

**PARISH**Old Bolsover Parish

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**APPLICATION** Application Under S106A to modify the legal agreement completed with planning permission 21/00464/TDC to omit infrastructure obligations for viability reasons for: affordable housing, leisure, schools, health and highways.

**LOCATION** Forge New Homes Development Site Welbeck Road Bolsover

**APPLICANT** Andy Beattie

**APPLICATION NO.** 23/00573/OTHER

**CASE OFFICER** Kay Gregory

**DATE RECEIVED** 8th November 2023

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**SUMMARY**

This application requires a determination by Planning Committee, as it would be contrary to policies contained within the Bolsover District Local Plan, where they relate to developer contributions.

This report relates to an application to vary planning obligations and the wording of the Affordable Housing clause within a completed Section 106 legal agreement (dated 19 May 2022), attached to planning permission 21/00464/TDC, comprising 58 dwellings.

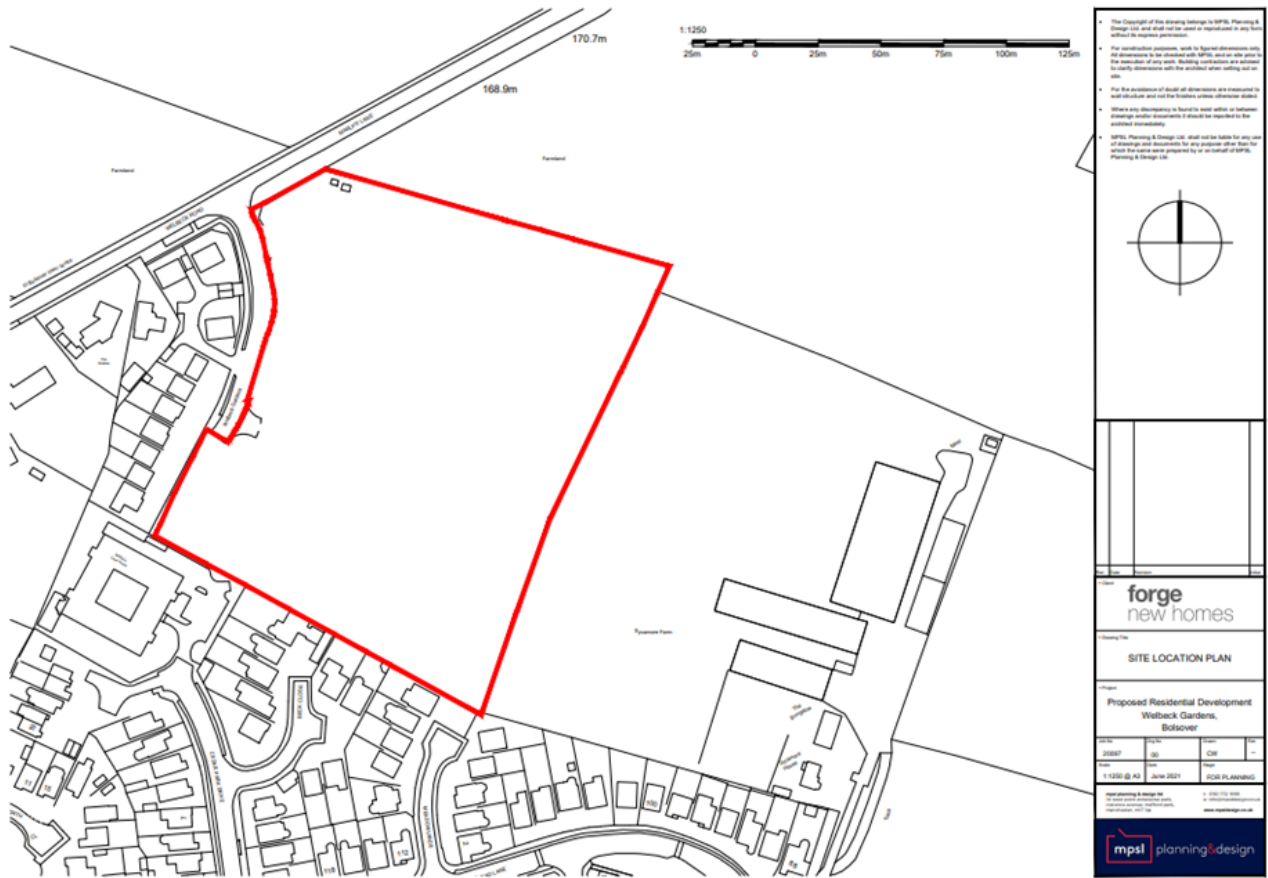
The application was accompanied by a Viability Assessment undertaken by Aspinall Verdi dated October 2023. Their Assessment concluded *that “the scheme is unable to provide any of the non-housing S106 contributions included within the signed s106 agreement. The applicant has confirmed that the 6 affordable units will be transferred to the Together Housing Group upon completion but in order to receive the Affordable Housing Grant from Homes England, the units must be outside the S106 agreement. The financial appraisal clearly demonstrated that even with the grant funding the viability of the scheme is challenging.”*

The application has since been subject to an independent viability review on behalf of Bolsover District Council.

