
Application for Planning Permission

04/00240/OUT

SIXTH DEED OF VARIATION TO SECTION 106 AGREEMENT – LAND AT PRIORS HALL PARK - The applicant seeks acceptance of its case that the sheltered housing scheme as consented under planning permission reference number 04/00240/OUT is altered to reflect a unit mix that Registered Providers will purchase

1. Background

The applicant acquired a site that had experienced difficulties in the inception as a Sustainable Urban Extension (SUE). Following acquisition of the site in October 2017 by the applicant a range of works in Zone 1 had to be undertaken; this included 7,000sqm surfaced footpath and 10,000sqm of surfaced roads; the installation of 139 street lights remedial works to the road way and drainage including the construction of a children's play area. Along with extensive enabling works to comply with the conditions associated with the extant planning permission. The Principal Agreement associated with the extant permission has been complied with by the applicant as follows:

- 4,360 total dwellings including 435 affordable units (10%)
- Of which 120 units to be built in Zone 1, comprising 80 sheltered units and 40 shared ownership units
- No requirement to provide social rented housing
- 10% off site provision contribution calculated at £3M (paid in full to Corby Borough Council (CBC) to fund Housing and Regeneration Programme inc. social rent e.g. Kingswood)
- The applicants proposed variation is policy compliant given that; S106 states 435 affordable units across CBC area (zones 1-2), i.e. (10% of 4360) whilst committee report states 10%
- Currently 11.5% due to reduced number of units to be achieved on Zone 1 (4360 (435) reduced to 3848 (384))
- Policy compliant position of 10% should prevail (384 units)

The applicant has demonstrated through marketing evidence that; no market interest currently exists for sheltered units despite repeated attempts to secure a registered provider since 2013, the viability assessment supports the applicant's case. The importance of the Deed of Variation is that; it underlines the need for agreement to be reached by the parties, to avoid the possibility of non-deliverability of further housing on Priors Hall Park.

Members are recommended to consider the avoidance of an adverse refusal to the suggested Deed of Variation and to give due consideration to the following Review Mechanism; as an inserted clause in the sixth Deed of Variation, as a suggested means of moving matters forward without risk to further deliverability of housing.

The appended Review Mechanism is therefore tabled for Members consideration and approval.

2. Site and Surroundings:

- 2.1 The application site forms Zone 1 of the Priors Hall Sustainable Urban Extension (SUE) that falls within the Borough of Corby. The application site extends to some 395 hectares, 268 hectares of which lies within Corby Borough Council and the remainder in East Northamptonshire.
- 2.2 The site is bounded by the A43 on its southern side, Gretton Road on its western side and Kirby Lane on its northern side. The site's eastern boundary wraps around Priors Hall Golf Course and follows the linear wooded areas extending northwards from what was referred to as Priors Hall Plantation.

- 2.3 To the south of the site, beyond the A43, lies the village of Weldon. To the west, beyond Gretton Road is Weldon North Industrial Estate and Rockingham Motor Speedway. Beyond Weldon North Industrial Estate lies the site of the former Corby Steelworks.
- 2.4 To the north of the site, beyond Kirby Lane, are the grounds (registered Grade II*) of Kirby Hall (Grade I listed building). To the east, beyond the linear wooded areas is Deene Park (also registered Grade II*) and the village of Deene.
- 2.5 A Scheduled Ancient Monument (SAM) – Little Weldon Roman Villa (NN105) – is located in the southern part of the site, adjacent to the A43. Another SAM – the site of Kirby deserted medieval village (SM17158) within the grounds of Kirby Hall – lies to the north of Kirby Lane. Weldon Lodge, on the western side of Gretton Road, is a Grade II listed building.

