

W2005/1473

Orleton Park & Former Orleton Lane Infant & Nursery School, Orleton Lane, Wellington, Telford, Shropshire.

Variation to section 106 agreement attached to planning permission W2005/1473 (Residential development, provision of 2no. full size sports pitches, 1no. mini sports pitch and sports pavilion (including community meeting room) with associated car parking)

APPLICANT

Lovell Partnerships Limited

RECEIVED

02/12/2005

PARISH

Wellington CP

WARD

Haygate Ward

OFFICER Steven Drury

1.0 PURPOSE OF THIS REPORT

- 1.1 The purpose of this report is to seek a Deed of Discharge of the S106 agreement attached to planning permission reference W2005/1473 to remove an obligation to provide affordable housing as part of the approved development.
- 1.2 Since acquiring the site in 2009, Lovell have been unable to bring the development forward as they are unable to generate a competitive return. The applicant is therefore seeking Members approval to remove the obligation to provide affordable housing at the site.
- 1.3 Section 106A of the Town and Country Planning Act sets out the procedure for dealing with the modification and discharge of a Section 106 agreement where a formal application is made and formal consultation takes place. There is a right of appeal in respect of a refusal. The Council can refuse a request or, where it no longer serves a planning purpose, agree to discharge the agreement in its entirety. In this instance the only obligation contained in the Section 106 agreement is for affordable housing.
- 1.4 The application is supported by an Affordable Housing Viability Report which is commercially sensitive and is therefore not available for public view. The applicant has, however, provided a covering letter providing a summary of the viability position which is available to the public.

2.0 PLANNING HISTORY

- 2.1 Outline planning permission reference W2005/1473 was granted on 9th July 2007 for residential development, provision of 2no. full sized sports pitches, 1no. mini sports pitch and changing pavilion (including community meeting room) with associated car parking at the former Orleton School site, Orleton Lane, Wellington.
- 2.2 A reserved matters application, reference W2008/0108 was subsequently granted on 3rd April 2009 confirming the development would comprise the

erection of 165 dwellings, sports pavilion, 2 full sized sports pitches, one junior pitch and associated parking.

2.3 The S106, entered into by Lovell Partnerships Ltd on 9th March 2009 (following granting of the reserved matters permission) secured the obligation of the developer to provide 25% of the dwellings as affordable housing, with 13 percent being Shared Ownership and 12 per cent being Rented Housing. This equated to a total of 41 dwellings.

2.4 The applicant subsequently applied to discharge all relevant pre-commencement conditions attached to the reserved matters permission and commenced work on site, in order to implement the permission. Officers confirmed in a letter dated 29th March 2012 that planning permission had been implemented and the permission was 'live'. Shortly afterwards, works on site stalled and no further works have taken place since. The site currently sits vacant and overgrown.

3.0 PLANNING POLICY CONTEXT

3.1 National Guidance:
National Planning Policy Framework (NPPF)

3.2 Core Strategy
CS1: Homes

3.3 Wrekin Local Plan
H23: Affordable Housing

3.4 Telford & Wrekin Local Plan (Submission Version)
HO5: Affordable housing thresholds and percentages
HO6: Delivery of affordable housing

4.0 SUMMARY OF CONSULTATION RESPONSES

4.1 Wellington Town Council: Objection
Members were opposed to the variation as they saw no grounds on which any reduction of the percentage of affordable housing should be approved.

4.2 Development Delivery Group Specialist: Support
The applicants agent, Bridgehouse Property Consultants, have provided a comprehensive package of supporting information with regard to the above Section 106 Agreement variation.

4.3 The site which has an outline consent from July 2007 and a reserved matters approval (W2008/0108) from April 2009 is probably the Council's longest major stalled housing site.

4.4 Viability evidence has been presented based on the market value of the land today(which is substantially less than the developer paid the Council in 2009) and using two scenarios(one with the original 25% affordable housing and

one with 0% affordable) both of which prove the development is still 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 Ironically, the variation if approved enables the opportunity for the developer to secure granted funding for affordable housing delivery (S106 units are not eligible for HCA AHP funding). This would also enable a quicker construction period on site with more housing pre-sold.

