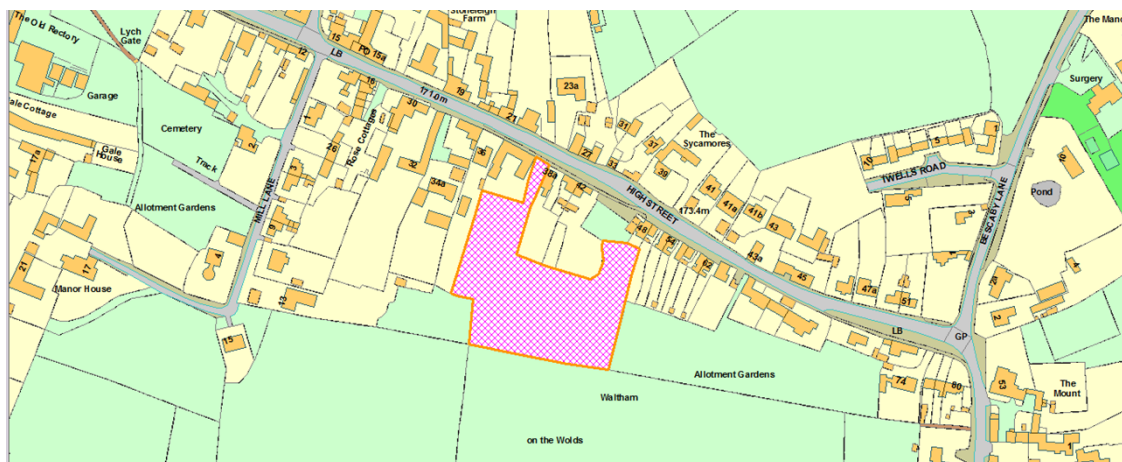


Request to vary Section 106 Agreement in relation to Planning Permission 14/00777/OUT at Land behind 38-48 High Street Waltham on the Wolds

Corporate Priority:	Delivering sustainable and inclusive growth in Melton
Relevant Ward Member(s):	Elaine Holmes (Waltham on the Wolds)
Date of consultation with Ward Member(s):	18 December 2020
Exempt Information:	No

1 Summary



- 1.1 The purpose of this report is to consider proposed amendments to the Section 106 agreement associated within this application that have been requested by the applicant.
- 1.2 Planning Permission was granted in 2016 for residential development of 26 Units (14/00777/FUL) with an associated s106 that included provision for 6 affordable housing units, specified within that application in terms of the relevant plot numbers 14 -19 and the tenures proposed (4 x affordable rent and 2 x shared ownership properties).

1.3 In December 2020 the Council was approached by the developers, Platform Housing Group (who have acquired the site from the original applicants) proposing a Deed of Variation to the s106 agreement. An amended proposal was submitted in January 2021 and a further update in March after Platform acquired the remainder of the site.

1.4 The proposal is now as follows:

- Delete the limit of 6 referred to in the s106 to allow for all of the properties to be affordable houses, of various tenures (see breakdown below).

- A proposed mix of :

- (i) 10 affordable rented properties,
- (ii) 5 rent to Buy properties and
- (iii) 11 shared ownership to total the 26 on site.

The Rent to Buy would be a mix of the two and three bed properties to be agreed.

- Adjustments to schedule 5 of the existing agreement such that:

- (i) The nomination provisions for the shared ownership units and the nominations requirements for the rented units not be in perpetuity, as Platform must be able to let the units in the event that the Council cannot nominate a tenant in a timely manner.
- (ii) Removal of local connection criteria for Shared Ownership units. Homes England will not provide grant funding if they are restricted.
- (iii) Adjust the mortgagee clause to the NHF standard form so the value of the properties as security for a loan is retained to allow for future investment.

RECOMMENDATION(S)

1. It is recommended that:
 - (ii) the request for a Deed of Variation is declined and
 - (iii) the applicants are invited into further discussion with a view to achieving a mutually acceptable solution.

2 Reason for Recommendations

2.1 The proposed tenure mix would result in delivery of affordable housing of a type for which there is limited local need or demand, and which has recently/currently being met by other developments in Waltham.

2.2 The 'local connection' criteria is considered to be an important component for the delivery of affordable housing and as such is enshrined within Development Plan policy and the adopted 'Affordable Housing and Housing Mix SPD' (July 2019). With the exception of the benefit of increasing the supply of affordable housing overall, it is considered that there are insufficient benefits to justify a departure from these policies.

2.3 Reason for Committee Determination

2.3.1 The deed of variation would impact on the provision of affordable housing and determination by Committee has been requested by the Chair.

2.4 Relevant Policies

2.4.1 Policy C4 of the Adopted Local Plan relates to affordable housing and requires 32% affordable housing in Waltham, of various tenures. It should be noted that the s106 in this location was determined significantly before the Local Plan was adopted and the Neighbourhood Plan was made, and that the figure of 6 (which equates to 23%) was based on a viability case presented through the application.

