

Agenda Item	Committee Date	Application Number
A8	21 August 2017	17/00623/VLA
Application Site	Proposal	
Land To The Rear Of Burr Tree Cottage Long Level Cowan Bridge Lancashire	Variation of legal agreement on planning application 15/00537/FUL to remove the provision relating to the delivery of affordable housing	
Name of Applicant	Name of Agent	
Mr Colin Hetherington	Mr Graham Love	
Decision Target Date	Reason For Delay	
3 August 2017	-	
Case Officer	Ms Charlotte Seward	
Departure	No	
Summary of Recommendation	Approval to progress to Deed of Variation	

1.0 The Site and its Surroundings

- 1.1 The application site is on the north east side of A65 close to the centre of Cowan Bridge. Planning permission was granted in August 2015 (15/00537/FUL) for the erection of 18 dwellings with associated access and parking at this site.
- 1.2 This permission was subject a Section 106 Agreement dated 10 August 2015. The agreement requires that 7 of the 18 units are delivered as affordable housing equating to 39%. Of these 7, 3 units (numbers 8, 10 and 12) are to be social rent units and 4 units (4, 7, 11 and 13) are to be shared ownership.
- 1.3 Construction of the development has commenced and is significantly progressed. Within the last 6 months 1 application for discharge of conditions and 2 applications for variation of condition have been determined. The variation of condition applications have amended the materials and elevation details of the homes and the surface water drainage scheme.

2.0 The Proposal

- 2.1 This application seeks to vary the legal agreement by means of a deed of variation to remove any affordable housing provision. This would reduce the proportion of affordable housing to market housing from 39% to 0%.

3.0 Background to the Application and Site History

- 3.1 There is a substantial planning history for the development of this site for 18 dwellings, including significant consideration of viable affordable housing provision. The following section sets out the consideration of viable affordable housing provision at each stage.

3.2 Planning History

Application Number	Proposal	Decision
14/01052/FUL	Erection of 18 dwellings with associated access and parking	Withdrawn
15/00537/FUL	Erection of 18 dwellings with associated access and parking	Permitted subject to S106 dated 10 August 2015
15/01355/VLA	Variation of legal agreement attached to planning permission 15/00537/FUL to amend affordable housing provision	Refused
16/01608/VCN	Erection of 18 dwellings with associated access and parking (pursuant to the variation of conditions 2, 7 and 8 to allow changes to elevation and roof details, and material type and colour)	Permitted
17/00276/VCN	Erection of 18 dwellings with associated access and parking (pursuant to the variation of condition 13 on planning permission 16/01608/VCN to revise the surface water drainage details)	Permitted
17/00306/PRETWO	Residential development (removal of affordable housing provision)	Under consideration

3.3 Consideration of affordable housing provision and viability in planning application 14/01052/FUL

3.3.1 In 2014 an application was submitted (14/01052/FUL) which sought to deliver 18 dwellings without provision of any affordable housing. An affordable housing statement was submitted which sought to demonstrate why the delivery of affordable housing at this site was not viable. Accompanying this statement was a Development Viability Costs Report.

3.3.2 Assessment of this information within the Committee report concluded that “...*the Council has looked carefully through the applicant’s financial appraisal and identified a number of figures that are either too high (build costs) or too low (house prices). Changes to these figures dramatically change the scheme’s viability. The Council has asked the applicant to provide more realistic costs.... Whilst this is outstanding at the time of writing, from the above analysis alone it is clear to the Council that this site can easily accommodate 40% affordable housing on site. The application is only acceptable if the applicant offers 40% provision of affordable housing on site. As this equates to 7.2 units, it would actually be 39%. Of the 7 units, 4 should be offered for social rent and the remaining 3 for intermediate housing*”.

3.3.3 On the basis of the viability of the scheme including the delivery of affordable housing, recommendation was made to Committee to approve the scheme for 18 houses at this site subject to the signing and completing of a legal agreement to include: 39% affordable housing provision (4 social rented and 3 intermediate housing), and other conditions. Members approved the application on this basis.

3.3.4 This determination was on the basis that the scheme was only acceptable where it delivered the required affordable housing. The application was then subsequently withdrawn post-Committee as a result of a failure of a S106 agreement to be entered into within the determination period. The Council advised that any resubmission should be made with a draft legal agreement for the provision of the affordable housing requirement at the site.