The independent review recommends that a reduced amount of £485,000 from the original £693,591 (£722,000 with indexation) is the total amount that the applicant can pay to deliver the scheme. This has been agreed by the applicant and consultees, and has been distributed across the obligations.

The proposed amendments to the Affordable Housing provision (6 units) are to insert a definition of ‘Homes England’, and to define the term ‘Registered Provider’ to allow for ‘Together Housing’ as developer of the affordable housing units, and who are a sub-company of Forge New Homes, or any other registered provider who is registered with Homes England, to enable grant funding to deliver social rented housing on site.

# Site location plan



## OFFICER REPORT ON APPLICATION NO: 23/00573/OTHER

### SITE & SURROUNDINGS

The application site comprises vacant and cleared brownfield land located immediately to the east of Welbeck Gardens and south of Marlpit Lane, circa 0.5 miles north-east of Bolsover town centre, and extends to 2.65Ha.



The site was formerly a community hospital operated by the NHS. The hospital was constructed in the mid-1980s and ceased operating in January 2019 when it was transferred to Homes England under the Public Sector Land for Housing Programme.

Bus stops on Welbeck Road and Marlpit Lane provide direct services to Clowne to the north and Bolsover to the southwest. Bolsover town centre is within walking distance of the application site and offers a range of shops and services, including further direct buses to Mansfield, Chesterfield, and Markham Vale.

The application site rises gently from west to east, with elevated areas in the southwest, southeast, and northeast corners of the site.

Immediately to the south and west of the site is existing housing and Millfield Care Home. Mostly 2 storey in scale but with single storey at the northern end of Welbeck Gardens. There is open countryside to the east. On the opposite side of Welbeck Lane, the Bolsover North residential development is currently underway.

There is a dense hedgerow to the north of the site, bordering Marlpit Lane, which extends along the entirety of the northern and eastern boundary of the application site. There are clusters of mature trees located along or close to the southern boundary. At the southwest corner the trees are growing on a raised area of land.

## **BACKGROUND**

The application site originally contained Bolsover Hospital, but following closure and dilapidation of the site, it was demolished in 2019 (19/00264/DETDEM) via a Prior Notification application from Homes England.

In 2019, an application for Permission in Principle was submitted for entry onto the Brownfield Lane Register, supported by a Development Brief commission by Homes England. The Brief *established that the site presented an excellent brownfield redevelopment opportunity with strong planning certainty for a scheme of 50 to 70 units.* (Homes England Development Brief)

Permission In Principle was granted on the 29 July 2020 and the site was entered into Part 2 of the Brownfield Land Register.

A formal application for the approval of technical details for 58 dwellings was submitted in July 2021 (21/00464/TDC), by Forge New Homes.

