

Application 24/01135/S106

Varying the existing Section 106 Agreement for the East of Lutterworth SDA 19/00250/OUT to a minimum of 10% and a maximum of 40% affordable housing

Variation to Section 106 agreement

Note to committee.

The applicant is seeking to vary the terms of the section 106 agreement associated with this grant of planning permission with the aim of reducing the number of affordable homes. It is a matter for the council to agree to or otherwise. There is no mechanism for the applicant to appeal immediately against the council's decision if the applicant is aggrieved by it. Should there be no agreement to vary the its terms after five years, and a more current application to vary the agreement, there is a right of appeal to the Secretary of State, but this is limited in its terms. At this time since the agreement is less than five years old this is a moot point.

The applicant's reason for wanting to vary the agreement is that under its current terms the scheme is not viable.

Planning history

19/00250/OUT

Hybrid planning application comprising Outline application for development (including demolition) of up to 2,750 dwellings, business, general industrial and storage and distribution uses, two primary schools, neighbourhood centre, public open space, greenspace, drainage features, acoustic barrier, and other associated infrastructure (some matters reserved), and full application for the development of a spine road and associated junctions with the A426 north of Lutterworth, Gilmorton Road, Chapel Lane (including the partial closure and realignment of Chapel Lane to motor vehicles and horse riders), and the A4304 east of M1 Junction 20, comprising carriageway, footway, cycleway and associated infrastructure to include earthworks, bridge structures, services, drainage, landscaping, lighting and signage

Approved 17/05/2022.

Discharge of Condition 7 (Hydrological Data) of 19/00250/OUT

Pending

24/00932/VAC

Hybrid planning application comprising Outline application for development (including demolition) of up to 2,750 dwellings, business, general industrial and storage and distribution uses, two primary schools, neighbourhood centre, public open space, greenspace, drainage features, acoustic barrier, and other associated infrastructure (some matters reserved), and full application for the development of a spine road and associated junctions with the A426 north of Lutterworth, Gilmorton Road, Chapel Lane (including the partial closure and realignment of Chapel Lane to motor vehicles and horse riders), and the A4304 east of M1 Junction 20, comprising carriageway, footway, cycleway and associated infrastructure to include earthworks, bridge structures, services, drainage, landscaping, lighting and signage. (Variation of condition 20 (B8 limitation), 50 (Traffic Signage), 51 (PRoW Strategy) and 54 (Pedestrian Crossings) of 19/00250/OUT)

On this committee.

Consultation

Town Council

Policy H2 requires 40% affordable housing, this was a major element in securing local support in the light of local house prices.

LCC assert that the local housing market is stagnant, affordable homes would enliven the market, what is being proposed would have the opposite effect. The market houses that replace the affordable will have a cost more in line with the local market which will contribute to increasing the average house price.

This is the second element of the original proposal which mitigated the impact of the development, the other being the size of the B8 units, that is being promoted.

Site description

The site lies predominantly to the east of the M1 Motorway, with built development only being proposed to the east of the M1. The site also includes land to the west of the M1. This comprises land north of Gloster Road, on the northern edge of Lutterworth, alongside the A426 (Leicester Road) and Bill Crane Way. The site also includes land to the east of Station Road and Misterton Way. This land is bordered by a dismantled railway line and the M1 Motorway. The site adjoins the town of Lutterworth to the west, is near to the hamlet of Misterton to the southeast.

The site is circa 225ha and is predominantly agricultural land in both pastoral and arable use. There are a small number of residential and agricultural buildings within the site, and high voltage overhead power lines cross the site. The site contains the Misterton Marshes Site of Special Scientific Interest (SSSI), Thornborough Spinney, and smaller pockets of woodland and hedgerows of local ecological value.

The River Swift and its tributaries run through the site, along with a network of drains and ditches. The majority of the site falls within the Flood Zone 1. The site is not designated for its landscape value, has a relatively limited visual envelope due to the presence of the M1 and tree planting. Part of the site falls within the setting of Grade II* listed Misterton Church.

The site can be accessed from the A4304 to the south, the Gilmorton Road, the A426 to the north, and numerous footpath connections along the western and eastern boundary. Whilst the individual parcels within the application site have a considerable planning history, none of this is relevant to this planning application.

Notes to committee

There are three key issues to consider before coming to a conclusion on this application, affordable housing, viability and the interaction between the two.

Affordable Housing

Policy Background.

The NPPF in the glossary defines what is meant by affordable housing. Broadly affordable housing is defined as 'Housing for sale or rent, for those whose needs are not met by the market.... and which complies with one or more of the following definitions'

Affordable housing for rent, which includes a number of criteria;

- Starter homes which are defined;
- Discounted market housing;
- Other affordable routes to home ownership which includes a number of options.