3. The Proposal:

- 3.1 The applicant has advanced the case that the sheltered housing scheme as under planning permission reference No. 04/00240/OUT is not saleable. The consented scheme is for 120 units, 80 of which are sheltered accommodation and 40 units are 2 bed shared ownership tenure housing.
 - The quantum of floorspace consented is 58,000 sqft. Consisting of 80 sheltered units at 350 sqft per unit and 40 housing units at 750 sqft per unit
 - The approach adopted by the applicant is to replace the sheltered accommodation with 100% housing units

4. History:

- 4.1 A planning history search exercise was carried out on 16.10.2019 to reveal an extensive history for the site. Submissions which hold material weight in the determination of this application include:
- 4.2 Outline planning application submitted under reference: 04/00240/OUT for a “Mixed use urban extension to Corby, including Residential (up to 5,100 dwellings), Employment (up to 14ha), 1 District Centre, 2 Neighbourhood Centres, Schools (1 Secondary, 3 Primary), Hotel, Formal and Informal open space” at Priors Hall Development Site, Stamford Road, Weldon, Corby, Northamptonshire. Granted consent on 29.03.2007.
- 4.3 Reserve Matters planning application submitted under reference: 13/00026/RVC for variation of condition 4 of planning permission 04/00240/OUT at Priors Hall Development Site, Stamford Road, Weldon, Corby, Northamptonshire. Granted Consent 15.8.2013.

5. Policy:

- 5.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:
 - a. The provisions of the development plan, so far as material to the application,
 - b. Any local finance considerations, so far as material to the application, and
 - c. Any other material considerations.

Section 38(6) of the Planning and Compulsory Purchase Act (2004) makes it clear that ‘if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise’.

The development plan for the Borough of Corby comprises the ‘North Northamptonshire Joint Core Strategy’ 2016. The National Planning Policy Framework 2019 (NPPF) does not change the legal status of the development plan.

The National Planning Policy Framework 2019:

The revised “NPPF”, originally published in 2012, was published on February 2019 and is a material consideration in the determination of planning related applications.

It contains in paragraph 11, a ‘presumption in favour of sustainable development’. Annex 1 of the “NPPF” provides guidance on its implementation. In summary, this states in paragraph

213, that policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the “NPPF” and in regard to existing local policies, that ‘due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)’.

Officers have reviewed the Joint Core Strategy for consistency with the “NPPF” and consider there is no issue of significant conflict. As such full weight can be given to these policies in the decision-making process in accordance with Paragraphs 211 and 215 of the “NPPF” 2019.

National Planning Practice Guidance ‘NPPG’ (2014 ONWARDS);

On 6th March 2014, DCLG launched the National Planning Practice Guidance (“NPPG”) resource. This replaced a number of planning practice guidance documents, and is subject to continuous periodical updates in different subject areas.

North Northamptonshire Joint Core Strategy 2016

Policy 1: Presumption in favour of Sustainable Development;

Policy 4: Biodiversity and Geodiversity;

Policy 5: Water Environment, Resources and Flood Risk Management;

Policy 6: Development on Brownfield Land and Land affected by contamination

Policy 7: Community Services and Facilities;

Policy 8: North Northamptonshire Place Shaping Principles;

Policy 9: Sustainable Buildings;

Policy 10: Provision of Infrastructure;

Policy 11; The Network of Urban and Rural Areas;

Policy 13: Rural Exceptions;

Policy 15: Well-connected Towns, Villages Neighbourhoods;

Policy 16: Connecting the Network of Settlements;

Policy 28: Housing Requirements;

Policy 29: Distribution of New Homes;

Policy 30: Housing Mix and Tenure;

North Northamptonshire Supplementary Planning Documents (“SPD”);

Biodiversity SPD 2016;

Updated Biodiversity SPD 2016;

Planning Obligations 20th March 2007; made pursuant to Section 106 and 106A of the Planning Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling enactments which may be relevant for the purpose of consideration of the applicants’ case.

6. Consultation:

The applicant engaged with officers of the Council Development Management Team direct in seeking to vary the Section 106 planning obligation. Development Management Officers engaged with Housing Strategy.

Housing Strategy have raised no formal objections to the applicant’s case for variation to the Planning Obligations.