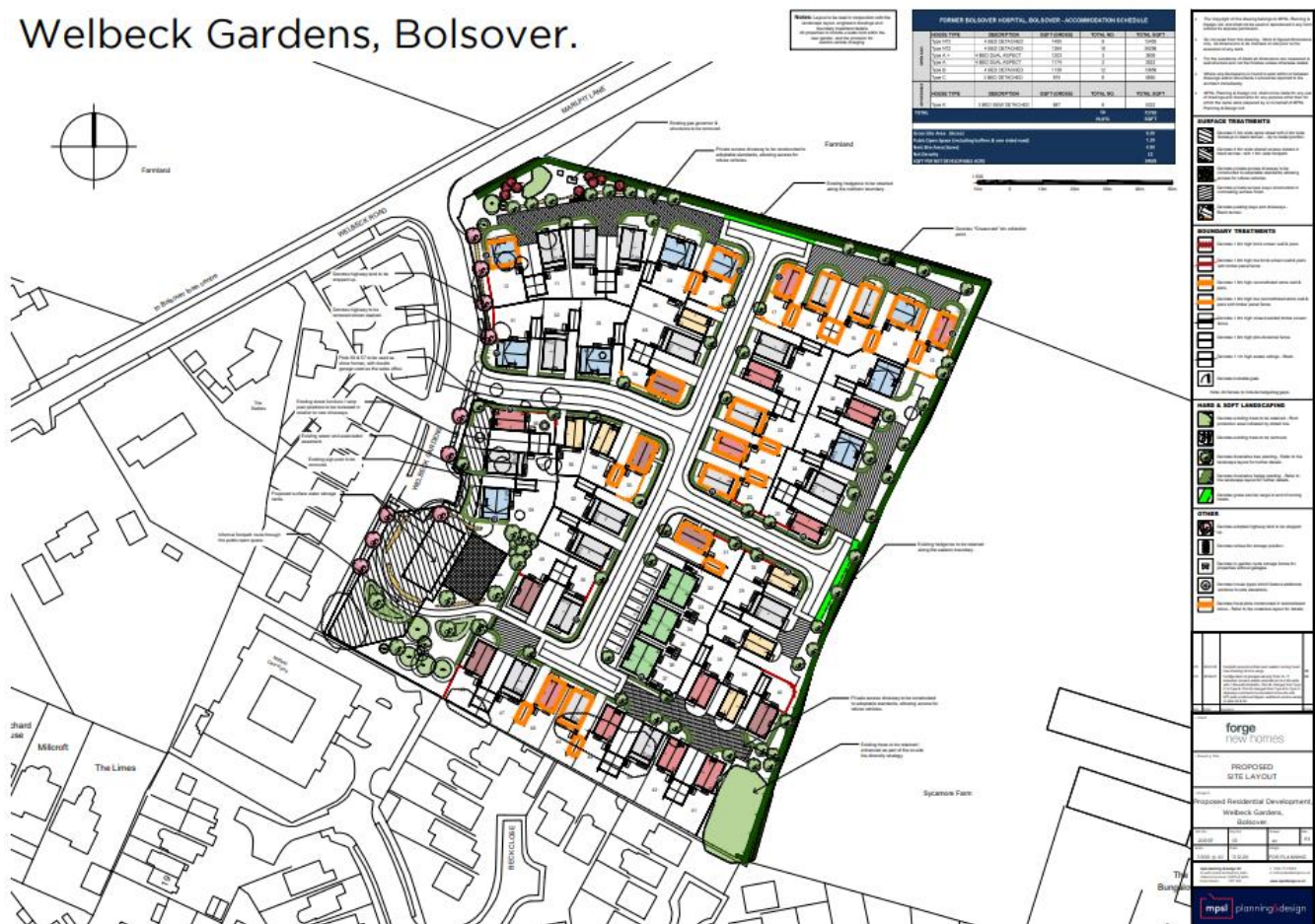
The application was revised during processing to secure improvements to better accord with planning policy.

With regard to design and layout, overall, it was considered that the amended proposals would result in a good standard of design, contemporary in nature but not inappropriate to the location subject to the use of appropriate materials.

There were no adverse impacts identified with regard to landscape, biodiversity, highway safety, amenity or other technical matters, and the application was recommended for approval, subject to conditions.

The approved layout is provided below:

## Welbeck Gardens, Bolsover.



A factor to be considered when assessing the sustainability of a site for development is whether there is sufficient local and social infrastructure to support the extra demands from the new development. If not, whether any infrastructure issues or shortfall in services can be resolved by a S106 agreement, such that the development will pay for the necessary expansion of services and infrastructure.

A legal agreement (S106 of the Town and County Planning Act 1990) was entered into, to secure a proportionate increase in capacity of local infrastructure and services as necessary for leisure, affordable housing, primary health, education, and travel such that the development will not result in the capacity of local services being exceeded. This was signed on the 19 May 2022 and required the following contributions:

<b>Provider</b>	<b>Amount</b>	<b>Allocated</b>
Health care	£27,840	To enhance existing practices at the Welbeck Road Health Centre, Castle Street Medical Centre and The Family Friendly Surgery.
Infant education	£102,434.94	Towards the provision of educational facilities at Bolsover Infant and Nursery School
Junior education	£136,579.92	Towards the provision of additional education facilities at Bolsover C of E Junior school.
Secondary education	£308,700.48	Towards the provision of education facilities at The Bolsover School.
Playing pitches	£61,480	Towards playing pitches and ancillary facilities at Moor Lane and Castle Leisure Park
Public open space	£50,460	Towards the provision and/or improvement of the existing equipped play areas and amenity green spaces located at Horsehead Lane, Laburnum Close Recreation Ground and Hornscroft Park.
Travel Plan	£3,596 and £2,500 monitoring fee	Towards the provision of bus taster tickets for the first occupier of each dwelling.

Regarding Affordable Housing, the agreement required 6 dwellings to be provided for social rent.

The S106 had a clause relating to indexing linking in line with inflation, for payment of the obligations.

### **PROPOSAL**

This application has been submitted under Section 106A of the Town and Country Planning Act 1990, to vary the terms of the Section 106 Agreement.

The original S106 Agreement, signed on the 19 May 2022 required the provision of £693,591.34 towards education, leisure, health, and highways, and 6 affordable housing units comprising 100% social rent. At the time of the application submission, this amount had been subject to indexation and had risen to £722,000.

