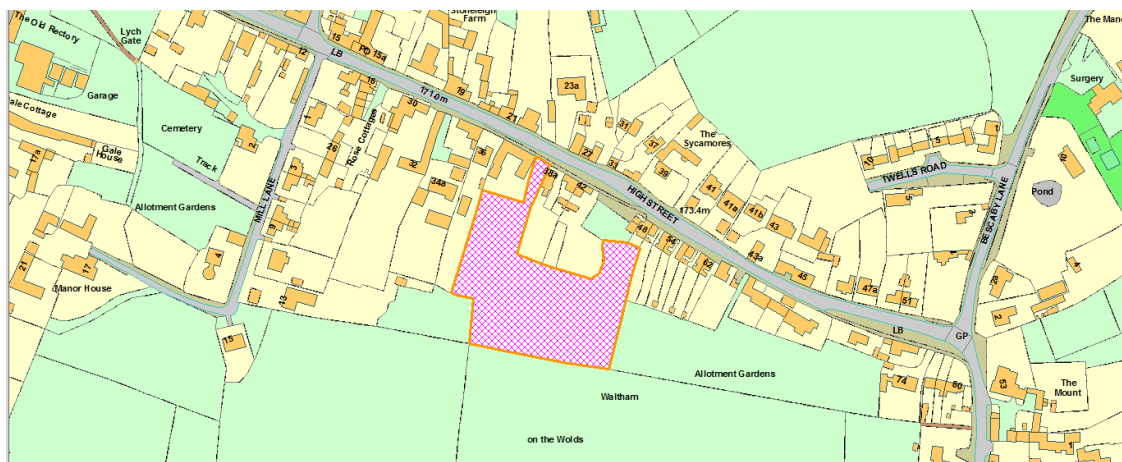


Request to vary Section 106 Agreement in relation to Planning Permission 14/00777/OUT at Land behind 38- 48 High Street Waltham on the Wolds

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 The request is made for adjustments to schedule 5 of the existing agreement such that:
 - The housing mix is now
 - 4 x Affordable Rent

- 7 x Shared ownership
- 10x Rent to Buy
- 5 x Outright Sale
- The nomination provisions for the shared ownership units and the nominations requirements for the rented units not to be in perpetuity.
- Removal of local connection criteria for Shared Ownership units only.
- Adjust the mortgagee clause to the NHF standard form.

Full details of the amendments are contained at paras 3.2-3.5 of the report

1.3 It should be noted that this is not a planning application but rather a request for the Council to make a decision. Whilst material planning considerations and policies will obviously form the crux of any decision, general reasonableness should also be considered in the same way that it must for any Council decision.

1.4 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).

RECOMMENDATION(S)

<p>1. It is recommended that:</p>
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<p>(ii) The request for a Deed of Variation is agreed in part.</p>

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| <ul style="list-style-type: none"> • Tenure mix agreed in full • Nomination provisions agreed in full • Removal of local connection for shared ownership units not agreed but amended to include the provision of Melton Town within the cascade • Mortgagee clause agreed in full |
|--|

2 Reason for Recommendations

2.1 The Borough has an acknowledged, evidence based deficiency of affordable housing and it is a corporate priority to secure and deliver affordable housing to address this shortfall. The Housing and Economic Development Needs Assessment (HEDNA) of 2017 identified affordable housing need across Melton Borough of 70 dwellings per annum (equating to 1,750 over the Local Plan Period).

2.2 Planning policies such as Policy C4 of the Melton Local Plan and Policy H3 of the Waltham on the Wolds and Thorpe Arnold Neighbourhood Plan and all other s106 agreements present Affordable Housing percentages as a minimum requirement, without fettering the ability for higher proportions to be secured where opportunity arises. Ultimately, there is no power available to the Council within the planning system or elsewhere, that would prevent a property owner letting or selling their property(ies) as affordable housing.

2.3 The proposed tenure mix along with the latest proposal to include 5 outright sale properties would result in the delivery of affordable housing of various types that would

address a range of needs. ‘Staircasing’ mechanisms would allow Rent to Buy and Shared Ownership houses to be a path to full home ownership. The mix of proposed tenures towards ownership-based house types is a significant compromise on the part of the developer.