4.6 The Council agrees with the detailed viability information provided and supports the applicant's summary.

4.7 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 to 2012 and subsequently because market values in the area have done little more than match increases in construction costs, they have not been able to bring the site forward as they are unable to make a competitive return on the site. They confirm that they are committed to developing the site as in reality it is their only means of recovering their investment in the site, however, as it stands the obligation to provide 25% affordable housing makes the scheme unviable. They are therefore seeking the support of the Council in making concessions in terms of affordable housing provision, 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 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. Paragraph 173 of the NPPF requires "*that sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. 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 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*".

- 6.2.2 Whilst there is no statutory definition of how financial viability is assessed on residential development sites, some assistance is provided, by RICS Guidance Note (2012) “Financial Viability in Planning” which directs valuers to assess whether a development delivers both a competitive return to the land owner and a market return to the developer to incentivise both parties to release the land and bring it forward for development. If the development did not pass both tests it would be considered unviable.
- 6.2.3 Lovell state that as a willing developer they are unable to make a competitive return from the development as required by the National Planning Policy Framework (NPPF). 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 Lovell Partnerships Limited (Lovell) which has been assessed by the Councils’ Development Delivery Group Specialist.
- 6.3.2 The appraisal is based on the market value of the land today which is substantially less than the developer paid the Council in 2009. The appraisal considers two scenarios, one with the original 25% affordable housing obligation and one with no affordable housing provided. The scenario which included the 25% affordable housing obligation produced a residual land value which fell well short of the threshold land value. The assessment was then undertaken on the basis of the provision of a 100% private housing scheme, which still did not break even and was also found to generate a scheme deficit.
- 6.3.3 The assessment suggests that due to relatively low market values in the area, the betterment achieved from converting affordable housing to market sale fails to make significant improvements in viability terms. However, with no other planning obligations to be reduced, this is the maximum extent to which viability can be improved. As a willing developer, Lovell are still committed to bringing the site forward and whilst the scheme remains technically unviable, even with no affordable housing provision, they consider that the reduced level of unviability would still allow the scheme to be delivered.
- 6.3.4 The appraisal therefore concludes that if the site is to come forward for residential development and meet the twin tests of the National Planning Policy Framework, this can only be achieved if the Council is willing to grant a full concession to the 25% affordable housing obligation contained within the S106 planning agreement.
- 6.3.6 The Council’s Development Delivery Group Specialist has viewed the submitted appraisal and is satisfied with both the findings and method of assessment.

6.4 Other Considerations

- 6.4.1 Officers are mindful that the site represents the Council's oldest major stalled site, which has sat vacant for a number of years and has become something of an eyesore. The site has also become a source of vandalism and anti-social behaviour and is strewn with broken glass and litter. The delivery of the scheme, even without affordable housing, therefore offers significant benefits to the local community in terms of the redevelopment and enhancement of the site and surroundings and improvements to the amenities of neighbouring residents. The delivery of the scheme also provides benefits in terms of new housing provision, the generation of jobs during the construction period, the provision of residents who will use and support local goods and services, all of which are of an economic and social nature. These benefits are considered to carry significant weight in the planning balance. Members may also wish to take into account the financial benefits to the authority in terms of income generated by Council Tax and the New Home Bonus from the provision of 165 new dwellings.
- 6.4.2 Market conditions have changed significantly since the time of the original approval and purchase of the site in 2009 and it is not considered unreasonable for the applicant to request that the viability position is reconsidered. This is in line with the NPPF requirements in terms of delivering viable development.
- 6.4.3 Whilst the omission of any affordable housing provision on the site is far from ideal, officers accept the viability case made by the applicant's consultant and accept the position that the planning obligation position needs to be reconsidered to allow the development to be brought forward. It is also noted that no other obligations are contained within the S106 agreement which could be re-negotiated as part of this process. The applicant is therefore left with no alternative but to seek to omit the obligation provide any affordable housing on site. Officers consider that there are significant benefits in allowing the site to be brought forward for development and these outweigh any harm resulting from the lack of affordable housing provision.
- 6.4.4 In addition, the applicant's consultant and the Council's Development Delivery Group Specialist also both point out that approval of this application would provide an opportunity for the developer to secure grant funding for affordable housing delivery through the Homes and Communities Agency. Such grant funding is not available to schemes where affordable housing is secured by a S106 agreement.

7.0 CONCLUSION

- 7.1 Taking the above factors into consideration, officers accept the applicant's justification that the scheme as approved is now unviable 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 discharge the S106 agreement is approved.

8.0 RECOMMENDATION

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