The application originally submitted proposed to omit all infrastructure obligations contained within the S106 Agreement, and this was supported by a viability assessment, and letter of support from the CEO of Together Housing Group were originally submitted.

The applicant's justification was due to *rising build costs, compliance with new Building Regulations, a new substation, finance costs and rising consultancy fees. However, even with Homes England's land price reduction, inflation coupled with the cost increases highlighted means Forge is still unable to deliver the S106 contributions agreed. This has necessitated the requirement and reluctance to submit a viability assessment to seek a variation to the S106 Agreement (covering letter).*

The Affordable Housing element was also proposed for removal from the Agreement on the basis that Homes England would not provide grant funding for homes which are secured by planning conditions or through a unilateral undertaking. The submitted viability assessment in section 4.21 stated, *Together Housing Association have agreed to take all 6 units for £750,000 (£125,000 per unit). This figure has been included in our financial appraisals. The transfer price is based on Together Housing utilising grant to fund this acquisition. We understand that the proposed 6 units can attract a grant of £300,000, on the basis that the affordable units are provided outside the S106 agreement.*

## **AMENDMENTS**

Amended viability assessment.

## **EIA SCREENING OPINION**

The proposals that are the subject of this application are not Schedule 1 development, but they are an urban development project as described in criteria 10b of Schedule 2 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

However, the proposals were screened as part of the technical details application, are not in a sensitive location as defined by Regulation 2 and by virtue of their size and scale, they do not exceed the threshold for EIA development set out in Schedule 2.

Therefore, the proposals that are the subject of this application are not EIA development.

## **HISTORY**

Whilst the site has an extensive planning history, the majority of applications relate specifically to operations at the former hospital, so have not been included. Relevant planning history is provided below:

19/00246/DETDEM    Prior Approval    Demolition of Bolsover Hospital  
not required

19/00434/OTHER    Environmental    EIA Screening Opinion Request  
Impact  
Assessment  
not required

19/00617/OTHER	Grant conditionally	Permission in principle for residential development - part 1 and 2 brownfield register entry
21/00464/TDC	Grant conditionally	Application for Technical Details Consent (following Permission in Principle Ref: 19/00617/OTHER) for residential development of 58 dwellings (This application is the equivalent of an application for full planning permission).

## CONSULTATIONS

### BDC Leisure Service

20/11/2023 – I have no alternative but to object. The signed S106 includes a POS contribution for the improvement of existing play areas / amenity green space at Horsehead Lane and Laburnum Close. If this is not provided, then an on-site play area will be required.

03/05/2024 - The new town park will be located just to the west of Elnton Lane, so is just over 400m walking distance from the Bolsover Hospital site. However, given that it is a larger site which fits the definition of either 'Amenity Green Space' or 'Recreation Grounds or Semi-Natural Green Space' in Policy ICTR5: Green Space and Play Provision, even though it is a park, this extends the walking distance to 500m to 800m, which it definitely falls within. This then opens up the question of what constitutes a 'reasonable financial contribution' under Quality Improvements to Green Spaces? The other site in the vicinity is the play area off Horsehead Lane which is about 300m away as the crow flies (but a much longer walking distance). This was installed about 15 years ago, so is reaching the end of its useful life – the roundabout certainly needs replacing.

In terms of an actual contribution, there is some flexibility. It could be argued that there are no sites with playing pitches that are 'well related to the development' (Policy ICTR7: Playing Pitches) and that the proposed town park is the better fit with existing policies than other sites that fall outside the 400m walking distance catchment. With that in mind, a reduced contribution should be sought towards development of the new town park, which should be deliverable within 5 years of receipt of payment (depending on the trigger point). What the exact contribution should be is open to discussion, but as a starting point I would suggest a minimum of £50,000. The Playing Pitch contribution could potentially be omitted if the open space contribution were increased.

With no particular logic 50% of the original total amount requested for both playing pitches and open space would be £55,970. If this was identified as the 'reasonable financial contribution for a new green space' (under Policy ICTR5) and earmarked for the new town park, that would be a useful contribution to the scheme and potentially an acceptable compromise. This would be some £22,309 less than the amended amount suggested below.

### BDC Planning Policy

No formal comments received.



### **CCG (Health Authority)**

24/11/2023 - I would like more information before submitting our comments. Please could you advise what figure they are able to contribute and if they have stated a percentage of which they would like to cut their contribution down for the other local services.

09/05/2024 - I can confirm we would accept the lower figure.

### **Derbyshire County Council (Education and Highways)**

28/11/2023 - In light of the S106A application, the County Council has sought to prioritise the contributions and can offer the following comments. These comments are, however, dependent on the corroboration of the applicant's viability assessment by independent appraisal. Should any level of contribution be available for education, it is requested that secondary education is prioritised due to significant pressure in this sector. It would be unfortunate if the Travel Plan monitoring contributions were omitted, and there may be some scope to renegotiate these figures. However should significant reductions be necessary, it is requested that contributions towards bus taster tickets are prioritised. If the development is unlikely to support the full planning policy requirement following receipt of the viability appraisal, Derbyshire County Council will work with Bolsover District Council to prioritise and apportion the level of contribution which can be tolerated by the site.

