

**Reference number: 22/01174/DIS**

**Proposal: Discharge condition 3 (viability assessment/affordable housing) of the outline planning permission reference 17/00397/OUT**

**Address: Land Opposite 1 And 10 Station Lane Old Dalby**

**Applicant: T Visaman & Sons Ltd t/a Bradgate Homes**

**Planning Officer: Helen White**

<b>Report Author:</b>	<b>Helen White, Planning Development Officer</b>
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<b>Corporate Priority:</b>	Delivering sustainable and inclusive growth in Melton
<b>Relevant Ward Member(s):</b>	Cllr Joe Orson (Old Dalby)
<b>Date of consultation with Ward Member(s):</b>	12 May 2022
<b>Exempt Information:</b>	No

**Reason for committee determination:**

The Director for Growth and Regeneration (in consultation with the Chair of Planning Committee) considers this application as likely to raise matters which should be referred to the Committee.

**Web Link:**

What 3 words:

<https://what3words.com/spaceship.pumps.admiringly>

Site Location Plan:



### RECOMMENDATION(S)

1. It is recommended that condition 3 is discharged (affordable housing scheme).

## 1 Executive Summary

- 1.1 The application seeks to formally discharge condition 3 (affordable housing scheme) attached to planning permission ref. 17/00397/OUT.
- 1.2 The affordable housing contribution was secured via planning condition 3 which requires the submission of a scheme for the provision of affordable housing and housing mix, and/or a viability assessment deeming why affordable housing cannot be provided. The wording of condition 3 was amended under application ref. 22/00920/NONMAT which introduced a mechanism which allows for the submission of a viability assessment if the amount of affordable housing cannot be achieved.
- 1.3 A viability assessment has been submitted which seeks to demonstrate that it would not be viable to deliver the required level of on-site affordable housing. The assessment has been independently assessed and although the scheme would not be viable with the full affordable housing contribution it has been demonstrated that it would be possible to provide a reduced off-site contribution of £12,210 which would equate to half an affordable unit.
- 1.4 The applicant has agreed to pay a commuted sum of £12,210 towards affordable housing provision in the Borough. The legal agreement to secure this would include a late stage review mechanism to re-test the site's viability towards the end of the build process.

- 1.5 A Section 106 agreement attached to the outline planning permission includes developer contributions towards primary and secondary education, travel packs, bus passes, civic amenity (weekly waste and recycling collection vehicle), library, and the village hall. No changes to the S106 obligations are proposed.

## Main Report

### 2 The Site

- 2.1 The site occupies a brownfield site, east of the village of Old Dalby and west of an industrial estate. To the west of the site is a railway test track. It is former MOD land of 5.65 hectares. Station Lane, Old Dalby, as shown in Figure 4 of the Neighbourhood Plan, is allocated for housing, to comprise at least 42 dwellings.

### 3 Planning History

- 3.1 **17/00397/OUT** - Residential development of up to 72 dwellings, associated infrastructure and landscaping (revised from 80 following changes to reflect ecology concerns) – planning permission granted 21.08.2018
- 3.2 **19/01319/DIS** - Discharge of condition 13 and 17 (contaminated land) of permission 17/00397/OUT Residential development of up to 72 dwellings, associated infrastructure and landscaping – formally discharged 08.04.2021
- 3.3 **21/00946/REM** – (Condition 2 of 17/00397/OUT): Layout, Scale, External appearance of buildings, Access and Landscaping – currently under consideration
- 3.4 **22/00920/NONMAT** - Non-Material Amendment in respect of outline approval reference 17/00397/OUT to alter the wording of Condition 3 of the decision notice to include a mechanism which allows for the submission of a viability assessment if the amount of affordable housing cannot be achieved –planning permission granted 23.09.2022
- 3.5 **23/00168/DIS** - Discharge of conditions attached to planning permission Ref. 17/00397/OUT: Conditions 6 & 8 - Construction Management Plan; Condition 15 - 7021-HBA-DR-A-50C\_Site Boundary Treatments; Condition 16 - Schedule of Acoustic Mitigation Measures and 7021-HBA-DR-A-50C\_Site Boundary Treatments; and Condition 25 - 7021-HBA-DR-A-51B\_Ecology and Badger Survey by Arbtech Consulting Ltd – currently under consideration

