

PARISH Clowne

APPLICATION Variation of S106 Planning Obligation to remove the requirement to make a contribution to affordable housing in connection with original planning permission 14/00057/OUTMAJ.
LOCATION High Ash Farm Mansfield Road Clowne Chesterfield
APPLICANT Matthew Stephens
APPLICATION NO. 18/00084/OTHER **FILE NO.**
CASE OFFICER Mr Peter Sawdon
DATE RECEIVED 13th February 2018

SITE

The site is 1.2ha of land located to the west side of Mansfield Road at Clowne that is mostly outside of the settlement framework. The eastern portion of the site comprises the original access to this site along with a former semi-detached bungalow that has been demolished to facilitate the delivery of this development. These site of the former dwelling, along with part of the entrance drive to the site are located within the settlement framework boundary that is generally formed by the ribbon of development that extends southwards from Clowne along Mansfield Road. The eastern portion of the site to the rear of existing residential properties fronting Mansfield Road was formerly occupied by buildings associated with High Ash Farm; the area is in the process of being cleared and is currently occupied by mounds of rubble.

Recently constructed dwellings are sited to the north west of the site and the field immediately to the north has planning permission for residential development. The fields to the south of the site have been the subject of a recent planning application for housing that has been refused planning permission. The majority of the boundaries of the site are made up of mixed hedgerows.

PROPOSAL

This application has been made seeking agreement with the Council to amend the terms of the S106 Unilateral Undertaking submitted in connection with planning permission 14/00057/OUTMAJ to extend the period for the relaxation of the affordable homes requirement for a further 3 years.

The request has been made due to issues regarding viability and therefore, potential deliverability of the scheme with an affordable housing requirement. The proposal is to amend the legal agreement so that the previously agreed relaxation is extended rather than the requirement for affordable housing omitted in perpetuity, so that if the scheme is not delivered, the normal affordable housing provision would again become a requirement.

AMENDMENTS N/A

HISTORY (if relevant)

17/00242/REM – Reserved matters permission for 41 dwellings was permitted on 28th September 2017.

14/00057/OUTMAJ – outline planning permission for residential development was granted conditionally on this site on the 27th February 2015. This was subject to a S106 Unilateral Undertaking to provide for:

- 10% Affordable housing to be waived in line with the former interim policy in existence at that time (now revoked) unless at least 10% of the open market dwellings have been practically completed within 3 years of the date of the permission and at least 50% practically completed within 5 years of the date of the permission.
- Transfer of the area of proposed open space area to the Council, along with a capital sum for improvements to that land and maintenance contribution;
- Education contribution (Derbyshire County Council requested sum pro-rata to take account of extant commitment from the existing planning permission on the majority of the site);
- Public Art Contribution of £10,000; and
- Contribution of £11,500 to provision of footpath link from the site to the existing public footpath network.

12/00112/VARMAJ – planning permission was granted on 16 May 2012 to extend the time limit of the earlier consents (09/00217/OUTMAJ) with access details as amended by later planning permission ref.10/00360/DISCON); this permission is still extant.

09/00217/OUTMAJ – Outline planning permission granted on 31st October 2009 for residential development with details approved for the position of the main access. This was a smaller site than that to which the current planning application relates.

08/00684/OUTMAJ – Planning permission for housing refused on 4th February 2009 as: the elements of the proposal outside of settlement considered to be unjustified contrary to policies ENV3 and HOU9 of the Bolsover District Local Plan; the proposals did not form a logical and well thought out urban extension and is unduly constrained / dictated by land ownership boundaries; the proposals were not considered to adequately assess the loss of existing employment uses contrary to policy EMP5; and no agreement had been made with respect to the provision of affordable housing, additional education facilities, outdoor recreation and play space provision and public art, contrary to policies of the Bolsover District Local Plan.

08/00077/OUTMAJ – Planning permission was refused on 09.05.2008 for residential development on a larger site of 2.66ha, including this site and other land in the ownership and control of the applicant to the west, along with a further paddock to the north.

