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| Agenda Item A6 | Committee Date 4 June 2018 | Application Number 18/00421//VLA |
| Application Site Land Off Sycamore Road Brookhouse Lancashire | Proposal Variation of legal agreement attached to planning permission 14/00270/OUT to alter the affordable housing provisions | |
| Name of Applicant Oakmere Homes | Name of Agent Mr Daniel Hughes | |
| Decision Target Date 19 May 2018 | Reason For Delay Committee cycle | |
| Case Officer | Mrs Jennifer Rehman | |
| Departure | N/A | |
| Summary of Recommendation | Approve | |

1.0 The Site and its Surroundings

1.1 The site that is the subject of this application relates to a previously existing property (47 Sycamore Road – since demolished) and the adjoining field to the west. The site is accessed via Sycamore Road within the village of Brookhouse located in the Forest of Bowland AONB and the District's Countryside Area. The site is surrounding by existing residential development to the east and south and open agricultural land to the north and partly to the west where land is also used for equestrian purposes. The development has commenced on site.

2.0 The Proposal

2.1 This is an application made under s106A(1)(a) of the Town and Country Planning Act 1990 to modify terms of the original planning obligation. The applicant is seeking to insert an additional clause (relating to the affordable housing provision) within the original obligation associated with planning permission 14/00270/OUT.

2.2 The additional clause allows the Council and developer/owner to agree a revised alternative affordable housing scheme in the event a registered provider cannot be secured to deliver the agreed affordable housing units.

3.0 Site History

3.1 The relevant planning history is set out below:

| Application Number | Proposal | Decision |
|---------------------------|--|-----------------|
| 14/00270/OUT | Outline application for the demolition of existing bungalow and erection of up to 31 dwellings | Approved |
| 17/00730/REM | Reserved Matters application for the erection of 22 dwellings | Approved |

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|--------------|--|----------|
| 17/00925/RCN | Application to removal condition 4 of 14/00270/OUT relating to off-site highway works. | Approved |
| 17/00924/VLA | Variation of legal agreement attached to planning permission 14/00270/OUT to remove the obligation relating to the allotment contribution. | Approved |

4.0 Consultation Responses

4.1 The Council's Strategic Housing Officer has raised no objections during pre-application discussion and in relation to the draft Deed of Variation which will be required if this proposal is approved.

5.0 Neighbour Representations

5.1 Not applicable.

6.0 Principal National and Development Plan Policies

6.1 National Planning Policy Framework
Paragraph 50 – Wide choice of high quality homes
Paragraphs 203 – 206 Planning conditions and obligations

Development Management DPD
DM41 – New Residential Development
DM48 – Community Infrastructure

Other Considerations
National Planning Practice Guidance
Meeting Housing Needs Supplementary Planning Document (2013)

7.0 Comment and Analysis

7.1 An application under s106A(1)(a) provides for a discharge or modification of a planning obligation by agreement with the Local Planning Authority and the person or persons against whom the obligation is enforceable. There is no specific time period under section 106 A (1)(a), so this can be done at any time with agreement but must be executed as a formal deed (i.e. by legal agreement).

7.2 The applicant had agreed an affordable housing scheme pursuant to the terms of the original obligation. Specifically, this required the owner (applicant) to provide up to 40% affordable housing units unless at reserved matters stage it becomes apparent to the owner that the abnormal costs of developing the site prohibit the delivery of a viable form of development.

7.3 A viability case has previously been advanced by the applicant and at the reserved matters stage an affordable housing provision equivalent to 18% was accepted by the Council. This was confirmed to Members in our recommendation for the reserved matters application, which was reported to Planning Committee on 21 August 2017. The agreed affordable housing scheme comprises 2 1-bed affordable rented units, 1 2-bed shared ownership unit and 1 3-bed shared ownership unit.

7.4 Following the approval of the reserved matters application and agreement of the above affordable housing provision, the applicant later contacted the local planning authority to inform Officers that they were having difficulties attracting a registered provider (RP) to purchase and deliver the affordable rented units. Officers advised the applicant that there were no provisions within the existing obligation to amend the previously agreed affordable housing scheme after the point of approval of reserved matters.

7.5 At the pre-application stage, the applicant produced evidence to demonstrate the lack of RP interest for the rented units. This information comprised private communication between a number of RPs and the applicant. The evidence indicates that the main reasons for the lack of interest related to the fact it is only two rented units on offer; a preference for different house types/sizes from those identified as the affordable units, and; that some of the RPs did not have capacity to bid for future s106 proposals. These reasons are not a surprise to Officers. We know through past experience

that RPs all have their own criteria for assessing proposals, that some are not keen on delivering mixed tenure schemes and the larger RPs are unlikely to take on a small number of units because of management costs and general economies of scale involved.

- 7.6 The submitted application is supported by the same evidence and is considered sufficient to warrant consideration to the inclusion of a new clause within the planning obligation to allow the developer and Council to renegotiate a further revised alternative affordable housing scheme. Officers are of the opinion that the main consideration here is that the obligation still serves a useful planning purpose and that any agreed affordable housing is actually deliverable. There is little use in having provisions within a planning obligation that cannot be met resulting in affordable homes being undeliverable. On this basis, Officers support the applicant's proposed modifications to the obligation to allow for the insertion of an additional clause to allow renegotiations to the affordable housing scheme in the event an RP cannot be secured. This additional clause is not intended to provide opportunities to open further viability negotiations for the developer to reduce the overall provision of affordable units on the site (18%). The affordable housing scheme can only be renegotiated on the grounds that an RP cannot be secured.
- 7.7 In light of the evidence presented, it is apparent that if the applicant cannot attract an RP for the rented units that the likely outcome of a revised affordable housing scheme would be for all four units to be delivered as intermediate homes (shared ownership). This has already been a scenario presented at the pre-application stage and again as part of this submission. Subsequently, at the pre-application stage the impacts of this change on development viability were also assessed. The application has been supported with a viability appraisal assuming four intermediate units. This sufficiently evidences that the development could not viably support an increase in the overall number of affordable homes from four units to five units in light of adjustments to the assumed values of the amended affordable units.

8.0 Planning Obligations

- 8.1 A formal deed is required to insert an additional clause into Paragraph 1) a) of the Third Schedule to enable the owner and the Council to agree a revised alternative affordable housing scheme in the event a registered provider cannot be found to purchase the agreed affordable housing scheme.

9.0 Conclusion and Recommendation.

- 9.1 An application to modify the obligation under s106A 1(a) can only be done by agreement between the authority whom the obligation is enforced and the person or persons against whom the obligation is enforceable. If Members did not allow the modification for the insertion of the proposed clause, the obligation cannot be varied. However, for the reasons set out above, Members are recommended to accept the proposed modifications to the obligation in the interests of creating optimal conditions to secure a deliverable affordable housing scheme.

Article 35. Town and Country Planning (Development Management Procedure) (England) Order 2015

In accordance with the above legislation, the City Council can confirm the following:

Officers have made this recommendation in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area. The recommendation has been taken having had regard to the impact of development, and in particular to the relevant policies contained in the Development Plan, as presented in the officer report, and to all relevant material planning considerations, including the National Planning Policy Framework, National Planning Practice Guidance and relevant Supplementary Planning Documents/ Guidance.

Background Papers

None