

PARISH Barlborough Parish

APPLICATION	S106A application to modify obligations contained within legal agreement relating to application code ref. 09/00370/OUTMAJ dated 07.03.2011 and deed of variation dated 13.12.2016 relating to affordable housing to allow for the delivery of 12 no. 20% discount sale affordable units with cascade provisions to allow for an equivalent financial contribution to be made if not sold within 6 months of marketing, and payment of a financial contribution of £98,548 in lieu of secured provision	
LOCATION	Rear Of 16 To 124 And South West Of 124 And Between Brickyard Farm And Barlborough Links Chesterfield Road Barlborough	
APPLICANT	Arba Ground Trading Company Unit D, Xenon Park Worcester Avenue Doncaster, DN2 4NB	
APPLICATION NO.	25/00235/OTHER	FILE NO.
CASE OFFICER	Mr Chris Whitmore	
DATE RECEIVED	22nd May 2025	

SUMMARY

This application is made under s106A of the Town and Country Planning Act (1990) and seeks the modification of a s106 agreement dated 07.03.2011 and Deed of Variation (DOV) dated 13.12.2016 linked to an approved residential development off Chesterfield Road, Barlborough known as 'Hawthorne Meadows'. As it relates to variations to obligations imposed on a permission granted by Planning Committee, in accordance with the District Council's scheme of officer delegation it requires Planning Committee consideration.

The application concerns the provisions relating to the delivery of affordable housing on site and follows an application by Bolsover District Council to the High Court for an Injunction, to prevent the applicant from continuing to build out the development without the consent of the Council and until the obligations within the abovementioned legal agreements had been fulfilled. An interim Injunction was issued on the 24th September 2024 and remains effective until 31st December 2025.

At the time of the Injunction application 126 dwellings had been built out and 119 of those had been occupied, with a further dwelling permitted to be exchanged due to the advanced stage that it had reached in the conveyancing process.

All obligations within the s106 and DOV remain outstanding in respect of financial contributions towards off-site sport, education, highway improvement works and the delivery of affordable housing and on-site amenity space despite the triggers having been met some time ago.

The trigger to deliver 10% of the dwellings as affordable units, was at 60% occupation of individual completed dwellings approved under a Reserved Matters Application. Under the terms of the original outline and approval of reserved matters application, the applicant can build out a total of 154 dwellings (with various amendments made), however, they have

secured separate permission for a standalone development of 9 dwellings in lieu of 28 apartments and have confirmed that it is this scheme that they intend to build out, resulting in 135 dwellings in total. The trigger has therefore been met in both scenarios.

The s106 agreement dated 07.03.2011 and Deed of Variation (DOV) dated 13.12.2016 requires the delivery of 14 affordable units for affordable rent (based on a development of 135 dwellings).

To demonstrate that the modifications would serve the purposes of the abovementioned agreements equally well, the applicant has offered up the 9 dwellings (forming phase 4) to be included as part of the affordable housing offer onsite alongside 3 of the remaining unoccupied units, providing 12 units in total. A commuted sum is offered up in respect of 2 units to make provision equivalent to at least 10% of the total number of dwellings to be provided on site.

The applicant has presented marketing information to demonstrate that there was no interest in the units built out on site for affordable housing by a registered providers with the application.

While it is regrettable that the development has reached an advanced stage without any of the obligations contained within the legal agreements dated 07.03.2011 and deed of variation dated 13.12.2016 having been met, the proposed modification offers a route to delivering the policy requirement for 10% affordable housing through market housing to satisfy policy LC2. Although this would not be in the form of social rented units, no interest was shown from 8 registered providers when approached in 2021/22 and 10 providers in January of 2025.

The proposal offers a mechanism to extract value from the remaining development to provide all outstanding financial contributions to the District and County Councils, totalling £1,036,871.67 (index linked to 2025), to cover off-site sports provision, education, highways and on-site public open space and to deliver a form and amount of affordable housing that would meet the policy requirement (in terms of percentage). On payment of the above sum and completion of any Deed of Variation, the process of lifting the Interim Injunction can commence and the development can then proceed to completion with contributions towards the infrastructure and affordable housing necessary to deliver sustainable development. It is considered that the proposed changes to the obligations would serve the purpose of the original agreements equally well in this respect and enable the completion of the development. It is recommended that a Deed of Variation be entered into on this basis.