The amendment to the NPPF which has been the subject of consultation, but at the time of writing not published, proposes that the definition of starter homes be deleted and replaced by a new category first Homes. These revisions to the NPPF proposes changes to paragraph 66. This deletes the requirement for at least 10% of homes on major development be affordable, the exceptions to this requirement are also deleted. This is replaced by a requirement that the mix of affordable housing required meets identified local need across both affordable housing for rent and affordable home ownership.

Local Plan policy H2 refers to the provision of affordable housing and defines affordable housing in the glossary as;

Housing provided to eligible households whose needs are not met by the market. This can include social rented housing (target rents determined by national rent regime) and intermediate housing (rent above social rent but below market rates)

Policy H2 sets out the requirements for the provision of affordable housing, in summary for the purposes of this application.

40% affordable housing on major sites;

A tenure split of about 75% affordable or socially rented, 25% low-cost home ownership products or a variation of these justified by reference to the latest assessment of affordable housing need.

Proposals which do not meet the policy requirements will be considered acceptable where it is demonstrated to the council's satisfaction that a different level of mix of affordable housing is required to make the development viable and the approach contributes towards creating mixed and balanced communities.

Paragraph 5.3.9 of the Local Plan states that the requirements of policy H2 have been assessed against their potential impact on the viability of individual housing developments. The Local Plan Viability Assessment 2017 demonstrates that both the required percentages of affordable housing and the mix of tenure are viable across developments including Lutterworth East.

Paragraph 5.3.10 allows that where an applicant considers the development cannot meet the requirements of the policy the applicant will be required to submit a viability assessment which will then be independently reviewed. To this end provision is made for the submission of an Affordable Housing Viability Assessment (AHVH) this is defined in the glossary to the local plan as an assessment of the economic viability of land for housing testing a range of percentages and thresholds of affordable housing and the impact of developer contributions, also defined in the glossary.

The completed 106 agreement for each sub-phase requires 40 of housing to be affordable. This proportion of housing is to be delivered in accordance with an 'Affordable Housing Scheme' this amongst other matters relates to the number of homes to be provided and their tenure mix. The 106 agreement contains a great deal of detail which are not materially affected by the proposed amendment.

Viability

Before moving to the specific requests, it is proposed to set out in some detail how national policy and guidance deals with the issues of viability. This policy / guidance is referred to in the council's adopted Planning Obligations SPD (June 2022).

The viability of the proposed development has been identified as a key consideration. Because of this, this report sets out in detail government policy and guidance on viability and the methodology to calculate it, the applicant's methodology and the council's review of this will then be considered.

Paragraph 34 of the NPPF (December 2023) requires 'Plans to set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan. At the plan making stage, a whole plan viability appraisal is undertaken to test the levels and types of contributions to be provided by the development identified in the Local Plan. This includes testing the viability of different sizes and types of sites as well as specific viability appraisal for strategic sites allocated in the Local Plan.

Paragraph 58 of the NPPF states:

'Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.'

The national Planning Practice Guidance - Viability sets out in detail a standard methodology for carrying out viability assessments. For the purposes of this report, it is not intended to go into the detail of this but present a broad outline.

The methodology sets out some general principles, which will be considered later. In this context the methodology identifies the costs of the development including abnormal costs such as contamination and its remediation and the requirements of policy i.e. affordable housing and infrastructure costs and the developer's profit.

A key element of assessing viability is the cost of the land. Which is referred to as the Benchmark Land Value (BLV). This calculation is based on the existing use value of the land plus a premium sufficient that the landowner would be willing to sell.

The gross development value is an assessment of the value of the development, put simply how much will all the properties be sold for.

What the NPPG does state is 'Under no circumstances will the price paid for the land be a relevant justification for failing to accord with relevant policies of the plan'.

The guidance does recognise that large scale developments take some time to deliver and consequently the viability can vary over time and also that the initial stages of a development may require expensive infrastructure to facilitate the development some flexibility may be required to deliver policy compliance over time.

The Harborough District Local Plan (2011-2031) adopted in 2019 was supported by the Local Plan Viability Assessment (August 2017).

Paragraph 5.3.9 of the Adopted Local Plan sets out that the affordable housing requirements set out in policy H2 have been assessed in terms of their potential impact upon the viability of individual housing developments. The Local Plan Viability Assessment, 2017 demonstrates that both the required percentage of affordable housing and the mix of tenures are viable for the East of Lutterworth Strategic Development Area. This was assessed against the council's referred tenure mix of affordable housing types of 12.5% shared ownership, 12.5% intermediate homes and 75% social rented.

Paragraph 5.3.10 explains that should an applicant consider that an individual housing proposal is unable to meet these affordable housing requirements due to particular unusual circumstances, the applicant will be required to submit a viability assessment to the Council. In such cases the Council will commission an independent review of the viability assessment, for which the applicant will bear the cost. This review should take account of the availability of public funding. Only where the independent review supports the conclusions of the applicant's viability assessment will a scheme which does not meet the affordable housing requirements be considered appropriate.

