.
- 4.9 The outcome, therefore, is that were the Land Compensation claim of £290,000 and contractor’s claim of £344,000 settled in such a way that the applicant did not need to pay out, the financial benefit to Phase 10 would be £29,745 or thereabouts. The proportionate saving to Phase 10 from not implementing the Phase 8 pumping station and sewer diversion is £9,383. Combined, these total £39,128.
- 4.10 Set against this is the approximate £50,000 additional expenditure on pre-boring on Phase 10, which cancels out the majority of the potential £39,128 saving leaving a residual £10,872.
- 4.11 The Council’s Viability Consultant has been asked to comment on the current housing market and recent changes within it over the past 12 months. Any response received by the time of the committee meeting will be reported to Members. However, Members are asked to note that to warrant a re-evaluation of the site’s viability there would need to be substantial evidence to suggest that the deficit of £447,313 could be recovered from money available elsewhere within the development. In other words, that there is a material difference. Based on the figures above a saving of to date of circa £10,872 has been potentially identified, which would not in itself represent a materially different saving to warrant reviewing the VA.

5.0 IMPACT OF REJECTING THE VIABILITY APPRAISAL

5.1 The report above has set out that Phase 10 is an unviable site whether or not Affordable Housing is provided through the Section 106. Members are asked to note that the applicants have to date continued working to deliver the site, subject to the outcome of this Deed of Variation, as a sign of their commitment to delivering and completing the Lawley SUE and the 3,300no. homes and employment opportunities it comprises.

5.2 Officers request that Members remain aware of the following consequences should they be minded to consider rejecting the Deed of Variation:

- Phase 10 is responsible for delivering 6% of the 3,300 homes provided for by Lawley SUE. If Phase 10 cannot be delivered then it becomes a stalled site and the Borough will fail to secure all of the 187no. dwellings approved and has an impact upon the 5-year housing supply for Telford and Wrekin Council;
- Without a planning permission WHG would be unable to gain Homes England funding to bring forward other mechanisms to deliver the identified 19no. Affordable Homes onsite.
- A stalled site would result in the significant loss of local employment opportunities created during the construction period at a time of significant demand for jobs as a result of the Covid-19 Pandemic;
- The Council would lose a significant amount of additional income through the New Homes Bonus;
- Leaving an unsupervised and closed construction site in the Sustainable Urban Extension will have a negative impact on the environment, with potential hazards.
- The Applicants have undertaken due diligence throughout the construction process to date resulting in bespoke abnormal costs for a retaining wall on site. Members are asked to be aware that the Applicants could have avoided some of the escalating costs were they to re-design the retaining wall to a utilitarian and less attractive design. However, the Applicant's commitment to delivering a retaining wall of a more attractive nature, which can support flora and biodiversity in the future, contributed significantly towards the increasing site specific abnormal costs
- The closure of construction sites during the initial stages of the COVID-19 pandemic had a detrimental impact upon site costs and timescales for delivery; in 2021 these impacts have been felt further by the Applicants by way of increased building and supply costs.
- This will further lengthen the time to complete the Sustainable Urban Extension which has been a development site since infrastructure works began in 2005/6 and housebuilding began in 2007.
- The applicant would have a right to appeal which would be reviewed independently by the Planning Inspectorate reviewing the technical evidence of the applicant and the Council. The applicant would also have a right to apply for costs.

5.3 Approving the Deed of Variation would allow the site to continue its development and to deliver the positive outcomes set out in para. 5.2.

6.0 OTHER CONSIDERATIONS

6.1 As mentioned in the previous committee report, the Applicants point out that approval of this Deed of Variation application would provide an opportunity for them to seek Grant Funding for Affordable Housing delivery through Homes England. They propose to seek funding to provide 19no. affordable dwellings on Phase 10, which would amount to 10% of the overall dwellings on site. Such Grant Funding is not available to schemes where Affordable Housing is required by a S106 Agreement and can be delivered as such. The applicants are committed to work with WHG and HE to deliver this.

7.0 CONCLUSION

7.1 Members approved the VA in June 2021, which concluded at the time that the Phase 10 site could justify providing no affordable housing due to its deficit of circa £447,313. The VA and supporting viability information have not changed in that time and Members are being asked to approve the same evidence base as was agreed at Planning Committee on 30 June 2021.

