

**To the Chair and Members of the
PLANNING COMMITTEE**

**Reconsideration of Section 106 Agreement following Viability Assessment for
Residential Development at White Lane, Thorne (15/02275/OUTM)**

EXECUTIVE SUMMARY

1. This report seeks the approval of the Planning Committee to a variation to the Section 106 Agreement for a development of 79 dwellings at White Lane, Thorne.
2. Outline planning permission was approved by Planning Committee on the 20th of September 2016, and the decision noticed issued on the 30th of January 2017 following the signing of the Section 106 Agreement. The viability of the scheme had been assessed by the District Valuer Services (DVS) and the signed Section 106 Agreement included the following obligations;
 - 8 built units of affordable housing (10%)
 - Commuted sum of £219,564 to provide 12 secondary school places at Trinity Academy
 - On site Public Open Space and scheme for maintenance
3. The developer has since submitted a further viability appraisal, and supporting evidence in support of a lower Gross Development Value (GDV) than was previously concluded by the DVS. The DVS has reconsidered the proposal in light of the figures and agrees that the site is no longer able to achieve the above and remain viable. However, they do give the option of the scheme providing £100,000 towards s106 contributions, or 2 units of affordable housing.

EXEMPT REPORT

4. The report does not contain exempt information, however the financial information contained within the supporting evidence is confidential and not in the public domain.

RECOMMENDATIONS

5. For the reasons set out below, it is recommended that Planning Committee authorise the Head of Planning to agree a Deed of Variation to vary the terms of the Section 106 Agreement dated 27th January 2017, to remove the requirement to provide a commuted sum in lieu of education, and to amend the affordable housing obligation to the provision of a commuted sum of

£100,000. The provisions relating to POS are unchanged.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

6. The variation to the Section 106 Agreement will remove the requirement to deliver 8 units on the site and instead provide a sum of £100,000 to be used to provide affordable housing elsewhere.
7. The variation will remove the requirement to provide 12 secondary school places at Trinity Academy. However, following a review by the Council's Education team as part of the consideration of this recommendation, it is now recognised that as 16% of the pupils on roll in Thorne are actually classed as out of catchment, it would not be reasonable, or necessary, to ask the developer to make a contribution towards secondary education. This is further explained in paragraph 17.

BACKGROUND

8. Outline Planning Permission was granted by Planning Committee on the 20th of September 2016 for a development of 79 dwellings and construction of access roads (approval sought for access, layout and scale). The decision was issued on the 30th of January 2017 following the signing of a Section 106 agreement.
9. Prior to the determination of the application, a viability assessment had been submitted and subsequently sent to the DVS who concluded that the scheme was fully viable and could provide the Council's policy requirements in relation to affordable housing, on-site public open space and education, with additional funds to support other contributions. This was contested by the developer, who provided additional information in respect of Gross Development Value (GDV) to support their case. This was again considered by the DVS who agreed that the costs submitted were genuine extra costs over and above standard build costs, which had not been made clear when the appraisal was first assessed. As such, the DVS revised their response and added these costs.
10. This presented three scenarios, and it was recommended by officers to Planning Committee that there was greater community benefit in scenario 2 which concluded that with a Section 106 contribution of £219,594, the scheme was viable enough to support 10% affordable housing (8 units). Members of the Planning Committee accepted this recommendation and planning permission was approved accordingly.
11. In March 2017, the local planning authority received notification from the developer that they had commissioned Savills to provide a response to the previous correspondence on the viability of the site, prepared by the DVS. They believed there to be clear evidence based on local values, build costs and appeal decisions that questioned some of the DVS' values and assumptions, which suggested that there should be a re-appraisal of the Section 106 Agreement. Whilst the developer is keen to progress to implementation (indeed the Reserved Matters application is currently being considered, and a discharge of conditions request received), they consider that this has to be on the basis of a viable and fundable project.

12. In their appraisal, Savills highlighted differing opinions on the GDV and Developer's Profit and evidence was provided in respect of this. The report was then forwarded to the DVS for consideration.
13. In August 2017, the DVS provided their formal report on the revised viability assessment. In summary, the DVS is satisfied that the abnormal costs relating to ecological matters and increased specification of foundations have escalated from the estimates used in the earlier viability review by the DVS. The DVS also consider that the evidence supports a lower revenue will be achieved than that envisaged by the DVS in the initial report.
14. As such, the DVS consider that all of these amendments have a negative impact on viability and cumulatively the evidence means that the DVS cannot support the previous conclusion on viability. They conclude that a planning compliant scheme is not viable and in their opinion the scheme cannot provide any affordable housing nor any section 106 contributions. This opinion is subject to an overage clause.
15. An area of disagreement between the DVS and the developer is of sales values. To move the matter forward an overage clause has been suggested which, in the event that the revenues are higher than anticipated in the appraisal, the authority would have the opportunity to secure section 106 contributions retrospectively. An alternative to this would be the developer paying a S106 contribution of £100,000 or agreeing to deliver two affordable housing units on site. This would provide more certainty about sums to be paid. The developer has agreed to do this. Strategic Housing team advise that payment of the £100,000 would be more advantageous for the delivery of affordable housing.
16. The Strategic Housing team have raised no objections to the reduction of affordable housing. They have stated that of the two options available, the commuted sum payment of £100,000 would be preferable, rather than 2 units of affordable housing. The combination of the development at the Willow Estate Phase 3 (around 35 units out of a total of around 110) and the Extra Care facility in Thorne (over 70 units) gives a significant boost to local supply. The commuted sum payment of £100,000 is likely to lever in significant funding elsewhere and so potentially deliver more than the option of 2 homes. The money will be spent to support the current HCA Affordable Housing Investment Programme period (up to 2021).
17. The Education team have undertaken a reassessment of the school places in Thorne. Following further investigation of the pupils on roll in Thorne, 16% are actually classed as out of catchment children and therefore it would not be reasonable to ask the developer to make the contribution when such a large number of students from out of the area are taking available places. Therefore, based on this new information, it is the opinion of officers that the obligation for £219,564 towards the provision of secondary school places at Trinity Academy would no longer meet the tests set out in paragraph 19 of this report, regardless of the fact that this would also mean that the scheme would not remain viable if making this contribution. As such, it is recommended that this obligation be removed from the Section 106 Agreement.