2.4.2 The adopted 'Affordable Housing and Housing Mix SPD' (July 2019) elaborates on the quantity, mix and tenure of affordable housing and also states that in rural areas occupancy conditions shall apply.

2.4.3 Neighbourhood Plan policies require;

- H2 – new developments should include a mixture of housing types to meet locally identified needs. Dwellings of 3 bedrooms or fewer and single storey accommodation suitable for older people will be supported.
- H3 – the provision of affordable housing for people with a local connection will be supported. Development should be 'tenure blind'.

2.5 Main Issues

2.5.1 The main issues associated with this proposal are considered to be :

- Whether removal of the limit of 6 to 100% provision of AH is acceptable;
- Proposed (new) Tenure Mix;
- Removal of nomination rights in perpetuity;
- Removal of local connection criteria for the shared ownership .

3 Report Detail

3.1 Background

3.1.1 The planning application was considered at the meeting of 18th February 2016 and was approved, subject to the completion of a S106 Agreement to provide affordable housing. Detailed within the S106 Agreement are a maximum of 6 (six) Affordable Dwellings (specified as discount market rent and shared ownership ('intermediate') and which is to be provided to an eligible household comprising or including a 'Qualifying Person' (a person in need of affordable housing) whose housing needs are not met by the market.

3.1.2 The agreement also sets out a local connections criteria for all types of affordable housing on a 'cascade' basis comprising:

- Those resident in Waltham
- Those recently resident in Waltham or with strong connection
- Adjacent Parishes
- Wider Melton Rural Area (n.b. expressly excluding Melton Mowbray town).

Removal of limit of 6 to allow 100%

- 3.1.3 The number of affordable housing proposed is 26 : 100% of the site. This is a proposed variation from a figure of 6.
- 3.1.4 It is considered that this change has general merit in generating affordable housing at a level not anticipated from this site and in excess of Local Planning Policy. Affordable Housing can be difficult to secure than the Local Plan acknowledges that its provisions do not fully satisfy anticipated needs. 'Windfall' provision such as this proposal (+20) contribute towards closing that imbalance.
- 3.1.5 However the NPPF describes the need to develop mixed communities (para. 62) and tailoring provision to meet local needs in rural areas (para.77). It is considered that if the development was exclusively affordable housing it would be distinguishable as an 'enclave' within the village which would be counter to the objective of mixed communities. This would exacerbated by the site characteristics as it presents as a 'stand alone' site with limited physical integration with the surrounding built form.
- 3.1.6 Current evidence for affordable housing shows there is not a demonstrable need for 10 additional affordable rented homes for households with a Parish connection. There may be a need or desire for other households, across the Borough, needing affordable rented housing, to live in the village but this is difficult to ascertain. This is because bids are often made by households to properties in rural locations, without realising there are a limited services and amenities.
- 3.1.7 Recent evidence on the sale of shared ownership housing in Waltham suggests there is not a need from households in the Parish but instead from neighbouring parishes or Melton. This evidence suggests though that even the additional proposed 11 shared ownership dwellings may not be needed in addition to the 11 already recently built at the Brampton Valley site and the further 9 which have received planning permission at the Bellway site (both on Melton Rd, Waltham).
- 3.1.8 The two new sites on Melton Road, Waltham (17/00391/REM and 18/01011/REM) will deliver between them, 38 new affordable dwellings: 18 x affordable rent and 20 x shared ownership. Comprising of 19 x 2 beds; 17 x 3 bed dwellings and 2 x 4 beds.
- 3.1.9 Bidding data for the most recent nomination requests to the Council for 5 of the newly built affordable rented homes shows only 4 of the households who made bids, have a local connection. The other bidders have either a neighbouring Parish or Melton connection.
- 3.1.10 Sales data for the shared ownership dwellings at the Brampton Valley, Melton Road site show that these were sold to households with a neighbouring Parish or Melton connection. It is reported that the sales were quite slow in coming forward. The average time for a sale has been around 4 months, with a further 3 months for the conveyancing. Most purchasers were first time buyers and sold to young, single people; younger couples; single parents with children and one sold to a retired couple.
- 3.1.11 The rural housing needs survey (report dated July 2016) concludes at the time that in the next 5 years, there is a need for up to 9 affordable homes (4 households for affordable rented and 5 households for shared ownership). The survey is a snapshot in time over a 5 year period and does not take into account further affordable housing need which may arise but similarly does not take into account re-lets and re-sales. If an additional 26 affordable homes were built, there would be a total of 64 new affordable homes, in Waltham in addition to existing supply.

3.1.12 The s.106 agreement for 14/00777/FUL has a local connection definition with 4 criteria to it. The fourth has the lowest priority and states “is a person who resides in the Borough of Melton but outside the town of Melton”. This applies to both the rented and intermediate (shared ownership) housing and the applicants are not requesting it is altered for the rented units or buy-to-rent units, only the shared ownership. This means that these cannot be let/sold to any household with a connection only to the town of Melton, which limits the pool of prospective tenants/buyers.

