



Doncaster Council

Date: 1st May 2018

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

**Reconsideration of Section 106 Agreement following Viability Assessment for
Residential Development at Barton Lane, Armthorpe (14/01385/OUT).**

EXECUTIVE SUMMARY

1. This report seeks the approval of the Planning Committee to a variation to the Section 106 Agreement for a development of 22 dwellings at the former Blacks Engineering Works, Barton Lane, Armthorpe.
2. Outline planning permission was approved for a residential development by Planning Committee on the 4th April 2015, and the decision noticed issued on the 12th December 2016 following the signing of the Section 106 Agreement. No viability assessment was undertaken and the land owner agreed to the full quota of contributions in order to gain permission and sell on the site. The Section 106 Agreement included the following obligations;
 - Public Open Space £48,450 off site commuted sum to the Church Street project.
 - Education £60,715.
 - Affordable housing 26% = 6 on site built units.
3. The site has since been sold to the current applicants who applied for a reserved matters application for 22 dwellings, which was approved. The new owners are unable to borrow the money to develop the scheme, due the necessary S106 contributions. The developer has submitted a viability appraisal and supporting evidence which has been independently assessed by 2 financial viability consultants, the latter being the District Valuer (DVS).
4. The DVS has considered that the price paid for the land is having a significant impact on the deliverability of the scheme and considered the current S106 asks to make the scheme unviable. The DVS has suggested the agreement be reduced to include 2 (9%) affordable houses and £30,000 financial contribution, which can either be split between Education and Public Open Space or dedicated to 1 or the other.

EXEMPT REPORT

5. 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

6. For the reasons set out below, it is recommended that Planning Committee agree a Deed of Variation to vary the terms of the Section 106 Agreement dated 7th December 2016, to amend the affordable housing units from 6 to 2 units and reduce the combined education and public open space contributions from £109,165 to £30,000. The £30,000 be split between Education and Public Open Space improvements £15,000 each. The specific project where the POS will be spent is to be confirmed; however it will be within the vicinity of the site as required by CIL regulations.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

7. The variation to the Section 106 Agreement will remove the requirement to deliver 6 on site affordable housing units and instead provide 2 on site affordable housing units.
8. The variation will remove the requirement to provide 5 school places £60,715 at Southfield Primary School in favour of 1 space £15,000.
9. The contribution towards the Church Street Public Open Space reduced from £48,450 to £15,000.

BACKGROUND

10. Outline Planning Permission was granted by Planning Committee on the 4th April 2015 and issued on the 12th of December 2016 following the signing of a Section 106 legal agreement.
11. The site was then sold to the current land owners who applied for a reserved matters application 16/01448/REMM for 22 dwellings. This was approved under delegated powers on the 23.05.17.
12. The applicants, sought to finance the scheme and discovered the lenders were unwilling to lend them the money due to the limited gross development value (GDV) in the scheme and the associated risks of the commencing the scheme. This was primarily due to the amount contributions contained within the original S106 agreement and the fact that no viability assessment had been done by the original land owner to establish the ability of the site to deliver these requirements.
13. The applicants now seek to vary the terms of the original legal agreement by a deed of variation to enable the outline and reserved matters permissions to be developed out.
14. The applicant commissioned a Financial Viability analysis in June 2017.