### 4 Proposal

- 4.1 The application seeks to discharge condition 3 attached to planning permission ref. 17/00397/OUT. It is a pre-commencement condition which requires the provision of an affordable housing scheme and/or a viability assessment deeming why affordable housing cannot be provided. The proposal initially relied upon the findings of a viability assessment to demonstrate that the required affordable housing could not be provided. A subsequent assessment was carried out which demonstrated a reduced affordable housing contribution would be viable. As a result, the applicant has agreed to pay a commuted sum of £12,210 towards affordable housing in the Borough which will be secured via a unilateral undertaking.

### 5 Amendments

- 5.1 The viability assessment submitted was objectively and independently assessed. The results confirmed that the scheme would not be viable including the provision of the required affordable housing contribution of 25% (equivalent to 18 dwellings).
- 5.2 Advice was sought from the Housing Policy Officer and it was agreed if possible a reduced level of affordable housing should be sought. The independent viability assessor undertook a further review based on a reduction in affordable housing provision. This review demonstrated that the scheme would remain viable with the provision of an off-site commuted sum of £12,210, equivalent of ½ a dwelling. This money would be pooled with contributions from other sites allowing for affordable housing provision in the Borough.
- 5.3 The applicant confirmed in writing on 18<sup>th</sup> September 2023 a commuted sum of £12,210 towards affordable housing would be paid.

## **6 Planning Policy**

### **National Policy**

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)

### **Melton Local Plan**

- The Melton Local Plan 2011-2036 was adopted by Full Council on 10<sup>th</sup> October 2018 and is the development plan for the area.
- The Local Plan is consistent with the National Planning Policy Framework and whilst it is now being updated, its policies remain relevant and up to date for the determination of this application.
- The relevant policies to this application include:
  - Policy C2: Housing Mix
  - Policy C4: Affordable Housing Provision

### **Broughton and Old Dalby Neighbourhood Plan**

- H5: Affordable Housing Provision

### **Other**

- Housing mix and affordable housing SPD
- Planning Practice Guidance - Viability

## **7 CONSULTATION RESPONSES**

Please Note: Below is a summary of responses and representations received. The full responses can be found on the web portal if required.

### **SUMMARY OF TECHNICAL CONSULTATION RESPONSES**

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## 7.1 **Housing Policy Officer (6.10.23 and 12.10.23)**

7.2 Initially requested that a further viability assessment was carried out to establish if a reduction in affordable housing was viable.

7.3 On receipt of the updated review, recommended agreement on the commuted sum and for it to be ring-fenced for use for affordable housing only, anywhere in the Borough and to have no time limit on when it needs to be spent.

## 7.4 **SUMMARY OF REPRESENTATIONS**

### **Ward Member**

No written comments received.

### **Parish Council**

- Not enough evidence has been submitted for comment, haven't been able to view the viability assessment.
- Policy H5 of the Broughton and Old Dalby Neighbourhood Plan and the affordable housing policies in the Melton Local Plan are unambiguous and set out clear requirements for affordable housing in this development.
- The viability assessment most likely seeks to justify why the affordable housing requirement cannot be met.
- Before condition 3 can be discharged, the Parish Council will need to be satisfied that all avenues have been considered to provide the maximum number of affordable houses possible and that setting aside our Neighbourhood Plan policy E5 is justified.
- What number of affordable housing would be possible?
- The Parish Council is also unhappy with the way condition 3 was altered without consultation of the PC under ref.22/00920/NONMAT.

### **Neighbours**

No letters of objection have been received in response to the publicity undertaken.

## **RESPONSE TO CONSULTATIONS AND REPRESENTATIONS**

7.5 Comments are noted with regards to the financial information received, however the viability assessment has been reviewed independently of both Melton Borough Council and the applicant. Both National Planning Policy (NPPF) and the Council's own Supplementary Planning Documents (SPDs) do include viability as a consideration regarding the provision of affordable housing. On this occasion the results of the assessments demonstrate that the development would not be viable if affordable housing were to be provided as originally conditioned.