15/02/2024 - should the development be proved to be unable to support the full policy and S106 ask, in light of the viability appraisal conclusions that the site can bear the full S106 contributions, the County Council would therefore request that the contributions as contained within the S106 on 21/00464/TDC dated 19/05/2022 and necessary to make the development acceptable in planning terms, are retained.

24/04/2024 - It is unfortunate that following signing of the original S106, viability issues have arisen. To enable the application to progress, Derbyshire County Council (DCC) is happy to vary the contributions in the existing s106 as follows:

- Infant, Junior and secondary education – please could you proportion the amount identified as available for education based on a percentage split as per the amount in the existing s106 (infant 18.70%, junior 24.94% and secondary 56.36%)
- The County Council are also prepared to waive the travel plan monitoring fee but would request that the travel plan contribution (bus taster tickets) remains in full (£33,596.00), with an additional £500 DCC administration fee for the delivery of the bus taster tickets in lieu of the foregone Travel Plan monitoring fee..

03/05/2024 – Many thanks for the calculations. I have liaised with both my education and travel plan colleagues, and they are happy with this approach, and the contributions.

13/05/2024 - Please can these additional funds be apportioned based on a percentage split as per the amount in the existing s106 (infant 18.70%, junior 24.94% and secondary 56.36%).

### **Old Bolsover Town Council**

23/11/2024 – Object. The Council feel the omission of these obligations would have a detrimental impact upon the health and wellbeing of residents. The application goes against policy ITCR5 as it does not contribute to green spaces/pay area provision.

## **PUBLICITY**

A site notice has been posted and two neighbours consulted on the proposal. There have been no representations received as a result of the publicity.

## **POLICY**

### Local Plan for Bolsover District (“the adopted Local Plan”)

Planning law requires that applications for planning permission be determined in accordance with policies in the adopted Local Plan, unless material considerations indicate otherwise. In this case, the most relevant Local Plan policies include:

- Policy SS1 – Sustainable development.
- Policy LC2 – Affordable housing through market housing.
- Policy ITCR5 – Green space and play provision.
- Policy ITCR7 – Playing pitches.
- Policy ITCR10 – Supporting sustainable transport patterns.
- Policy IL2 – Plan delivery and the role of developer contributions

### National Planning Policy Framework (“the Framework”)

The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied. The Framework is therefore a material consideration in the determination of this application and policies in the Framework most relevant to this application include:

#### **Sustainable Development**

- NPPF Paragraph 8 sets out that ‘achieve sustainable development means that economic, social and environmental gains should be sought jointly and simultaneously through the planning system’.

#### **Affordable Homes**

- NPPF Paragraph 66 states that, “where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups...”
- Annex 2: Glossary set out a definition of affordable housing.

#### **Infrastructure**

- NPPF Paragraph 34 states that, “Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure) ...”
- NPPF Paragraph 99 states “It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive, and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

- a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and
- b) work with school promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.”

### **Viability**

- NPPF paragraph 58 “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..... should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”

### Other policy considerations

- **Planning Practice Guidance Healthy and safe communities** - Includes “Supporting the delivery of sufficient school places to meet the needs of existing and new communities” with reference to The Department for Education has published the ‘Securing developer contributions for education’ Paragraph: 007 Reference ID:53-007-20190722 Revision date: 22 07 2019.
- **Planning Practice Guidance – Planning Obligations**  
Includes “What contributions are required towards education?” Plan makers and decision makers should consider existing or planned/committed school capacity and whether it is sufficient to accommodate proposed development within the relevant school place planning areas. Developer contributions towards additional capacity may be required and if so this requirement should be set out in the plan. Requirements should include all school phases age 0-19 years, special educational needs (which could involve greater travel distances), and both temporary and permanent needs where relevant (such as school transport costs and temporary school provision before a permanent new school opens). Paragraph: 008 Reference ID: 23b-008-20190315 Revision date: 15 03 2019
- **Planning Practice Guidance Viability**  
Includes standard inputs to viability assessment and any viability assessment should reflect the government’s recommended approach to defining key inputs as set out in National Planning Guidance. 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, including whether the plan and viability evidence underpinning the plan is up to date, and site circumstances including any changes since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment.” Paragraph: 008 Reference ID: 10-008-20190509. Revision date: 09 05 2019.