15. Valuing the site at the price paid of £450,000 the conclusions of the report were that the scheme would return a 10.5% level of profitability. On this basis the developer would not be able to raise the additional money to develop the site as any lender would be looking at a minimum of 20% to allow for the risks associated with this scheme. Any contribution towards affordable housing would further reduce this profit level. The assessment was silent on the other POS and educational contributions.
16. This was assessed by one of the council's independent viability assessors who found some discrepancies in the assessment. The main area of disagreement was the value of the site which was put at £10,000 given all the S106 requirements and other development costs.
17. The discussions came to a standstill, as both parties disagreed and the main issue was the price paid for the land. The applicants fully appreciate their position due to a lack of experience and accept they paid too much for the land but are keen to develop this site. It's likely that these sums would have been significantly reduced had a viability assessment been undertaken at the time of the original outline permission. This may also have happened had the previous land owner not managed to sell the site for a long period of time.
18. This is a derelict brown field site in need of being developed to improve the appearance of this part of Armthorpe and to deliver new homes. Officers proposed that the two financial assessments be independently assessed by the District Valuer (DVS) to see if any middle ground could be achieved.
19. The DVS undertook the appraisal "through the eyes" of a typical developer intent on implementing the planning permission. The conclusion was that whilst he had a difference of opinion on a number of inputs to the applicant's original appraisal, the conclusion was that a compliant scheme with the required section 106 contributions of 6 affordable housing units was unviable.
20. The conclusion through sensitive analysis suggests that a scheme which is PPG compliant on viability could provide £30,000 of contributions and 2 on-site affordable houses.
21. The National Planning Policy Framework (NPPF) states in paragraph 173 'Ensuring viability and deliverability' that sustainable development requires careful attention to viability and costs in plan-making and decision taking. It emphasises that development should not be the subject to such scales of obligations that threatens its ability to be delivered.
22. 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

23. 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 and lead to this site remaining derelict for the foreseeable future.

REASONS FOR RECOMMENDED OPTION

24. 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 £30,000 to contribute towards public open space improvements and education and 2 on site affordable dwellings.

25. The viability has been robustly assessed by an independent consultant (DVS).

IMPACT ON THE COUNCIL'S KEY OUTCOMES

	Outcomes	Implications
	<p>Doncaster Working: Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"> • Better access to good fulfilling work • Doncaster businesses are supported to flourish • Inward Investment 	<p>Agreeing to the recommendation will reduce the level of affordable housing provision on the site. This has the potential to disadvantage those in need of affordable housing in Armthorpe.</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. Potential residents may therefore not seek employment within the borough.</p> <p>The site will not be developed, therefore reducing construction employment opportunities.</p>
	<p>Doncaster Living: Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> • The town centres are the beating heart of Doncaster • More people can live in a good quality, affordable home 	<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 remain derelict</p>

	<ul style="list-style-type: none"> • Healthy and Vibrant Communities through Physical Activity and Sport • Everyone takes responsibility for keeping Doncaster Clean • Building on our cultural, artistic and sporting heritage 	<p>and open to vandalism and a blight on the local area and safety concern</p>
	<p>Doncaster Learning: Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> • Every child has life-changing learning experiences within and beyond school • Many more great teachers work in Doncaster Schools that are good or better • Learning in Doncaster prepares young people for the world of work 	<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.</p> <p>The delivery of the development will provide an attractive, low density place to live with associated infrastructure and green space. This will allow families to settle and children to attend local schools. A contribution towards education places is being suggested albeit a reduced amount.</p>
	<p>Doncaster Caring: Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> • Children have the best start in life • Vulnerable families and individuals have support from someone they trust • Older people can live well and independently in their own homes 	<p>The delivery of the development will provide an attractive, low density place to live with associated infrastructure and green space. This will allow families to settle and children to attend local schools.</p> <p>The proposal also will enable the delivery of much need bungalows to enable these to be purchased by older residents allowing them to stay in their homes for longer. Without this amendment the proposal wouldn't be delivered.</p>
	<p>Connected Council:</p>	<p>The proposed changes have</p>

	<ul style="list-style-type: none"> • A modern, efficient and flexible workforce • Modern, accessible customer interactions • Operating within our resources and delivering value for money • A co-ordinated, whole person, whole life focus on the needs and aspirations of residents • Building community resilience and self-reliance by connecting community assets and strengths • Working with our partners and residents to provide effective leadership and governance 	<p>been agreed following consultation with the Housing and Education teams, ensuring that they are involved in the decision making process as the implications of this decision will directly affect their service.</p>
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RISKS AND ASSUMPTIONS

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

LEGAL IMPLICATIONS [Initial HL Date 16/4/18]

27. A planning obligation (S106 agreement) can be modified or discharged by agreement at any time between the Council and the person or persons against whom a planning obligation is enforceable against. The committee must consider if the obligations in the S106 agreement still serve a useful planning purpose. If the Council determines that the S106 agreement shall continue to have effect without modification, the applicant has the right to appeal to the Secretary of State.

