

The applicant has made a formal application under Section 106A of the 1990 Town and Country Planning Act to discharge the planning obligations entered into on the 14th December 2010 by Mr. Gerald Richard Goodridge and the Borough Council prior to the grant of outline planning permission (10/00480/FUL) for the erection of 16 terraced dwellings.

The completed S106 agreement secured policy compliant affordable housing and a financial contribution towards public open space.

**The 8 week determination period for this application expires on 10<sup>th</sup> April 2017**

### **RECOMMENDATION**

**That the application to discharge the S106 agreement be approved.**

### **Reason for Recommendation**

The application has demonstrated that the scheme is financially unviable with any level of affordable housing or financial contribution towards public open space and if the policy compliant obligations were sought the development could not proceed to completion. Therefore it is accepted that the obligations no longer serve a useful purpose because they would stall the development which would result in the eight remaining houses not being constructed.

### **Key Issues**

The application under Section 106A of the 1990 Town and Country Planning Act seeks to discharge the planning obligations entered into on the 14th December 2010 prior to the grant of outline planning permission (10/00480/FUL) for the erection of 16 terraced dwellings. The completed S106 agreement secured 25% Affordable Housing and a financial contribution of £47,088 towards Public Open Space (POS). Subsequent to the completion of the agreement the Committee agreed to defer the triggers within the completed agreement, in order to assist with the viability of the scheme, although the legal agreement was never formally amended to give effect to this decision.

Section 106A of the 1990 Town and Country Planning Act indicates that the obligation can be discharged if it serves no useful purpose.

The National Planning Policy Framework has been published since the agreement was completed and states at paragraph 173 that: '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 planning application that the secured S106 agreement relates to was permitted on the 7<sup>th</sup> December 2010 and eight of the dwellings have been constructed and sold. Part of the development has been undertaken but neither of the revised triggers have yet been met.

Prior to the making of this application a financial viability report was submitted to the LPA in an attempt to demonstrate that the construction of the eight remaining dwellings and associated demolition and development works cannot proceed with the planning obligations in place.

The District Valuer's advice has been obtained by the Authority and that advice has concluded that the development is by some considerable margin financially unviable with any level of affordable housing or financial contribution towards POS. On the basis of this advice your officers recommend that the S106 should be discharged to enable the applicant to proceed with the construction of the remaining dwellings which would contribute to the delivery of housing in a sustainable urban location within the Borough. It would also enable a currently stalled housing site to be completed. However it is

not considered necessary, should the development not be progressed promptly, to require a reappraisal of the financial position (and potential requirement for contributions if viability was then demonstrated) - given the stage that the development has already reached is beyond "substantial commencement" and its limited scale.

## **APPENDIX**

### **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)  
Developer Contributions Supplementary Planning Document

### Views of Consultees

None undertaken

### Representations received

None received to date

### Applicant's/Agent's submission

The application has been submitted by a covering letter seeking the removal/ discharge of the obligations of the S106 agreement. A copy of the S106 agreement and the Financial Viability Appraisal have also been submitted for consideration as part of the application. All of this information is available to view via the following link

<http://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/17/00026/DOB>

### Background papers

Planning files referred to  
Planning Documents referred to

### Date report prepared

10<sup>th</sup> March 2017