

**PLANNING COMMITTEE**

**16<sup>th</sup> AUGUST 2018**

**REPORT OF THE DEVELOPMENT MANAGER**

**UPDATE REPORT 16/00157/OUT: RESIDENTIAL DEVELOPMENT OF UP TO 25 DWELLINGS; LAND ADJACENT THE WOODLANDS, STATION ROAD, OLD DALBY.**

**1. Introduction**

- 1.1 The purpose of this report is to provide an update to the Committee in respect of the above planning application and to set out viability issues as presented by the applicant.
- 1.2 **The purpose of this report is to provide details of the changes in circumstances relevant to the Section 106 Agreement that have taken place since the Committee's consideration of the application in January 2017, and to consider whether sufficient information has been presented to remove the Affordable Housing element of the Section 106 Agreement.**

**2. Background**

- 2.1 Members will recall that the planning application was considered at the meeting of 12<sup>th</sup> January 2017 and was approved, subject to the completion of a S106 Agreement to provide 6 affordable dwellings and various conditions. Subsequently the applicants sought agreement to remove the obligation for affordable housing based on viability considerations related to the unique condition and location of the site and the development costs these factors produced. The Committee declined the request at its meeting on 24<sup>th</sup> May 2018 and 14<sup>th</sup> June 2018 and further information has now been provided by the applicant.
- 2.2 The Section 106 document states "Affordable Dwellings" means those Dwellings within the development comprising Affordable Housing being a maximum of six (6) of the total Dwellings to be constructed on the Site to be provided as part of the Development unless otherwise agreed with the Borough Council and "Affordable Dwelling" shall be constructed accordingly.
- 2.3 "Affordable Housing" has the meaning given to it in Annex 2 of the National Planning Policy Framework dated March 2012 or any successor provisions which may be

introduced from time to time including for the avoidance of doubt changes in policy or legislative changes.

2.4 S106 Agreements can be varied at any time through agreement of the parties. PPG advises that Local Authorities should ensure that the combined total impact of s106 requests does not threaten the viability of the sites.

2.5 NPPG gives guidance on “How costs should be defined for the purpose of viability assessment? And sets out that Assessment of costs should be based on evidence which is reflective of local market conditions. As far as possible, costs should be identified at the plan making stage. Plan makers should identify where costs are unknown and identify where further viability assessment may support a planning application,

2.6 The NPPG also sets out a list of what costs may include they are

- Build costs based on appropriate data, for example that of the Building Cost Information Service
- Abnormal costs, including those associated with treatment for contaminated sites or listed buildings, or costs associated with brownfield, phased or complex sites. These costs should be taken into account when defining benchmark land value.
- Site-specific infrastructure costs, which might include access roads, sustainable drainage systems, green infrastructure. Community infrastructure Levy charges, and any other relevant policies or standards. These costs should be taken into account when defining benchmark land value.
- General finance costs including those incurred through loans
- Professional, project management, sales, marketing and legal costs incorporating organisational overheads associated with the site. Any professional site fees should also be taken into account when defining benchmark land value.
- Explicit reference to project contingency costs should be included in circumstances where scheme specific assessment is deemed necessary, with a justification for contingency relative to project risk and developers return.

2.7 The revised National Planning Policy Framework was released in July 2018

Paragraph 57 sets out that where up to date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force, all viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

### **3. Update**

3.1 The request for removal of the affordable housing element to the Section 106 Agreement has been supported by a Viability Appraisal Report, Old Dalby Cost and Value Schedule, Abnormal Budget Cost Estimate, Ecology Cost Analysis and Demolition quote.

3.2 The Viability Assessment has been undertaken in the context of the requirements of the NPPF in respect of the imposition of planning obligations in a manner which maintains the economic viability of development. The assessment has also drawn on best practice advice contained in the Local Housing Delivery Group's 'Viability Testing Local Plans' June 2012 and the RICS guide 'Financial Viability in Planning' August 2012.

### **3.3 Background to the viability assessment**

The applicants have provided the subsequent explanation regarding their viability calculations:

*A viability assessment assesses the value of a completed development and all the various costs associated with undertaking it including a normal profit return to the developer and competitive return to the landowner. The standard cost elements include items that the developer is legitimately entitled to apply including industry standard contingency allowances and finance costs – to determine if the policy requirements of the Local Authority are viable based on the standard cost allowances.*

*The term 'negative viability' refers to a situation where all the standard value and cost assumptions have been applied to an assessment, and the result demonstrates a negative residual figure. This does not mean the development is not deliverable if the developer is prepared to reduce standard profit level and take a view on construction contingency risks.*

*In the current assessment these standard allowances include a profit return of 1,176,000 (at 20%) and a construction cost contingency of 5% at £207,000.*

*In this case Hofton Homes are willing to take a view on the contingency allowance as they have undertaken significant site investigation and therefore have good information on abnormal costs. This removes £207,000 of cost. If the developer is willing to undertake the scheme at approximately 15% profit removing a further cost of £310,000 then the 'negative viability' of -£516,000 is removed. However, if the additional £417,000 cost of affordable housing is added, the developer would have to undertake the scheme at full risk for a return of only 7% which would not be reasonable.*

### **3.4 Parkhurst Road Ltd High Court Case on Affordable Housing May 2018.**

The applicants have provided the following comments:

*This case was about one issue – the appropriate land value to be adopted in viability assessment. In this case, which related to the development of 96 flats on a small site in London, the Developer argued that the price they paid for the land at £13 Million should*

