

Agenda Item	Committee Date	Application Number
A9	3 April 2017	16/01487/VLA
Application Site Land East Of Railway Line St Michaels Lane Bolton Le Sands Lancashire	Proposal Variation of legal agreement attached to planning permission 15/01167/FUL to vary the affordable housing provision	
Name of Applicant Mr Gary Middlebrook	Name of Agent Mr Daniel Hughes	
Decision Target Date 16 January 2017	Reason For Delay Independent assessment of viability appraisal	
Case Officer	Mrs Jennifer Rehman	
Departure	No	
Summary of Recommendation	Refusal	

1.0 The Site and its Surroundings

- 1.1 The application site relates to a 0.76 hectare parcel of pasture land located on the south-eastern periphery of the built-up area of Bolton-le-Sands. The site is situated to the east of the West Coast Main Line (WCML) with residential development bordering the site to the north and east. To the south is agricultural land designated as Green Belt. Native hedgerows and trees surround the site with an open drainage ditch running along part the western boundary. The nature of surrounding residential development is predominately two-storey in scale but of varying styles and architectural periods.
- 1.2 The site is accessed off St Michael's Lane which runs along the northern boundary of the site. This road links to the A6 in the east over the WCML immediately to the north west of the site.
- 1.3 The site is within the District's Countryside Area and partly located with land designated for Mineral Safeguarding. There are no other designations or land use allocations relating to the application site.

2.0 The Proposal

- 2.1 The applicant has submitted an application to vary the terms of the legal agreement attached to planning permission 15/01167/FUL, for the erection of 20 dwellings with an associated new access.
- 2.2 The permission was granted subject to planning conditions and a legal agreement securing the following:
1. Provision of a minimum of 40% affordable housing of which 50% will be provided as intermediate affordable housing and 50% as social rented housing (unless an alternative affordable housing scheme is approved in writing with the Council first);
 2. An Education Contribution to the sum of £79,444.00 (equivalent to 1 secondary school place and 5 primary school place); and
 3. An Open Space Contribution to the sum of £25,000 (£10,000 to off-site improvements to equipped play areas; £10,000 for off-site improvements to children and young person's facilities and £5,000 for off-site improvements to parks and gardens).

2.3 The applicant has submitted an application to vary the terms of the legal agreement under Section 106A of the Town and Country Planning Act. This can be done where the developer and local planning authority (LPA) agree to renegotiate. This application has been submitted with a viability appraisal to evidence the applicant's claim the development cannot meet the requirements of the originally agreed affordable housing obligations. As viability is a material planning consideration, it would not be conducive to the Council's role in facilitating the delivery of housing for the LPA not to agree to consider changes to the planning obligation in this regard. The landowners of the site have also confirmed agreement to vary the terms of the agreement.

2.4 The applicant seeks to vary paragraph 1.1 of the Third Schedule which reads:

“To submit an Affordable Housing Scheme to the Council which provides for a minimum of 40% Affordable Housing Units out of the 20 dwellings built on the Site, of which 50% will be provided as intermediate Affordable Housing and 50% as Social Rented Housing unless an alternative Affordable Housing Scheme is approved by the Council, which must firstly be agreed in writing between the relevant parties”;

and paragraph 2 of the Third Schedule which reads:

“Not to allow the Occupation of more than two (2) of the Market Dwellings prior to payment to the Council of the Education Contribution”.

2.5 The applicant seeks to reduce the affordable housing provision from 40% to 10% of the 20 dwellings built on the site. The applicant's submission indicates the affordable units would comprise two 2-bedroom intermediate affordable housing units. A viability appraisal has been submitted to support the applicant's changes.

2.6 The applicant also seeks to modify the trigger for the payment of the education contribution to not to allow the occupation of more than fifteen (15) market dwellings prior to the payment of the education contribution.

3.0 Site History

3.1 The relevant planning history is set out in the table below:

Application Number	Proposal	Decision
15/01167/FUL	Erection of 20 dwellings and associated access	Approved

4.0 Consultation Responses

4.1 The following responses have been received from statutory and non-statutory consultees:

Consultee	Response
Strategic Housing	Based on the independent review of the viability, recommends refusal.
Education Authority	No objections to the changes to the trigger for payment.