7. Advertisement/Representations:

7.1 None was required the Borough Council had instructed White Land Strategies to undertake a viability appraisal of the 100% affordable housing development within Zone 1 of Priors Hall.

Main Issues

- Principle of Proposed Development
- Acceptability of the Applicant’s case for variation to the section 106.

- Is the proposed reduction of affordable units reasonable
- Reduction of Provisions

8. Considerations

Principle of Development

- 8.1 The outline planning permission referenced 04/00240 OUT has settled the issue of Priors Hall Park as a policy compliant SUE.

9. Acceptability of the Applicant's case for variation

- The applicant have advanced the case that, a reduction in the quantum of affordable housing in Zone 1 is necessary in order to deliver affordable homes and market homes in Zone 1. Whilst 120 affordable units were initially intended to be built in Zone 1 (comprising 80 Sheltered units as required by the Principal Agreement and 40 Shared ownerships), with the remaining 315 units in Zone 2.
- The applicants' case for reduction is that the delivery of 120 affordable homes is not viable and that it would likely result in the applicant incurring a cost in excess of £800,000.
- The appointed independent assessor White Land Strategies considered two scenarios based upon the applicant's submitted proposal for reduction of the numbers in the Principal Agreement.
- The first scenario was to consider a compliant scheme in line with the Technical Housing Standard Nationally Described Space Standards (NDSS). The approach here would require the applicant to deliver units to be a minimum size. "The appraisal is structured to accommodate 120 units at the minimum NDSS size per unit. The development space schedule equates to 105,626 sqft. An alternative non-compliant NDSS appraisal is submitted for the 120 units based on smaller unit sizes equating to a floorspace area of 94,300 sqft.
- The second scenario is a reduced number of units within both the NDSS compliant and non NDSS compliant options. "The unit numbers being reduced to provide a floorspace of 58,000 sqft (the equivalent of the consented floorspace)."
- Officers have set an approach that; allows Corby Borough Council as a party to the Principal Agreement and variations to the Principal Agreement, to gain a claw back should the applicant earnings exceed what is argued in the viability. These sums would be monies paid to Corby Borough Council for off -site provisions for affordable housing.
- The Review Mechanism should thus read as an insertion into the agreed Deed of Variation and set alongside that would be the suggested Table and Formula which are appended as Appendix A to the officer report.

10. Applicant Preferred Option of the Two Scenarios

- The applicant preferred option is for scenario two to build 58,00sqft on 3.8ha which in their view would generate the smallest loss when compared to the first scenario.
- The viability assessment carried out for the Council draw the conclusion that the substitution of 80 Sheltered flts with shared ownership houses of an equal square footage (85,00 sqft), and therefore equal build cost, would equate to 35 shared ownership houses. On this basis the Council if it agrees with the assessors findings on the understanding that the principal of substituting Sheltered units with Shared ownership homes, and maintaining build costs for a scheme which is not viable, it should accept that the affordable provision for Zone 1 should result in an adjustment to provide the following:
 - 40 Shared ownership units (in line with the Principal Agreement);
 - 35 Shared units (as opposed to 80 Sheltered units);
 - Therefore equating to 75 Units in total as opposed to 120 units.

The reduction would therefore result in the overall Principal Agreement having a reduced provision from 435 to 390 units.

11. Is the proposed reduction reasonable

- a. The applicant's position supported in part by the viability assessment is that whilst the Outline Consent referenced 04/00240/OUT gave consent for 4,360 units the maximum units to be delivered across Zones 1 and 2 is 3,848, indicating that the 10% on-site affordable housing provision should be 384 units as opposed to 435. It therefore results in a reduction of 51 units.
- b. The applicant's case rests on the Local Planning Authority (LPA) supporting the case advanced in the viability report which argues that the level of affordable housing should be policy compliant at 20%, it requires the LPA to note that the 10% (51 units) to be paid in off-site contributions should also be proportionally reduced if the total number of dwellings is to be less than anticipated. If the LPA accepts this position then in the view of the applicant the development has funded 51 units in excess of the Principal Agreement. The LPA does not accept this view with respect to off-site affordable housing provision as this funding for off-site provision has already been paid in full and fully utilised to provide off-site affordable housing and should not be credited.

