



# City of Doncaster Council

## Report

Date: 14<sup>th</sup> November 2023

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

**Consideration of Section 106 Agreement following Viability Assessment for Residential Development at Owston Road, Carcroft (19/01514/OUTM)**

Relevant Cabinet Member(s)	Wards Affected	Key Decision
Cllr Phil Cole	Adwick le Street & Carcroft	No

### EXECUTIVE SUMMARY

1. This report was previously presented to Members at the 17<sup>th</sup> October Planning Committee but was deferred to provide Committee with further education information.
2. This report seeks the approval of the Planning Committee to a variation to the Section 106 Agreement for a development of residential housing at Owston Road, Carcroft.
3. Outline planning permission was granted under delegated authority on the 16th December 2019, with the decision being subject to a Section 106 Agreement dated 13th December 2019. The Agreement sought to deliver the following obligations;
  - Delivery of 26% on site built units for affordable housing. The tenure split required 75% to be Social Rented dwellings and 25% to be Shared Ownership dwellings.
  - Commuted sum of £201,267.00 to provide 11 secondary school places at Outwood Academy
  - On site Public Open Space (POS) and scheme for maintenance
4. A copy of the Officer Delegation Report is appended for reference.

### EXEMPT REPORT

5. This report does not contain exempt information.

### 6. RECOMMENDATIONS

7. 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 13th December 2019 to remove the requirement to provide affordable housing and to remove the requirement for a commuted sum in lieu of education in accordance with the terms of this

report. The provisions relating to POS are unchanged.

## **WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?**

8. The variation to the Section 106 Agreement will remove the requirement to deliver any affordable housing.
9. The variation will remove the requirement to provide 11 secondary school places at Outwood Academy. As an update on the education requirement as requested by Committee, a revised education calculation has been provided. Education has advised that 'based on the reduced number of dwellings, this along with a post-covid birth rate drop, a change to parental preference and removing any out of catchment children from calculations there is enough space at both Carcroft Primary and Outwood Academy Adwick to accommodate any children arriving from this development, therefore no education contribution would be required.'
10. Whilst this is not an allocated housing site in the Local Plan, it does form part of a larger site identified as a 'Potential Development Site' in the Local Plan. These sites are identified as suitable for housing development but are not currently considered developable in the plan period. These identified sites will be supported in accordance with Local Plan policies. The development will nevertheless benefit the local community as it will deliver a range of new homes, on a previously developed (brownfield) site by providing a range of new 1,2,3 and 4 bedroomed homes and thus a good mix of house types. The site is also one that experiences frequent fly tipping as witnessed by the case officer on site visit.

## **BACKGROUND**

11. Outline Planning Permission was granted on the 16th December 2019 for residential development on approx. 1.87ha of land (approval sought for access only). The decision was issued following the signing of a Section 106 agreement dated 13th December 2019.
12. The site has subsequently been sold on and the current owner has submitted a Reserved Matters application (Ref: 22/02277/REMM). The application is seeking approval of the details of Appearance, Landscaping, Layout and Scale for the erection of 63 dwellings. The application initially proposed 73 dwellings but has since been reduced in order to overcome highway and design related issues.
13. The Applicant submitted a Deed of Variation (DOV) accompanied by a Full Viability Appraisal (FVA) concurrently with the submission of the Reserved Matters application. Since submission, the FVA has also been updated to reflect the current number of dwellings proposed.
14. Policy 66 of the Local Plan states that where the applicant can demonstrate that particular circumstances justify the need for a Viability Appraisal, the Council will take a pragmatic and flexible approach to planning obligations and consider their genuine impact on viability of development proposals on an independent and case-by-case basis.
15. In September 2023 the FVA was assessed by an independent external consultant. The level of profit a scheme should make has been the subject of


debate and it is widely accepted at appeal that schemes should make between 15 and 20% profit on sales (Gross Development Value). The consultant has appraised the scheme using the nationally accepted profit level of 17.5% on GDV which is taken to represent a reasonable return for a scheme such as this. The conclusion of the assessment shows that the scheme with the policy compliant amount of affordable housing and education contributions would make this scheme unviable.

## OPTIONS CONSIDERED AND REASONS FOR RECOMMENDED OPTION

16. To not enter into a Deed of Variation would have a negative effect on the viability of the scheme and result in the non-delivery of the proposed housing development.
17. 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 affordable housing contribution provided by the scheme, whilst remaining viable for the developer. The education contribution is now updated and no longer required.
18. This in line with the NPPF, which allows 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. Doncaster Local Plan Policy 66 also reflects this stating the Council will take a pragmatic and flexible approach to planning obligations and consider their genuine impact on viability of development proposals on an independent and case-by-case basis.
19. The viability has been robustly assessed by an independent consultant who has concluded that the scheme submitted under the Reserved Matters application is not viable to make the affordable housing and education contributions required under the current Section 106 Agreement.

## IMPACT ON THE COUNCIL'S KEY OUTCOMES

20. This report is considered to impact on the following key outcomes.

Great 8 Priority	Positive Overall	Mix of Positive & Negative	Trade-offs to consider – Negative overall	Neutral or No implications
 <b>Tackling Climate Change</b>	✓			
Comments: The housing development will include a landscape scheme including planting of trees within streets and within green open spaces. Homes will be fitted with EV charging facilities and will also be required to meet building regulation requirements for energy efficiency. This can be in the form of such as ground source heat pumps, solar panels.				