Site Location Plan



OFFICER REPORT ON APPLICATION NO. 25/00235/OTHER

SITE & SURROUNDINGS

The application comprises approximately 12ha of land either side of Chesterfield Road, to the south west of Barlborough, which has been partly built out for housing and employment development. The housing element, 'Hawthorne Meadows' has been delivered on the land to the west of Chesterfield Road. The application relates specifically to the affordable housing obligations associated with this part of the development. Bordering the site to the west is the M1 motorway. To the north of the site is junction 28 of the M1 motorway and the A616 and to the north east is existing residential development off Chesterfield Road and Barlborough Links Business Park.

BACKGROUND

Planning permission was issued on the 23rd March 2011 for residential and commercial development (business, industrial and warehousing, Class B1, B2 and B8) including new roundabout and associated roads at the site under planning application code ref. 09/00370/OUTMAJ, with a legal agreement dated 7th March 2011 under s106 of the Planning Act 1990, which secured the following contributions:

District Council:

- Off-site sports contribution: £765/dwelling - half at 50% dwellings occupied, half at 75% occupation (+indexation applying the BCIS All in Tender Price Index).
- On-site amenity open space and on-site children's play area plus notice of maintenance and payment of maintenance fee + indexation if to be offered up for adoption - triggered by 33% of dwellings occupied.
- Affordable Housing 33% at 60% occupation of dwellings.

County Council:

- Education £2,255/dwelling on occupation of 75 dwellings + indexation.
- Highways improvement works, in the form of a roundabout.

A Deed of Variation was then entered into on the 13th December 2016 under s106A of the Act which reduced the amount of affordable housing to be provided from 33% to 10% of the total number of dwellings to be constructed on site.

On the 5th October 2020 a separate standalone full application was made to substitute 28 flats approved under previously approved applications 09/00370/OUTMAJ and 16/00187/REM with 9 houses under planning application code ref. 20/0425/FUL reducing the total amount of development to be delivered on site to 135 dwellings, with other variations made. This application was granted planning permission by the Local Planning Authority on the 19th December 2022.

On the 24th July 2023 an application was made to vary the section 106 legal agreements, based on an appraisal of the projects viability, to reduce the amount of local infrastructure obligations currently required for schools, highways, affordable housing, recreation and play facilities under s106A of the Act. The application was considered under application code ref. 23/00367/OTHER and refused in a decision notice dated 22nd February 2024 following independent assessment of the project by a viability expert appointed by the District Council. Following this decision, the District Council pursued an application to the High Court for an Injunction to prevent further construction and occupation of the dwellings, given the advanced stage that the applicant had reached in building out the development without meeting any of the obligations in the agreements relating to financial contributions and affordable housing.

The applicant lodged an appeal to the Planning Inspectorate two days before the deadline for lodging an appeal against this decision on the 20th August 2024. This was after they had received a letter before action letter threatening a claim for an Injunction from the District Council. In granting the Interim Injunction a period of time up to the 31st December 2025 was given to allow the appeal to be heard and a decision be issued.

In a decision letter dated 10th December 2024, the Planning Inspectorate dismissed the appeal against the decision to modify the planning obligations to reduce the level of developer contributions sought. The applicant had sought to show that if they were to deliver the contributions as drafted, they would make a nominal profit (6.36% of GDV) that was below what would be accepted as reasonable for viability testing purposes.

In dismissing the appeal the appointed inspector recognised that if they were to pay the

contributions as currently required, then they would still realise a profit. While this would not deliver a level of profit within the range preferred by the appellant it was stated that this is the risk inherent in development.

The inspector confirmed that planning guidance is clear in that the level of profit modelled at plan-making stage is not guaranteed for the lifetime of the project and it is not appropriate to seek to amend obligations in order to protect returns. It was confirmed that it is not the purpose of the planning system or planning obligations to remove any and all financial risk from development.

The obligations were considered to continue to serve a useful purpose and would not serve their useful purpose equally well if they had effect subject to the modifications proposed as part of application code ref. 23/00367/OTHER.

Following this decision the applicant has sought to engage the Local Planning Authority in reaching agreement on how they can modify the agreements so that they are able to meet the obligations contained within them, that they serve their useful purpose equally well and to facilitate the completion of the development. Failure to reach any agreement and/or to meet the obligations in the s106 agreements would require further applications to the courts to resurrect proceedings and presents risks in terms of the completion of the development and delivery of developer contributions to achieve high quality, sustainable development.