12. Reduction of Provisions

- a. The Viability report sets out the argument that the reduction in the circumstance is fair and concludes by way of assessing the numbers in reduction as follows;
- b. Agreed level of on-site affordable housing in Zone 1 and 2 - 435
- c. Reduction arising from loss of sheltered housing - 45
- d. Reduction to retain on site provision at 10% (51) of total units - 51
- e. Reduction to retain off site provision at 10% (51) of total units - 0
(Not agreed so recorded as nil)
- f. Revised number of on-site affordable housing 339
- g. The applicant is seeking to make all on-site provision to be intended as Shared ownership with no Social rent
- h. The applicant in discussions with officers of Corby Borough Council have further stated that they wish to build all the affordable houses in Zones 1 and 2 by the occupation of 3500th unit as follows:
 - i. 75 by 2,000th
 - j. 135 by 2,500th
 - k. 192 by 3,000th
 - l. 399 by 3,500th
- m. The applicant further wishes to dispense with the requirement to build the affordable house in line with the Technical Housing Standard Nationally Described Space Standards (NDSS)
- n. The applicant seeks to gain the Local Planning Authorities acceptance for the developer not to build the affordable units in clusters between 12 and 20 to any size as they currently have offers based on 26 units and 49 units.
- o. An additional request from the applicant is for the required submission of the Health Centre specification to be provided by the 1,600th occupation as opposed to the 1,000th the applicant argues that given the Care Commissioning Group not have an end user in place no specification is forthcoming.

13. Conclusion and Recommendation

- 13.1 The viability assessment by White Land Strategies has had due regard to the policy advice contained in paragraph 34 of the National Planning Policy Framework (NPPF 2019) and Planning Policy Guidance (PPG) on viability there has been a realistic assessment of contributions offered by the applicant and an assessment of the cumulative costs of all relevant policies and the conclusion drawn is that a reduction in affordable housing provision will not undermine deliverability of the requirements of provisions sought in the Principal

Agreement. The assessment allows for sufficient return for the developer in order that the site comes forward for development. The officer recommendation is that members approve the reduction and variation sought in the Principal Agreement.

13.2 The officer recommendation is in line with para 57: of the NPPF sufficient weight has been given to the viability assessment and due regard paid to all circumstances in this particular case to support the applicants' submission for variation to the Principal Agreement.

13.3 Different legal advice regarding the issue of space standards has been reviewed, the majority advice is that the current space standards would not apply as the current guidance came into force after the initial outline approval was given. The exact wording of the Review Clause has not been agreed with the applicant and as such the following recommendations are put for Members consideration.

13.4 Recommendation A

13.4.1 Grant permission subject to authority being delegated to the Head of Planning in consultation with the Director of Legal and Governance Services for the completion of the S106 Deed of Variation. The Section 106 Deed of Variation Heads of Terms would cover the following matters:

13.4.2 To provide an open book review of the scheme at 80% of the sales. The council will seek to clawback 100% of any profit (if any) generated by the scheme with regards to affordable housing.

13.5 Recommendation B

13.5.1 That if the Section 106 Deed of Variation is not completed by 1.4.2019, or as extended period as may be agreed by the Head of Planning in consultation with the Chair of the Planning Committee, then it is recommended to delegate the decision to REFUSE planning permission to the Head of Planning that:

13.5.2 The proposed development, by reason of the failure to demonstrate an acceptable review mechanism in relation to the provision of an appropriate level of affordable housing and would fail to comply with Policy 30 of the North Northamptonshire Joint Core Strategy 2016.

