

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

27/03/2020

PARISH

Dawley Hamlets, Lawley and Overdale

WARD

Horsehay and Lightmoor, Ketley and Overdale, Malinslee and Dawley Bank, Wrockwardine

1.0 PURPOSE OF THIS REPORT

- 1.1 The purpose of this report is to seek authority to amend the current Section 106 (S106) Agreement, insofar as it relates to Phase 11 of the Lawley Sustainable Urban Extension (planning permission ref: W2004/0980 and TWC/2010/0828), to vary 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 the Committee's approval to vary the obligation to provide 10% Affordable Housing on Phase 11 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 S106 Agreement. Where a formal application is made, 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 11 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 11 Planning Application Layout](#)
 - [Appendix B Accommodation and Net Selling Prices](#)
 - [Appendix C Compliant 25% Affordable Land Value Assessment](#)
 - [Appendix D BCIS Q4 2019 Shropshire](#)
 - [Appendix E 100% Private Residual Land Value Assessment](#)

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. Condition 16 related to the carrying out of mitigation works on M54 Junction 6.
- 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, and more recently 12% on Phases 5, 9 and 10.
- 2.5 Phase 11 is currently the subject of a Reserved Matters planning application which is pending consideration (TWC/2020/0047).

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.

- 4.2 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.
- 4.3 Despite this the applicants have offered to provide 10% affordable housing in the form of discounted open market value homes. These would be offered with a 30% discount on the open market value. The applicants have suggested including provisions in the Deed of Variation to ensure that the proposed affordable units are kept affordable at 70% of market value in perpetuity. Further, the applicants have asked for flexibility to deliver this affordable housing as "First Homes" if the government's First Homes policy has been introduced before the affordable housing has been delivered on Phase 11. (If this First Homes policy has not been introduced in time, the applicants will deliver these dwellings as discounted market dwellings).
- 4.4 The Ministry of Housing, Communities & Local Government (MHCLG) have recently consulted on a new model for provision of affordable housing which may come forward that would allow first time buyers to purchase affordable housing at a discount of 30% of market value. The proposed scheme is named "First Homes". However, the details of this scheme are not completely clear at this moment in time. The draft Deed of Variation that has been presented to the Council ensures that the proposed 10% affordable housing will be secured as discounted open market affordable housing with an option to provide the 10% affordable housing as First Homes under any future scheme should one come forward. In these circumstances officers consider it is appropriate for Members to accept the applicants' offer of 10% discounted open market homes with scope to switch to the First Homes model if the government has introduced it in time.
- 4.5 TWC Housing Team: **Comment**
 - The proposed Affordable Housing scheme includes 60no. affordable two bedroom houses. This represents 10% of the total homes to be provided on this development phase;
 - The proposal is for all of the affordable dwellings to be for discounted home ownership (30%) – these may switch to provision as part of the government's 'First Homes' scheme as and when this commences. The actual start date of 'First Homes' has not yet been announced.
 - An affordable housing scheme for rent and shared ownership would be preferred. This proposal will be less affordable and accessible, while higher income levels and higher deposits will be required for 'First Homes' compared to Shared Ownership.
 - If the discounted home ownership proposal is considered acceptable this should be provided following all of the principles of 'First Homes', as

published. This includes meeting eligibility criteria, giving initial priority for local people, value and income caps, occupancy requirements and resale arrangements (including ensuring the discount continues to be applied in perpetuity). This will help to ensure that there is a seamless transition when First Homes commences.

- In addition the developer must be responsible for the sale and administration of these homes, and for ensuring that the conditions are met. They must also ensure that appropriate arrangements and funding are provided for the administration of future resales (net of specific funding from government). These should all be provided for in the S106 Agreement.
- The proposed draft variation to the S106 scheme does not appear to be as comprehensive as First Homes and also appears to place the responsibility for administering the scheme on the Council. The variation also appears to give discretion to the scheme owner about whether to switch to First Homes.

4.6 Neighbour Consultation Responses

None received

5.0 **BACKGROUND**

5.1 The Applicant has advised that as a result of the property market downturn from 2008 onwards, 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 Council Officers. Such submissions 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. The Applicant is now seeking the support of the Council in making concessions in terms of Affordable Housing provision, to 10%, in order to allow the development to proceed.

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 issues:

- Policy Guidance
- Consideration of Viability Position

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 and have a Reserved Matters application for Phase 11 under consideration, 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 (VA) 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. [View Viability Appraisal Review by Turleys here.](#)
- 6.3.2 The Viability Appraisal (VA) concludes that when the Phase 11 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 £4,770,000 when the Residual Land Value (RLV) of £3,930,000 is compared with the benchmark land value (BLV) of £8,700,000.
- 6.3.3 When assessed on a 100% market sale basis, the VA states that the viability deficit reduces to £1,100,000 with the appraisal attached at VA Appendix E, generating an RLV of £7,617,000 in comparison to the BLV, which remains at £8,700,000.

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 11 site is acceptable.

6.3.5 As mentioned above, the Applicants have offered to provide 10% affordable homes in the form of discounted open market units.

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 11 and needs to be reconsidered for the Applicants as willing developers to bring the site forward. There are no other obligations to renegotiate and as such, the only option is to consider the variation of the Affordable Housing requirement.

7.2 As a result of 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 reduction of Affordable Housing provision within the S106 to 10%, and as such, it is recommended that the application to vary the S106 Agreement in respect of Phase 11 is approved.

8.0 RECOMMENDATION

8.1 That authority be delegated to the Development Management Service Delivery Manager to agree terms to vary the original Section 106 agreement dated 21st October 2005, insofar as it relates to Phase 11, to

- (i) secure 10% affordable housing as discounted open market affordable housing, and
- (ii) to enable, if appropriate, the 10% affordable housing to be provided as First Homes under any future government scheme, should one come forward before the affordable housing has been delivered.