03/00621/VAR – Refusal of permission to vary condition of 02/00500/FUL to extend hours of operation 6/1/04

02/00500/FUL – Permission granted for change of use (of the larger buildings on 0.62ha of land to the rear of dwellings fronting Mansfield Road) to storage (Class B8) on 26/2/03. Amongst the conditions is a restriction to the hours of operation to 8am to 5pm Monday to

Friday and 8am to 1pm Saturdays, with no operations at any time on Sundays, Bank and Public Holidays and a restriction of external storage.

02/00052/OUT – Permission refused for erection of a 3-storey single dwelling as considered contrary to policy due to its location outside of settlement framework 31/5/02

BOL 1291/496 – Erection of mushroom growing room, service arcade, boiler plant house and meter shed, approved 1992

There have been ongoing enforcement investigations regarding the use of this site in respect of the previously unlawful use of some buildings. However, the site has now been cleared of buildings and unauthorised activities subsist. Ongoing site clearance is still underway.

CONSULTATIONS

N/A

PUBLICITY

Site notice has been erected on site.

POLICY

Bolsover District Local Plan (BDLP) Policy HOU6 (Affordable Housing)

National Planning Policy Framework

Approve development that complies with policy. Aim to have a 5 year supply of affordable housing. Viability can be a material consideration in terms of negotiations on S106 contributions to assist on delivery.

Para' 205. Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

National Planning Policy Guidance

Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so.

ASSESSMENT

Where a S106 Planning Obligation is under 5 years old, there is no statutory requirement on the Council to re-consider it, but where a legal agreement is under that age, the Council can agree to a variation; this request is seeking such agreement for the modification to the Section 106 obligation for affordable housing.

As stated in above, Paragraph 205 of the NPPF states that where obligations are being... revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

Background

At the time of the recent application for reserved matters approval, the applicants indicated

that due to delays in construction of dwellings commencing on site, in part due to complications over discharge of conditions of the original planning permission, it was not going to be possible to deliver the initial 10% of dwellings within the requisite 2 years of the date of the original planning permission, this being the trigger for the agreed waiver of affordable housing provision on site. The applicants were aware that this meant that they had become obliged to deliver affordable housing, but they also advised that changes in circumstances since the original grant of outline planning permission meant that the scheme would not be viable if they had to fund affordable housing and that they were unable to secure funding for the development (from the Homes and Communities Agency as their sole available source of funding) if any affordable housing provision had to be made. On the basis of this, the applicants were seeking to relax the requirements of the original Unilateral Undertaking (S106) to extend the waiver of affordable housing requirements as part of this development.

The applicants were advised this was not a straightforward request as: -

- The sole reason for the relaxation of the requirement was to ensure early delivery of dwellings due to the (then) absence of a 5 year housing supply and so this basic criteria of the original agreement had clearly not been met; and
- The relaxation of the normal requirements of policy HOU6 had been a temporary measure to stimulate housing delivery (due the Council being unable demonstrate a 5 year housing supply at that time) and this relaxation had since been withdrawn by the Council.

Despite this material change in planning circumstances, in the spirit of NPPF guidelines for the Council to take a flexible approach, officers advised the applicants that they were happy to consider this issue further, but that any request would have to be accompanied by a robust and independent viability analysis in order to evidence the viability issues raised in order to demonstrate the claimed changes as a basis of the re-consideration of this issue.

As a result of this an independent viability assessment was commissioned jointly by the Council and the developer.

Assessment

Notwithstanding the fact that the Council can demonstrate a 5 year supply of housing, it was accepted in granting planning permission ref. 14/00057/OUTMAJ that this site could be developed without any affordable housing provision if 10% of the total was delivered within 2 years of the date of the planning permission (27/02/2018) and 50% of within 5 years (27/02/2020).

The developer is still stating its commitment to the delivery of the scheme and have self-funded initial site clearance works. These have had to be postponed however due to issues regarding the absence of agreement over the remediation of the site as required by conditions of the planning permission prior to works commencing; this issue has now been addressed such that works can re-commence, but there are now issues relating to ongoing funding and development viability.

The site is outside of the settlement framework, but has a history of planning permissions for housing dating back to October 2009, granted in part due to the partial brownfield nature of this site and a history of uses that were not wholly compatible with their residential neighbours. The site is currently partially cleared and so does not have the appearance of traditional green open countryside, despite its location out of the settlement, such that its ultimate re-development is generally still considered to be appropriate in principle. Whilst only limited weight can be attributed to emerging policy in the draft replacement local plan, of note is that the site is proposed for inclusion as housing site in that plan and forms part of the Council's predicted delivery of houses in the next 5 years.