Officers to Contact

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Appendix A

Affordable Housing Review Mechanism

- 1.1 If Commencement has not occurred within twenty four (24) calendar months from the date of the Planning Permission; or
- 1.2 Commencement has occurred within twenty-four (24) calendar months from the date of the Planning Permission but the development has not been completed (save in respect of residual landscaping) within twenty four (24) months after the date of Commencement; or
- 1.3 Either paragraph 1.1 or 1.2 applies and an updated Viability Appraisal has been submitted to the Council and agreed or determined more than twenty-four (24) months previously, then the Council may serve notice on the Owner stating that the Viability Appraisal or the previous Updated Viability Appraisal shall be taken to have expired and requiring the Owner to submit an Updated Viability Appraisal.
- 1.4 If the Owner shall dispute the circumstances as specified in the Council's notice apply, it may serve counter notice on the Council accordingly within forty (40) Working days of receipt of the council's notice and shall accompany any such counter notice with reasons, together with documentary evidence supporting the Owner's case and if the dispute is not resolved within ten (10) working days thereafter, the matter shall be referred to an independent expert for determination pursuant to the dispute clause contained herein if the Owner shall not serve any such counter notice pursuant to this clause 1.4, the Viability Appraisal (or where paragraph 1.3 applies) the previous Updated Viability Appraisal in question shall be deemed to be expired at the end of the period ten (10) working days following service of the Council's notice pursuant to paragraph 1.3

Updated Viability Appraisal

- 1.5 Where pursuant to clause 1.3 or 1.4 a Viability Appraisal or Updated Viability Appraisal is deemed to have expired, or it is agreed or determined that the Viability appraisal or Updated Viability Appraisal has expired, then the owner shall (unless otherwise agreed with the Council) within forty (40) working days of such deemed expiration or agreement or determination submit to the Council an Updated Viability Appraisal.
- 1.6 Following receipt of an Updated Viability Appraisal, the Council shall confirm to the Owner within fifteen (15) working days:
 - 1.61 Whether the Updated Viability Appraisal contains all the necessary information for the Council to commence an assessment of it; or
 - 1.62 Whether any reasonable additional information or clarification of the contents of the Updated Viability Appraisal is required.
- 1.7 The owner shall respond promptly to any reasonable request received from the Council or the Council's appointed viability consultant under clause 1.62, and shall provide any such information or clarification within ten (10) working days of the Council's request for the same and the process in paragraph 1.6 and this paragraph 1.7 shall be repeated until the Council confirms that the Updated Viability Appraisal contains all necessary information for the Council to commence an assessment of it (Validation Date).
- 1.8 The reasonable costs incurred by the Council obtaining independent advice to assist with its assessment of the Updated Viability Appraisal shall be paid by the owner, such reasonable to be paid within ten (10) working days of receipt from the Council (or the Council's appointed adviser) of an invoice for the same.
- 1.9 The Council and the Owner shall use reasonable endeavors to agree the Updated Viability Appraisal and the Council shall notify the owner within thirty (30) working days following the validation date whether or not it agrees with the Updated Viability Report.
- 1.10 If after thirty (30) working days following the validation date the Council and the Owner have been unable to reach agreement on the Updated Viability Appraisal, then any party may refer

any dispute element of the Updated Viability Report to an expert for determination pursuant to the dispute clause

