

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, Lawley and Overdale

WARD

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

1.0 PURPOSE OF THIS REPORT

- 1.1 This Deed of Variation (DoV) was previously presented to Planning Committee dated 30 June 2021 whereby Members Resolved to Grant the Deed of Variation. In dialogue since that Resolution, and through no fault of the Developer, Taylor Wimpey, it is apparent that the information presented to Planning Committee at that time was not a true reflection. The Deed of Variation is once again being presented to Members of the Planning Committee to reconsider their Resolution in-line with the submission as outlined within this Report.
- 1.2 The purpose of this report is to seek a Deed of Variation 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.
- 1.3 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.
- 1.4 Section 106A of the Town and Country Planning Act sets out the procedure for dealing with requests for modification and discharge of a Section 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).
- 1.5 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](#)].
- 1.6 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 undertaken.

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.

6.4.2 The applicants have confirmed that the lack of viability in the site prevents them from substituting the 4no. 3-bed affordable units being omitted with 2-bed units. Whilst Officers would prefer to keep the 3-bed units and lose the 4no. 2-bed units instead, it is accepted that the benefits achieved overall from the 10% affordable housing offer outweigh the disadvantages of losing the 3-bed units instead of the 2-bed 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 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.

8.0 RECOMMENDATION

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