5.0 Neighbour Representations

5.1 Whilst there are no statutory requirements to publicise applications to vary legal agreement, a site notice has been posted adjacent to the application site along with an advert in the local press. At the time of drafting this report, no representations have been received.

6.0 Principal National and Development Plan Policies

National Planning Policy Framework

Paragraphs 7, 14 and 17 – Presumption in favour of Sustainable Development and Core Planning Principles;

Section 6 – Delivering a wide choice of high quality homes;

Paragraph 72 – Supporting education provision to meet the needs of the community;
Paragraph 173 – Ensuring viability and deliverability;
Paragraphs 204 and 205 - Planning obligations.

6.2 Local Planning Policy Overview – Current Position

At the 14 December 2016 meeting of its Full Council, the local authority resolved to undertake public consultation on:

- (i) The Strategic Policies and Land Allocations Development Plan Document (DPD); and,
- (ii) A Review of the Development Management DPD.

This enabled progress to be made on the preparation of a Local Plan for the Lancaster District. The public consultation period is from 27 January 2017 to 24 March 2017, after which (if the consultation is successful), the local authority will be in a position to make swift progress in moving towards the latter stages of: reviewing the draft documents to take account of consultation outcomes, formal publication and submission to Government, and, then independent Examination of the Local Plan. If an Inspector finds that the submitted DPDs have been soundly prepared they may be adopted by the Council, potentially in 2018.

The **Strategic Policies and Land Allocations DPD** will replace the remaining policies of the Lancaster District Core Strategy (2008) and the residual ‘saved’ land allocation policies from the 2004 District Local Plan. Following the Council resolution in December 2016, it is considered that the Strategic Policies and Land Allocations DPD is a material consideration in decision-making, although with limited weight. The weight attributed to this DPD will increase as the plan’s preparation progresses through the stages described above.

The **Review of the Development Management DPD** updates the policies that are contained within the current document, which was adopted in December 2014. As it is part of the development plan the current document is already material in terms of decision-making. Where any policies in the draft ‘Review’ document are different from those adopted in 2014, and those policies materially affect the consideration of the planning application, then these will be taken into account during decision-making, although again with limited weight. The weight attributed to the revised policies in the ‘Review’ will increase as the plan’s preparation progresses through the stages described above.

6.3 Development Management DPD Policies:

DM41 (New Residential Development)
DM42 (Managing Rural Housing Growth)
DM48 (Community Infrastructure)

6.4 Lancaster District Core Strategy Policies:

SC1 (Sustainable Development)
SC4 (Meeting Housing Requirements)

7.0 Comment and Analysis

7.1 Section 106A of the Town and County Planning Act 1990 relates to the modification and discharge of planning obligations. S106A (1) states that a planning obligation may not be modified or discharged except-

- (a) By agreement between the appropriate authority and the person or persons against whom the obligation is enforceable; or
- (b) In accordance with this section and section a106B (appeals).

7.2 The NPPF states at paragraph 205 that ‘*where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planning development being stalled*’. Whilst there has not been a significant length of time between the planning permission being issued and the submission of this application to vary the legal agreement, Officers have been advised that following further on-site ground investigations there are increased abnormalities associated with the development of the site leading to development viability issues. A viability appraisal has been

provided to support the applicant's proposal to reduce the affordable housing provision from 40% to 10%.