PROPOSAL

The application is made under S106a of the Town and Country Planning Act 1990 and seeks to modify obligations contained within legal agreement relating to application code ref. 09/00370/OUTMAJ dated 07.03.2011 and deed of variation dated 13.12.2016 relating to affordable housing to allow for the delivery of 12 no. 20% discount sale units with cascade provisions to allow for an equivalent financial contribution to be made if not sold within 6 months of marketing, and payment of a financial contribution of £98,548 in lieu of secured provision.

The applicant proposes payment of all outstanding financial contributions to the District and County Councils, totalling £1,036,871.67 (index linked to 2025), to cover off-site sports provision, education, highways and on-site public open space and payment of the Councils' legal costs up to £5,000.

It also requires on payment of the above sums and completion of any revised S106 that the Council withdraw the interim injunction.

Supporting Documents

The application is accompanied by an application form, covering letter, location plan, Heads of Terms for a Draft Deed of Variation document and draft s106 agreements.

AMENDMENTS

n/a

EIA SCREENING OPINION

The application relates to an approved development that was not considered to constitute EIA development. The proposed modifications to the agreement would not materially change the environmental effects to warrant screening or to revisit the decision in respect of the associated planning applications.

HISTORY

09/00370/OUTMAJ	GC	Residential and commercial development (business, industrial and warehousing, Class B1, B2 and B8) including new roundabout and associated roads
13/00002/VARMAJ	GC	Variation of condition 8 of 09/00370/OUTMAJ to allow for repositioning of flood alleviation pond
14/00622/OTHER	GU	Variation of Section 106 agreement relating to 09/00370/OUTMAJ to reduce affordable housing to 10%
16/00187/REM	GC	Approval of reserved matters for erection of 157 dwellings and 5 B1 office units and 4 B2/B8 industrial units with provision of open space and access to the site via A619
17/00298/VAR	GC	Removal of condition 17 and variation of conditions 18 & 20 (all highways issues) of 13/00002/VAR (which varied outline permission 09/00370/OUTMAJ)
17/00642/MINAM	GU	Minor amendment to previously approved 16/00187/REM - revised layout
19/00256/VAR	GC	Variation of Condition 8 (Flood Attenuation Pond), 9 (Surface water drainage details), 20 (new access junction replacing roundabout) of Planning Permission 17/00298/VAR
19/00258/VAR	GC	Variation of Condition 3 (Treatment of Hard Surfaces), Condition 4 (Hard and Soft Landscaping) of Planning Permission 16/00187/REM

20/00120/MINAM	GU	Minor amendment to planning permission 16/00187/REM - Housetype (T53) to Plots 46-48 to reduce the overall scale of the dwellings
20/00425/FUL	GC	Full Planning Application for the Erection of Nine Dwellings and associated works
22/00217/VAR	GC	Application for variation of conditions 2 (landscaping), 6 (parking layout) and 13 (list of approved plans) of Reserved Matters Permission 19/00258/VAR to facilitate house type substitutions, layout amendments and revision to affordable housing provision.
22/00247/MINAM	GU	Minor amendment to reserved matters planning permission 19/00258/VAR to add a condition to list the approved plans.
23/00247/MINAM	GC	Minor amendment to planning application 22/00217/VAR - Substitute House Types on Plots 153 & 154 substituting 2 dwellings for 1 larger house Plot 153 (1 Detached 2 storey dwelling).
23/00367/OTHER	REF	Application for variation of section 106 legal agreement, based on latest viability assessment, to reduce the amount of local infrastructure obligations currently required for schools, highways, affordable housing, recreation and play facilities.

CONSULTATIONS

Bolsover District Council (Planning Policy and Housing Strategy) – The proposal to substitute the provision of 10% of the built units as affordable housing for rent with the proposed delivery of 12 no. 20% discount sale affordable units on site with cascade provisions to allow for an equivalent financial contribution to be made if not sold within 6 months of marketing, and payment of a financial contribution of £98,548 in lieu of provision of the 2 properties already sold that should have been sold as Affordable Housing, is considered to be a less desirable outcome. However, it is noted that the applicant states that they have been unable to dispose of the required affordable housing provision to a Registered Provider. Furthermore, it is noted that this case has required the Council to apply to the High Court for an Injunction to prevent the applicant from continuing to build out the development without the consent of the Council and until the S106 obligations had been fulfilled. In light of this situation, whilst the new proposal is less desirable it appears to be best outcome possible.

