



14/00777/OUT Waltham on the Wolds

Proposal: Deed of Variation to Section 106 Agreement

Site: Land behind 38 – 48 High Street Waltham on the Wolds

Applicant: Platform Housing

Planning Officer: Louise Parker

Report Author:	Louise Parker , Planning Development Manager
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Chief Officer Responsible:	Sarah Legge , Assistant Director for Planning
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Corporate Priority:	Delivering sustainable and inclusive growth in Melton
Relevant Ward Member(s):	Richard Sharp (Waltham on the Wolds)
Date of consultation with Ward Member(s):	21 December 2023
Exempt Information:	No

Reason for Committee Determination:

The Director for Growth and Regeneration considers this application as likely to raise matters which should be referred to the Committee.

Web Link:

<https://pa.melton.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NCPKGYKO0F200>

What 3 words:

<https://what3words.com/intruding.creamed.definite>

RECOMMENDATION(S)

It is recommended that the request for a Deed of Variation is **AGREED in full**:

- Tenure mix agreed in full
- Nomination provision agreed in full
- Removal of local connection for Rent to Buy and Shared Ownership units agreed in full
- Mortgage clause agreed in full

1 Executive Summary



- 1.1 The purpose of this report is to consider proposed amendments to the Section 106 Agreement associated with planning decision 14/00777/OUT 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 site is now made up of 100% affordable housing, the proposed mix being:
- 4 x Affordable Rent (as per S106 Agreement)
 - 20 Rent to Buy
 - 2 Shared Ownership (as per S106 Agreement)
- 1.3 In order to support the new proposed tenure mix, the variation to the Section 106 would include the following:
- Amendment of tenure mix from current 4 Affordable Rent Units and 2 Shared Ownership Units to the proposed 100% affordable housing mix as set out above.
 - Removal of 'Local Connection' and 'nomination requirements' on the Rent to Buy and Shared Ownership units.

- Amendments to the current 'Mortgage Clause' so that it is in the NHF standard form.
- 1.4 It should be noted that this is not a planning application but rather a request for the Council to make a decision to vary the S106. 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.
- 1.5 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).

Main Report

2 Proposal

- 2.1 Planning application 14/00777/OUT was approved at the Planning Committee meeting of 18th February 2016, subject to the completion of a Section 106 Agreement (S106) 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 provide 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.
- 2.2 The agreement also sets out a local connection criterion 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).
- 2.3 The proposal is to vary the approved Section 106 Agreement, with the variation solely relating to the affordable housing element. The proposal does not amend any of the details secured through other planning applications or notifications which relate to the built form and design of the dwellings.

3 Amendments

- 3.1 A previous request from the developers, Platform Housing Group (The Applicant) who have acquired the site from the original applicants, was made on 1 April 2021 proposing a Deed of Variation to the S106 for all of the properties to be affordable homes, of various tenures. This request was rejected by the planning committee, with an instruction to continue discussions with a view to achieving a mutually acceptable solution.
- 3.2 Numerous exchanges took place and a series of meetings were held exploring the distance between the developer's aspirations and those of the Parish Council.
- 3.3 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. Other 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.

- 3.4 Further meetings took place with both Platform Housing and the Parish Council. A request was made to Platform to consider (in the light of Parish Council opposition to the high proportion of affordable housing), whether there is a level (above the 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 the Parish Council’s firmly held preference that it should remain at 6.
- 3.5 From this dialogue Platform Housing Group 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 homes. This amendment was prepared for the Planning Committee meeting of 26 May 2022.
- 3.6 However, Platform Housing Group later confirmed that they could not agree to anything which required the additional affordable housing units to be affordable housing or which required them to be used for a particular tenure (which may be contrary to grant requirement) if a S106 agreement requires units to be used in a way which is effectively affordable housing.
- 3.7 Platform also stated that it is a requirement that any units which Platform elect to use for social housing are not bound by any local connection or nomination requirements as this would make them ineligible for grant funding. Subsequently the item was withdrawn from the 26 May 2022 Planning Committee.
- 3.8 Since that time officers have worked to try and negotiate between the requirements of Platform Housing Group and the wishes of the Parish Council and the community. However the tenure mix proposed is the final offer from Platform Housing Group and there is no further opportunity to make any amendments to this request, therefore a decision must be taken on the submitted information as outlined in Section 1.2.