7.6 With regards to the publicity undertaken there was no statutory requirement to publicise this application however, the Parish Council and Ward Member were notified for information purposes. The viability appraisals and independent assessments have been

made publically available. The Parish Council and Ward Member were notified of this on the 8<sup>th</sup> November 2023.

- 7.7 In addition there is no statutory requirement to publicise planning applications seeking to make a non-material amendment to an existing planning permission. Application ref. 22/00920/NONMAT sought to add wording into condition 3 of the outline consent which inserts a mechanism for an assessment on viability of the scheme and the ability for the development to provide affordable housing to take place within further applications.
- 7.8 Officers considered that the proposed additional wording in the condition was acceptable as a non-material amendment. This is because the condition would still include the provision of a scheme for affordable housing (and the ability for this to come forward), should the viability argument be unsuccessful.

## **8 PLANNING ANALYSIS**

The main considerations are

- 8.1 Principle of Development
- 8.2 Viability and affordable housing

### **Position under the Development Plan Policies**

- 8.3 Policy C4 of the Melton Local Plan and Policy H5 of the Nether Broughton and Old Dalby Neighbourhood Plan seeks to secure affordable housing provision on housing developments.
- 8.3.1 The Affordable Housing SPD also provides guidance on the submission of Economic Viability Assessments and information that would be required to support an application where the development seeks a reduction or removal of affordable housing provision.

### **Principle of Development**

- 8.3.2 Outline planning permission with all matters reserved has been granted for the erection of 72 dwellings (reference 17/00397/OUT).
- 8.3.3 Reserved matters for the Layout, Scale, Appearance, Access and Landscaping for 72 dwellings is currently under consideration (reference 21/00946/REM).
- 8.3.4 This application seeks to discharge condition 3 attached to outline planning permission 17/00397/OUT. Condition 3 (as amended) reads:
- The development shall not begin until either a scheme for the provision of affordable housing and housing mix, and/or a viability assessment deeming why affordable housing cannot be provided, has been submitted to and approved in writing by the local planning authority. Any affordable housing scheme shall include
- i) The tenure of the affordable housing,
  - ii) The arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing, and

iii) The occupancy criteria to be used for determining the identity of prospective and successive occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

- 8.3.5 The original reason for the condition was to ensure that the housing provision is affordable for both initial and subsequent occupiers. The amended condition makes provision for the applicant to demonstrate affordable housing cannot be provided.
- 8.3.6 The principle of the development, given that the outline permission is still extant by virtue of the reserved matters submission remains acceptable.
- 8.3.7 The main consideration is the loss of affordable housing provision, which is considered in full in the following section.

### **Viability and affordable housing**

- 8.3.8 The original outline planning permission reference 17/00397/OUT was permitted subject to a number of contributions to local infrastructure, including 25% on site affordable housing provision (18 dwellings out of the total 72). The affordable housing provision was secured via a planning condition (condition 3) and did not form part of a S106 or other legal agreement.
- 8.3.9 Because the affordable housing was secured via a condition which covered it in isolation (rather than as part of a legal agreement containing a number of infrastructure contributions), consideration cannot be given when discharging this condition to other developer contributions included within the S106. The focus therefore of this consideration is whether the information submitted is sufficient to discharge condition 3.
- 8.3.10 As provided by the wording of the condition the Applicant has chosen to submit a Viability Assessment to demonstrate why affordable housing cannot be provided within the site.
- 8.3.11 A Benchmark land value is established as part of the viability process and is based on an existing use value (EUV) for the land. The BLV allowance is detailed as £1,328,024 and this is considered to be acceptable following a review of recent land transactions achieved within the surrounding area.
- 8.3.12 In addition to this the residential property market has been assessed providing the value that the properties are expected to be sold. Development/construction costs along with other fees associated with the development including professional, contingency, sales, legal and interest costs have been provided.
- 8.3.13 The Viability Appraisal was submitted by the Applicant dated 26<sup>th</sup> October 2022. An initial review of the applicant's appraisal was undertaken in February 2023. The Independent Assessor disagreed with the predicted sales values put forward in the Applicant's Assessment. Taking into account the package of developer contributions secured via the S106 of £508,886, the assessment found there would be a deficit of £507,653 for a scheme including 25% affordable housing provision, which is unviable. However, an affordable provision of 12.5% would result in a surplus of £1,344. The report concluded: *"The Residual Land Value of our appraisal of the proposed development with policy compliant affordable housing is below the benchmark land value. We have therefore run further appraisal to assess the point at which viability is reached, which indicated that 12.5% to be the cross over point into viability."*