Payment and Application of Surplus

- 1.11 In the event that an Updated Viability Appraisal agreed to pursuant to paragraph 1.9 or determined pursuant to paragraph 1.5 demonstrates that there is no surplus, then clauses 1.12 to 1.14 of this clause shall not apply.
- 1.12 In the event that an Updated Viability Appraisal as agreed pursuant to paragraph 1.9 or determined as provided for by paragraph 1.5 demonstrates that there is a Surplus then the owner shall pay the Surplus to the Council in accordance with paragraph 1.13 provided that any such payment shall not exceed the Affordable Housing Contribution Cap.
- 1.13 The surplus shall be paid to the Council by the Owner as follows:
 - 1.13.1 where the surplus results from an Updated Viability Appraisal in the circumstances prescribed in paragraph 1.1, the surplus shall be paid to the Council by the owner within twenty (20) working days of commencement following the date the surplus is agreed pursuant to paragraph 1.9 or determined as provided for in paragraph 1.10 provided that if commencement shall occur after the date of the Council’s notice pursuant to paragraph 1.1, but before agreement or determination of the surplus, then the surplus shall be paid to the Council by the owner within twenty (20) working days of that same agreement or determination; and
 - 1.13.2 where the surplus results from an Updated Viability Appraisal in the circumstances prescribed in paragraph 1.2, the surplus shall be paid to the Council by the owner within twenty (20) working days of agreement pursuant to paragraph 1.9 or determination as provided for in clause 1.10.
- 1.14 Any sum paid to the Council in respect of the surplus shall be applied by the Council towards the off-site provision of Affordable Housing in the Council’s Area

What are we to tie the agreement to?

What is the definition of affordable housing cap?

How do we define the baseline viability position so as to be clear we can determine a surplus?

- 1) This agreement needs to be an additional clause written in the Deed of Variation S106 agreement.

An example is as follows which ties in formulas below.

"EARLY STAGE REVIEW DATE"	means the date on which Substantial Implementation takes place;
"EARLY STAGE REVIEW TRIGGER DATE"	means the date 2 (TWO) years after the date of the grant of the Deed of Variation by committee;
"FORMULA 1"	means the formula used to calculate the amount of any Late Stage Affordable Housing Contribution at the Late Stage Review Date as shown at Appendix 1 of this Unilateral Undertaking;
"LATE STAGE REVIEW CAP"	means the maximum Late Stage Affordable Housing Contribution that will be payable as a result of the Late Stage Review calculated in accordance with Formula 2;
"LATE STAGE REVIEW CAP"	means the maximum Late Stage Affordable Housing Contribution that will be payable as a result of the Late Stage Review calculated in accordance with Formula 2;

- 2) The Affordable Housing Cap – Is the amount which is required as at the date of the Updated Viability Appraisal to provide 120 of the dwellings as 100 % affordable Shared Ownership and assuming 67 units being NDSS compliant such amount to be derived from the average values (measured in pounds per square foot) achieved on the Affordable Housing at the time of the Updated Viability Appraisal or (when no actual sales have taken place) as assumed in the Viability Appraisal and Index linked.
- 3) The baseline position would be the construction of 120 units (with 67 units being NDSS compliant) and the assumption of achieving sales at £235 psft

The following is two formulas that can be used to capture the late stage review and the late stage review cap:

Formula 1: Late Stage Review Contribution

X = Late Stage Review Contribution

$$X = (((A + B) - C) - ((D + E) - F) - P) \times *$$

A = GDV achieved on sale/ lease of 75 per cent of residential units and GDV from other parts of the development sold / let and other income receipts (£)

B = Estimated GDV for parts of the development that are yet to be sold/ let and other income sources (£)

C = GDV determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review) (£)

D = Build Costs incurred at the time of review (£)

E = Estimated Build Costs for remainder of the development (£)

F = Total Build Costs determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review) (£)

P = (A + B - C) * Y; Developer profit on change in GDV (£)

Y = Developer profit as a percentage of GDV as determined at the time planning permission was granted (%)

Notes:

(A + B) - C = the change in GDV from the grant of planning permission (or previous review) to the late stage review (£)

(D + E) - F = The change in Build Costs from the grant of planning permission (or previous review) to the late stage review (£)

P = Developer profit on change in GDV (£)

* = Any surplus profit, after deducting the developer profit (P), will be shared between the LPA and the developer with 60 per cent used for additional affordable housing.

Formula 2: Late Stage Review Cap

X = Late Review Cap

$$X = ((A * D) - (B * D))$$

A = Average value of market housing per m² (£)

B = Average value of shared ownership housing per m² (£)

D = Average habitable room size for scheme (m²)

(Determined at the time planning permission was granted or as updated following previous review)