3.4 Consideration of affordable housing provision and viability in planning application 15/00537/FUL

3.4.1 A further application 15/00537/FUL was submitted in 2015 and despite the previous requirement for the delivery of affordable housing, this proposal also omitted any provision. This application was accompanied by a Planning Statement which noted that consideration of the viability assessment, together with the results of an independent appraisal, is of critical importance in the consideration of affordable housing delivery at this site.

3.4.2 On behalf of Lancaster City Council, NPS Group carried out an independent Financial Viability Assessment Check, which concluded in April 2015 that the subject site is capable of viably supporting a residential development scheme featuring 7 affordable (4 intermediate tenure units and 3 social rented units) and 11 market units.

3.4.3 On this basis, given the lack of affordable housing delivery proposed in the scheme the 2015 application was recommended for refusal at the June 2015 committee on the following grounds:

“The application as submitted fails to address planning policy with regard to the delivery of affordable housing. The financial information provided by the applicant has been independently assessed prior to the submission of this application and it was concluded that 39% (7 units) provision of affordable housing on site is viable. Despite the conclusion of this assessment the applicant is proposing a 100% open market housing scheme. This is contrary to Development Management policies DM41 and DM42, Core Strategy policy SC4 and National Planning Policy Framework paragraphs 17 and 50”.

3.4.4 Prior to the Committee the agent advised that his client would accept the independent assessment and enter into a legal agreement to secure the 7 affordable units. The application was subsequently approved by Members on this basis. On the 10 August 2015 a S106 agreement was signed which secured the delivery of affordable housing and planning permission was granted concurrent to this on the same day. This agreement requires that 7 of the 18 units are delivered as affordable housing equating to 39%. Of these 7 3 units (numbers 8, 10 and 12) are to be social rent units and 4 units (4, 7, 11 and 13) to be intermediate tenure.

3.5 Consideration of affordable housing provision and viability in variation of legal agreement application 15/01355/VLA

3.5.1 In 2015 an application for Variation of Legal Agreement (VLA) was submitted, on behalf of the then developer KCS, to reduce the level of affordable housing provision to 5 shared ownership units (reference 15/01355/VLA). This was refused in January 2016. Within the Committee report however, it was accepted that given changes in the market since the application was approved the delivery of 6 affordable units could be accepted. One of the key differences between the approved application and the VLA, was the value expected on the affordable housing. Progress Homes submitted an offer to acquire the affordable housing, which was lower than the value previously expected.

3.6 Consideration of affordable housing provision and viability in pre-application advice 17/00306/PRETWO

3.6.1 Then in early 2017 a pre-application advice application was made (reference 17/00306/PRETWO) that sought to remove all requirements to deliver affordable homes. This was preceded in 2016 by a meeting with the prospective purchaser of the site (the now developer) where the Council reiterated the importance of delivering 40% affordable housing on this site, a site in a village not listed within policy DM42 (i.e. a departure from the Development Plan). The developer subsequently purchased the site and commenced works. As part of the consideration of this application the Council has sought advice from an independent planning viability agent (Lambert Smith Hampton). During the consideration of this pre-application request, the applicant chose to submit this current Variation of Legal Agreement application. The pre-application advice application and the variation of legal agreement application are being considered concurrent to each other. This application seeks to remove by Deed of Variation the required affordable housing provision.

4.0 Consultation Responses

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

Consultee	Response
Planning & Housing Policy Team	The Financial Viability Appraisal Review demonstrates that the delivery of 7 affordable units with an amendment 3 x two-bedroomed ‘Casterton’ units (affordable rent tenure) and 4 x three-bedroomed ‘Lupton’ units (shared ownership tenure) is viable and a minor variation to facilitate this would be acceptable.

5.0 Neighbour Representations

5.1 10 objections have been received. In addition objection from both Ireby with Leck Parish Council and Burrow with Burrow Parish have also been received. The main reasons for opposition are:

- There is a current outstanding need for affordable housing in the area as a result of high houses prices;
- The 2015 permission was supported on the basis that there would be the benefit of the delivery of affordable homes;
- Previous rejection of 2015 VLA application showed affordable housing provision to be viable at the site and there has been limited change in the housing market since this decision;
- The developer should bear cost of delivery of sites on profit realised not at the expense of affordable housing; and
- No evidence has been submitted to demonstrate any lack of demand for affordable housing.