7.2 The deficit of £447,313 would need to be materially improved to warrant undertaking a re-reassessment of the viability. A further explanation of the abnormalities and infrastructure costs highlighted in the RLB letter has indicated a cost saving to date of circa £10,872, which is not a material difference in the context of the overall deficit amount.

7.3 The Council's Viability Consultant and RLB have been asked to comment on this, as well as whether there have been any material changes in the housing market since August 2020 to warrant a review of the viability for Phase 10.

7.4 Subject to receiving this advice, and taking the above factors into consideration, Officers accept the Applicant's justification that the S106 as approved is now unviable with respect to Phase 10 and needs to be reconsidered for the Applicant as a willing developer to bring the site forward. There are no other obligations to renegotiate and as such, the only option is to consider the omission of the Affordable Housing requirement. The Applicant has demonstrated that even with no Affordable Housing provision, the scheme is still unviable.

7.5 Given the above, Officers consider that the benefits in terms of facilitating the site to come forward will significantly and demonstrably outweigh the harm brought about by lack of Affordable Housing provision and as such, it is recommended that the application to vary the S106 Agreement in respect of Phase 10 is approved.

8.0 RECOMMENDATION

8.1 That the Deed of Variation to the Section 106 Agreement be approved.

1.0 PURPOSE OF THIS REPORT

- 1.1 The purpose of this report is to seek a Deed of Variation (DoV) of the S106 agreement, in so far as it relates to Phase 10 of the Lawley Sustainable Urban Extension (Planning Permission ref's.: W2004/0980 and TWC/2010/0828), to remove an obligation to provide Affordable Housing as part of the approved development.
- 1.2 The Applicants have provided a Viability Appraisal to demonstrate that bringing the site forward is not viable with an obligation to provide 25% Affordable Housing. The Applicant is therefore seeking Members approval to remove the obligation to provide Affordable Housing on Phase 10 of the site.
- 1.3 Section 106A of the Town and Country Planning Act sets out the procedure for dealing with requests for modification and discharge of a Section 106 agreement. Where a formal application is made and formal consultation takes place, The Council can refuse a request and there is a right of appeal in respect of a refusal. Where it no longer serves a planning purpose, the Council can agree to discharge the obligation(s).
- 1.4 This application is supported by an Affordable Housing Viability Report which the developers have made available for public view [[view Phase 10 Approach & Overview to Viability Assessment \(Dec 2019\) here](#)].
- 1.5 Appendices to the Viability Assessment are available under the individual links as follows or collectively on the Council's planning website for [TWC/2010/0828](#):
 - [Appendix A Phase 10 Planning Application Layout](#)
 - [Appendix B Accommodation Schedule & Net Selling Prices](#)
 - [Appendix C - BCIS Q2 2020 Shropshire](#)
 - [Appendix D - Residual Land Value Assessment with 12% Affordable Housing](#)
 - [Appendix E - Residual Land Value Assessment with 0% Affordable Housing](#)

2.0 PLANNING HISTORY

- 2.1 Outline Planning Permission ref. W2004/0980 was Granted on 21 October 2005 for '*residential development comprising 3,300 dwellings, employment/mixed-use commercial/leisure development, erection of a primary school and community centre, infrastructure works and associated recreational space and landscaping*' on land at Lawley, Telford.
- 2.2 Section 73 application TWC/2010/0828 was submitted to '*vary Condition 16 of Outline Planning Permission W2004/0980 to exclude the areas comprised within reserved matters application ref TWC/2010/0627 and within plots G4*

and G5 as defined within the phasing plan drawing number 006 rev L' from the effect of Condition 16 and was Granted on 13 December 2013.