4 Planning Policy

4.1 National Policy

4.1.1 National Planning Policy Framework 2023

4.2 Melton Local Plan

4.2.1 Policy C4 Affordable Housing Provision

4.3 Neighbourhood Plan

4.3.1 Waltham on the Wolds and Thorpe Arnold Neighbourhood Plan

4.3.2 Policy H2: Housing Mix

4.3.3 Policy H3: Affordable Housing Provision

4.4 Other

4.4.1 Affordable Housing and Housing Mix SPD (July 2019)

5 Consultation Responses

5.1 Summary of Technical Consultation Responses

5.1.1 MBC Housing Policy Officer

5.1.2 The proposed 20 Rent to Buy dwellings are additional to the required affordable housing, as per the S.106 agreement. Platform Housing Association are able to apply for Homes England funding on these additional dwellings. However, to be able to receive this, they are informed by Homes England that there cannot be any local connection or nomination requirements placed on these 20 affordable housing dwellings, regardless of the tenure.

5.1.3 Platform have stated previously though that they will, where possible, sell the properties to households with a local connection. This is likely to be households with a local connection to the whole borough of Melton rather than specifically to Waltham Parish. The number of households looking to purchase through Rent to Buy within the parish is likely to be limited.

5.1.4 Rent to Buy is an affordable home ownership product, as set out in the NPPF Annex 2: Glossary (d). The properties are let on an initial 5 year fixed term tenancy. After this period of time, Platform, as stated in their letter, could sell the properties on an outright basis with the occupier being given right of first refusal. A shared ownership purchase may be permitted if the occupier is unable to afford to purchase through an outright sale.

5.1.5 Platform is committed to ensuring that every Rent to Buy customer is best placed after 5 years to purchase their home either as Shared Ownership or outright. Customer circumstances will be monitored and assessed by Platform on a yearly basis throughout the five-year term. At the end of the year 4 annual review and if it looks like the occupiers are unable to purchase the property at the end of 5 years, Platform issue a 6 month notice to end the tenancy, 6 months before the 5 years expires. This allows the customer 6 months to find alternative accommodation. Platform support occupiers through this process and into a more long-term sustainable housing solution or, in some cases, offer the ability to rent at 100% market rent for a further year.

5.1.6 The Council holds a register of households interested in Shared Ownership in the Borough. There are currently 61 households (data held by the Council, as at December 2023). However, some of these households may not be in a financial position to purchase this tenure and it is unknown who would be interested in purchasing in Waltham on the Wolds. The circumstances of the households interested in Shared Ownership will be similar to those interested in Rent to Buy, as they are both affordable home ownership products.

5.1.7 Rent to Buy is not as well known as Shared Ownership and so it may be difficult to sell 20 dwellings of this tenure in this location, especially to people who live or work locally or have family in the area.

5.1.8 The rent for Rent to Buy is at an 'affordable rent' which is 20% below the market rent. In Waltham, this is likely to be a high rent even with the discount of 20% applied. Rent to Buy can be advantageous for some households as it allows for a smaller 'step' to be taken on to the home ownership ladder. However, with rent at 80% of market rent, it may not be possible for households to save up for the deposit required to purchase the properties as Rent to Buy at the end of the 5 year period.

5.1.9 In the letter received from Platform, it states that the S106 agreement would need to be varied to amend the tenure mix from the current 4 x Affordable Rent dwellings and 2 x Shared Ownership dwellings to the 100% affordable housing mix, as set out in the letter. However, if this was to happen, it would mean that Platform would not be able to receive

Homes England grant funding on the additional affordable housing dwellings, as they cannot be cited in the S106 Agreement.

