



**Melton  
Borough  
Council**

Helping people | Shaping places



# Planning Committee

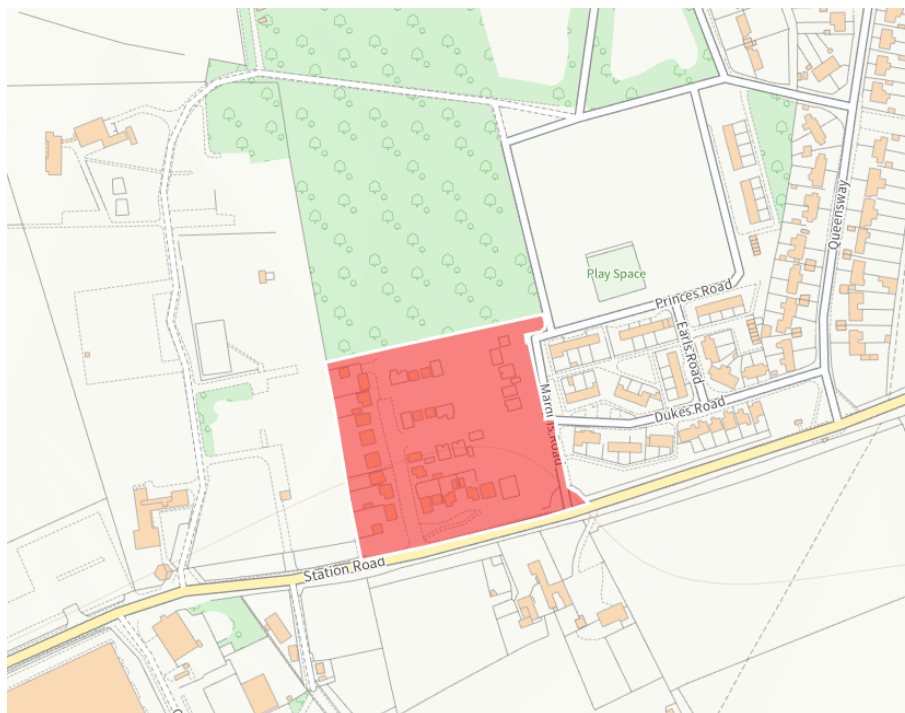
10 November 2022

Report of: Assistant Director for Planning and Delivery

## Variation of Planning Obligation within previous Section 106 Agreement associated with 15/00017/OUT Land West of Marquis Road and North of Station Road Old Dalby

<b>Corporate Priority:</b>	Delivering sustainable and inclusive growth in Melton
<b>Relevant Ward Member(s):</b>	Councillor Joe Orson, Councillor
<b>Date of consultation with Ward Member(s):</b>	N/A
<b>Exempt Information:</b>	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 15/00017/OUT on appeal following refusal by the Council (PINS Reference APP/Y2430/W/15/3135191). The permission grants outline consent for residential development of up to 39 dwellings and associated works and reserved matters approval has been granted for all reserved matters pursuant to application reference (18/01436/REM)
- 1.3 The associated s106 took the form of a 'Unilateral Undertaking' considered by the Inspector within the appeal proceedings. The Undertaking included provision for affordable housing units as 40% of the total units which equates to 16 dwellings. The Affordable Houses are specified to be "Social Rented Units, New Build Homebuy and Intermediate Affordable Housing Units"
- 1.4 It required submission of scheme for the housing setting out the detailed provision and tenure mix of these properties along with details of phasing, nomination rights, occupancy limitations and details of the provider.
- 1.5 In support of the request, the developers advise that, approaches have been made to a number of RPSH's (housing associations) with a view to entering into legal arrangements to sell the on-site affordable to an RPSH. Such approaches have been unsuccessful and the applicant has demonstrated that it is unable to secure a RPSH (housing association) for the 16 affordable housing units required on the site with the tenure as currently set out in the s.106 UU.
- 1.6 The S106 Unilateral Undertaking does not contain a provision whereby an alternative tenure of affordable housing or a commuted sum can be provided in the event a registered provider cannot be found for the Affordable Housing as currently defined. It is for that reason, this application to modify the S106 Undertaking has been made.
- 1.7 A series of amendments to the existing s106 are proposed to facilitate this revised approach, an alternative scheme that the Owner will provide 50% of the affordable housing units (i.e. 8 units) as Discounted Market Dwellings and 50% (i.e. 8 units) as Affordable Housing for Rent, with the Affordable Housing for Rent being transferred to The Council at an agreed price.
- 1.8 If such a proposal is considered acceptable, it would be necessary to amend the S106 UU to provide the above tenure and split and also to enable the transfer of the Affordable Housing for Rent to The Council. It is suggested that the variation to the existing S106 UU to formalise the proposal would include :-
  - Utilising the definitions of Discounted Market Units and Affordable Housing for Rent as set out in the National Planning Policy Framework (NPPF).
  - Securing that the Affordable Housing for Rent operate under the Council's housing allocations Policy and apply the local connection criteria.
  - Securing that the Discount Market Units are restricted in terms of value, purchaser and longevity in accordance with the Council's mechanism.