- 2.3 The S106 Agreement, entered into by English Partnerships on 21 October 2005 (following Granting of the original Outline Planning Permission) secured the obligation of the developer to provide 25% of the dwellings as Affordable Housing.
- 2.4 Lawley Sustainable Urban Extension (SUE) is being delivered by a developer consortium, who have brought the SUE forward on a phase by phase basis. Since the economic downturn the developers have sought to reduce the amount of Affordable Housing on various Phases as they have been brought forward for reserved matters consent. This has resulted in previous variations to the 2005 S106 Agreement to allow reduced Affordable Housing contributions of 15% on Phase 7 and 8, 12.5% on Phases 5 and 9, and most recently 10% on Phase 11. Phase 11 specifically comprised discounted open market housing as opposed to the general needs Affordable Housing being provided on other phases.
- 2.5 Phase 10 was the subject of a Reserved Matters planning application which was approved on 23 March 2019, ref.: TWC/2018/0732.

3.0 PLANNING POLICY CONTEXT

3.1 National Guidance:

National Planning Policy Framework (NPPF)

3.2 Telford & Wrekin Local Plan (2011-2031)

HO5 Affordable Housing Thresholds and Percentages

HO6 Delivery of Affordable Housing

4.0 SUMMARY OF CONSULTATION RESPONSES

- 4.1 Viability evidence has been presented based on the market value of the land today which proves the development is unviable. Indeed the appraisal without any Affordable Housing still does not provide the appropriate return to the developer in terms of the NPPF requirements.
- 4.5 The Variation, if approved, provides the opportunity for the developer to seek Grant Funding for on-site Affordable Housing delivery. This may enable the developer to provide Affordable Housing on Phase 10 but this outcome is not guaranteed and, when considering this application to vary the planning obligation, members should not assume that grant funding will be available or that on-site Affordable Housing will be provided as a result.
- 4.6 The Council has had the Viability Appraisal independently assessed by an external consultant, who agrees with the detailed viability information provided and supports the Applicant's position.

- 4.7 Housing Officer: The offer of 10% Affordable Housing is welcome in principle noting that this is subject to the agreement of Grant Funding by Homes England.

Notes that it would be reasonable to take account of the recent revised Affordable Housing scheme for Lawley Phase 11 (all 2-bed houses). The revised 10% Affordable Housing scheme represents a reduction of four Affordable Homes (from 23 to 19).

Suggest that all of the Affordable Homes should be Affordable Rent. Comment that all Affordable Homes in Phase 11 are 2-bed, Notes that the four affordable dwellings to be lost should be 2-bed as opposed to 3-bed.

- 4.8 Neighbour Consultation

None received

5.0 BACKGROUND

- 5.1 The Applicant has advised that as a result of the property market downturn from 2008 onwards. As a consequence, all earlier phases of the scheme have been compromised and are unable to deliver the 25% Affordable Housing obligation required in the October 2005 S106 Agreement. Previous viability submissions have been made by the consortium and reviewed by Officers at the Council. They have typically resulted in a negotiated position, accepting that Phases were unviable but a compromise agreed with the developers accepting a lower commercial return (16% profit is allowed for in the land purchase/development agreement) but with the Council accepting circa 12-15% Affordable Housing in return. They are now seeking the support of the Council in making concessions in terms of Affordable Housing provision, to 0%, in order to allow the development to proceed.

- 5.2 Subsequent to the Reserved Matters Approval of Phase 10 and with the benefit of further detailed site constraint analysis and due diligence, additional abnormal development costs were identified affecting Phase 10. These additional abnormal costs related to:

- Ground stabilisation, preparation and remediation;
- Depth of foundation costs;
- Height and retaining structures;
- Build duration extended due to delays in constructing large retaining walls.

The Applicant advises that, overall, these costs are in excess of £650,000 more than anticipated at the time of the reserved matters application. As a consequence, the even lower anticipated profit at 12% Affordable Housing could no longer be sustained.