- 8.3.14 The Applicant disagreed with these findings and in response an updated Viability Assessment was submitted by the Applicant on 14<sup>th</sup> March 2023 which suggests sale rates have dropped by around 23% and sale values have dropped by 2.3%. It also challenges the independent Assessors appraisal stating: *“I can’t find any statistics/data to support an increase in prices of between 8 and 11% on the original figures from last year.”*
- 8.3.15 In an initial response to this assessment the Independent Assessor maintained their GDV but accepted both the rise in build costs identified by the Applicant, as well as the increased cost assumptions for the abnormal costs, additional costs which they hadn’t previously included such as the cost of the garages, the provision for Part L/Future Home Standards, their timescales have been extended to reflect a slower sales period and therefore slower build rate, but all their other inputs remain the same. As a result of this they agreed that the scheme would struggle to viably deliver affordable housing.
- 8.3.16 Following on from this, at the request of the Local Planning Authority, the independent Viability Assessor undertook a number of alternative and objective appraisals, summarised in the table below. Aside from affordable tenure splits all inputs from previous appraisals have remained the same.

S106 Contribution	Affordable Provision	Land Value	Benchmark Land Value	Difference	Comment
Full	12.5% 50% shared ownership 50% affordable rent	£966,893	£1,329,024	-£362,131	Not viable
Full	12.5% All shared ownership	£1,099,096	£1,329,024	-£229,928	Not viable
Full	1.39% 1 Shared Ownership unit	£1,317,001	£1,329,024	-£12,023	Not viable
Full	None	£1,341,237	£1,329,024	£12,210	Financial Contribution of £12,210 possible

- 8.3.17 The above table shows that, with all inputs the same, the scheme is unable even to viably provide 1 shared ownership unit, as the land value generated is £12,023 below the benchmark land value. With no affordable provision it is £12,210 positive, which suggests that the scheme can support 1/2 a shared ownership unit.
- 8.3.18 As advised by the Viability Assessor: ‘...overall, the market in Old Dalby and the surrounding area remains mainly unchanged, since May 2023. House Price Index shows that prices have risen in the district by 2.20% (February 2023 to July 2023), and 12% up since Devvia’s original submission in March 2022. There is limited new evidence for new build transactions in the immediate area, but the scheme opposite, Marquis Gardens, asking prices have risen, with a three bedroom detached available for £320,000 (£328 psf) and a four bedroom detached available for £515,000 (£351 psf). At the same time most housebuilders are reporting a slow down in sales and the increased use of sales incentives and including this within an appraisal will off-set headline price rises (noting that the general tone of UK house prices is downwards at present).’
- 8.3.19 ‘Caution should be taken as it is likely that if Gross Development Value (GDV) was revised within the viability at this point, Devvia could argue that there has also been cost inflation since their previous update, which will balance out any rise in GDV. The Building Cost Information Service (BCIS) General Building Cost index has risen 1.77% from May 23 to October 23. It may be that specific cost elements have risen more or less but the trend remains upwards.’
- 8.3.20 While this is not considered to be sustainable at this time, the Viability Assessor provided the table below which shows the potential impact on land value, and therefore affordable provision, with a 2% increase in GDV (and no change to costs).