6.0 Principal National and Development Plan Policies**6.1 National Planning Policy Framework**

- Paragraph 205 (Planning conditions and obligation)

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. Public consultation took place from 27 January 2017 to 24 March 2017. Whilst the consultation responses are currently being fully considered, the local authority remains 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 Development Plan Document (DPD)

- DM41: New Residential Development

6.4 Other considerations

- Meeting Housing Needs SPD (Feb 2013)
- Lancaster Independent Housing Requirements Study (Part 1) (2015)

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*'. Subsequently, it is clear from national planning policy and guidance, Local Planning Authorities should be flexible and should assess any change in circumstances that affect the development.
- 7.3 National Planning Practice 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 This application was submitted with a Financial Viability Appraisal (FVA) carried out in March 2017. The FVA includes land costs, estimated gross development value (as advised by the developer, Applethwaite), and development costs (reviewed by a separate company instructed by the developer) and a developer rate of return on the gross development value. The key focus of the FVA is that abnormal development costs have affected the viability of the scheme such that the percentage profit on the gross development value is below the minimum reasonable competitive return. The removal of the affordable housing provision is requested to enable the scheme to achieve a target competitive return. To facilitate assessment of the FVA Lambert Smith Hampton were appointed by Lancaster City Council to advise Officers (at a cost to the developer).
- 7.6 Following assessment of the submitted FVA by Officers and by Lambert Smith Hampton the applicant was asked to respond to a number of questions and provide the full development cost review. Following further detailed assessment and analysis Lambert Smith Hampton produced the Financial Viability Assessment Review (FVAR). The FVAR interrogates the land costs, gross development value, development costs and rate of return. The FVAR identifies areas of agreement and acceptance of figures, and also identifies a number of areas of challenge. In these areas of challenge alternative assumptions have been included into the assessment. The outcomes of this assessment are summarised below.
- 7.7 The FVAR using an agreed set of assumptions has demonstrated that the 100% market housing scenario would realise a percentage developer profit which greatly exceeds the rate of return normally accepted by Lancaster City Council. On this basis the delivery of 0% affordable housing at this site would not be supported. However, further scenario analysis has demonstrated that the permission as approved and set out within the S106 dated 10 August 2015 is not capable of viably delivering 7 affordable housing units within an expected rate of developer return. On this basis

Officers have considered alternative scenarios that would allow for the requirement of 7 affordable homes to be to be maintained with a varied model of delivery.

- 7.8 The optimum scenario to allow for the delivery of 7 affordable homes is to change from social rent to affordable rent. Affordable rent units command a higher rate of transfer to the Registered Providers than social rent units and so can increase the gross development value of the scheme. In addition, an amendment to the allocation of the units on site is required so that the shared ownership tenure is allocated to the larger units, which are of higher market value, and the affordable rent being allocated to the smaller units. This allows for a greater rate of return on the higher value properties increasing the viability of the scheme. On this basis it is recommended that a Deed of Variation be entered into to allow for 7 affordable housing units to be delivered at the site. This would allow the development to be in accordance with local policy requirements for affordable housing delivery whilst also ensuring that the developer can make a reasonable rate of return that allows the development as a whole to be completed.

8.0 Planning Obligations

- 8.1 It is proposed that a Deed of Variation be made to the 10 August 2015 Section 106 Agreement to alter the rental tenure model from social rent to affordable rent, and to amend the tenure allocation of proposed units to 3 x two-bedroomed 'Casterton' units (affordable rent tenure) and 4 x three-bedroomed 'Lupton' units (shared ownership tenure). This will enable the scheme to return a higher gross development value and therefore make the delivery of the agreed 39% affordable homes at this site viable.

9.0 Conclusions

- 9.1 The existing legal agreement associated with planning permission 15/00537/FUL is proven to be not viable. On the basis of the review and testing carried out by an independent consultant on behalf of the Local Planning Authority it is recommended that minor revisions by a Deed of Variation are made to the legal agreement to allow for the rental tenure model to be changed from social rent to affordable rent, and to amend the tenure allocation of proposed units to 3 x two-bedroomed 'Casterton' units (affordable rent tenure) and 4 x three-bedroomed 'Lupton' units (shared ownership tenure). This will enable the scheme to return a higher gross development value and therefore make the delivery of the agreed 39% affordable homes at this site viable.

Recommendation

That a Deed of Variation be **approved** on the following basis:

- (i) A Deed of Variation to make provision to alter the rental tenure model from social rent to affordable rent, and to amend the tenure allocation of proposed units to 3 x two-bedroomed 'Casterton' units (affordable rent tenure) and 4 x three-bedroomed 'Lupton' units (shared ownership tenure)

Background Papers

None.