Derbyshire County Council (Strategic Planning) – I confirm that the Strategic Planning team do not have any comments with regards to the Deed of Variation.

All consultation responses are available to view in full on the Council's website.

PUBLICITY

The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 sets out the publication requirements in respect of applications to modify agreements under s106A of the Town and Country Planning Act (1990).

Regulation 5 (1) advises that when a local planning authority receive an application for the modification or discharge of a planning obligation they shall publicise the application by–

(a)posting notice of the application on or near the land to which the planning obligation relates for not less than 21 days; or

(b)serving notice of the application on the owners and occupiers of land adjoining that land; or

(c)publishing notice of the application in a local newspaper circulating in the locality in which that land is situated.

Bolsover District Council in its capacity as the Local Planning Authority posted a site notice on this site on the 3rd June 2025.

This has resulted in the receipt of two representations from residents of the existing housing estate / development objecting to the application on the following grounds:

- Concerns over sale of existing phase 3 units on this development for a 20% discount. It is considered that this will have a knock on house prices to the rest of development as the houses are no different and were previously sold for a higher price.
- The development site has not been completed in terms of the approved landscaping and at the entrance to the site the undeveloped part has been used as an area to dump excavated materials, which the developer has had to fence off.
- Questions are raised as to how the public open space will be completed if the District Council were to receive money instead of the applicant fulfilling their duties.
- We will be directly impacted by the planning of 12 new properties at the front of our estate. This was not on the original site plan, in fact this area is meant to stay a green area for residents of the estate to use as a communal site. We regularly have families use it for games of football, picnics, or walking their dogs. This is our only large, shared green area on the site, even though there is a much larger green area to the left of the site as you enter. This area has had nothing done to it apart from let it become unkempt and overgrown. This was meant to be a tree lined 'woodland' area for the estate on the original site plan.
- If we are to lose our only large, shared green area to 12 houses, there should be plans to convert the largest, now overgrown, green area for use by the residents of the estate.
- Our roads and paths have recently been completed. This is after years of uneven,

unsafe and unfinished paths and roads that could, and may, have led to serious injury to residents of the estate. To plan 12 new houses at the front of the estate and turn our only entrance point into another building site, with uneven road and path layouts, would immeasurably impact the quality of life and wellbeing of the existing residents.

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:

- SS1: Sustainable Development
- LC2: Affordable Housing through Market Housing
- SC4: Comprehensive Development
- II1: Plan Delivery of 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:

- Chapter 2 (paras. 7 – 14): - Achieving sustainable development.
- Paragraphs 48 - 51: Determining applications.
- Paragraphs 56 - 59: Planning conditions and obligations.

ASSESSMENT

1.1 Where an application is made to an authority under subsection (3) of s106A of the Planning Act 1990, S106(6)(a) states that the authority may determine:-

- (a) that the planning obligation shall continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

1.2 The courts have established that there are four questions which must be resolved to reach a decision under s.106A(6) as per Richards J in *Garden and Leisure Group Ltd v North Somerset Council* [2003] EWHC 1605 (Admin) at [28], namely: what is the current obligation? what purpose does it fulfil? is it a useful purpose? and if so, would the obligation serve that purpose equally well if it had effect subject to the proposed modifications? Section 106A involves a precise and specific statutory test and does not bring in the full range of planning considerations involved, for example in an ordinary decision on the grant or refusal of planning permission.

- 1.3 In considering the purpose of obligations and whether they are useful, there is a requirement to consider the relevant provisions of the development plan and any other material considerations. The development plan for the purposes of the Act is the Local Plan for Bolsover District (2020).
- 1.4 Policy SS1 of the Local Plan for Bolsover District (2020) deals broadly with sustainable development and requires that new development to contribute to reducing social disadvantages and inequalities, deliver an appropriate mix of development and to support the provision of key infrastructure amongst other considerations.
- 1.5 Policy LC2 'Affordable Housing' "The Council will require applications for residential development comprising 25 or more dwellings (or which form part of a larger development site with a potential capacity of 25 or more dwellings) to provide 10% as affordable housing on site. This should be in the form of affordable housing for rent.
- 1.6 Policy SC4 'Comprehensive Development' states that unless viability indicates otherwise, proposals to revise an existing planning permission, or which vary the Council's plans for a particular allocated site, will be permitted provided that they maintain or enhance:

- a) The required levels of necessary infrastructure and facilities
- b) The balance of uses, where applicable

It goes on to state that proposals will be supported where they do not prejudice the comprehensive delivery of development sites and assist in the provision of any necessary physical, social or environmental infrastructure.