S106 Contribution	Affordable Provision	Land Value	Benchmark Land Value	Difference
Full contribution	12.5% 50% shared ownership 50% affordable rent	£1,235,746	£1,329,024	-£93,278
Full S106 contribution	12.5% All shared ownership	£1,391,873	£1,329,024	£62,849
Full S106 contribution	None	£1,638,930	£1,329,024	£309,906

- 8.3.21 Although the proposed affordable provision would fall short of the optimum it is considered that the off-site commuted sum of £12,210 is the best option available at this point in time. As advised by the Housing Policy Officer it would be pooled with other commuted sums to provide affordable housing in the Borough. The applicant has agreed to this provision which would be secured via a legal agreement.
- 8.3.22 To ensure the scheme is policy compliant a late stage review mechanism would be included in the legal agreement which would allow the situation to be reviewed when more of the costs and values are known rather than estimated or predicted, especially in relation to sales values and construction costs.
- 8.3.23 The wording of the mechanism would require a review once a proportion of the units in the scheme are sold – in line with Section 3.3.5 of the Housing Mix and Affordable Housing SPD.
- 8.3.24 This means the review will be based on actual sales values and known build costs and the mechanism is based on changes to the gross development value (GDV) and build costs between planning permission and review. The approach will not undertake a full reassessment but focus on these key values that have been submitted as part of this application which will be compared to final figures.
- 8.3.25 Section 3.3.5.1 of the Housing Mix and Affordable Housing SPD states that ‘If the applicant has adequately demonstrated that a scheme cannot be delivered in current market circumstances, the Council may, in exceptional circumstances, agree to defer the policy requirements until better market conditions apply. This would be through ‘clawback’ or ‘deferred payments’. Therefore, the position will be reviewed when actual costs are known as opposed to estimated costs. If the actuals show greater scope for provision this can be achieved by, for example, a subsequent financial contribution. This approach is sometimes applied where the estimates indicate a significant shortfall in policy compliant provision.’
- 8.3.26 The review mechanism would determine whether a ‘surplus’ is generated over and above the returns necessary for a scheme to be deemed viable. Any surplus profit will be a financial contribution towards off-site affordable housing provision.
- 8.3.27 It is therefore recommended that condition 3 is discharged.

### **Conclusion of Viability**

- 8.3.28 Overall, it is considered that up to date, acceptable and robust evidence of viability has been provided which demonstrates that the development is not capable of providing the policy target of 25% (18 Affordable Housing units). The viability appraisal has been independently reviewed as part of the consideration of the application.
- 8.3.29 The provision of affordable housing is a key priority and there is a need for providing affordable housing as part of new developments. However, it is considered that the provision of affordable housing on site would result in a scheme that would not be economically viable. As such a reduction in affordable housing provision whilst not in

accordance with Policy C4 of the Melton Local Plan and Policy H5 of the Nether Broughton and Old Dalby Neighbourhood Plan, is considered to be acceptable when considering the viability assessment which has been thoroughly externally and independently assessed.

- 8.3.30 Beyond the independent assessment of the viability assessment a further review has been undertaken to determine if a reduction in affordable housing provision could be achieved.
- 8.3.31 It is worth noting that the development is unchanged in nature and would still provide benefits to the local area, in way of providing a housing mix weighted in favour of 2 and 3 bed dwellings with a limited number of 4 and 5 bed properties, which is tailored towards to the local housing supply.
- 8.3.32 In conclusion the viability assessment successfully demonstrates that affordable housing cannot be provided on site at this time. In addition the commuted sum would be ring fenced towards the provision of affordable housing. A late stage review mechanism would be included within the legal agreement once there is more certainty on actual build costs and sale values. It is therefore recommended that condition 3 is discharged.

## **9 CONCLUSION FOR RECOMMENDATION**

- 9.1 The Viability Assessment dated May 2022 received by the Local Planning Authority on 26<sup>th</sup> October 2022 accords with the requirements of condition 3. It has been reviewed by an independent Viability Assessor and the Borough Council's Housing Policy Officer and considered to be acceptable. An off-site commuted sum of £12,210 would be secured via a legal agreement which also includes a late stage review mechanism.

### **Informatives**

- 9.2 Please note that the condition will not be fully discharged until the commuted sum has been paid in full in accordance with the details hereby approved and secured by a planning obligation, and also an obligation containing the late stage review mechanism.

## **10 Financial Implications**

- 10.1 There are no financial implications associated to this planning application

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

## **11 Legal and Governance Implications**

- 12 Legal implications are set out in the report where relevant. Legal advisors will also be present at the meeting.

**Legal Implications reviewed by: Tom Pickwell (Solicitor)**

## **13 Background Papers**

- 13.1 None