- 5.3 The Developers and Wrekin Housing Trust (WHT) are in continued dialogue, noting that an indicative offer has been made on the mix proposed for 19 affordable dwellings (10% of total dwellings). It should be noted that this is subject to further consideration by WHT and is predicated on WHT's ability to access Grant Funding, which in turn is predicated on the LPA accepting that fundamentally Phase 10 cannot support the delivery of any Affordable Housing as a S106 planning obligation. Therefore the Applicants are requesting the Council approve a Deed of Variation confirming that 0% S106 Affordable Housing will be delivered on Phase 10 and then via a new side agreement with WHT, the Applicants intend to provide 10% of the units as Affordable using Grant Funding.
- 5.4 The Applicant advises the mix of the units would be fully NDSS compliant as already plotted on the Reserved Matters approved layout, and therefore Grant Funding compliant, on the basis of the following mix:

2 beds (House Type AA22) - Plots 18-20, 21-23, 95-98, 118-121 - **14 Units**
2 bed FOG (House Type PT22) - Plot 122 - **1 Unit**
3 bed (House Type AA31) - Plots 123-126 - **4 Units**

Total - 19 Units

- 5.5 The Applicant advises that Wrekin Housing Trust have confirmed their desire to acquire these units should the Council resolve to approve the proposed Deed of Variation to confirm the proposal as set out.

6.0 PLANNING CONSIDERATIONS

- 6.1 Having regard to the Development Plan policy and other material considerations including comments received during the consultation process, the planning application raises the following main issue:

- Policy Guidance
- Consideration of Viability Position
- Other Considerations

6.2 Policy Guidance

- 6.2.1 The NPPF confirms that pursuing sustainable development requires careful attention to viability and costs in plan-making and decision taking. Para. 57 of the NPPF states *'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. 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 the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning*

guidance, including standardised inputs, and should be made publicly available.'

6.2.2 Para. 64 of the NPPF states *'where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified Affordable Housing needs of specific groups.'*

6.2.3 The Lawley developer consortium are actively developing housing in Lawley thus demonstrating their willingness to deliver housing within the area and upon this site. Evidence to support this claim has been presented in a Viability Appraisal which is considered below.

6.3 Consideration of Viability

6.3.1 In support of the application, a Viability Appraisal has been carried out by Bridgehouse Property Consultants on behalf of the Lawley developer consortium which has been independently assessed by Turley acting on behalf of the Council.

6.3.2 The Viability Appraisal (VA) concludes that when the Phase 10 development is assessed on the basis of policy compliant Affordable Housing provision, with values equating to 62% of market value in line with an overarching agreement negotiated with the Wrekin Housing Trust, the scheme generates a viability deficit of £1,033,869 when the Residual Land Value (RLV) of £316,131 is compared with the Benchmark Land Value (BLV) of £1,350,000.

6.3.3 When assessed on a 100% market sale basis, the VA states that the viability deficit reduces to £447,313 with the appraisal attached at VA Appendix E, generating an RLV of £902,687 in comparison to the BLV, which remains at £1,350,000.

6.3.4 Therefore, following review of and minor amendments to the Viability Appraisal assumptions as deemed necessary, Turley conclude that the provision of Affordable Housing within the Proposed Development is not viable, in agreement with the applicants. It is Turley's recommendation to the Council that provision of 0% Affordable Housing within the proposed development of the Phase 10 site is accepted.

6.4 Other Considerations

6.4.1 As mentioned above, the Applicants point out that approval of this Deed of Variation application would provide an opportunity for the developer to seek Grant Funding for Affordable Housing delivery through Homes England. Such Grant Funding is not available to schemes where Affordable Housing is required by a S106 Agreement. However, when considering this application to vary the planning obligation, members should not assume that Grant Funding will be available or that on-site Affordable Housing will be provided as a result.

7.0 CONCLUSION

- 7.1 Taking the above factors into consideration, officers accept the Applicants justification that the S106 as approved is now unviable with respect to Phase 10 and needs to be reconsidered for the applicant as a willing developer to bring the site forward. There are no other obligations to renegotiate and as such, the only option is to consider the omission of the Affordable Housing requirement. The applicant has demonstrated that even with no Affordable Housing provision, the scheme is still unviable, however, the reduced level of unviability would still allow the scheme to be brought forward.
- 7.2 Given the above, officers consider that the benefits in terms of allowing the site to come forward will significantly and demonstrably outweigh the harm brought about by lack of Affordable Housing provision and as such, it is recommended that the application to vary the S106 Agreement in respect of Phase 10 is approved.

9.0 RECOMMENDATION

- 8.1 That the Deed of Variation to the Section 106 Agreement be approved.