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| <b>REPORT TO:</b>              | <b>PLANNING COMMITTEE</b>  | <b>AGENDA ITEM: 5</b>      |
| <b>DATE OF MEETING:</b>        | <b>26 JULY 2022</b>  | <b>CATEGORY: DELEGATED</b> |
| <b>REPORT FROM:</b>            | <b>HEAD OF PLANNING AND STRATEGIC HOUSING</b>  | <b>RESTRICTED</b>          |
| <b>MEMBERS' CONTACT POINT:</b> | <b>SARAH BEEBY</b><br><a href="mailto:Sarah.beeby@southderbyshire.gov.uk">Sarah.beeby@southderbyshire.gov.uk</a> | <b>DOC:</b>                |
| <b>SUBJECT:</b>                | <b>DEED OF VARIATION – LAND AT BOULTON MOOR</b>  | <b>REF: 9/2016/0166</b>    |
| <b>WARD(S) AFFECTED:</b>       | <b>ASTON</b>   | <b>TERMS OF REFERENCE:</b> |

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## **1. Recommendations**

- 1.1 That the Committee approves an amendment to the Section 106 agreement (S106) by means of a Deed of Variation (DoV) to accept total financial contributions of £6,356,145 along with the provision of 12% on site affordable dwellings (66).
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured under the DoV.

## **2. Purpose of Report**

- 2.1 Members will recall this item was brought to Committee 3<sup>rd</sup> May 2022 seeking a deed of variation to the S106 for Boulton Moor 2 (BM2) and the original report is attached at the end of this one.
- 2.2 Discussions have taken place with the landowners in an attempt to address the concerns raised by Members on that occasion and this report provides a summary of those discussions and the revised recommendation at section 1.

## **3.0 Discussion**

- 4.1 Subsequent to the Planning Committee's decision to defer taking a decision on the request to vary the S106 Agreement due to concerns over the reduction in affordable housing Officer's discussed the matters raised with the landowners.
- 4.2 The landowners have considered their position and wish the Committee to be aware of the following points in considering their proposals:
  - i. The original planning application for Boulton Moor Phase 2 was submitted in February 2016. As a result of protracted discussions with Highways England (now National Highways) and Derbyshire County Council Highways, the application was not reported to SDDC's Planning Committee until February 2020. The planning*

*permission was issued in July 2020. Due to the unusually long determination period, the landowners felt compelled to secure the planning permission without further delay (unlike a housebuilder who would have been compelled to acquire the land upon the grant of permission).*

*ii. The landowners commissioned their own viability assessment, prepared by Cushman & Wakefield. Whilst this report was shared with SDDC, it is not the basis of the officer's Committee Report. Instead, in 2021, SDDC appointed the District Valuer (DV) to undertake an independent viability assessment. The landowners and their consultant, Cushman & Wakefield, did not agree fully with the DV's assessment. Thus, the landowners have already accepted concessions in reviewing the viability of this development which has resulted in increases to the revised s106 package recommended to SDDC's Planning Committee on 3rd May 2022.*

*iii. All viability reviews in planning must accord with the RICS's professional code of conduct. These are mandatory standards which both the DV's report and the landowner's consultant has complied with. The Planning Committee have been provided with a copy of the DV's report; however, we are not aware that any of the inputs or findings have been challenged. The Committee's request to depart from the DV's assessment risks departing from a robust professional basis for reviewing the viability of this development.*

*iv. The full extent of costs for substantial off-site highway works could not have been established until after the grant of planning permission. Detailed highway drawings which have subsequently been produced to cost each highway scheme have identifies a significant increase in costs above preliminary estimates.*

4.3 Notwithstanding the above, the landowners wish to agree a way forward which avoids significantly delaying the delivery of this development. To that end they have proposed an uplift in the amount of affordable housing proposed on site to 12%, which equates to a further 11 dwellings, 66 in total.

4.4 Whilst it is appreciated that this is a reduction in onsite provision of 17 homes and there would be no off-site contribution (£4,539,061), it is recognised that this additional provision is out with the findings of the DVS and recognises the existing viability pressures associated with the development of the site.

## **5.0 Conclusions**

5.1 The obligations attached to the original S106 were proposed so as to ensure the impacts of the development are appropriately mitigated, and whilst the percentage of affordable housing would be reduced in this case, the benefits to the new community in this regard would remain. On balance, whilst there would be some conflict with Policy H21 this is considered the material considerations in favour of the development are considered to override this harm.

