

TWC/2016/0147

Land North of Grove Road, Overdale, Telford, Shropshire

Outline application for residential development with associated access and all other matters reserved

APPLICANT

Mr Evans

RECEIVED

22/02/2016

PARISH

Lawley and Overdale

WARD

Ketley and Overdale

AS THE APPLICATION INVOLVES A VARIATION TO S106 FINANCIAL CONTRIBUTIONS, THIS APPLICATION IS TO BE DETERMINED BY MEMBERS OF THE PLANNING COMMITTEE.

Online planning file:

<https://secure.telford.gov.uk/planning/pa-applicationsummary.aspx?Applicationnumber=TWC/2016/0147>

1.0 SUMMARY RECOMMENDATIONS

1.1 It is recommended that **DELEGATED AUTHORITY** be granted to the Development Management Service Delivery Manager to **APPROVE THE DEED OF VARIATION TO THE S106 AGREEMENT**, subject to the variation set out in the detailed recommendation at para 8.1(A).

2.0 PURPOSE OF THIS REPORT

2.1 The purpose of this report is to seek a Deed of Variation of the S106 agreement, in so far as it relates to residential development of land north of Grove Road, Overdale (outline ref: TWC/2016/0147) to remove all obligations to provide off-site financial contributions, as part of the approved development.

2.2 In addition, the S106 will be varied to give nomination rights to the Council for the proposed affordable dwellings being brought forward by the applicant.

2.3 The S106 agreement, dated 11th November 2016, sought the following off-site financial contributions:

- Education - £62,000.00 towards the expansion/extension of Old Park School;
- Rights of Way - £10,000.00 towards right of way improvements from Grove Road to Waterloo Road;
- Recreation - £24,000.00 towards play facilities at Overdale Playfield and/or Riding Close.
- (plus indexation from the time of the grant of outline consent).

- 2.4 The Applicants have provided a Viability Appraisal to demonstrate that bringing the site forward is not viable with the financial contributions set out within the S106 agreement, as listed above.
- 2.5 Section 106A of the Town and Country Planning Act sets out the procedure for dealing with requests for modification and discharge of a Section 10 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).
- 2.6 This application is supported by a Viability Report which the developers have made available for public view here:

[CBRE Independent Financial Viability Review – Oct 2021](#)

3.0 PLANNING HISTORY

- 3.1 Outline planning permission was granted in 2016 under reference TWC/2016/0147 for residential development with associated access, and all other matters reserved.
- 3.2 It was known at the time of the outline application that due to the sites complex ground works from the previous mine workings, abnormal costs would be high. During the course of this application, the applicants at the time, submitted a Viability Assessment which sought to remove the affordable housing contribution and reduce other financial contributions. Despite these reductions, the predicted commercial return was still considered low.
- 3.3 Since approval of the outline application, it is understood that the applicants had continually marketed the application relatively unsuccessfully due to the site constraints and abnormal costings.
- 3.4 In order to secure the permission, the landowners and applicants (at the time) submitted a reserved matters application (ref: TWC/2019/0902) for the erection of 81no dwellings including details for appearance, landscaping, layout and scale. The layout of the site was in general conformity with an illustrative masterplan which was discussed at length, and agreed at the outline planning stage. Significant discussions/amendments were made to the housetypes to secure a design which was considered to be an enhancement to the local area.
- 3.5 During the course of the reserved matters application, the former landowners reached agreement with a Registered Social Landlord (RSL) Green Square Accord.
- 3.6 Green Square Accord have now acquired the site and are in the process of discharging the relevant conditions and are the applicants seeking this deed of variation.

4.0 PLANNING POLICY CONTEXT

4.1 National Guidance:
National Planning Policy Framework (NPPF)

4.2 Telford & Wrekin Local Plan (2011-2031):
HO5 Affordable Housing Thresholds and Percentages
HO6 Delivery of Affordable Housing

5.0 **SUMMARY OF CONSULTATION RESPONSES**

5.1 Viability Specialist: The Council has had the Viability Appraisal independently assessed by an external consultant (CBRE), who confirms that the viability evidence is presented on the market value of the land today which proves the development is unviable. Indeed the appraisal, based on a wholly affordable scheme which is the intention of the applicants, still does not provide the appropriate return to the developer in terms of the NPPF requirements, which is a material consideration. The site is only made viable through the requisition of external funding, which is discussed below.