### **ASSESSMENT**

With regard to procedure, there is no formal requirement for the Council to accept an application to change the wording of a section 106 obligation which is less than 5 years old. However, under S106A of the Town and Country Planning Act 1990, a planning obligation may be modified by agreement with the Council. So, whilst the Council does not have to

agree to the modification proposed, being a responsible public authority, it should at least consider the application because it is important to ensure that the Council's decisions are reasonable.

On the basis of the information submitted with the application, the Council commissioned an independent viability assessment, carried out by David Newham (CP Viability Ltd).

The initial assessment from CPV, as of the 13 December 2023, concluded that the scheme remained viable with full obligations, including the provision of 6 affordable housing units in the form stated in the signed S106.

Viability appraisals have to be viewed in the context that they are not a precise science as there are number of variables to consider when determining the values and costs associated with development.

The applicant initially refuted CPV's response, claiming that there were areas of difference between their appraisal and the one carried out by CPV, relating to build costs, building regulation costs, contingency allowance, finance rates, NHBC costs and the benchmark land value, and they provided a table to outline each of the costs which would be applicable to deliver the scheme. They subsequently updated their appraisal to provide the following information:

- *“Hard Build Cost – increased to £1,505psm for the market units and £1,317 psm for the affordable units.*
- *Part L Costs – we have not included this cost item in our updated financial appraisal.*
- *Contingency Allowance – we have reduced this from 5% to 3%.*
- *Finance Rate – we have included a 7% interest rate; the total cost is now similar to the cost in CPV's appraisal. NHBC Costs - we have not included this cost item in our updated financial appraisal.*
- *Benchmark Land Value – we have prepared an updated appraisal based on a fixed land cost of £930,000. We have also included a non-housing s106 contribution of £140,000 in our appraisal.”*

CPV was asked to revisit the updated appraisal, but maintained the view that the scheme could viably support the S106 obligations provided in the signed Agreement.

The applicant provided additional information on the 21 February to justify their reasoning. They explained the set up of Forge new Homes, as an SME developer, *“owned by 5 Registered Providers, so all our profits will be reinvested into affordable housing by our Members...(we) reached out to you explaining viability was extremely challenging [in the current climate before being obligated to buy the site from Homes England. We have always wanted to deliver the 6 affordable plots and pay some financial contributions; we just can't afford to pay £720k...at the moment cannot secure build rates that plc house builders use. The fact that CPV strongly argues the case that all residential viabilities must be assessed on the basis that the applicant is able to secure plc type build rates because the site is of a certain size has no factual backing...The development is currently not even achieving a 11.5% margin in real terms and that was assuming the Council would support us being able to use grant to deliver the affordable housing and a reduction in the contributions...CPV's*

*response has knocked £700k off the revenue (loss of grant and no reduction in contributions)...We're not working in the world of 20-25% margins that the plc do. As a way of being transparent, attached are Forge's golden rules, the board is prepared to operate at margins as low as 12% for sites over 50 dwellings because our primary objective is housing delivery."*

The applicant was emailed on the 22 February 2024, to advise that the Council found the response from CPV to be sound and that the application would be recommended for refusal in its current form.

The case officer did invite a conversation with the applicant to discuss the wording of the affordable housing clause only if it both retained the obligation to deliver 100% affordable rent housing and allowed for grant monies to be applied for from Homes England.

The additional information submitted by the applicant was subsequently tested by CPV through a revised appraisal, received on the 4 April 2024. A summary of the appraisal outlined the reasoning behind CPV's latest assessment.

*"In terms of where we got to with this previously, the "Bolsover Viability Letter 23.02.24" provided by the applicant in their email is a good summary of the position. Essentially, there were 2 key differences between the respective viability appraisals (i) build costs and (ii) benchmark land value.*

*It appears that the applicant is willing to accept my point on the benchmark land value but has proposed a different approach on the build costs.*

*Taking each in turn:*

- Build costs: previously the applicant suggested using the BCIS median rate, whereas I favoured the BCIS Lower Quartile. What the applicant is now proposing is following the approach as set out in the Local Plan viability testing. This involves adopting the BCIS median rate but allowing a 5% deduction from this figure. Having reconsidered this and given that this was the method used in the Local Plan viability testing, I agree that this is a reasonable approach here. I am therefore willing to adjust my appraisal to include the amended build cost of £1,416 per2 m.*
- Benchmark land value ('BLV'): in this case, the BLV was established through a residual appraisal that reflected the existing Permission in Principle. We previously challenged the applicant's approach to this (as presented by their advisor Aspinall Verdi) because they adopted lower build costs in the BLV residual, but higher build costs in the viability appraisal. This was an incorrect approach, as the level of build costs needed to be consistent across both appraisals. The applicant now appears to accept this principle. Therefore, if we are applying the uplifted build costs above of £1,416 per2 m, this needs to be applied to both the viability appraisal and also the BLV appraisal. Having re-run the BLV appraisal with the build costs at £1,416 per2m, but also 'stepping back' from the figures to deem what is a realistic sum in the market place, we are of the view that a revised BLV of £650,000 is appropriate for the subject scheme (reduced from £930,000 as previously shown in the modelling).*

*I've subsequently updated my appraisal (attached) to reflect the higher build cost of £1,416 per square metre and the reduced BLV of £650,000.*

***The result is that the scheme can provide 6 onsite affordable dwellings, but only with a reduced total S106 contribution of £485,000.***

CPV later confirmed that this would be the total amount that Forge New Homes could afford and that it would not be subject to further indexation.