**Appendix**

|                                |   |                                      |
|--------------------------------|---|--------------------------------------|
| <b>REPORT TO:</b>              | <b>Planning Committee</b>   | <b>AGENDA ITEM:</b>                  |
| <b>DATE OF MEETING:</b>        | <b>3<sup>rd</sup> May 2022</b>  | <b>CATEGORY:</b><br><b>Delegated</b> |
| <b>REPORT FROM:</b>            | <b>Head of Planning and Strategic Housing</b>   | <b>RESTRICTED</b>                    |
| <b>MEMBERS' CONTACT POINT:</b> | <b>Sarah Beeby</b><br><b><a href="mailto:Sarah.beeby@southderbyshire.gov.uk">Sarah.beeby@southderbyshire.gov.uk</a></b> | <b>DOC:</b>                          |
| <b>SUBJECT:</b>                | <b>Deed of Variation – OUTLINE APPLICATION (ALL MATTERS TO</b>  | <b>REF: 9/2016/0166</b>              |

**BE RESERVED) FOR THE  
RESIDENTIAL DEVELOPMENT FOR  
UP TO 550 UNITS, A TWO-FORM  
ENTRY PRIMARY SCHOOL,  
STRATEGIC ROAD LINKS  
(CONNECTING BOULTON MOOR  
PHASE 1 AND SNELSMOOR  
GRANGE) PUBLIC OPEN SPACE  
INCLUDING CHILDREN'S PLAY  
PROVISION, SURFACE WATER  
DRAINAGE AND LANDSCAPING  
AND ANCILLARY SUPPORTING  
INFRASTRUCTURE (BOULTON  
MOOR PHASE 2)**

**WARD(S)  
AFFECTED:**

**Aston**

**TERMS OF  
REFERENCE:**

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**1. Recommendations**

- 1.1 That the Committee approves an amendment to the Section 106 agreement (S106) by means of a Deed of Variation (DoV) to accept total financial contributions of £1,360,000 along with the provision of 10% on site affordable dwellings (55).
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured under the DoV.

**2. Purpose of Report**

- 2.1 An approach has been made to the Council under the 'mutual agreement' allowances of section 106A of the 1990 Act, it being less than 5 years since the agreement was signed. This report considers the reasons why the approach has been made and the recommendations above are proposed.

**3. Background**

- 3.1 Members may recall that the site was considered by Planning Committee and subsequently granted outline planning permission in July 2020. The scheme was proposed as a Local Plan compliant scheme providing 30% affordable housing (15% on site and a commuted sum of £4,539,061 for 15% off-site) and developer contributions totalling £6,356,145 towards education, healthcare, monitoring fees and play and open space provision.
- 3.2 The original S106 agreement contained 12 'parts', 11 of which required the undertaking of works, the payment of financial contributions or the provision of infrastructure. These are summarised thus:

Affordable Housing

This schedule sets out the requirement to submit an Affordable Housing Scheme for each phase applied for at Reserved Matters stage. 15% of dwellings within each phase shall be affordable and trigger points are set for their transfer, the payment of the Affordable Housing contribution, form of transfer and restrictions on occupation. A formula sets out how the off-site contribution for the remaining 15% of any Affordable Housing and any additional short fall in Affordable Housing provision on site.

#### Built facilities

This schedule identified the formula used to calculate the financial contributions sought towards built facilities and sets out the specific trigger points.

#### Outdoor sports facilities

This schedule identified the formula used to calculate the financial contributions sought towards outdoor sports facilities and sets out the specific triggers points.

#### On-site public open space (POS)

This schedule sets out the requirements for notification of transfer of POS to the Council or a management company and funding mechanisms. It set out the trigger points for providing POS per phase.

#### Off-site public open space contribution

This schedule identified the formula used to calculate the financial contributions sought towards Off-site public open space and sets out the specific triggers points.

#### Drainage

This schedule sets out the requirements for notification of transfer of the SuDS for each phase, the maintenance of, the trigger points for providing these and restrictions on such.

#### Management company

In the event of the POS or SuDS being transferred to a Management Company this schedule sets out the trigger points for providing the council with details of the company and its funding, maintenance and inspection mechanisms.

#### Healthcare contribution

This schedule identified the formula used to calculate the financial contributions sought towards health care and sets out the specific triggers points.

#### Monitoring fee

This schedule sets out the monitoring fee payable.

#### Education contribution

This schedule relates to a covenant with the County Council and identified the financial contribution and formula used to calculate the contributions sought towards primary and secondary education and sets out the specific triggers points.

#### Travel plan monitoring fee

This schedule relates to a covenant with the County Council and identified the financial contribution towards the monitoring fees associated with the implementation of the travel plan