The current policy in respect of affordable housing provision is still policy HOU6 (Affordable Housing) of the adopted Bolsover District Local Plan. The delivery of affordable housing is also compliant with national planning policy contained in the NPPF, such that this policy should still be afforded weight.

The independent viability work undertaken on behalf of both the applicant and the Council has concluded that the development of the site is not currently viable.

The report verifies evidence provided by the applicants in respect of additional costs in respect of:

- Ground contamination and the cost of remediation works.
- Revised external quotation for the provision of infrastructure.
- Revised quotations for the supply of utilities.

In considering the issues raised, the assessor has considered issues relating to the original cost of the site and whether normal due diligence of a developer, taking into account known or predictable factors, should have influenced the price paid for that land. The report infers that some of these issues could have been better considered and investigated given adequate 'warnings' contained in conditions and notes on the earlier planning permissions. There are some issues within this element of the assessment on which the applicant and the assessor do not wholly agree in particular in respect of the price paid for the original site and the degree to which this can be used in reaching conclusions in respect of viability.

Notwithstanding these potentially 'avoidable' issues, the report does acknowledge that there are demonstrable budget and tendered cost increases since the viability assessment that was carried out at the time of the grant of the earlier outline planning permission 14/00057/OUTMAJ that do impact in any event on the viability of the scheme, regardless of the land acquisition cost.

The assessor has carried out various sensitivity tests that show prospective developer returns much lower than would normally be deemed acceptable and therefore, the scheme is deemed to be unviable, commenting that "I am bound to conclude that the development of this site is neither viable or sustainable when based on the clients cost base for both land and development even if the affordable housing policy is relaxed for the concession would make no difference to the outcome of the viability test".

This conclusion suggests that even without the affordable housing requirement, there are still question marks over development viability in any event. Notwithstanding this, ultimately the

amount of risk and return is a matter for the developer (and its funders) to satisfy themselves on and in this case the developer has indicated that they are still prepared to move ahead with the development of this site and maintain the other financial contributions that are contained in the original Unilateral Undertaking. It is understood that they have secured loan funding from the HCA (Homes and Communities Agency) to facilitate the development and therefore the delivery of the housing, should the affordable housing requirement be waived.

Given the principle of housing on this site has been long established and that there would continue to be benefits from the delivery of housing on this partial brownfield site that would otherwise remain undeveloped and only partially cleared, it is considered that on balance the non-delivery of affordable housing can be supported in order to facilitate the delivery of this approved and planned development, in view of the independent verification of the viability issues that exist. This should encourage delivery of the scheme.

Notwithstanding this general conclusion, the intention of the continued relaxation of the requirement is to facilitate the delivery of the approved and planned housing on this site. It is considered that the waiver should not be permanent in order to deal with potential non-delivery of the housing. This is as the development has been lawfully implemented the planning permission will remain extant regardless of whether any additional works are carried out. As market conditions may change over time in the event that the houses are not delivered promptly, market viability may change again, potentially in favour of the delivery of affordable dwellings. For this reason, it is considered that the waiver should only be conditional on the basis of actual delivery of the houses within a reasonable time frame. The suggested agreement submitted with the request proposed that the affordable housing requirement would be made in the event that 10% of the dwellings were not practicably completed within three years of the 27th February 2018 and 50% within five years of the same date. In the event that these targets are met, then no affordable housing would be delivered.

Given the evidenced viability issues relating to this development and the ongoing benefits of delivery of houses on this partial brownfield site, it is considered that the proposed amendment to the legal agreement secures a reasonable compromise to encourage and facilitate its development, whilst allowing either the provision of affordable housing if the target deliveries are not met, or alternatively, it would allow the issue of viability to be re-visited at that time.

In view of the above, it is recommended that the requested extension for the waiver of affordable housing as part of this proposal should be agreed.

Other Matters

Listed Building: N/A

Conservation Area: N/A

Crime and Disorder: N/A

Equalities: No known issues.