- 1.7 Policy II1 sets out the Council's policy on the role of developer contributions. It states to aid plan delivery, planning obligations will be sought where the implementation of a development would create a need to provide additional or improved infrastructure, amenities or facilities or would exacerbate an existing deficiency. It advises that alongside infrastructure delivery, planning obligations will also be sought where the implementation of a development would necessitate the delivery of other policy objectives, such as the provision of starter homes and/or affordable housing and lifetime homes.
- 1.8 The National Planning Policy Framework was updated in December 2024 and is a material consideration in respect of this application. The policies contained within the development plan are considered to align with national policy.
- 1.9 Para 58 states that planning obligations must only be sought where they meet all of the following tests:
- a) Necessary to make the development acceptable in planning terms;
 - b) Directly related to the development; and
 - c) Fairly and reasonably related in scale and kind to the development.
- 1.10 The case put forward by the applicant in respect of application code ref.

23/00367/OTHER was that the development, with all of the secured contributions did not return a sufficient profit to be a viable proposition. It was proposed that the profit was well below the 15-20% range (at 6.36%) supported by planning practice guidance. It was advanced at that time that if planning obligations were not reduced and no affordable housing was provided, the development will not be completed and the site will not provide the full number of planned new homes, nor will the site be able to be completed in terms of road infrastructure.

- 1.11 In this context, viability policy contained within the NPPF and practice guidance is relevant. Paragraph 59 of the Framework states where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.
- 1.12 Planning Practice Guidance provides useful guidance on considering viability in decision making. Viability Para. 018 states that potential risk is accounted for in the assumed return for developers at the plan making stage.
- 1.13 In dismissing the appeal the appointed inspector noted that challenging market conditions, as set out in the appeal (covid and high inflation) had affected the country as a whole, not just the applicant, and there was no compelling evidence that the public should, in effect, suffer twice. Once directly, and once indirectly in order to protect the return to the developer on their capital employed in delivering the development. Development carries risk and it is not the purpose of the planning system or planning obligations to remove the financial risk from development.
- 1.14 It was established that the development would still return a profit with all of the developer contributions secured, and that delivering no affordable housing (as proposed at that time) would clearly conflict with local and national planning policy. The proposed obligations in their modified form were not considered to serve their useful purpose equally well in this respect.
- 1.15 This application relates to the affordable housing provisions only. The obligations contained within the s106 dated 07.03.2011 and deed of variation dated 13.12.2016 required the delivery of 10% of the dwellings permitted under a Reserved Matters Application to comprise social rented and intermediate affordable dwellings. They required the owners to not occupy more than 60% of the individual completed dwellings until the affordable housing had been completed and transferred to a housing association.
- 1.16 The purpose which the obligations fulfil is to ensure that the development delivers policy compliant levels of affordable housing. This purpose is clearly a useful one

having regard to national and local plan policy. A key consideration is therefore whether the modifications to obligations proposed as part of this application serve that purpose equally well.

- 1.17 Given the advanced stage that the development has reached, the obligations contained within the original agreement and deed of variation can no longer be met. The applicant has appended evidence to their covering letter, which sets out the level of interest in the units delivered site as affordable dwellings, following marketing in 2018 and 2025. This demonstrates that there was very little interest in the delivery of social rent and intermediate housing by a housing association / registered provider. In such circumstances and whilst less desirable, it is considered reasonable to consider other affordable housing products. As set out in the Annex 2 of the NPPF, affordable housing can include 'discounted market sale housing' sold at a discount of at least 20% below market value, subject to local eligibility criteria and in perpetuity.
- 1.18 The applicant has offered up the provision of 12 discount sale properties (with a 20% discount) and a commuted sum for 2 units based on a 20% discount on the blended gross development value of the remaining units on site, to deliver what the applicant believes to be a viable development. This will enable them to complete the project and provide the other developer contributions in full (with indexation). This will require linking the standalone permission for 9 dwellings to the terms of the original agreement dated 07.03.2011 and deed of variation dated 13.12.2016. Although a less desirable product, the proposals would facilitate the delivery of affordable housing on site at a percentage that would meet the requirements of Policy LC2 of the Local Plan for Bolsover District. The modifications with the linking of the development approved under application code ref. 20/00425/FUL (which expires 19/12/2025) would, it is considered serve the purposes of the original agreement equally well, reflecting on the evidence on demand for social rented and intermediate housing on site.
- 1.19 If planning committee was minded to approve the application and agree to the modifications, the remaining obligations contained within the original agreement dated 07.03.2011 and subsequent Deeds of Variation dated 13.12.2016 and 29.01.2020 would remain in effect and the interim Injunction in place until the financial contributions owing have been paid to the District and County Council's and any Deed of Variation has completed. The District Council would reserve the right to proceed with further court action should insufficient progress be made on payment of the outstanding contributions or completion of any deed. It is recommended that the application be approved on this basis. Points 1) and 5) of the Heads of Terms set out in the covering letter, which accompanies the application (payment of outstanding contributions and withdrawal of the Interim Injunction) are matters that whilst related, fall outside of the scope of this application.

