

The applicant has made a formal application under Section 106BA of the 1990 Town and Country Planning Act to revise the affordable housing contribution requirement in the planning obligations entered into by them prior to the grant of outline planning permission (13/00970/OUT) for residential development (to a maximum of 100 dwellings) on the land north of Pepper Street, Keele.. The revision sought is a reduction in the level of affordable housing to be provided within the development from 15% of the total number of dwellings to 6%.

The 28 day determination period for this application expired on 21st May 2015 however the applicant has agreed to an extension of time for the determination of the application until 27th May.

RECOMMENDATION

Subject to your officers having established, by the application of information from indices to the key elements of the District Valuer's previous appraisal, the likely current position and being satisfied that his conclusion can still be sufficiently relied upon, the planning obligation associated with planning application 13/00970/OUT for residential development (to a maximum of 100 dwellings) be modified to reduce the requirement for the affordable housing contribution to 6% of the total number of dwellings constructed, 3% social rented and 3% shared equity for a period of 4 years after which it reverts to the original affordable housing obligation, such modification only relating to those dwellings completed within that period.

Reason for Recommendation

The applicant has submitted an application under section 106BA of the Town and Country Planning Act to review the affordable housing contribution secured by planning obligation for a residential development of the site at Pepper Street granted consent under application reference 13/00970/OUT.

The basis for the applicant's submission is that after an independent review of the applicant's additional evidence of the costs involved in the cut and fill element of the remediation of the spoil heap fire, the District Valuer advised that the developer profit would not be sufficient to allow for an affordable housing contribution at the level subsequently secured within the planning obligation. On this basis it is therefore considered that the current cost of building out the entire site (at today's prices) is not at a level that would enable a competitive return to a willing developer and a willing landowner as required by the national planning guidance in relation to viability.

Subject to your officers confirming, following the obtaining of indexation information, that they consider that the conclusions of the District Valuers October 2014 report can continue to be sufficiently relied upon it is considered that the affordable housing contribution of 15% of the total number of dwellings constructed, contained within the planning obligation dated 2nd April 2015 in respect of 13/00970/OUT, can no longer be justified, and it is recommended that the Planning Obligation is modified accordingly to reduce this requirement to 6% of the total number of dwellings. It is considered that a 4 year time limit should be imposed on this modification so that if the development is not completed in that time the original affordable housing obligation will apply to those parts of the scheme which have not been commenced.

Key Issues

The applicant has made a formal application under Section 106BA of the 1990 Town and Country Planning Act to reduce the affordable housing contribution requirement in the planning obligations entered into prior to the grant of to the previous planning permission for development of the site (13/00970/OUT). Section 106BA was introduced by Government through the Growth and Infrastructure Act, 2013 specifically to allow such a request to be made in a case where the applicant considers that the contribution makes the scheme unviable. The applicant's claim is that the

affordable housing obligation as currently agreed makes the scheme nonviable in current market conditions and that the only method of bringing this site forward is to reduce the affordable housing contribution to 6% of the total number of dwellings. This request is supported by information relating to the viability of the proposal.

The Government is keen to encourage development to come forward to promote construction and economic growth. The Growth and Infrastructure Act 2013 inserted Sections 106BA, BB and BC into the 1990 Town and Country Planning Act which introduce a new application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing.

The National Planning Policy Framework paragraph 173 states: 'to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking in account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.'

The Government publication Section 106 Affordable Housing Requirements Review and Appeal gives guidance on the process for determining applications submitted under s106BA.

Paragraph 10 of the document states that 'The test for viability is that the evidence indicates that the current cost of building out the entire site (at today's prices) is at a level that would enable the developer to sell all the market units on the site (in today's market) at a rate of build out evidenced by the developer, and make a competitive return to a willing developer and a willing landowner'.

The applicant submitted a viability assessment (the 'Grasscroft' appraisal) prepared in November 2013 with the application for outline planning permission. The District Valuer was subsequently instructed by the Borough Council and submitted his own appraisal on 9th June 2014. Following further exchanges of information with the applicant, he then revised on 23rd July 2014 certain conclusions and in effect updated his report. At that time the District Valuer was not convinced that all of the costs and values identified by the applicant in the 'Grasscroft appraisal' were justified, in particular he considered that the costs identified within that appraisal for the cut and fill element of the remediation of the spoil heap fire were larger than he could accept based upon the information provided. His conclusion was that if 15% of on-site affordable housing was secured on site there would be £371,127 available for contributions towards the provision of education places and travel plan monitoring costs.