Access for Disabled: N/A

Trees (Preservation and Planting): N/A

SSSI Impacts: N/A

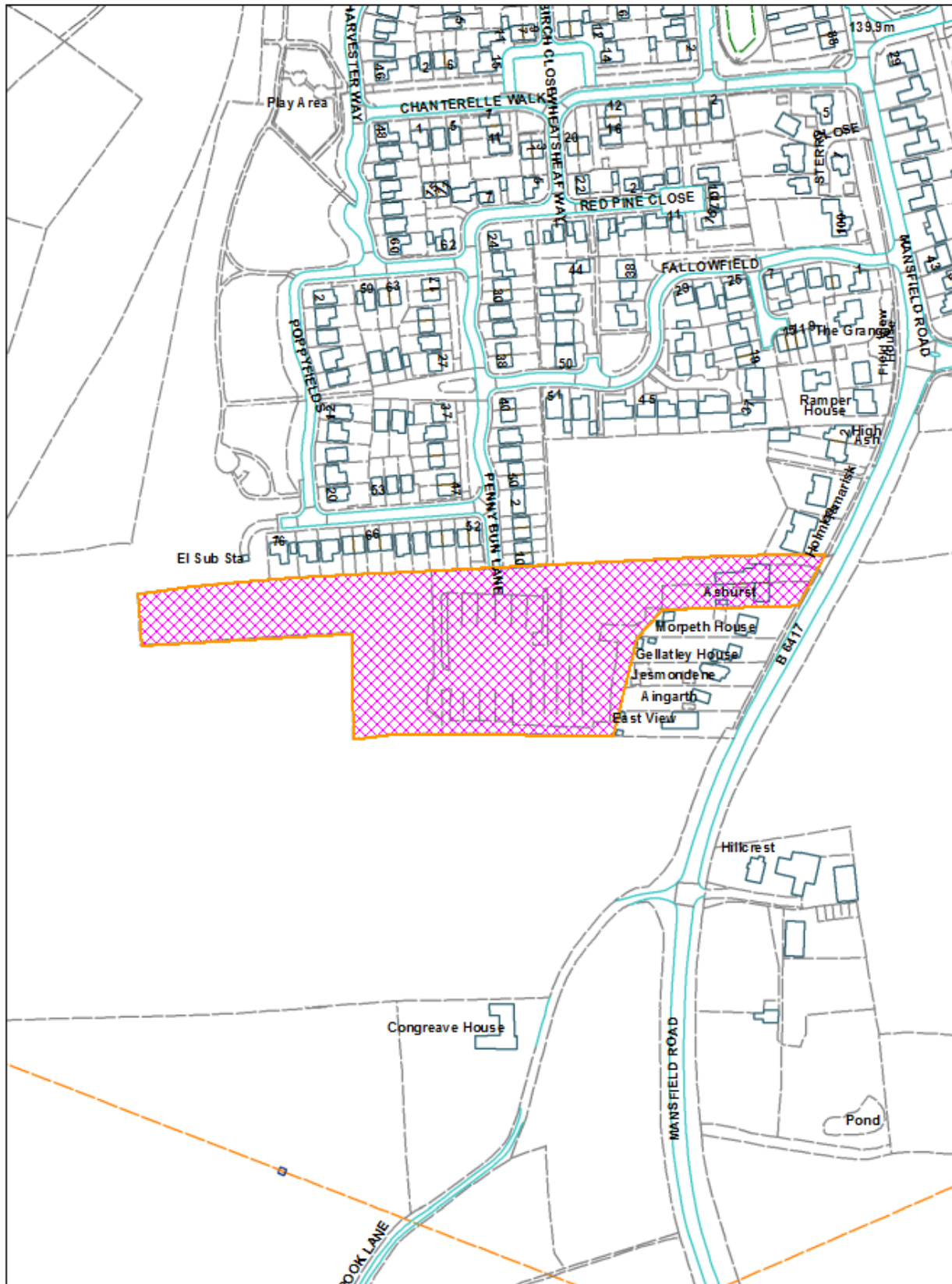
Biodiversity: N/A

Human Rights: No known issues.

RECOMMENDATION

Agree to a relaxation of the affordable housing requirement contained in the original Unilateral Undertaking, subject to practical completion of 10% of the proposed dwellings within 2 years and 50 % within 5 years of the 27th February 2018.

Not Set



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