	<b>Developing the skills to thrive in life and in work</b>				
<p>Comments: Provision of school places is considered during the consideration of a residential development. In this case a commuted sum of £201,267.00 to provide 11 secondary school places at Outwood Academy was required as part of the S106 Legal Agreement. However, this contribution is now updated and no longer required due to existing capacity at both primary and secondary schools. This Deed of Variation request seeks to remove this element of the obligation.</p>					
	<b>Making Doncaster the best place to do business and create good jobs</b>				
<p>Comments: The development will contribute by creating jobs locally in the short term during the construction period. The site is sustainably located so will generate more footfall locally to support local services and also sustainably located to the city centre so will generate more footfall and use of services/facilities within the city centre.</p>					
	<b>Building opportunities for healthier, happier and longer lives for all</b>				
<p>Comments: The development will create a healthy living environment with green spaces, play area and quality landscaping, including tree lined streets. Overall the development will help to create a sense of place and wellbeing for residents.</p>					
	<b>Creating safer, stronger, greener and cleaner communities where everyone belongs</b>				
<p>Comments: The development will contribute to achieving this priority by provision of on site open space which will be ensured to be maintained, along with provision of children's play area. The development has been designed to achieve a safe place to live with opportunities for natural surveillance of overlooking of play areas. The developer will also be encouraged to achieve 'Secure By Design' accreditation.</p>					

	<b>Nurturing a child and family-friendly borough</b>	✓			
Comments: The housing development will provide a range of family homes, predominantly 1,2 and 3 bedroomed housing with green spaces and a children's play area which will create a healthy, family friendly, place to live.					
	<b>Building Transport and digital connections fit for the future</b>	✓			
Comments: Each property will be connected with Superfast Broadband internet connection. Each property will have its own designated on-site parking space and EV charging provision.					
	<b>Promoting the borough and its cultural, sporting, and heritage opportunities</b>				✓
Comments: The planning merits of the development do not include consideration of cultural, sporting or heritage opportunities given that this is an overgrown greenfield site with no heritage assets on site which proposes a moderately sized housing development. The development will not impact on or provide for sporting opportunities.					
<b>Fair &amp; Inclusive</b>					✓
Comments: In line with the corporate approach for compliance against the Equality Act 2011 due regard must be shown across all activity within the Council. The planning application has been advertised in the local press, online and individual letters of notification have been sent to all adjoining neighbours. Therefore, there are no detailed impacts on any people, groups or individuals on which to base a due regard statement.					

## LEGAL IMPLICATIONS [Officer Initials SC Date 2.11.23 ]

19. A planning obligation may not be modified or discharged except by agreement with the LPA within the first five years beginning with the date the obligation is entered into. After that period an application (which has a statutory determination period and can be appealed) can be made to the LPA to so modify or discharge an obligation. In this case we are within the five year period so the LPA has the discretion to consider the request, and there is no right of appeal. Any decision is, however, open to challenge in accordance with the usual public law principles. The relevant test (as set out in s106A of the Town and Country Planning Act 1990) when considering whether to agree to the modifications proposed is whether the obligations continue to serve some useful purpose in the public interest such that the obligations should be maintained. Thus in reaching a

decision in such a case, the full range of planning considerations involved for example in a grant or refusal of planning permission are not engaged. Instead the useful purpose test is to be applied. If the modifications are agreed, they must be secured via the entry into of a deed.

#### **FINANCIAL IMPLICATIONS [Officer Initials CS Date 01.11.2023]**

20. As a result of this decision the developer won't be providing the affordable housing element and the commuted sum of £201,267 for education places. The variation will remove the requirement to provide 11 secondary school places at Outwood Academy. As an update on the education requirement as requested by Committee, a revised education calculation has been provided. Education has advised that 'based on the reduced number of dwellings, this along with a post-covid birth rate drop, a change to parental preference and removing any out of catchment children from calculations there is enough space at both Carcroft Primary and Outwood Academy Adwick to accommodate any children arriving from this development, therefore no education contribution would be required.

#### **HUMAN RESOURCES IMPLICATIONS [Officer Initials DK Date 03.10.2023]**

21. There are no direct HR implications in relation to this report, but if in future staff are affected or additional specialist resources are required then further consultation will need to take place with HR.

#### **TECHNOLOGY IMPLICATIONS [Officer Initials PW Date 03.10.2023]**

22. There are no technology implications in relation to this report.

#### **RISKS AND ASSUMPTIONS**

23. None.

#### **CONSULTATION**

24. Chair and Vice Chair of Planning Committee,  
Ward Members

#### **BACKGROUND PAPERS**

25. Appendix 1 - Delegated report – **16TH DECEMBER 2019**.  
Appendix 2 – S106 Legal Agreement  
Appendix 3 – Applicant's Viability Appraisal

#### **GLOSSARY OF ACRONYMS AND ABBREVIATIONS**

26. NPPF – National Planning Policy Framework 2023

#### **REPORT AUTHOR & CONTRIBUTORS**

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