The Planning Committee accepted the advice received and at its meeting of 5th August 2014 resolved to grant planning permission subject to the applicant entering into planning obligations to secure, amongst other things, 15% affordable housing and a financial contribution totalling £371,127 towards schools, and travel plan monitoring.

Following the decision of the Planning Committee (but prior to the eventual completion on the 2nd April of the legal agreement with these obligations and the consequential issuing of the planning permission on the 13th April) the applicant provided further quotes as to the costs of the cut and fill element which were similar to the costs that Grasscroft had identified in their Viability Appraisal. On the basis of the evidence of the additional quotes the District Valuer accepted that costs were significantly higher than he had included in his assessment of viability (by in the region of around £325,000). He advised in correspondence to the Council dated 15th October 2014 that taking into account the additional costs the development could only viably support 6% affordable units, 3 of which being social rented and 3 shared ownership.

Although the guidance on these types of applications envisages the submission of a revised appraisal the circumstances here are somewhat unusual, with the DV already having provided further information superceding that which the LPA took into account in determining the application and setting out what the LPA considered was required. The critical question appears to be whether it is reasonable to now rely upon such advice, bearing in mind when it was provided. It is standard practice for the District Valuer to always caveat that their advice is valid for 3 months from its date, and indeed that even this is subject to market circumstances not changing, or further or better information coming to light, which would cause them to revise their opinion.

As to whether there are sufficient grounds to consider that a different conclusion *might* be reached on what level of affordable housing is now viable, your officer is aware that construction costs are likely to have risen since last October. Whilst no further advice has been taken from the District Valuer since the submission of this application, prior to the Committee the intention is to seek information on the key indices that are understood to be available and apply them to the District Valuer's previous appraisal – which should give a further signal as to whether the October 2014 District Valuer's appraisal can still be relied upon.

On this basis, it is at present recommended that the affordable housing contribution of 15% of the total number of dwellings constructed, contained within the planning obligation dated 2nd April 2015 in respect of 13/00970/OUT, can no longer be justified, and that the Planning Obligation is modified accordingly to reduce this requirement to 6% of the total number of dwellings.

Section 106BC of the Act ensures that if an Inspector modifies an affordable housing obligation on appeal, that modification is valid for 3 years. If the development is not completed in that time, the original affordable housing obligation will apply to those parts of the scheme which have not been commenced. This is to incentivise developers to build out as much of their scheme as possible within 3 years as they cannot secure the revised affordable housing requirement across the whole scheme if they have only partially commenced. The guidance set out in the DCLG document referred to below suggests that Local Planning Authorities may wish to make similar time-limited modifications or conditions when considering an application under Section 106BA. It is considered that a time limit should be applied to the modification as recommended. In this case, however, in recognition of the significant site preparation works and that this is an outline planning permission with no approval of reserved matters in place a more reasonable period would be 4 years. If the developer remains concerned about the viability at the end of the 4 years, they can seek to modify the agreement again through voluntary renegotiation or by a new application under S106BA.

Members might wish to note that the planning obligation also requires that a revised viability appraisal be undertaken and its conclusions then be applied, if the development has not substantially commenced within 18 months of the consent. That part of the obligation would not be affected by the applied for revision.

Relevant Material Considerations include:

National Planning Policy Framework (NPPF) (2012)

Planning Practice Guidance (PPG) (2014)

DCLG document 'Section 106 Affordable Housing Requirements Review and Appeal' (April 2013)

Views of Consultees

The views of the **Housing Strategy Officer** and **Keele Parish Council** have been sought and will be reported if available.

Applicant's/Agent's submission

In addition to a statement setting out the basis of the application and a plan identifying the site, the applicant has submitted the following:

- The original S106 Agreement and decision notice
- The Viability Appraisal submitted with the outline planning application
- The District Valuer's review of the appraisal received before the application was determined.
- Additional information on the costs involved in the work proposed to that contained with the Viability Appraisal and the District Valuer's response.
- Evidence that all signatories to the S106 have been notified of this application

Details of the application are available to view via the following link www.newcastle-staffs.gov.uk/planning/1500359DOAHR

Background papers

Planning files referred to
Planning Documents referred to

Date report prepared

12th May 2015