5.2 Internal Consultees: None received.

5.2.1 Informal discussions were held with the Education Team and Rights of Way Teams whom advised that they had no objection to the loss of contributions in light of the findings of the Viability Appraisal.

5.2.2 The education contributions were being sought for improvements/enhancement to Old Park School and the Education Team advises that an expansion was undertaken in 2016 giving the school greater manoeuvrability with class sizes. They have also confirmed that there are no other plans for expansion/improvement at present.

5.2.2 The rights of way contributions were being sought for improvements to the public right of way (PROW) from Grove Road, behind the houses at Ercall View and leading to the open space area at Waterloo Road; Overdale Play Area. Improvements would have included resurfacing the PROW to provide improved accessibility for future residents however, the loss of this contribution is not considered to be an overly significant issue as access to the open space via the adopted highways is only marginally greater in distance.

5.3 Neighbour Consultation: None received

6.0 **BACKGROUND**

6.1 Previous viability submissions have been made by the former landowners/applicants for this site which had been reviewed during the outline stage (TWC/2016/0147). This resulted in a negotiated position, and Planning Committee appreciated that the site was unviable, and that a compromise that Officers had negotiated was acceptable, recognising that the landowners accepted a lower commercial return.

- 6.2 The site has subsequently been purchased by the applicants Green Square Accord (GSA) a Registered Social Landlord. GSA are seeking to develop the site for affordable rent dwellings and in doing so, are also committing to the nomination rights being given to the Council through the variation to the S106 agreement.
- 6.3 GSA can only assume that the true abnormal costs were significantly underestimated in the previous Viability Assessment at outline stage. The abnormal costs include, but are not limited to, remediation of the former opencast coal mining works and highcast wall, piling and retaining structures due to the presence of former coal mining works, and noise impact measures due to the proximity of the M54. The applicants advise that the costs included in the submitted Viability Assessment for this deed of variation are not estimations of costs but true actual costs following a competitive tendering process of the various contract works packages undertaken over the last 12 months.
- 6.4 They are now seeking the support of the Council in making concessions in terms of removing the remaining financial contributions (set out at para 2.3 above) in order to allow the development to proceed.

7.0 PLANNING CONSIDERATIONS

7.1 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
- Other Considerations - Affordable Housing

7.2 Policy Guidance

7.2.1 The NPPF confirms that pursuing sustainable development requires careful attention to viability and costs in plan-making and decision taking. Para 58 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.'

7.2.2 The application site was previously approved with affordable housing having been removed from the planning obligations. As such, the involvement of an RSL to bring forward a wholly affordable scheme in the 'Built-up Area' is considered to be a significant benefit to the local area and Borough as a whole, and wholly compliant with the Local Plan and NPPF.

7.2.3 The applicants are currently in the process of discharging their final conditions and have started to make progress on the removal of earthworks on-site. Their willingness to deliver housing within the area and upon this site is therefore evident with a letter of commitment dated 9th December 2021 having been submitted, which also sets out their agreement to nomination rights being provided to the Council for the proposed affordable rent dwellings.

7.3 Consideration of Viability

7.3.1 In support of the application, a Viability Appraisal has been carried out by the applicants, which has been independently assessed by CBRE acting on behalf of the Council.

7.3.2 What should be made clear is that this permission is currently for a wholly open-market development, with the site having been previously released from its affordable housing obligation at outline stage due to viability concerns.

7.3.3 Subsequent to the Reserved Matters Approval (TWC/2019/0902) and with the benefit of further detailed site constraint analysis and due diligence, a more detailed understanding of the abnormal development costs has been identified. The Applicant advises that, overall, these costs are in excess of those estimated at outline stage.

7.3.4 The Viability Report submitted by the applicants seeks to demonstrate that an open-market scheme remains unviable and the return for the developers/sales risk isn't sufficient. Even with the removal of the planning obligations, an open-market development would result in a significant loss financially.

