

Rother District Council

Report to - Planning Committee
Date - 15 April 2021
Report of the - Head of Strategy and Planning
Subject - Application RR/2019/1384/P
Address - Hillbury Field
High Street
TICEHURST
Proposal - Modification to Section 106 imposed on RR/2015/2953/P to reduce the amount of affordable housing

[View application/correspondence](#)

RECOMMENDATION: It be **RESOLVED** to **APPROVE SECTION 106 MODIFICATION SUBJECT TO COMPLETION OF THE DEED OF VARIATION IN RESPECT OF THE PROVISION OF NO AFFORDABLE HOUSING UNITS WITHIN THE DEVELOPMENT; ALSO, TO INCLUDE A REVIEW MECHANISM BASED ON A FULL VIABILITY REVIEW IN RESPECT OF BOTH THE NUMBER OF AFFORDABLE UNITS AND A COMMUTED SUM**

Head of Service: Tim Hickling

Applicant: Ticehurst Homes Ltd
Agent: DHA Planning (Maidstone) – Mr M. Blythin
Case Officer: M. Cathcart (Email: mark.cathcart@rother.gov.uk)
Parish: TICEHURST
Ward Member(s): Councillors Mrs M.L. Barnes and G.S. Browne

Reason for Committee consideration: Head of Strategy and Planning referral: Application relates to a modification to an existing Section 106 planning obligation, which proposes a reduction in the number of affordable housing units to be provided.

Statutory 13-week date: 20 August 2019
Extension of time agreed to: 22 April 2021

1.0 UPDATE AND SUMMARY

1.1 This application was previously considered by the Planning Committee at its meeting on 17 December 2019, when the application was deferred to seek a further review of development viability. That review has now been carried out and the matter is being reported back for Members' consideration.

- 1.2 Outline planning (RR/2015/2953/P) has been granted for residential development incorporating 30 No. houses together with associated infrastructure subject to a Section 106 planning obligation, which included the delivery of 40% affordable housing units (12 dwellings). This legal agreement is presently in place. A subsequent reserved matters application (RR/2019/2818/P) was approved on 1 December 2020, which established the outstanding details of the scheme in relation to external appearance and landscaping.
- 1.3 The application here (to modify the legal agreement) was submitted in June 2019. The application seeks a modification to the Section 106 in respect of the requirement to provide affordable housing as part of the development. The application as originally submitted was supported by a Financial Viability Assessment (FVA) and District Valuer Services (DVS) review of the Applicant's economic assessment of the scheme. The DVS review concluded that three affordable housing only could be provided without the scheme becoming unviable. The application was subsequently reported to Planning Committee in December 2019 on that basis. Members, however, deferred a decision of the application to seek a further review of development viability. That has now been undertaken. The further review has been based on the full details of the scheme as set out in the reserved matters, which have now been approved since Members considered the modification of the Section 106 application in December 2019. The further review concludes that the scheme cannot viably provide any affordable housing.
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2.0 SITE

- 2.1 The site (2.14 hectares) comprises an area of rough grassland and scrub on the southern side of the village to the rear of the residential properties in the small cul-de-sac development of Hillbury Gardens, and the relatively recent development of flats (The Old Coachworks) on the former Warren's Coaches site. Hillbury House and Saffreys, detached properties fronting High Street, lie next to the site to the north. A number of properties within Rosehill (Oaklands, September Cottage, and Oasthouse Bungalow) are to the eastern side of the site.
- 2.2 Site ground levels fall approximately north – south (away from Hillbury Gardens and The Old Coachworks). To the southern side of the application site is an area of designated 'ancient woodland', which contains a ghyll stream.
- 2.3 Access into the site presently serves the Old Coachworks flats and an existing electricity transformer station located to the rear of this property.
- 2.4 The site is located outside of the development boundary of Ticehurst and falls within the Area of Outstanding Natural Beauty (AONB).
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3.0 PROPOSAL

- 3.1 The application seeks a modification to the existing Section 106 planning obligation (or legal agreement) between the developer and the Council whereby, on the grounds of economic viability, there should be no

requirement in this case for the developer to provide any affordable housing as part of the scheme. The developer sets out in the application that this is necessary in order to make the scheme viable and deliverable. The application is supported by a Financial Viability Assessments (FVA), which have been reviewed independently.