5.1.10 For the reasons stated above, I recommend the 20 dwellings to be split as follows:

- 10 x Rent to Buy
- 10 x Shared Ownership

5.1.11 Please note that also for Shared Ownership, where Homes England grant funding is sought, and eligibility criteria applies in that a local connection criteria cannot be applied.

5.1.12 For the proposed 2 Shared Ownership dwellings required as part of the S.106 agreement, Homes England grant funding cannot be sought for these and so the local connection criteria does need to apply.

5.2 **Summary of Representations**

5.2.1 **Ward Member(s)**

No comments received

5.2.2 **Parish Council January 2024**

5.2.3 The Parish Council strongly object to the application to amend the application to 100% affordable. Although the PC would prefer to uphold the S106, they are prepared to compromise to increase the affordable homes to a maximum of 9 (in line with Policy C4 of the Adopted Local Melton Plan @32.4 %). This reiterates the decision stated in 3.3.11 of the MBC Planning Committee report dated 26th May 2022.

5.2.4 The Parish Council strongly objects to the removal of the local connection. PHG have stated that their reason for removing the restrictive local connection clause is to be able to claim full funding and that this restriction hampers their ability to utilise the value of development to raise funds for further projects, which in turn will affect their overall development 'pipeline'. In the eyes of the Parish Council, this is not for the benefit of supporting the sustainability and community of the location, but forces on monetary gain only.

5.2.5 Local connection criteria are in place to ensure households who live in the parish and neighbouring parishes can remain close to their existing community. MBC's Planning Committee in their Planning Committee report 26th May reported not to agree to the removal of the local connection for shared ownership units, but that it should be amended to include the provision of Melton town within the cascade. In addition, the report states that these local connection cascades have been applied to most sites in the villages of the Borough and it would be extremely unusual to lift these requirements.

5.2.6 The Parish Council has no issue with the final point with reference to the current mortgage clause bringing it into line with the NHF standard.

5.2.7 **Neighbours**

None received

5.3 **Response to Consultations and Representations**

5.3.1 The consultation responses are all discussed within the relevant sections of this report.

6 Planning Analysis

6.1 Main Considerations

6.1.1 Planning Policy

6.1.2 Removal of the limit of 6 to allow provision of 21 of Affordable Homes

6.1.3 Proposed (new) Tenure Mix;

6.1.4 Removal of nomination rights in perpetuity.

6.1.5 Removal of local connection criteria for the Rent to Buy and shared ownership units

6.1.6 Options considered

6.2 Planning Policy

6.2.1 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.

6.2.2 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.

6.2.3 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"

6.3 Removal of the limit of 6 to allow the provision of 21 Affordable Homes

6.3.1 The total number of dwellings for this development is 26. The developer seeks to vary the limit from 6 to rise to 26, it is unclear as to why a maximum number was imposed in the original Section 106 Agreement, it is usual practice to include a minimum requirement rather than a maximum number, due to the benefits brought by Affordable Housing in general.

- 6.3.2 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.
- 6.3.3 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".
- 6.3.4 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.
- 6.3.5 The level of affordable housing being provided nationwide has reduced over the years and Melton is not alone in the challenges that are put forward regarding viability and reduced numbers of Affordable Housing.
- 6.3.6 Whilst it is acknowledged that there is community concern regarding the increased level of affordable housing, this is a positive to the Borough as a whole.

6.4 **Proposed (new) Tenure Mix;**

6.4.1 The proposed tenure mix is

- 4 x Affordable Rent (as per S106 Agreement)
- 20 Rent to Buy
- 2 Shared Ownership (as per S106 Agreement)

6.4.2 The NPPF describes the need to develop mixed and balanced communities (para 64), the NPPF further describes the requirement for affordable housing at paragraph 66 where there is an expectation of at least 10% of the total number of homes to be available for affordable home ownership. Exemptions to this 10% are allowed and one such example is where the site is exclusively for affordable housing.