The applicant confirmed on the 15 April 2024 that they would commit to the revised contributions and agreed to a rewording of the affordable housing clause, rather than removal of the Affordable Housing clause, as originally proposed, to allow for Homes England grant funding to deliver the affordable housing.

The Affordable Housing amendment does not alter the terms of the original agreement in so far that the 6 units will be provided for social rent. The amendment is to include and amend definitions to ensure that the affordable housing provider (likely to be Together Housing Ltd) is registered with Homes England for the purpose of funding applications.

Once the final financial obligations were agreed, the Health Authority, County Education and Highways, and Councils Leisure officer were contacted to confirm whether firstly they agreed to the reduced amount and whether they considered the readjusted amounts could be divided fairly between the parties, based on the original percentage allocated to each obligation. All parties agreed to the reduced amount.

The adopted Local Plan for Bolsover District is supported by an evidence base including the Infrastructure Study and Delivery Plan, March 2018 (currently being updated). The Delivery Plan identifies that some types of infrastructure appear to be more critical than others over the short term, while others are more necessary over the plan period. In addition, others are required to complement development in order to maximise the benefits of sustainable growth for local communities. The Table below is extracted from the Infrastructure Study and Delivery Plan and identifies critical, necessary, and complementary infrastructure.

Importance to the Local Plan Strategy	Type of Infrastructure Project
Critical	<ul style="list-style-type: none"> <li>• Road capacity</li> <li>• Utilities</li> <li>• Water</li> <li>• Education - Primary Phase</li> </ul>
Necessary	<ul style="list-style-type: none"> <li>• Cycling and Walking</li> <li>• Green Space - Town Parks</li> <li>• Green Space - Quantitative improvements</li> <li>• Education - Secondary Phase</li> <li>• Health</li> </ul>
Complementary	<ul style="list-style-type: none"> <li>• Green Space - Qualitative improvements</li> <li>• Strategic Green Infrastructure</li> </ul>

The original education contribution in the signed S106 Agreement amounted to 78.97% of the total amount (£547,715). Clearly, this extends well beyond the current 'total' viable contribution of £485,000. Given that education provision is seen to be of critical importance within the Infrastructure Study, the Leisure officer was asked to consider whether their

obligations could be reduced further. They agreed to some flexibility, confirming that, *“It could be argued that there are no sites with playing pitches that are ‘well related to the development’ (Policy ICTR7: Playing Pitches) and that the proposed town park would be a better fit with existing policies than other sites that fall outside the 400m walking distance catchment. With that in mind, a reduced contribution should be sought towards development of the new town park, which should be deliverable within 5 years of receipt of payment (depending on the trigger point). 50% of the original total amount requested for both playing pitches and open space would be £55,970. If this was identified as the ‘reasonable financial contribution for a new green space’ (under Policy ICTR5) and earmarked for the new town park, that would be a useful contribution to the scheme and potentially an acceptable compromise.”*

This resulted in a surplus of £22,309 to allocate towards education provision. The County education officer was contacted to see how the funds would be split across the provision, and they confirmed *these additional funds be apportioned based on a percentage split as per the amounts in the existing s106 (infant 18.70%, junior 24.94% and secondary 56.36%)”*.

The revised contributions have been divided into the respective obligations, and a draft Deed of Variation has been submitted to the Council.

The Deed of Variation proposes the following amendments:

1. New definitions shall be inserted at Clause 1 of the Original Agreement as follows:  
“Homes England” means Homes England or any bodies undertaking the existing functions of Homes England within the meaning of Part 1 of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);
2. The definition of "Registered Provider" in Clause 1 of the Original Agreement shall be deleted and replaced with a new definition as follows:  
*“means the Developer or any other Registered Provider as defined in part 1 of the Housing Act 1996 (or as redefined by any amendment, replacement, or re-enactment of such Act) who is registered with Homes England pursuant to section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act or any company or other body approved by Homes England for receipt of social housing grant.”*
3. The definition of “Developer” in the Recitals of the Original Agreement shall be deleted and a new definition shall be inserted at Clause 1 of the Original Agreement as follows:  
“Developer” means Together Housing Association Ltd the registered society registered by the Financial Conduct Authority under registration number 28687 R of Bull Green House, Halifax, HX1 2EB which intends to acquire the Affordable Housing Units on the Site.
4. The definition of Healthcare Contribution in Clause 1 of the Original Agreement shall be deleted and replaced with a new definition as follows:  
£19,448.50
5. The definition of Infant Education Contribution in Clause 1 of the Original Agreement

