

Report to Planning Committee

Application Number:	2013/0836
Location:	Land at Cornwater Fields, Longdale Lane, Ravenshead.
Proposal:	Application to Vary Section 106 Planning Obligations.
Case Officer:	Nick Morley

Background

As a stimulus to economic growth, the Growth and Infrastructure Act 2013, introduced Sections 106BA, BB and BC into the Town and Country Planning Act 1990. This allows the modification or discharge of the affordable housing elements of Section 106 planning obligations in order to make developments that can be demonstrated by the applicant to have stalled due to economically unviable housing requirements, come forward for development.

Relevant Planning History

In October 2014 outline planning permission was granted for the erection of 70 dwellings, including access, equipped play area and open space, under application no: 2013/0836. This permission is, amongst other things, subject to a Section 106 planning obligation with the Borough Council for the provision of nine affordable two-bedroom bungalows on the site and a commuted sum for the provision of 12 affordable units off-site.

Proposal

An application has been made to the Borough Council under Section 106BA to remove the whole of the affordable housing requirement from the planning obligation attached to outline planning permission no: 2013/0836 on viability grounds.

In support of the application, it is stated within the Section 106BA application that the joint landowners have undertaken a comprehensive assessment of the development having had the opportunity to obtain estimates for the various abnormal construction costs associated with this scheme and have come to a conclusion that the impact of these costs, in tandem with the requirement for £0.5 million of infrastructure contributions, and 30% affordable housing renders the project economically unviable and undeliverable in its current form. The development has therefore effectively stalled and cannot progress with the current level of affordable housing.

The application is accompanied by a Viability Appraisal, which concludes that:

- Even with 0% affordable housing, the development still demonstrates negative viability of -£207,000 and illustrates the even before affordable housing discounts are applied, the costs of the overall development compared to the projected value do not allow for a reasonable development profit or return for the landowners.
- The additional impact of 30% affordable housing provision is illustrated by the Viability Appraisal, which shows that negative viability increases by around £1.4 million to -£1.67 million.
- The primary reasons that affordable housing delivery is not viable in this location are the abnormal site development costs of £420,000 and the Section 106 planning obligation infrastructure contributions of £501,000.
- The conclusion is that if the scheme is to deliver new housing in this location, then the developer will have to accept reduced returns, but that there is no additional margin for affordable housing. The Appraisal demonstrates that the overall viability position becomes positive with a reduced 18% developers return and it is hoped that the scheme could proceed on this basis, if the affordable housing requirements are removed.
- It is considered by the applicant that up to date evidence of viability has been provided demonstrates that the development is not capable of providing any affordable housing based on current market conditions. The applicant therefore seeks to vary the terms of the current Section 106 planning obligation in accordance with the provisions of Section 106BA of the Act to remove all requirements for affordable housing delivery for a period of 3 years.

Planning Considerations

The Borough Council as local planning authority must assess the affordable housing obligation and decide whether it prevents the development from being economically viable.

If the Borough Council finds that the obligation remains economically viable, it has no choice but to keep the obligation as it is. However, if the Borough Council finds that the obligation prevents the development from being economically viable, then it has to deal with the application in a way that safeguards and promotes the economic viability of the proposed development. In order to achieve this, the Borough Council has three options:

1. It can modify the obligation, either in the way the application suggests or in another way if more appropriate;
2. It can replace the obligation in the way the application suggests or with another obligation, if more appropriate; or
3. It can remove the obligation altogether

The applicant may appeal to the Secretary of State if:

1. The Borough Council does not make its determination within the prescribed period;
2. The application is refused; or
3. The Borough Council modifies the obligation in a different way to that suggested in the application.

The Borough Council's Housing and Planning Officers have held open and constructive dialogue with the applicants consultants from the outset of the application being lodged. At the agreement of the applicants agent, and as per Gedling Borough Council's Affordable Housing Supplementary Planning Document, an independent Viability Appraisal was sought from the District Valuer at the land owner's expense.

The District Valuer's report concluded that the site was viable with a requirement for 30% affordable housing, comprising affordable contributions of 9 affordable bungalows on-site and a £964k off-site commuted sum. The District Valuer's report has been shared with the applicant and challenges to the findings in response have been discussed and refuted. Furthermore, Housing and Planning Officers have offered to attend a meeting with the District Valuer and agent to discuss the findings but this has been rejected by the agent.

Following the above, the Borough Council received a revised proposal, stating that an off-site contribution of £404,502 could be provided, with no affordable on-site accommodation.

Furthermore, in order to test the District Valuer's findings and respond to further comments from the applicant, the Borough Council commissioned its own Viability Appraisal, which agrees with the findings of the District Valuer that the site is viable with full affordable housing contributions equivalent to 30%.

It is considered that the additional appraisal reaffirms the view of the District Valuer, that the site can make affordable housing contributions at 30% and remain viable.

The Borough Council is therefore unable to agree with the applicant's Viability Appraisal and disputes that the site has stalled on viability grounds

Government guidance indicates that "it is for the developer to demonstrate to the Local Planning Authority and to the Planning Inspectorate on appeal that the affordable housing obligation as currently agreed makes the scheme unviable in current market conditions." The guidance goes on to emphasise that "the developer will need to submit clear, up to date and appropriate evidence". In this case, it is considered that the applicant has failed to do this and that there is no alternative but to recommend refusal of the application.

Recommendation:

That the Borough Council determines under Section 106BA that the affordable housing requirement in the planning obligation attached to outline planning permission no: 2013/0836 is to continue to have effect without modification or replacement.