4.0 HISTORY

- 4.1 RR/2015/2953/P Outline: Residential development incorporating 30 No. houses including affordable housing, amenity green space and play space, together with necessary car parking and new landscaping – approved conditional.
- 4.2 RR/2019/2198/P Variation of Conditions 1 and 4 of RR/2015/2953/P to permit amendments to the approved layout in relation to removal of footpath rear of Hillbury Gardens and plot re-configuration, particularly plots 1-4 to address levels; moving one unit to the approved plots 25/27; plots 18/19; substituting garages for carports and reconfiguring the larger properties for smaller footprints – approved conditional.
- 4.3 RR/2020/827/MA Non-material minor amendment to planning application RR/2019/2198/P to amend the layout of Plots 5 and 4 - approved.
- 4.4 RR/2019/2818/P Approval of reserved matters relating to appearance and landscaping pursuant to outline permission RR/2019/2198/P (as amended) for the erection of 30 dwellings – approved conditional.
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5.0 POLICIES

- 5.1 The following policies of the [Rother Local Plan Core Strategy 2014](#) (CS) are relevant to the proposal:
- LHN2: Affordable housing
- 5.2 The following policies of the [Development and Site Allocations Local Plan](#) (DaSA) are relevant to the proposal:
- DHG1: Affordable housing (this effectively replaces Core Strategy Policy LHN2)
- 5.3 The following policies of the made Ticehurst [Neighbourhood Plan](#) are relevant to the proposal:
- H4: Affordable housing
- 5.4 The National Planning Policy Framework and National Planning Practice Guidance (PPG) are also material considerations.
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6.0 CONSULTATIONS – On the originally submitted application:

6.1 Parish Council – **OBJECTION**

- Planning permission had been granted for the 40% affordable element on the site. It is acknowledged that there is a need for affordable and that the benefit to the community within the variation put forward is very limited. The valuer comments on the high planning costs.
- Planning Officer David Marlow assured the Parish Council that the 100% affordable site at Banky Field would not in any way affect the requirement for 40% on other sites within the parish.
- John Howell MP for Henley (meeting took place with him on 12 July) stated that planning authorities should challenge viability assessments.
- The costs of building on this site (overhead cables, utilities etc.) were evident at the time of purchase. Clarification of what the Section 106 agreement £110,000 was designated for is sought as this should directly benefit the immediate surroundings of the site.
- The Parish Council had suggested to the Applicants 12 months ago that almshouses, handed over to the management of the Parish Council could be an acceptable form of alternative to the normal affordable housing route as little interest had been shown by housing associations. This remains of interest to the Parish Council.
- The mix and size of houses does not meet the requirements of the recently 'made' Neighbourhood Plan Policy H3.
- Consideration could be given to allowing two additional private houses in order to retain the 12 affordable units in the original RR/2015/2953/P permission.
- The introduction of Community Infrastructure Levy was known by the Applicants when pursuing the original application and should not be seen to make a substantial difference to the overall equation.

6.2 Planning Notice

6.2.1 **OBJECTIONS:** Five letters with objections were received. The comments are summarised as follows:

- We live next to Banky Field in Ticehurst which is now in the process of being developed to provide 100% affordable housing. It was made clear by the District Council and Parish Council that the affordable homes are needed in the village at a minimum of 40%. The Council cannot have one rule for one and another for another in the same village just because it has lumped a complete affordable housing site at the other end of the village.
- The developers are now renouncing the plan for affordable housing they were so keenly promoting when they applied, therefore the original plans should be void.
- We still need the 40% affordable housing which was in the original application. Economic Viability of the site has not changed, the topography was always difficult, and so it is hard to understand how it has suddenly made the development uneconomic. Furthermore, as I understand it, CIL is not payable on affordable housing, so changing the mix to less affordable increases the CIL. The calculations appear to have assumed the CIL is payable on all the housing (affordable and market). The viability assessment should be stringently queried.

