

TWC/2019/0104

Land between Hartfield House/41, Pool Hill Road, Horsehay, Telford, Shropshire  
Outline application for the erection of up to 36no. dwellings and access with all other  
matters reserved \*\*\*AMENDED DESCRIPTION\*\*\*

**APPLICANT**

Homes England

**RECEIVED**

04/02/2019

**PARISH**

Dawley Hamlets

**WARD**

Horsehay and Lightmoor

**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-applicationssummary.aspx?applicationnumber=TWC/2019/0104>

**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.

**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 36no. Dwellings on land at Pool Hill Road and Doseley Road, Horsehay (outline ref: TWC/2019/0104) to remove a proportion of planning obligations to provide off-site financial contributions, and reduce the amount of affordable housing provided as part of the approved development.
- 2.2 The S106 agreement, dated 26<sup>th</sup> April 2021, sought the following off-site financial contributions, alongside 25% (9 units) of affordable housing:
- Education - £155,363.00 divided into £108,587.00 towards the provision of primary schools, and £46,776.00 towards the provision of secondary schools;
  - Highways - £19,285.00 towards road improvements to the Pool Hill Road and Doseley Road junction;
  - Recreation/Children's Play - £600 per dwelling up to a maximum of £21,600.00 towards the enhancement of public open space and the upgrade of a nearby play facility at Shirefields Way or Dawley Park;
  - (Plus indexation from the time of the grant of outline consent).

- 2.3 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 and that the affordable housing percentage would need to be reduced to 22%.
- 2.4 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).
- 2.5 This application is supported by a Viability Report prepared by Highgate (dated July 2022) which the developers have made available for public view here:

[TWC/2019/0104 Application Documents](#)

- 2.6 The report sought the removal of all planning obligations, alongside a reduction in the affordable housing provision from 25% to 22% (a reduction from 9 to 8 units) in order as the development is currently unviable.
- 2.7 CBRE subsequently reviewed the report and provided a formal assessment, which raised some queries surrounding the submission. The Applicants provided a response and CBRE subsequently prepared an addendum in April 2023 confirming that the development is currently unviable as proposed.
- 2.8 In recognition of the importance of securing the highways contributions for the identified improvement works to the Pool Hill Road/Doseley Road junction, Officers have negotiated the provision of the £19,285.00 sum originally agreed for this purpose, in lieu of one of the affordable units. The Applicant is therefore now seeking to provide the £19,285.00 (£23,270.55 including indexation) as a highways contribution, and 7 affordable housing units as part of this Deed of Variation.

### **3.0 PLANNING HISTORY**

- 3.1 Outline planning permission was granted in 2019 under reference TWC/2019/1014 for residential development with associated access, and all other matters reserved.
- 3.2 Central and Country (the current Applicant) submitted the reserved matters application (TWC/2022/0478) in May 2022 which was subsequently approved and are now in the process of discharging the relevant conditions and the applicants are 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. The appraisal identifies that the scheme 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 removal of the planning obligations, a reduction in affordable housing provision and through securing external funding, which is discussed below.
- 5.2 Internal Consultees: None received.
- 5.2.1 Informal discussions were held with the Education Team and Healthy Spaces Teams who advised that they accepted the findings of the Viability Appraisal that the scheme was not viable with the contributions towards Education and Recreation.
- 5.2.2 **Cllr Jayne Greenaway:** Object
- Considers the removal of the education contribution to be contrary to Policy COM1 of the TWLP as development is expected to support existing community facilities and ensure the demand from new development is met;
  - Considers the removal of the highways contribution would have significant impacts upon the road network as the cumulative impact of new developments is already impacting the area. There are limited footpaths and lighting, causing safety issues for pedestrians;
  - Objects to the loss of 3% affordable housing, along with all other contributions for the development.
- 5.2.3 **Dawley Hamlets Parish Council:** Object
- The developer has been aware of the contributions required since they purchased the site and removal of the contributions makes the scheme unacceptable;
  - Would not support the reduction from 25% affordable housing provision;
  - The Education contribution is a requirement to go towards local provision and needs to be acknowledged;
  - The road infrastructure in the area is poor, therefore the highways contribution is also required.

- The recreation contribution also needs to remain in place however the Parish Council questions the need for it to go towards Shirefields or Dawley Park and instead requests it is used on site.