Policy H2 Affordable Housing at point 5 recognises that a different level of affordable housing may be required to make a scheme viable and the approach contributes towards creating mixed and balanced communities.

Policy IN1, Infrastructure Provision identifies the need for infrastructure and social assets but also recognises the need for a development to be viable to deliver these. Paragraph 11.1.6 of the Adopted Local Plan notes that further guidance on how the Council will implement Policy IN1 will be set out in revisions to the Planning Obligations Supplementary Planning Document 2017, now superseded by the 2022 revision of the document. This sets out how Policy IN1 will be implemented.

The most recent version of the Planning Obligations SPD (2022) at section 3.11 deals with viability and reiterates the advice in the national PPG referred to previously. Paragraph 3.1.3 refers to Paragraph 5.3.10 of the Adopted Local Plan and also states that a review mechanism or clawback clause may be required in the Section 106 agreement to enable compliance to be achieved over the lifetime of the project where lower levels of affordable housing have been accepted.

Turning now to the specifics of this application. In December 2023 the applicant commissioned a viability assessment and the council has had this independently reviewed. The review has been carried out by the same consultancy that carried out the Local Plan Viability Assessment.

One of the principles alluded to previously as to the need to carry out a review is that there has been a change in circumstances. The application was submitted in 2017 and the Council's Local Plan Viability Assessment was published in the same year. Subsequently there have been wider issues which have impacted on development in general;

2020 covid pandemic and its impact on the economy;

2022 mini budget and its impact on the economy and interest rates; and

2022 the invasion of Ukraine and its impact on the global economy.

Taken together these factors have had a significant impact on the cost of materials and other costs.

In July 2024 the Government published proposed reforms to the NPPF and other changes to the planning system. The consultation closed on 24th September 2024 and the Government is currently analysing the responses received. These changes are a material consideration in the determination of the applications.

The NPPF consultation proposed no changes to the NPPF in relation to viability.

The purpose of a Section 106 agreement is to create a mechanism for a development to mitigate its impact on the wider community. The affordable housing element of an agreement is to ensure that a development is policy compliant.

Analysis.

In accordance with the requirements of the policy the applicant has submitted a viability assessment which has been independently reviewed. The review of the applicant's assessment has been carried out by the consultant who carried out the viability review of the local plan.

The provision of affordable homes is a cost to the development. Put simply each different type of affordable home represents a different level of cost. For example, private sales represent a return of 20% of the gross development value (GDV), i.e. the total cost to the scheme, affordable housing 6% GDV and first homes 15%. Consequently, the mix of types of affordable home can have an impact on the viability of a scheme.

In June 2023 the applicant submitted a viability assessment. The PPG set out in detail a standard methodology for carrying out viability assessments. It is not intended here to go into the detail of the methodology employed to carry out the analysis, in essence the costs of the scheme including land assembly and construction costs are set against the profits made from the sale of the development. If the calculation does not produce a surplus, then the scheme is not viable.

The applicant carried out an assessment of three levels of affordable housing 40%, 5% and 0%. At 40% the scheme is not viable, whilst at 5% and 0% the scheme is viable. This accorded with the council's consultant's assessment. The mix of affordable housing types was the same as the council's preferred mix as set out in the local plan and used for the viability assessment of

the local plan. But given there is a level of viability and in the light of the NPPF requirement to deliver 10% affordable housing, which the applicant had offered, a more detailed analysis was carried out by the council's consultant. This analysed 8%, 9% and 10%, this concluded that at 8% the scheme is viable.

The guidance recognises that large schemes take time to deliver and that the factors that affect viability including the mix and type of affordable housing can vary. The existing 106 agreement allows for a variation of mix affordable housing types to reflect the council's need at that time.

In the light of the following, the applicant's offer of 10% affordable housing, the impact of variations of mix and external factors such as construction costs rather than agreeing to a fixed position at the current time it is suggested that any revised 106 agreement includes a review mechanism.

In the first instance the 10% affordable homes is fixed for the life of the scheme with the mix to be agreed. This would also apply to the first phase because of the costs of providing the infrastructure to allow the site to be developed. For further phases a review mechanism would be incorporated into the agreement. This would allow the viability to be assessed in the light of prevailing conditions and the mix of affordable homes needed. It is also an opportunity to enable the later phases, subject to a cap on each phase, make up for shortfalls in earlier delivery. The final phase would be limited to 40% affordable homes as per the current agreement. This is because there is potential for the final phase to have a disproportionate number of affordable homes as there may be a shortfall to make up and economic conditions have changed sufficiently to supply this.

As an alternative if an amended agreement cannot be made it is unlikely that the scheme will proceed.