shall be deleted and replaced with a new definition as follows:  
£76,080.62

6. The definition of Junior Education Contribution in Clause 1 of the Original Agreement shall be deleted and replaced with a new definition as follows:  
£101,406.57
7. The definition of Public Open Space Commuted Sum in Clause 1 of the Original Agreement shall be deleted and replaced with a new definition as follows:  
£55,970
8. The definition Secondary Education Contribution in Clause 1 of the Original Agreement shall be deleted and replaced with a new definition as follows:  
£227,998.29
9. The definition of Travel Plan Contribution in Clause 1 of the Original Agreement shall be deleted and replaced with a new definition as follows:  
£4,096 (inc. £500 admin)

It is expected that the revised financial contributions provided above will be distributed in accordance with the original agreement, as defined in Schedule 2, 3, 4 and 5.

The applicant was asked whether they would agree to a clawback clause, should Members request this, which would mean entering into a viability review later into the development process. Any uplift in market conditions which result in greater profit margins for the applicant would be factored into a revised viability appraisal. It was suggested that the clause would require a review if only less than 90% of the dwellings were occupied after three years following the date of the Deed of Variation. They have agreed in principle to this, in writing, but given that they intend to start on site as soon as the planning conditions are discharged, and that the development is only for 58 units, and so could realistically be completed within 18 months, a later review may not be necessary. They have provided a statement of why they consider a clawback clause may be unnecessary. *“Forge New Homes LLP is a joint venture of five housing associations (The Members) which was established in September 2019 to deliver new family homes in South Yorkshire to help play a part in alleviating the pressure on the housing market. As a result of build cost and labour inflation; compliance with the new building regulations and finance costs increasing following significant interest rate increases by the Bank of England this development is delivering a return to the Members of less than 10% which is significantly less than a typical return of 15-20% required by most developers and house builders. Although Forge is making modest returns, Forge is also delivering 6 affordable rent homes and £485,000 in s106 contributions whilst delivering high quality new homes using modern methods of construction and a fully electric development using Air Source Heat Pumps.*

*Not only are the Members prepared to accept lower returns than other developers to deliver new housing, 100% of any returns made are returned to the Members to reinvest in their respective affordable housing programmes and community led schemes – Forge New Homes is a profit for purpose business.*



*Based on our projected modest returns combined with the delivery of 6 affordable rent homes, £485k in s106 contributions and 100% of any profits made being invested in affordable housing developments by our Members we feel a clawback clause is unnecessary.”*

## **CONCLUSION**

It is considered that sufficient information has been submitted to confirm that the scheme as originally approved cannot be viably delivered. Despite the original proposal to omit all infrastructure obligations and remove the Affordable Housing from the terms of the signed Section 106, negotiations have been successfully undertaken to provide reduced contributions and retain the Affordable Housing clause, while still being able to deliver a sustainable and viable housing development.

As such, Members are requested to approve the application and agree to the revised Deed of Variation, in accordance with the following recommendation.

## **RECOMMENDATION**

It is recommended that by reason of the independent viability review carried out by CPV on behalf of Bolsover District Council, that the revised contributions totalling no more than £485,000, and the proposed amendments to the Affordable Housing clause are acceptable, and the deed of variation can be signed and completed by the Council with the effect of:

- A. Revising the commuted sum towards Education, Leisure, Health and Highways from £722,000 to £485,000.
- B. Omitting the Playing Pitch contribution to afford additional obligations towards Public Open Space, and Education provision.
- C. Rewording the Affordable Housing clause to allow for Together Housing Ltd, or any other registered provider registered by Homes England to deliver 100% social housing for rent, through securing Homes England funding.

## **Equalities Statement**

*Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (i.e., “the Public Sector Equality Duty”).*

*In this case, there is no evidence to suggest that the development proposals would have any direct or indirect negative impacts on any person with a protected characteristic or any group of people with a shared protected characteristic.*

## **Human Rights Statement**

*The specific Articles of the European Commission on Human Rights (“the ECHR”) relevant to planning include Article 6 (Right to a fair and public trial within a reasonable time), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).*

*It is considered that assessing the effects that a proposal will have on individuals and weighing these against the wider public interest in determining whether development should be allowed to proceed is an inherent part of the decision-making process. In carrying out this 'balancing exercise' in the above report, officers are satisfied that the potential for these proposals to affect any individual's (or any group of individuals') human rights has been addressed proportionately and in accordance with the requirements of the ECHR.*