5.3 Neighbour Consultation: None received

## 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 and Affordable Housing

### 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 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.'*

### 6.3 Consideration of Viability and Affordable Housing

6.3.1 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. The original Viability Report submission has been followed by additional information being provided by the Applicant where required and several responses being prepared by CBRE to assess the report.

6.3.2 Subsequent to the Reserved Matters Approval (TWC/2022/0478) and with the benefit of further detailed site constraint analysis and due diligence, a more detailed understanding of the development costs has been identified. The Applicant advises that, overall, these costs are in excess of those estimated at outline stage.

- 6.3.3 The Viability Report submitted by the applicants seeks to demonstrate that the current scheme is unviable and the return for the developers/sales risk would not be sufficient. The report indicates that with the £196,248.00 of planning contributions and 25% affordable housing, the developer's viability residual profit would be 3.15% (£384,202).
- 6.3.4 The Viability Report notes a number of changes to the market which have significantly impacted upon the development's viability, namely impacts from the Covid 19 Pandemic, on-going build cost pressures which could outpace the house price rises and continual rises in inflation.
- 6.3.5 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 18.32% on GDV.
- 6.3.6 As the developer's profit was indicated to be around 3.15%, this figure falls far below the expected range of 15-20% set out in the Planning Practice Guidance - Viability (PPG-V). CBRE provided a formal response to the Viability Report, raising questions surrounding the abnormal development costs, profit margins and external funding to be provided. The Applicants then updated the report and provided further information which CBRE then used to make their recommendations, in the form of an addendum to their original response. Following a significant amount of discussion, CBRE provided their final response on 28<sup>th</sup> April 2023 which confirms that the developer's profit margin would be approximately 17.89% based on the provision of 22% affordable housing and no planning obligations being provided.

Therefore, CBRE conclude that the provision of financial contributions within the proposed development is not viable, in agreement with the applicants. They confirm that the 22% affordable housing provision and planning obligations could not both be delivered for this development.

- 6.3.7 This Deed of Variation by the Applicants proposes to remove all financial contributions and reduce the affordable housing provision to 22% (8 units). The revised profit margin for the Applicants of 17.89% would fall within the expected range of 15-20% within the PPGV. This includes a loan of £4million and grant funding of £432,000 from the West Midlands Combined Authority (WMCA) that the Applicant has had approved to assist with delivery.
- 6.3.8 It is noted by the LPA that the developer's profit margins would still be low when compared to the expected figures in the PPGV, the maximum amount of external funding is already secured to assist with the delivery, and no further funding is available to provide the planning obligations. The outturn profit would fall just short of the target risk adjusted developer's return of 18.32%. It would therefore be reasonable to accept the developer's proposals to remove all planning obligations and reduce the affordable housing provision based on the figures alone.

6.3.9 However the LPA recognise the importance of securing contributions, particularly highways contributions where in this case funds have already been allocated for improvements to the Pool Hill Road/Doseley Road junction. As a result, Officers have negotiated with the applicant for the Highways Contribution fee of £19,285.00 (£23,270.55 including indexation) to be secured, in lieu of one of the affordable units. The LPA note that this agreement would still result in a profit below 20% for the developer and therefore this agreement would be a reasonable compromise to ensure some obligations and affordable units are delivered.

6.3.10 The Applicant has accepted this compromise, and agreed to provide the contribution sought for Highways along with 20% affordable housing (7 units). 20% is the minimum affordable housing provision required to secure the WMCA loan and grant funding to assist with the delivery of the development.

6.3.11 The 7 Affordable Housing Units would be delivered as Discount Market Sale (DMS) units, sold at 80% of the market value, which the viability report has taken into account as part of the overall profit margins.

## **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 the affordable housing provision and financial contributions cannot both be delivered in full as part of the development however have agreed that the Highways Contributions of £23,270.55 (including indexation) and 20% affordable housing provision can still be delivered.

7.3 The proposal put forward now is a reflection of the situation as it stands today, with detailed abnormal costs having now been calculated including the changes in the housing market, build costs and inflation.

7.4 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 the lack of provision of full 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 a proportion of the existing planning obligations from the original agreed sum of £196,248.00 to £23,270.55 (including indexation) only.
- B) The reduction of the affordable housing provision being provided, from 9 units (25%) to 7 units (20%).