- 7.3 National Planning Policy Guidance (NPPG) states that *'in making decisions, the local planning authority will need to understand the impact of planning obligations on the proposal. Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations'*. In the circumstances, it is contended that it would be unreasonable of the local planning authority to not voluntarily renegotiate the terms of the agreement in accordance with s106A (1) of the Act if the amendments are justified.
- 7.4 The applicant's proposed changes to the terms of the legal agreement are significant. National planning policy seeks to significantly boost the supply of housing and notes that housing applications should be considered in the context of the presumption in favour of sustainable development. This is particularly notable in cases where Councils cannot demonstrate a 5 year housing land supply. However, national planning policy also requires local planning authorities to plan for a mix of housing to appropriately meet local needs and demands, including affordable housing. This policy approach is echoed in the Development Plan, where Policy DM41 requires proposals for more than 10 dwellings in the rural areas to provide 30% affordable housing on site and up to 40% on greenfield sites. Local planning policy (DM41 and the supporting SPD: Meeting Housing Needs) does, however, recognise that the scale of planning obligations, in particular affordable housing, can in certain circumstances have a potentially negative impact on development viability.
- 7.5 To support the applicant's changes a viability appraisal has been submitted for consideration. The local planning authority has subsequently appointed an independent consultant to review the applicant's viability appraisal (to the cost of the applicant). Our consultant has reviewed the appraisal and the key assumptions therein and has confirmed that the site is capable of providing an affordable housing contribution of 40% in accordance with the Development Plan, contrary to the applicant's submission. Despite the increased abnormal costs put forward by the applicant and subsequently adopted as part of our consultant's appraisal (albeit with the right to examine these costs further if necessary alongside a Quantity Surveyor), with modest changes to the assumptions relating to the gross development value (GDV), disposal fees and the duration of development (affecting development finance costs), the development as approved (with 40% affordable housing) appears to remain a viable proposition.
- 7.6 From this assessment it is apparent that delivering 40% affordable housing on site based on the tenure mix set out in paragraph 1.1 of the Third Schedule is at the lower end of what would be regarded an acceptable developer's return (profit). Paragraph 173 of the NPPF makes it clear that to enable the delivery of development there must be a competitive return to a willing landowner and willing developer. The margin for developer profit can vary but is typically between 18-22%. The developer's return should reflect the market at the time of assessment and include risks attached to a specific scheme. In very simply terms – a less risky scheme may attract a lower profit margin. In this case, our consultants assessment indicates that 40% affordable housing could be provided with a develop profit of 18%. This is based on the delivery of 8 affordable units, of which 4 would be intermediate and 4 social rented. This would accord with the terms of the existing legal agreement.
- 7.7 Whilst the profit level is close to the minimum a developer would expect, it is noted that this was the applicant's expectation as the profit was set at 18% in their own viability submissions.
- 7.8 Overall, based on the viability information submitted and our assessment of this, the applicant has not sufficiently justified the reduction from 40% to 10% affordable housing provision on site. As a consequence, the applicant's proposed amendments to paragraph 1.1 of the third schedule are not accepted.
- 7.9 The proposed variation to Paragraph 2 of the Third Schedule to allow occupation of not more than 9 market dwellings prior to payment is acceptable. This amendment can be supported but would need to be executed as a deed.

8.0 Planning Obligations

- 8.1 Paragraph 1.1 of the Third Schedule shall remain as existing with this element of the obligation continuing to have effect without modification.

Paragraph 2 of the Third Schedule to be **revised** to allow no more than 9 market dwellings to be occupation before payment of the Education Contribution.

9.0 **Conclusions**

9.1 The existing legal agreement associated with planning permission 15/01167/FUL shall continue to have effect without modifications to the affordable housing provision on the basis that the submitted viability evidence, which has been reviewed and tested by an independent consultant on behalf of the local planning authority, is not considered sufficiently robust or compelling to accept a reduction to the provision of affordable housing. The trigger for the education contribution raises no fundamental issues and is accepted. A Deed of Variation will need to be entered into to permit the changes to Paragraph 2 of the Third Schedule.

Recommendation

That in respect of the proposal to vary the legal agreement attached to the grant of planning permission:

- (i) The proposed changes to Paragraph 1.1 of the Third Schedule to reduce the affordable housing provision from 40% to 10% is **refused**; and,
- (ii) The changes to Paragraph 2 of the Third Schedule to “no more than 9 market dwellings to be occupied prior to the payment of the Education Contribution” is **permitted** subject to a Deed of Variation to this effect.

Background Papers

None