3.2 Tenure Mix

3.2.1 The proposed tenure mix is as set out at paragraph 1.3 above. Platform have advised that they are happy to discuss a variation of these 3 tenure types. However, they are not able to include Discount Market products as they do not attract grant funding from Homes England and is not a tenure-type that they are able to develop. They have highlighted that both Rent to Buy and Shared Ownership allow residents to progress to 100% ownership.

3.2.2 As set out above, there is limited demand for the shared ownership and affordable rent products and the development is coming forward shortly after other developments in Waltham that have provided supply in these tenures. It is considered therefore that the tenure mix is inappropriate in this location, in current circumstances.

3.2.3 The house designs are established in the planning permission (and amendments) and do not distinguish a different design quality across different tenures. Therefore it is not considered that ‘tenure blind’ issues are raised by this request.

3.3 Local Connection criteria

3.3.1 The requirements for local connection criteria and prioritisation is set out in the adopted ‘Affordable Housing and Housing Mix SPD’ (July 2019) and Neighbourhood Plan policies (see section 3.2 above).

3.3.2 Platform HG have explained that the restrictive nature of these clauses hampers their ability to utilise the value of development to raise funds for further projects, which in turn will affect their overall development ‘pipeline’ (NB this is not limited to delivery in the Melton Borough). However, it is fundamental to the way in which Affordable Housing is secured in Melton, especially in rural areas, and as such it is not considered there are grounds to delete it.

3.3.3 It should be noted that this – along with the other aspects of the s106 to which this request relates – were established upon the granting of permission in 2016 and the developers have acquired the site in knowledge of their requirements and limitations.

3.3.4 Local connection criteria are in place to ensure households who currently live in the Parish and neighbouring Parishes can remain close to their existing community to be eg. close to family, support networks, schools, employment etc. There is a limit to the number of households in these circumstances. Waltham on the Wolds (as with most of the villages in the Borough) has a limited services and so households often rely upon either private cars; taxis (although these are expensive and often beyond the means of household’s needing affordable housing) or assistance from family/friends for transport. This is one of the reasons there are limited numbers of households from Melton Mowbray who will choose to live in Waltham (or any of the villages in the Borough) because they may not have family or friends who can support them with transport, resulting in them having

difficulty in accessing employment, family and friends; other support networks; health care and amenities.

3.3.5 In addition to this, house prices on average (both to buy and rent) are more expensive in Waltham and the other villages of the Borough than they are in Melton Mowbray. Also, residents in the town have a greater choice of housing options in regards to both tenure and size of dwelling. For these reasons, priority has been given to households in the parish of Waltham, then neighbouring parishes and then other Melton Borough rural parishes in the local connection criteria. Because Melton Mowbray has more housing options, there is less likely to be a need or desire for households to move to Waltham unless they have a connection to the village.

3.4 **Mortgagee clauses**

3.4.1 The proposed mortgagee clauses are the NHF standard form and are not unusual in s106 cases. They are applicable in the event of financial failure of the Registered Provider to allow administrators to sell the properties and include provision that an alternative Registered Provider must be sought initially (then a wider approach to disposal if this is not achieved).

3.4.1 The existing s106 makes a provision that is similar in principal, i.e. that a mortgagee would be exempt from the terms of the agreement subject to following a defined procedure of notification of the Council, seeking to dispose to an alternative Registered Provider or the Council itself before proceeding to sale. It is not considered that the difference in the provisions as existing and proposed are prejudicial to the purpose of the wider document.

3.5 **Other matters**

3.5.1 The development is progressing on the site despite the request addressed in this report not being concluded. This, in itself, is not a breach of planning control as the s106 provision addressed here relate to the tenancy and occupation of the houses rather than their built form which is conveyed by the planning permission (including amendments). It is at the developers own risk that they have proceeded whilst awaiting resolution of these requests.

4 **Consultation & Feedback**

4.1 Waltham on the Wolds and Thorpe Arnold Parish council have objected to the proposed variation on the following grounds:

- The proposal will not provide a range of housing types suitable to meet the needs of the village and does not include single storey accommodation suitable for older people. This is contrary to Policy H2 of the Neighbourhood Plan.
- The removal of nomination rights will remove priority for local people contrary to Policy H3.
- Being 100% affordable housing it will not be 'tenure blind' and indistinguishable from market housing.
- The two sites on Melton Road have delivered 38 affordable houses, a level above the 32% requirement specified in the Local Plan. Only approx. 10% of the housing on these sites has been sold to persons with a local connection.
- The site is a not a Rural Exception Site where 100% affordable housing is encouraged

- The Deed of Variation was submitted some 3 months after development started, in the knowledge of the existing terms set out in the s106 agreement.

5 Financial Implications

5.1 There are no financial implications arising from this request.

Financial Implications reviewed by: N/A

6 Legal and Governance Implications

6.1 Variation of S106 is required to be agreed by the successors to the original signatories (as owners) to the s106 and the Council also as signatory in its capacity as Local planning Authority.

Legal Implications reviewed by: Bob Power – Planning Solicitor

7 Background Papers

7.1 14/00777/OUT Committee Report

7.2 Sealed Section 106 Agreement

8 Appendices

8.1 None

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