*be the basis for the viability assessment and therefore the scheme could only afford 10% Affordable Housing. The Council argued that a 'benchmark land value' of £7 Million should inform the assessment based on existing use value (as a territorial army centre) plus a premium to incentivise the landowner to sell - and on this basis the development could provide the policy target of 50% Affordable Housing. There were no 'abnormal construction costs' associated with the scheme.*

*The Judge found for the Council, making it clear that developers should not ignore policy requirements and over-bid for land with an expectation that affordable housing could be reduced based on a 'market value' paid for a site. The High Court case was based on the developer paying £138,000 per apartment plot.*

*At Old Dalby the land value proposed in the appraisal is the price paid at the existing use value of £280,000 which represents £11,200 per house plot – which would be very difficult to argue represents too much being paid for the land.*

*As such land value is not the issue in the Old Dalby case – it is principally the abnormal construction costs of £551,000 that render the delivery of affordable housing unviable.*

*Based on national BCIS research, construction prices have risen 14.8% in the last 12 months alone whilst house price increases have failed to keep pace and have largely stagnated in many parts of this region. As such the viability position has changed significantly even since the application was granted permission.*

*There are genuine site specific costs in this case that prevent the viable provision of affordable housing and we hope you are willing to review this application with an open mind to enable this scheme to be delivered. The decision in September 2017 took account of the provision of affordable housing as part of the proposal and required this by Section 106 Agreement.*

- 3.5 The study sought to assess the ability of the proposed development to make infrastructure or affordable housing contributions. The overall value of the completed development has been assessed and compared with the total costs, the appraisal has made an allowance for a reasonable return to the Landowner and a reasonable return to the Developer as required by the NPPF.
- 3.6 The submitted report contains a number of abnormal construction costs associated with the development of this site, itemised as follows, with a total estimated cost of £551,000, the applicant has obtained and submitted quotations for these works.
- 3.7 Acoustic Fencing – Estimated Cost £81,000

Acoustic fencing has been included to the full length of the southern and eastern boundaries to the site with a notional allowance for working around site features. The cost is based on a quote from Jackson Fencing for the supply and installation of the fencing specified in the Architects report.

#### Road Alterations – Estimated Cost £64,000

This cost excludes any costs for the formation of the turning head into the site itself. An amount of £10,000 has been included for a new wearing course to the full width of the existing main carriageway for a length of 60m. There is no indication on the drawing of any requirement to divert or otherwise alter any services or the like. Should such a requirement arise this will result in additional costs.

#### Ground Remediation – Estimated Cost £152,000

The costs are based on the disposal of 600m<sup>3</sup> of “Hazardous” waste. The assessment of the potential quantity of material to be disposed of is based on a statistical assessment by GEA Ltd of the soil samples carried out to date. Further site investigation will be required to confirm real quantities. It is assumed that there will be no requirement to import clean soil to replace the contaminated material removed as there will be sufficient clean material from excavation elsewhere on the site to replace that removed.

#### Flood and Storm Water Attenuation – Estimated Cost £168,000

The cost of this element is largely driven by the costs of the oversize pipes and manholes, some of which are relatively deep, running from the detention basin to the site boundary. The costs of providing the same run using 225 pipework and proportionately smaller manholes have been deducted from the overall cost.

It is assumed that there will be no requirement for any specialist earthwork support systems as a consequence of unusually poor ground conditions and that the deep excavations required for some of the manhole/pipes will not be effected by groundwater due to a high water table. Should this not be the case there could be significant additional costs.

#### Ecological Works - £45,020

These include Phase 1 Habitat and protected Species Assessment, Bat and Reptile Surveys, Reptile Fencing and translocation, Bat Development Licence, onsite Bat Mitigation and Monitoring.

#### Demolition and Site Clearance - £41,250

Includes asbestos survey, stripping out, demolition, site trip, removal of all waste and materials.

- 3.8 The appraisal also makes an allowance for £190,000 for Section 106 infrastructure contributions based on advice received from Hofton Homes. The Appraisal calculates the level of Affordable Housing that is viably achievable and shows that even with 0% delivery, the development demonstrates negative viability of -£516,000. The appraisal therefore illustrates that even before affordable housing discounts are applied, the costs

of the overall development compared to the projected value do not allow for a reasonable development profit or return for the landowner.

The additional impact of 25% Affordable Housing Provision is illustrated by the Viability Appraisal as submitted. The appraisal shows increased negative viability of -£933,000. This is because affordable housing is required to be sold at a discounted rate, ranging from 40% to 60% of open market value resulting in a decrease in the revenue of each affordable dwelling by up to circa £100,000. The reduced revenues from the 6 affordable houses concerned would combine to increase the deficit by £417,000 (i.e. the difference between - £516,000 and -£933,000).

The primary reasons that Affordable Housing delivery is not viable in this location are the abnormal site development costs of £551,000 and the Section 106 infrastructure contributions of £190,000.

#### **4. Recommendations**

**4.1 The site has permission for 25 dwellings and the request would not undermine or remove that. It is not an allocated site within the Local Plan nor is it one which is included within 3 or 5 year housing land supply calculations as its build out period is anticipated to be longer term.**

**4.2 It is recommended that a Deed of Variation is granted to allow the removal of the Affordable Housing requirement from the Section 106 Agreement supported by the extensive list of costs highlighted within the report. The additional costs are considered site specific and are in accordance with the approach to costs outlined in the NPPG which give guidance on what costs can be defined for the purpose of viability assessments. The costs outlined are reflective of those that can be considered acceptable.**

#### **Background documents:**

- Report to the meeting of Planning Committee 12<sup>th</sup> January 2017 and 24<sup>th</sup> May 2018
- Minutes of the meeting of 12<sup>th</sup> January 2017