The proposed mix of affordable housing would meet a range of needs. A revision was requested from the Housing Policy Officer for a mix of 10 x Rent to buy and 10 x Shared Ownership, however Platform rejected this proposal and stated that "this decision is based on the financial viability of the scheme and shared ownership no longer being feasible for Platform".

6.4.3 Platform have also stated that Rent to Buy has proven popular for the development demonstrated higher demand. They have had just over 140 enquiries for Rent to Buy at Waltham.

6.4.4 Again, it is fully acknowledged that this tenure mix is not optimal, however when considering both the need and provision of affordable housing within the Borough as a whole this additionally is a positive in securing much needed affordable housing. In the opinion of

officers this carries significant weight against the desirability for either a different tenure mix or a local connection cascade.

6.5 Removal of nomination rights in perpetuity

- 6.5.1 The proposed mortgage 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).
- 6.5.2 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.
- 6.5.3 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.

6.6 Removal of local connection criteria for the Rent to Buy and shared ownership units

- 6.6.1 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.
- 6.6.2 Homes England Rent to buy eligibility criteria – 1.4.1: Rent to Buy homes are not subject to local authority nominations although landlords may choose to work with the local authority to identify potential tenants. There are no local or other prioritisation criteria to be applied to the Rent to buy product, other than on rural exception site.
- 6.6.3 Homes England Shared Ownership eligibility criteria – 3.2.1: in 2016, the Government removed all priority groups for assistance where there is an under-supply of Shared Ownership homes. Homes should be available on a first come, first served basis to Shared Ownership applicants providing that they meet the relevant eligibility and affordability criteria. The exception is when Armed Forces personnel apply, and in circumstances of under supply, priority must continue to go to serving military personnel and former members of the British Armed Forces discharged in the last 2 years.
- 6.6.4 Whilst it is always preferable to secure affordable housing initially for the location to which it is being proposed, there are occasions such as this where that is not possible. Home England Funding is a national scheme and is the government's housing accelerator to provide assistance for those whose needs are not met by the market. The provision of affordable housing is a key element of the government's plan to end the housing crisis, tackle homelessness and provide aspiring homeowners with a step onto the housing ladder.
- 6.6.5 When taking all of the above into consideration, whilst this proposal is not ideal, it does provide additional affordable housing, which must be given significant weight against some of its shortcomings that have been expressed by the community.

6.7 Options considered

- 6.7.1 Platform Housing Group maintain the view that they are free to proceed on whatever basis they choose, save for the limitations of the tenure and letting (local connection) of the 6 dwellings addressed by the original S106.
- 6.7.2 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.
- 6.7.3 The adjudication of these matters would lie with the Court and there can be no certainty that action of this nature would be successful.

7 Conclusion and Reason for Recommendation

- 7.1 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).
- 7.2 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 as affordable housing.
- 7.3 The proposed tenure mix would result in the delivery of affordable housing of various types that would address a range of needs.
- 7.4 Whilst the removal of a Local Connection Cascade and Nomination is regrettable, the applicant has tried over the last 2 years to resolve this issue, however given that the site is funded by Homes England there is not an opportunity to secure this mechanism due to exemption in accordance with the Homes England Capital Funding Guide.
- 7.5 The proposed housing mix, whilst not optimal, will create a development that will provide first time buyers and households in housing need with the ability to both rent and buy properties, which is seen as a benefit to Melton Borough as a whole and in line with the objective of securing and delivering affordable housing.

8 Planning Conditions

- 8.1 The proposal is to vary the Section 106 agreement only, there are no associated Planning Conditions for this request.

9 Financial Implications

- 9.1 N/A

Financial Implications reviewed by: N/A

10 Legal and Governance Implications

- 10.1

Legal Implications reviewed by: Tom Pickwell (Solicitor)

11 Background Papers

11.1 N/A

12 Appendices

12.1 N/A