2.4 The proposed housing mix will create an appropriate mixed tenure development that will provide first time buyers, key workers and households in housing need with the ability to both rent and buy properties

2.5 Reason for Committee Determination

2.5.1 The deed of variation follows an earlier Committee decision in April 2021 and is considered by the Director of Growth and Regeneration, in consultation with the Chair, to be an appropriate consideration to be addressed by the committee.

2.6 Relevant Policies

2.6.1 Policy C4 of the Adopted Local Plan relates to affordable housing provision and identifies minimum percentages of affordable housing across the Borough varied to reflect the different types of neighbourhood and values that exist. In Value Area 2, in which Waltham is located, the Local Plan requires 32% affordable housing of various tenures on all sites of 11 or more units (and/or where the floor space exceeds 1000m²). It should be noted that the planning application was determined some time before the current Local Plan was adopted and the Neighbourhood Plan was made, and that the figure of 6 affordable units included in the associated Section 106 Agreement was based on a viability case provided at that time.

2.6.2 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.

2.6.3 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’.

Policy H3 is introduced in the NP as follows:

“Consultation has demonstrated broad support for affordable units to be provided for those individuals in housing need who have a local connection so that local need is prioritised. Similarly, the provision of Starter Homes or Shared Ownership Homes will be supported to help achieve a balanced community. The Neighbourhood Plan supports the provision of more affordable housing within the Waltham on the Wolds and Thorpe Arnold Parish”.

2.7 Main Issues

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

- Whether removal of the limit of 6 to 21 provision of Affordable Housing is acceptable;
- Proposed (new) Tenure Mix;
- Removal of nomination rights in perpetuity.

- Removal of local connection criteria for the shared ownership units only.
- Options Considered

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 is 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 connection 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).

3.2 Removal of the limit of 6 to allow 21 provision of Affordable Housing

- 3.2.1 The total number of dwellings for this development is 26. The developer seeks to vary the limit from 6 to rise to 21.
- 3.2.2 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 the minimum requirements of Local Planning Policy. Affordable Housing can be difficult to secure and the Local Plan acknowledges that its provisions do not fully satisfy anticipated needs. 'Windfall' provision such as this proposal contribute towards closing that imbalance but it should be noted a significant deficit still remains across the Borough
- 3.2.3 Policy H3 of the Neighbourhood Plan is introduced with the explanation that: "Consultation has demonstrated broad support for affordable units to be provided for those individuals in housing need who have a local connection so that local need is prioritised. Similarly, the provision of Starter Homes or Shared Ownership Homes will be supported to help achieve a balanced community. The Neighbourhood Plan supports the provision of more affordable housing within the Waltham on the Wolds and Thorpe Arnold Parish".
- 3.2.4 Policy H3 makes no reference to the quantity, proportion or any limit to which its support is directed. It is notable that the Policy was adopted after affordable housing was secured on the sites on Melton Road, and is therefore unclear what other opportunities were anticipated for the additional ('more') affordable housing it refers to if not this site.
- 3.2.5 Recent evidence shows there remains demand for affordable homes for households with a Parish connection. This is despite there being a recent upturn of supply arising from the two developments located on Melton Road, Waltham (17/00391/REM and 18/01011/REM) delivering 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).
- 3.2.6 The rural housing needs survey (report dated July 2016) concluded 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.

3.3 Proposed new Tenure Mix

3.3.1 The proposed tenure mix is

- 4 x Affordable Rent
- 7 x Shared ownership
- 10 x Rent to Buy
- 5 x Outright Sale

3.3.2 The NPPF describes the need to develop mixed and balanced communities (para 62) and tailoring provision to meet local needs in rural areas (para 78.). The proposed mix of affordable housing would meet a range of needs and the 'staircasing' opportunities within the ownership – based models allow flexibility for changing circumstances, as well as a route to full home ownership.

3.3.3 NP Policy H3 requires that provision is 'tenure blind'. It is considered that there is no physical feature(s) within the layout or the design of the houses that allow distinction to be made on the basis of tenure. The two houses at the front of the site (plots 25 and 26) have a notably superior architectural treatment and use of materials. However, this relates to their prominent location at the site frontage and Conservation Area, not a differentiation of their tenure. Plots within the body of the site are proposed to be the same tenure.