Other Matters

- 1.20 In the representations received, concerns has been expressed that the delivery of discount sale properties on site would undermine the sales values of other private dwellings. Notwithstanding the draft s106 agreements that have been submitted with the application, within any Deed of Variation it would be expected that provisions are included that limit the occupancy of the dwellings to those in housing need and which

have a local connection to the area and that those provisions remain in effect in perpetuity. While the impact of development on house prices is not a material planning consideration, this would ensure no interference or distortion of the housing market.

- 1.21 Concern has been expressed with regard to the payment of a sum of money to the Council in lieu of open space provision on site. This application concerns obligations relating to affordable housing only. The applicant is required to deliver the open space and on-site children's play area and to then either to elect to maintain the said spaces in perpetuity or offer the spaces to the Council for adoption subject to meeting the requirements of 4.1 – 4.5 of Part B of the Second Schedule of the original agreement dated 07.03.2011. It remains that the approved open space will need to be provided to an acceptable standard before the Council (District or Parish) would agree to take on maintenance.
- 1.21 The development approved under applications 09/00370/OUTMAJ and 16/00187/REM showed two apartment blocks (28 flats in total) and a parking courtyard. A separate standalone full application was made to substitute the 28 with 12 houses. This application does not propose to introduce new development. It relates to the delivery planning obligations in respect of consented development. The modifications to the obligations do not result in the loss of any green space in this respect. With regard to the impacts of further construction, this sits outside of the scope of consideration in respect of this application.

CONCLUSION / PLANNING BALANCE

Whilst it is unfortunate that the development has reached an advanced stage without any of the obligations contained within the legal agreements dated 07.03.2011 and deed of variation dated 13.12.2016 having been met, the proposed modification offers a route to delivering the policy requirement for 10% affordable housing through market housing (albeit providing a less desirable product) to satisfy policy LC2. The proposed modifications, with the linking of the development approved under application code ref. 20/00425/FUL (which expires 19/12/2025) would, it is considered serve the purposes of the original agreement equally well, reflecting on the evidence on demand for social rented and intermediate housing on site.

The proposal offers a mechanism to extract value from the remaining development approved under the original outline and approval of reserved matters application and linked application for 9 dwelling, to provide all outstanding financial contributions to the District and County Councils, totalling £1,036,871.67 (index linked to 2025), to cover off-site sports provision, education, highways and on-site public open space and to deliver a form and amount of affordable housing that would meet the policy requirement (in terms of percentage). On payment of the above sum and completion of any Deed of Variation, the process of lifting the Interim Injunction can commence and the development can then proceed to completion with contributions towards the infrastructure and affordable housing necessary to deliver sustainable development.

It is recommended a Deed of Variation as set out in the description of the application be entered into on this basis.

RECOMMENDATION

That a Deed of Variation be entered into which allows for the delivery of 12 no. 20% discount sale affordable units on site with cascade provisions to allow for an equivalent financial contribution to be made if not sold within 6 months of marketing, and payment of a financial contribution of £98,548 in lieu of provision secured in respect of agreements relating to the Chesterfield Road, Barlborough site dated 07.03.2011 and deed of variation dated 13.12.2016.

Statement of Decision Process

Officers have worked positively and pro-actively with the applicant to secure the developer contributions required to deliver sustainable development. This has resulted in the submission of this application to modify the obligations dated 07.03.2011 and deed of variation dated 13.12.2016 in the manner proposed.

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.