18. The National Planning Policy Framework (NPPF) states that ‘local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.’
19. Planning obligations should only be sought where they meet all of the following tests;
- Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably relating in scale and kind to the development.
- These are the tests set out as statutory tests in the Community Infrastructure Levy Regulations 2010 and as policy tests in the NPPF.
20. The National Planning Policy Guidance (NPPG) states that planning obligations should not be sought where they are clearly not necessary to make the development acceptable in planning terms. Paragraph 205 of the NPPF states 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 planned development being stalled.’

OPTIONS CONSIDERED

21. To not enter into a Deed of Variation would have a negative effect on the viability of the scheme and/or result non-delivery of the approved scheme.

REASONS FOR RECOMMENDED OPTION

22. To enter into a Deed of Variation to vary the terms of the Section 106 Agreement as discussed would allow the developer to reduce the contributions provided by the scheme, whilst remaining viable for the developer. This would enable timely delivery of the scheme and provide a commuted sum of £100,000 to contribute towards affordable housing.
23. The Education team have confirmed that the sum of £219,564 is no longer required, therefore insisting upon this would be contrary to the policy and statutory tests set out in paragraph 19.
24. The viability has been robustly assessed by an independent consultant.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

	Outcomes	Implications
	<p>All people in Doncaster benefit from a thriving and resilient economy.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Be a strong voice for our veterans</i> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> 	<p>Agreeing to the recommendation will reduce the level of affordable housing provision on the site, replacing this with a sum which could be spent elsewhere in the Borough. This has the potential to disadvantage those in need of affordable housing in Thorne.</p> <p>Not to agree with the recommendation will mean that the development of the site will not be brought forward any time soon and that the potential for new and improved housing stock in the settlement will be reduced.</p> <p>The site will not be developed, therefore reducing construction employment opportunities.</p>
	<p>People live safe, healthy, active and independent lives.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> 	<p>Not to agree with the recommendation will mean that the development of the site will not be brought forward any time soon and that the potential for new and improved housing stock in the settlement will be reduced.</p>
	<p>People in Doncaster benefit from a high quality built and natural environment.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> 	<p>The site will not be developed, reducing the potential for new families to move to the area which would boost the local economy, and allow existing families to move to new housing and remain in the local area. The site will also provide smaller accommodation for those wishing to downsize and remain in the local area.</p> <p>The delivery of the development will provide an attractive place to live with associated infrastructure and green space.</p>
	<p>All families thrive.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> 	<p>Existing and new families will have access to new housing with attractive landscaping and open areas. Without the development being brought forward these facilities would not be provided.</p>
	<p>Council services are modern and value for money.</p>	<p>The development of new homes will deliver additional Council Tax and New Homes Bonuses to the Borough.</p>
	<p>Working with our partners we will provide strong leadership and governance.</p>	<p>The proposed changes have been agreed following consultation with the Housing and Education teams, ensuring that they are involved in the</p>

		decision making process as the implications of this decision will directly affect their service.
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RISKS AND ASSUMPTIONS

25. There is a risk that the development will not go ahead if the variation is not agreed.

LEGAL IMPLICATIONS

26. A planning obligation can be modified or discharged by agreement at any time between the appropriate authority and the person or persons against whom it is enforceable. The committee should consider if the obligation still serves a useful planning purpose. In this instance the education team have concluded that the education commuted sum is no longer required and the Strategic Housing team advise that payment of the £100,000 would be more advantageous for the delivery of affordable housing. Any challenge to a refusal of the current application would be subject to a judicial review challenge.

FINANCIAL IMPLICATIONS

27. The legal and administrative costs associated with this variation will be met by the Developer.
28. Agreeing to the variation will remove requirements included in the original Section 106 Agreement to support 8 units of affordable housing and to provide a commuted sum of £219,564 for the provision of 12 secondary school places at Trinity Academy, and instead a Section 106 contribution of £100k will be made by the Developer to support the Borough's Affordable Housing Programme.
29. Section 106 obligations regarding Public Open Spaces will remain unchanged.

HUMAN RESOURCES IMPLICATIONS

30. There is no identified staffing or other resource implications.

TECHNOLOGY IMPLICATIONS

31. There are no identified technology implications.

EQUALITY IMPLICATIONS

32. There are no identified equality implications.

CONSULTATION

33. Consultation has taken place with the Ward Members for Thorne and Moorends and Thorne and Moorends Town Council. At the time of writing

this report, Councillor Blackham has confirmed that he has no objections, and whilst the proposal was discussed verbally with Councillor Mark Houlbrook, a formal response has not been received. No comments have been received from Councillor Susan Durant or Thorne and Moorends Town Council. Any further responses will be reported verbally at the meeting.

34. Consultation has also taken place with the Programme Manager, Strategic Housing and the Planning and Monitoring Officer, School Organisation Service. Their comments are contained within this report.

BACKGROUND PAPERS

35. Planning application 15/02275/OUTM.

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