FINANCIAL IMPLICATIONS [Initials BC Date 20.4.18.]

28. The viability of the development has been assessed independently and the results of that assessment indicate that the revised s106 contributions outlined below are reasonable.

29. Agreeing to the variation will remove requirements included in the original s106 agreement to support 6 on site (26%) units of affordable housing, provide a commuted sum of £60,715 for the provision of 5 primary school places at Southfield Primary School and a commuted sum of £48,450 towards the Church Street project.

30. Instead the provision of 2 on site affordable housing units would occur and a contribution of £15k will be made to the Church Street project and £15k to education.

31. The revised s106 contributions are less than the full quota identified under the original planning permission. Should this mean that there is insufficient to cover the impact of the development, the Council may need to fund some of this from its own resources. This would be a pressure on the Council's budget that would require appropriate resources to be identified. The

Council should not act unreasonably in hindering development so the risk of this needs to be weighed against the benefits of the development itself.

32. The legal and administrative costs associated with this variation will be met by the Developer.

HUMAN RESOURCES IMPLICATIONS [Officer Initials CR Date 19/4/18.]

33. There are no identified HR staffing / resource implications in relation to this Planning Committee report and the proposals at Barton Lane.

TECHNOLOGY IMPLICATIONS [Officer Initials PW Date 19/4/18]

34. There are no identified technology implications in relation to this report.

HEALTH IMPLICATIONS [Officer Initials CT Date 20/4/18]

35. From a Public Health perspective is disappointing that the initial number of affordable homes will be reduced. Good quality, affordable housing helps create a stable environment for residents and as Doncaster consists of a number of deprived communities; affordable housing is important in creating opportunities for everyone to buy their own homes to support the creation of a stable, fulfilling life.

36. Section 106 monies will also be reduced under the variation which will have negative impacts on the community in terms of the contributions towards providing community and social infrastructure to mitigate the impact of the development.

37. However, it is clear that if the development does not go ahead then this piece of land is likely to be left undeveloped which can lead to negative impacts on the existing community creating perceived hotspots for antisocial behaviour and a derelict area.

38. The Developer is agreeing to provide two affordable homes and £30,000 in Section 106 monies which will be split between the school and also a community project. In relation to the community project it would prudent to have site of evidence of what the Church Street Project is and how it will benefit the community; also, how the contribution will be utilised. If this information is not forthcoming at this time it might be more appropriate to consider commencing the sum to another local project that has established project objectives and outcomes and is in apposition to deliver the community aspect of the Section 106 contribution.

EQUALITY IMPLICATIONS [Officer Initials GS Date 19.4.18]

39. There are no identified equality implications.

CONSULTATION

40. Consultation has taken place with the Ward Members for Armthorpe, and Armthorpe Parish Council. Councillor Christopher McGuinness suggested because of the amounts involved we the 3 ward members and Parish

Council believe the monies should go to open space improvements (Church Street project).

41. Consultation has also taken place with Neighbourhood manager for Armthorpe who queried what the 'Church Street project' was. This is unclear and therefore an alternative proposal is being considered and would be included within any revised agreement. Strategic Housing and the Planning and Monitoring Officer, have also been consulted.

42. The school organisation service have requested that as much contribution as possible is still made to education, to address shortfall in education places.

BACKGROUND PAPERS

43. Planning application 14/01385/OUT.

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