- I have examined the Viability Assessment and attempted to recreate a spreadsheet to calculate the viability given the information in DHA's document; this illustrates how changing the parameters can make a big difference to the profit on GDV.
- The developer's viability assessment submitted with the application has both increased costs and reduced income in order to reach the conclusion wanted by the developers.

6.2.2 **GENERAL COMMENT:** one letter with has been received. The comment is summarised as follows:

- This attempt to have wholly private housing developments is morally wrong in this day and age and is not policy, as indeed is to have 100% affordable housing developments. It sends out such mixed messages.

7.0 APPRAISAL

7.1 This application is a request for a modification to the existing Section 106 planning obligation on the grounds that the economic viability of the scheme, and hence its delivery, can only be viable without any affordable housing units being brought forward as part of the scheme.

7.2 Policy Background

7.2.1 Outline planning permission was granted for residential development of 30 dwellings on the site on 13 December 2017. This was subject to a Section 106 planning obligation (also referred to as a Section 106 agreement) dated 6 January 2017. The Section 106 agreement included the requirement for 12 units of affordable housing to be provided as part of the scheme. This represented 40% of the total number of dwelling units to be built on the site.

7.2.2 Policy DHG1 of the DaSA states that the Council will expect 40% on site affordable housing to be provided on sites within the High Weald AONB on schemes of six dwellings or more (or 0.2 hectares or more). Policy LHN2 of the 2014 CS also sets out a requirement for 40% affordable housing for this type of development. Policy H4 of the Ticehurst Neighbourhood Plan requires that new developments of more than 10 houses should provide at least 40% affordable housing. Returning to the Council's DaSA Local Plan, Policy DHG1 also gives consideration to the viability issue and comments as follows:

"Where it can be demonstrated that these requirements would either render otherwise suitable development unviable, or where the local need for affordable housing would no longer justify the above levels, the Council will respectively expect the proportion of affordable housing to be the most that does not undermine viability, or is needed locally".

7.2.3 The Government sets out its policy on the use of planning obligations in the National Planning Policy Framework and National Planning Policy Guidance. Paragraph 54 of the National Planning Policy Framework states that, local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of planning conditions and obligations. Paragraph 56 states that planning obligations must only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and;
- fairly and reasonably related in scale and kind to the development.

On the issue of viability and developer contributions paragraph 57 of the National Planning Policy 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 the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force”.

7.2.4 The Government’s position on developer contributions is further set out in PPG:

Viability and decision taking (paragraph 07):

“Where up-to-date policies have set out the contributions expected from development, planning applications that fully 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. Policy compliant in decision making means that the development fully complies with up to date plan policies. A decision maker can give appropriate weight to emerging policies.”

“Such circumstances could include, for example where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan; where further information on infrastructure or site costs is required.”

(Reference ID: 10-007-20190509)

Paragraph 10 covers the principles for carrying out a viability assessment and states that a viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return. Any viability assessment should be supported by appropriate available evidence informed by engagement with developers, landowners, and infrastructure and affordable housing providers.

(Reference ID: 10-010-20180724)

7.3 Reasons for the Proposed Modification

7.3.1 The supporting information states that after the granting of planning permission the Applicant has been progressing matters in relation to archaeological and ecological conditions, which has required significant input from specialist consultants. It is added that following consultation with the quantity surveyor acting for the Applicant, and upon assessment, it has become apparent that the topography of the site would give rise to significant abnormal costs through cutting and filling works required across the site and

the provision of retaining walls to safely accommodate the development. Other costs described as abnormal are the relocation of overhead electricity cables and the construction costs of the pumping station and compound. The Applicant has also factored-in a cost associated with the future maintenance of the area of amenity green space to be eventually transferred to a management company based on an initial 12-year period of maintenance work (Section 106 payments). Furthermore, the Applicant has said Community Infrastructure Levy (CIL) was not a requirement at the time of submitting the original outline application; however, CIL payments were introduced by the Council during the time the application was with the Local Planning Authority pending determination.