3.3.4 A previous request from the developers, Platform Housing Group (who have acquired the site from the original applicants) was made on 1st April 2021 proposing a Deed of Variation to the s106 agreement to allow:

- All of the properties to be affordable homes, 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.

- Variation to schedule 5 of the existing agreement to vary nomination requirements, and removal of the local connection criteria for Shared Ownership units
- Variation of the mortgagee clause to the NHF standard form

3.3.5 This request was rejected by the planning committee, with an instruction to continue discussion with a view to achieving a mutually acceptable solution.

3.3.6 Numerous exchanges have taken place in the intervening period and series of meetings held exploring the distance between the developer's aspirations and those of the Parish Council.

- 3.3.7 Platform Housing Group approached the Council with a legal opinion that the s106 does not control the tenancy arrangements beyond the 6 units specifically referenced in the existing s106. Further legal opinions have reached alternative conclusions and it is a common view that resorting to legal proceedings to secure resolution of this matter is highly undesirable: a negotiated solution would be far preferable.
- 3.3.8 A series of meetings have been held involving the developer, Parish Council and Ward Member to explore how the issue can be taken forward, with a view to arriving at a mutually acceptable solution. The Council's Chief Executive more recently has led in trying to broker an agreement between the parties.
- 3.3.9 The Parish Council have been asked to consider in the light of their opposition to the high proportion of affordable housing whether there is a level (above that of 6 units which is established by the original s106 agreement) they would agree meets their expectations – recognising that this involves a compromise and departure from their firmly held preference that it should remain at 6. Details of the Parish Council's objections to a higher proportion are contained later in the report.
- 3.3.10 While the Parish Council has been asked to consider how far they could depart from their stated preference for no more than 6 affordable units, Platform Housing Group have also been asked to explore whether alternative mix(es) could be achieved and specifically whether a proportion could be market housing. It is recognised that this represents a compromise on their part that has potentially significant financial and operational implications.
- 3.3.11 The Parish Council indicate their willingness to see a proportion of affordable homes in line with the Neighbourhood Plan and Melton Local Plan to a maximum of 9 affordable houses and see this as being in accordance with Policy but also proportionate given the distribution of Affordable Homes provided within the two new developments in the village – Forest Heath and Waltham Heights.
- 3.3.12 Platform Housing Group have advised that having given further consideration to the proposed numbers and mix they could include 5 homes to be provided as outright sale homes with the balance (21) being provided as affordable houses.
- 3.3.13 It is considered that on balance the proposed Tenure Mix is acceptable.
- 3.4 **The nomination provisions for the shared ownership units and the nominations requirements for the rented units not to be in perpetuity.**
- 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).
- 3.4.2 The existing s106 makes a provision that is similar in principle, 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.
- 3.4.3 It is not considered that the difference in the provisions as existing and proposed are prejudicial to the purpose of the wider document and are acceptable to the Local Planning Authority.

3.5 Removal of local connection criteria for Shared Ownership units only.

- 3.5.1 Page 21 and 22 of the Section 106 agreement sets out the Local Connection criteria. In summary priority is given to households who have a local or strong connection to Waltham; then to neighbouring parishes (and states which); then someone who resides in the Borough of Melton but outside the town of Melton. These local connection cascades have been applied to most sites in the villages of the Borough and would be extremely unusual to lift these requirements.
- 3.5.2 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.
- 3.5.3 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, for example, 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 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.
- 3.5.4 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.
- 3.5.5 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 remove it, however an extension of this cascade to include Melton Town Centre would be considered appropriate in this instance for the 7 x shared ownership units proposed.

3.6 Options considered

- 3.6.1 The developers maintain the view that they are free to proceed on whatever basis they choose, save for the limitations on the tenure and letting (local connection) of the 6 dwellings addressed by the original s106.
- 3.6.2 Should they proceed on this basis – at their own risk – the Council's ability to respond would be restricted to litigation through the Courts (application for injunction to enforce the

terms of s106). Pursuit of such a case would take into account not only the legal basis for argument (i.e. interpretation of the application of the s106 as a maximum of 6 affordable houses), but also the public interest objectives in imposing the restrictions if they are shown to apply.