## RECOMMENDATION(S)

1. It is recommended that:  
(ii) the request for a Deed of Variation is agreed

## 2 Reason for Recommendations

- 2.1 The proposed tenure mix would result in delivery of affordable housing of a type for which there is local need (as set out at 4.1.3)
- 2.2 It has been adequately demonstrated that the configuration in the original s106 has not been of interest to providers

## 3 Key Factors

### 3.1 Reason for Committee Determination

- 3.1.1 The deed of variation would impact on the composition of the provision of affordable housing, and raises matters, which in the opinion of the Director of Growth and Regeneration, in consultation with the Chair, should be referred to the Planning Committee under Chapter 2, Part 9 of the Constitution

### 3.2 Relevant Policies

- 3.2.1 Policy C4 of the Adopted Local Plan relates to affordable housing and requires 25% affordable housing in Old Dalby, 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 16 equates to 40%.
- 3.2.2 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.
- 3.2.3 Neighbourhood Plan policies require;
- Policy H5: Affordable Housing Provision - Development proposals for new housing where there is a net gain of more than ten dwellings should provide at least 25% affordable housing, or other figure within the Local Plan.

### 3.3 Main Issues

- 3.3.1 The main issues associated with this proposal are considered to be whether the proposed (new) Tenure Mix is acceptable

## **5 Report Detail**

### **5.1 Background**

- 5.1.1 The planning application was granted on appeal in 2017 and was approved, with a S106 'Unilateral Obligation' taking effect pursuant to the Inspector's decision to provide affordable housing. Detailed within the S106 Agreement is a requirement for 40% Affordable Dwellings, with tenure unspecified (in detailed terms) but to include "Social Rented Units, New Build Homebuy and Intermediate Affordable Housing Units". The exact type and mix was to be agreed through the submission of 'a scheme'
- 5.1.2 The Local Plan does not specify a required, or preferred, tenure mix but the Supplementary Planning Document advises that the Council's approach is to facilitate the negotiation of affordable housing and housing mix in order to:
- Ensure positive and flexible approach to facilitating sustainable development;
  - Maximise the quantum and quality of affordable housing delivered;
  - Ensure residential developments create mixed and balanced communities
  - Ensure reasonable returns for developers
- 5.1.3 The Housing Mix and Affordable Housing Supplementary Planning Document (SPD) (adopted July 2019) states that the Council's starting point is a tenure target of 80% affordable housing for rent and 20% affordable home ownership e.g. Discounted Market Sale; Starter Homes; Rent to Buy or Shared Ownership. This tenure target derives from the Leicester and Leicestershire Housing and Economic Development Needs Assessment (HEDNA), January 2017, which provides evidence on the tenure split of affordable housing needed across the whole Borough. It states that in Melton Borough, 80% affordable housing for rent and 20% affordable home ownership (formerly intermediate housing in the 2012 NPPF) is needed.
- 5.1.4 For this site, the tenure split would equate to 12 affordable housing for rent and 4 for Discounted Market Sale. The applicant (Rippon Homes) submitted viability information showing they could not afford to sell that many dwellings as affordable housing for rent (it is accepted that affordable housing for rent cannot be sold for as much as the Discount Market Sale Dwellings) and the reason why negotiations concluded with 8 x affordable housing for rent and 8 x Discounted Market Sale.
- 5.1.5 The Housing Policy Officer is supportive of the proposal: a RPSH could not be secured to buy the affordable housing dwellings with the tenures currently required by the s.106 UU and this Deed of Variation proposes an alternative tenure mix (50% affordable housing for rent (8 dwellings) and 50% Discounted Market Sale (8 dwellings), which the Council, as a RPSH are interested in buying.
- 5.1.6 The revised tenure would meet current affordable housing needs for that area. The Housing Needs Survey (2014) for the parish, undertaken by Midlands Rural Housing, identified a total 11 households in need of affordable housing for rent and 3 households in need of shared ownership.
- 5.1.7 Since the Housing Needs Survey was undertaken, only 2 affordable housing for rent dwellings have been delivered at Longcliffe Hill, Old Dalby (at allocation: OLD1) and a

planning commitment for a further 2 affordable housing for rent dwellings at Heckadeck Lane, Nether Broughton.

5.1.8 Therefore, this proposal will satisfy the unmet need.

## 6 Consultation & Feedback

6.1 The Ward Councillor has not provided written feedback on the proposal

## 7 Financial Implications

7.1 The financial implications arising from this request are limited to the costs of amending the s106 agreement. It is expected that the developers would cover the Council's costs in this respect

**Financial Implications reviewed by: N/A**

## 8 Legal and Governance Implications

8.1 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 (Solicitor)**

## 9 Background Papers

9.1 15/00017/OUT Committee Report and appeal decision Reference APP/Y2430/W/15/3135191

9.2 Original Section 106 Agreement

<b>Report Author:</b>	<b>Louise Parker</b> , Planning Development Manager
<b>Report Author Contact Details:</b>	01664 502375 lparker@melton.gov.uk
<b>Chief Officer Responsible:</b>	<b>Peter Baguley</b> , Assistant Director for Planning
<b>Chief Officer Contact Details:</b>	01664 502359 pbaguley@melton.gov.uk