#### **4.0 Discussion**

- 4.1 A viability assessment has been submitted which has been independently assessed by the District Valuer. This identifies that on the basis of the agreed design, build and abnormal costs, the development would not be able to withstand the full requirement of S106 contributions or affordable housing provision from the values that could be reasonably achieved from the site.
- 4.2 Whilst there are a small number of unagreed details between the District Valuer and the applicant, these are relatively minor points and in taking the view of the District Valuer on these points it remains the case that the development would not be viable on the basis of the whole package of contributions.
- 4.3 Notwithstanding this, there are three alternative scenarios whereby the development could support a certain level of developer contributions and/or affordable housing the first two of these are suggested by the District Valuer with the third being a proposal by the applicant, and these merit serious consideration:
- A. Retain 15% on-site Affordable Housing (on the basis of 60% Social Rent: 40% Shared Ownership), and in order to maximise the amount available for payment of Section 106 financial Contributions, the off-site Affordable Housing financial Contribution would need to be reduced to zero; on this basis the amount available for Section 106 Contributions would be the reduced amount of £5,662,453
- B. Affordable Housing provision retained at 15% on-site and a further 15% by way of off-site financial Contribution in accordance with the requirements of the Section 106 Agreement, the Section 106 Contributions would need to be reduced to a total of £1,360,000 (on the basis of payment prior to occupation of 50% of the dwellings).
- C. Reduce the on-site affordable housing to 10% (a reduction of 5%), in addition to the removal of the off-site housing contribution (i.e. £4,539,061). This would ensure that the level of financial contributions requested could be met in their entirety.
- 4.4 Policy INF1 of the Local Plan identifies that for development that is otherwise in conformity with the plan, but generates a requirement for infrastructure will normally be permitted if the necessary on and off-site infrastructure required to support and mitigate the impact of a development is either (i) already in place or (ii) secured.
- 4.5 Policy H21 of the Local Plan (part 1) states that the Council will secure up to 30% of new housing development as affordable housing on sites of over 15 dwellings.
- 4.6 Consideration of the required developer contributions and affordable housing was undertaken by members at Committee in February 2020. Members agreed with the officer recommendation that the contributions sought met the identified legal tests and so were necessary to mitigate the impacts of the development which weighed as a positive material consideration within the overall planning balance.
- 4.7 In relation to development viability, the Planning Practice Guidance (PPG) sets out

that 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. Whilst the site was allocated in the Local Plan the costs associated with the development have only been realised as a result of more detailed work undertaken as part, and following approval, of the outline planning permission.

- 4.8 The viability information provided by the developer has been independently assessed and it has been confirmed that it would not be viable for the development to provide the full package of contributions and affordable housing, but that it could support a revised package. Whilst it is acknowledged that the associated benefits of the development would therefore be reduced in this regard; overall the disadvantages on housing delivery associated with non-delivery of the site are considered to be greater. On balance, therefore, a development which delivers a reduced level of contributions/affordable housing is considered preferable.
- 4.9 On accepting the above, it therefore falls to be considered which of the identified scenarios would be most suitable taking into account the applicable planning policy and local circumstances.
- 4.10 The Strategic Housing Team has provided comments on the options. They advise that Boulton Moor is an area of low demand in respect of affordable housing.
- 4.11 It is acknowledged that there is a lesser need for affordable housing in this area for the residents of South Derbyshire, which is acknowledged by the agreement to allow an offsite contribution to be made originally.
- 4.12 Having regard to this, it is considered that option C would offer a more balanced approach to enable the truest localised need for affordable housing to be met whilst ensuring that the pressures on education and good quality and sufficient recreational facilities are appropriately resourced, creating a sustainable community. On balance this is considered an acceptable compromise and is reflective of Corporate Plan aims to secure necessary infrastructure requirements to support development.
- 4.13 The advice of the DVO is that their appraisal remains valid for a period of 12 months (from January 22).
- 4.14 It is Officers view that Policy INF1 and the relevant Planning Practise Guidance allows for a review mechanism within a S106 Agreement. That said noting the passage of time since the report was received from the DVO, the finance implications of the off-site highways works required and the need to secure developers and subsequently submit reserved matters applications, it is considered that an extended review period, which could either be a set period of time or prior to specific phases of the development being commenced, would allow more certainty to prospective developers which would ensure that the site came forward in a timely manner so as to contribute significantly towards the council's five year housing land supply.

## **5.0 Conclusions**

- 5.1 The obligations set out above are proposed so as to ensure the impacts of the

development are appropriately mitigated, and whilst the percentage of affordable housing would be reduced in this case, the benefits to the new community in this regard would remain. On balance, whilst there would be some conflict with Policy H21 this is considered the material considerations in favour of the development are considered to override this harm.

## **6.0 Financial Implications**

- 6.1 The endorsement of the above recommendation would ensure that Corporate projects relating to sport and recreation would be supported.
- 6.2 The Council's legal fees associated with pursuing a DoV would be covered by the developer.

## **7.0 Corporate Implications**

- 7.1 Approval of the recommendation set out above would support the delivery of an approved housing site which has been included within the Council's calculations relating to housing land supply. If the variation to the S106 is not agreed, it may compromise the delivery of the whole site, reducing the available housing supply.
- 7.2 The proposal would contribute towards the key aims of the Corporate Plan including the measure to enable the delivery of housing across all tenures to meet Local Plan targets. Furthermore, it would ensure the improvement of infrastructure to meet the demands of growth, again in line with a Corporate Plan measure.

## **8.0 Community Implications**

- 8.1 The principle of development has been established through approval of the outline Planning permission and the required public consultation has been undertaken. Delivery of the scheme would contribute positively towards the social dimension of sustainable development through the provision of market housing, and would help address an identified local need in regard to the provision of affordable housing on the site.
- 8.2 By securing the financial obligations set out, the communities created and impacted upon would be able to access suitable education and recreation facilities.