7.3.2 The applicant has provided FVAs in support of the application, which seek to justify the modification of the Section 106 agreement in respect the provision of affordable housing units. It argues that the costs associated with the development of the site undermine the viability of the scheme and in order to meet other associated costs and still provide an accepted level of return for the developer, affordable housing units could not be provided in this case, as the additional costs associated with this would make the development of the site for housing unviable.

7.4 Appraisal of Applicant's FVAs

7.4.1 Members last considered the application in December 2019, making the decision to defer determination for further appraisal information. Since that time, the following matters are now relevant to Members' further consideration of the application:

- The reserved matters application (RR/2019/2818/P) for the development of the site has now been approved. This means that details of the development relating to the layout, scale, access, external appearance, and landscaping of the scheme are now able to be fully factored-into a further financial appraisal or review of the development costs.
- A further appraisal (review) of the applicants updated FVA has now been independently undertaken. This was commissioned by the Council but paid for by the applicant (as set out in the DaSA). The further appraisal concludes that the scheme cannot viably provide any affordable housing.

7.4.2 In summary, the independent review explains that in performing this assessment, they have considered what assumptions have been used within the applicant's residual land value calculation and how they compare to industry benchmarks along with current economic factors and evidence. The independent review assessment considers the viability position of providing 100% market dwellings on the site, which mirrors the Applicant's assessment. The viability appraisal concludes that when comparing the Residual Land Value (RLV) of the proposed scheme against the Benchmark Land Value (BLV) this reveals that the BLV exceeds the RLV by £1,264,915. This means that there is a deficit; thereby indicating that it would not be viable for the applicant to provide an element of on-site affordable housing nor any payment in lieu of on-site affordable housing provision.

7.4.3 Moreover, within the review assessment it is noted that, even by deducting the total CIL amount of the scheme (calculated at £738,215) the scheme still would not be viable.

7.4.4 The independent review assessment concludes by recommending that the Council applies a viability review mechanism at early and late stages of development in line with the PPG for Viability document (Paragraph: 009 Reference ID: 10-009-20190509) where local policy allows.

8.0 PLANNING BALANCE AND CONCLUSION

- 8.1 Outline planning permission has been granted on the site for residential development, which included a Section 106 agreement for the provision of 12 affordable housing units (RR/2015/2953/P as amended by RR/2019/2198/P). Pursuant to this, a reserved matters application for the development has been approved (RR/2019/2818/P). The application under consideration here is to modify the s106 agreement. Under the application, a FVA (Financial Viability Assessment) has been provided by the Applicant, which concludes that the implementation of the scheme that has been granted planning permission is not economically viable and, the delivery of a viable scheme that met other payments and contributions, as well as expected and abnormal development costs would not permit the provision of affordable housing. An independent review of the Applicant's figures was carried out by specialist consultants on behalf of the Council. This supports the Applicant's case, that the development of the site cannot viably provide any affordable housing.
- 8.2 Whilst the absence of any much-needed affordable housing is regrettable, the findings of the review support the Applicant's position and if the site is to be delivered for housing to meet the Council's targets for new dwellings in the District as set out in the CS, a situation of no affordable housing provision being made would have to be accepted in this case.
- 8.3 However, it is also considered that a review mechanism to be 'triggered' at an agreed stage should be incorporated in the modification of the Section 106 agreement. This would be based on a full viability review, once any further inputs become known. A review mechanism is important in this case to demonstrate that the Council is doing everything possible to achieve a policy compliant position.
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RECOMMENDATION: It be **RESOLVED** to **APPROVE SECTION 106 MODIFICATION SUBJECT TO COMPLETION OF THE DEED OF VARIATION IN RESPECT OF THE PROVISION OF NO AFFORDABLE HOUSING UNITS WITHIN THE DEVELOPMENT; ALSO, TO INCLUDE A REVIEW MECHANISM BASED ON A FULL VIABILITY REVIEW IN RESPECT OF BOTH THE NUMBER OF AFFORDABLE UNITS AND/OR A COMMUTED SUM.**