3.6.3 The adjudication of these matters would lie with the Court and there can be no certainty that action of this nature would be successful.

4 Consultation & Feedback

4.1 Waltham on the Wolds and Thorpe Arnold Parish Council have objected to higher proportions of affordable housing on the following grounds:

- It goes against so many of the policies in the Local and Neighbourhood Plan, policies that have been well researched and fought for.
- The mix of tenure within the village would create an imbalance. There is no need or demand for further affordable housing in Waltham, the village having already met this need.
- The predicament of having more than an adequate supply of affordable homes is further exacerbated by the fact that Platform HG wish to amend the nomination provisions and requirements, so they are not in perpetuity. They also want to remove the local criteria for Shared Ownership units. This is 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.
- Tenants who are from outside the area without the support and assistance of local family and friends or other networks, and who are probably on a limited budget, will find themselves in a rural location, with limited public transport and amenities. They could then find it difficult to integrate and access employment, resulting in isolation and frustration. This has just recently resulted in anti-social behaviour where the police have had to have been called out to new tenants on the Bellway Estate in the village. It has been harmful and disruptive to the village.
- That this development would not be a tailored provision to meet local needs in rural areas (NPPF para 77). It is an ambition by Platform HG to benefit from substantial grants from Homes England, and not for the benefit of supporting the sustainability and community of the location.
- The village would be presented with a separate, stand alone development that would be distinguishable from the surrounding area, and would by its very nature be in contrast to the ideal of forming a mixed community re: LP policy AH SPD 4.1.3.1, and NP policy H3.
- By allowing developers and RPs to ignore legally binding agreements tied into planning permissions, you are setting a very dangerous precedent that a developer can ride rough shod over your policies and agreements with impunity.
- Although Affordable Housing is necessary and applaudable, it should not be supplied at any cost to a location where it is not warranted or justified, just for the convenience of a developer to obtain grants.
- Platform HG did not supply an AF specification for the site before construction began, as they were legally obliged to do, and had they done so, their ambition for a fully AF development could have been prohibited at the onset.

- Under the umbrella of “Affordable Housing”, which is perceived to be a worthy thing, developers suppose that they can build as many affordable houses as they wish, even if it is in contravention of the planning permission, because they are providing a “favoured product”.

5 Conclusion

- 5.1 The original proposal for 100% affordable housing was rejected in order to find a compromise between the applicant and the Council. They have given a meaningful consideration of issues raised along with a proposal that now includes a number of outright sale homes.
- 5.2 The HEDNA (2017) identified an affordable housing need across the Melton Borough of 70 dpa (1,750 over the Local Plan period). From the start of the plan period 2011/12-2020/21 (10 years), affordable housing delivered in the Borough has been 346 dwellings (average 35pa). As at February 2022, MBC had 689 active housing register applications demonstrating that affordable homes are required in the Borough.
- 5.3 Waltham Housing Register data summary (as at March 2022) shows there are 8 households with both a local connection to Waltham and they would ‘ideally like to live’ in the village (6 of which have a high housing need). There are a further 3 households (all either in a high or medium level of housing need) with a local connection but they have not stated where they would ideally like to live. There will also be households with a local connection to the surrounding villages within the parish and also the surrounding parishes.
- 5.4 Whilst the proposal may not fully overcome the concerns raised, the information gathered and evidence presented in terms of registered need wider in the Borough is a material consideration. The provision of affordable homes is one of the key aims of the Corporate Strategy and its aims in this regard are supported by the Melton Local Plan and the National Planning Policy Framework.
- 5.5 Waltham on the Wolds is a Local Service Centre and provides sufficient local services to accommodate the basic needs of future occupants as it would any other residential development in the village with access to schools, road and bus network along with retail, church and pubs within the village.
- 5.6 Based on the identified need for affordable home provision within the Borough, officers support the request to vary the Section 106 Agreement.

6 Financial Implications

- 6.1 There are no financial implications arising from this request.

Financial Implications reviewed by: N/A

7 Legal and Governance Implications

- 7.1 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:

Tom Pickwell

8 Background Papers

- 8.1 14/00777/OUT Committee Report
- 8.2 Planning Committee minutes of 18th February 2016
- 8.3 Sealed Section 106 Agreement

9 Appendices

- 9.1 None

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