7.3.5 This applicants advise that the site has only been able to come forward successfully on the basis of an acquisition by an RSL which allows for external funding to be received from Homes England, which must be done so outside of the S106 agreement. This funding acts as a 'top-up' to the RSL to allow the RSL to acquire units for sums in excess of traditional affordable housing secured via S106 agreement, and without grant.

7.3.6 This effectively means that the developer becomes a contractor (with a role limited to managing and delivering the construction of the scheme), with a guaranteed handover to the RSL. This means sales/funding risk is significantly reduced, and profit accordingly.

7.3.7 Even allowing for this, there is no further sums available for other S106 planning obligations.

- 7.3.8 The abnormal costs are in the region of £2 million, and according to the applicants, have increased further since the submission of this application. *(N.B. by the 21st September 2021, the applicants advised that abnormal costs had already increased by a further £66k)*
- 7.3.9 The Viability Appraisal (VA) produced by CBRE, despite some adjustments to the figures produced by the applicant, concludes that the scheme generates a viability profit of £846,285.00 which provides a developers profit of 7%.
- 7.3.10 Planning Practice Guidance - Viability (PPGV) states that an appropriate range for developer's return (for the purpose of Plan-making, which should subsequently inform decision-taking) equates to a range of 15-20% on Gross Development Value (GDV), with the rate appropriately adjusted for risk. It is CBRE's view that the appropriate developer's return for the Development of the site, as permitted, should be 20% on GDV⁹. This is due to the relatively significant constraints and abnormal works costs for a Site of this scale, which act as impediments, and would be expected to pose heightened construction risk of both cost escalation (via unknowns) and potential delays in delivery.
- 7.3.11 The developers profit for this site falls below the expected range of 15-20% set out in the Planning Practice Guidance - Viability (PPG-V).
- 7.3.12 Therefore, following review of the Viability Appraisal, CBRE conclude that the provision of financial contributions within the proposed development is not viable, in agreement with the applicants. It is CBRE's recommendation to the Council that provision of nil (£0) financial contributions within the proposed development site is accepted, and in accordance with National Planning Policy Framework.

7.4 Other Considerations - Affordable Housing

- 7.4.1 As a Local Planning Authority (LPA) we do not have control over the delivery model in which the developer employs, and ultimately, the development of this site can viably only come forward in the format being put forward by GSA.
- 7.4.2 Whilst evident that any open-market scheme on this site is entirely unviable, the applicants have secured grant funding from Homes England to bring the site forward as a wholly affordable rent scheme.
- 7.4.3 Whilst we are unable to secure the affordable housing through S106 agreement, as such funding is not available to schemes where affordable housing is secured by S106 agreement, the provision of 100% affordable rent development site is considered a significant benefit to the Borough and is a material consideration which is afforded weight when considering this application. The delivery of Affordable Housing outside of S106 controls is an important delivery mechanism for the Council, as approximately 60% of all affordable housing delivered in the Borough over the past 5 years has been outside of planning controls – whether S106 planning obligations, or planning conditions.

7.4.4 In order to provide the Council with some level of control over the future of the affordable housing on-site, the applicants have offered that the S106 is varied to give nomination rights to the Council.

7.0 CONCLUSION

7.1 Taking the above factors into consideration and following independent review, Officers accept the Applicants justification that the existing S106 is now unviable and must be reconsidered as set out in the NPPF.

7.2 The applicant has demonstrated that even with no off-site financial contributions, an open-market scheme is still unviable.

7.3 Members should will be aware that this is a stalled site, with the original application having been submitted 10 years ago in 2011. It was sold on the open-market to an RSL, as there was no interest from developers for an open-market scheme due to the significant abnormal costs and risk associated with these. The proposal put forward now is a reflection of the situation as it stands today, with detailed abnormal costs having now been calculated.

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 off-site financial contributions and as such, it is recommended that the application to vary the S106 Agreement is approved.

8.0 RECOMMENDATION

8.1 Based on the conclusions above, it is recommended that Delegated Authority be granted to the Service Delivery Manager to **APPROVE THE DEED OF VARIATION TO THE S106 AGREEMENT** subject to:

- A) The removal of all existing planning obligations
- B) The insertion of Nomination rights being granted to the Council as a priority to accommodate local needs.