

Application Number:	V/23/95347
Case Officer:	Dawn Errington
Received Date:	5 June 2023
Site Address:	Land west of Burnetts Lane, Eastleigh, SO30 2HH
Applicant:	Eastleigh Borough Council
Proposal:	Deed of Variation to s106 Agreement dated 2 December 2022 to remove any requirement to provide affordable housing or first homes under planning permission F/20/89500- The erection of 381 dwellings at One Horton Heath.
Recommendation:	Agree to vary Section 106 agreement dated 2 December 2022 as requested subject to consideration of any further consultation and neighbour responses (consideration delegated to Service Director for Planning and Environment in consultation with Chair/Vice Chair)

Report:

This application has been referred to Committee because the applicants are Eastleigh Borough Council.

Existing Planning Permission

1. Planning permission F/20/89500 was granted for the erection of 381 residential units with public open space, hard and soft landscape works, internal roads, footway/cycleways, associated parking spaces, substation, SuDS and associated infrastructure in December 2022 following completion of the requisite S106 agreement for planning obligations. The application was also subject to Environmental Impact Assessment.
2. As well as requiring 35% on-site affordable housing provision, the S106 agreement contained various obligations including those for public open space, community infrastructure, education, health, transport infrastructure, public art, sports provision etc, mostly to be provided off-site.
3. The S106 agreement, dated 2 December 2022, specified that the 35% (134) affordable units should be located across the site with a mix of 75% for rent and 25% First Homes (restricted low-cost first time buyer purchase).

4. An application has subsequently been received to amend the S106 agreement and remove the obligation to provide 35% affordable housing. The applicant has advised to meet the obligation, which was applied in accordance with policy DM28 of the adopted Eastleigh Borough Local Plan Review (2016-2036), would make the scheme financially unviable.
5. Section 106A of the Town and Country Planning Act 1990 allows a party to vary the terms of a completed S106 Agreement if the other parties agree to this. Parties to this agreement are Eastleigh Borough Council (as applicant and Local Planning Authority) and Hampshire County Council.

Description of Application

6. The application is solely for a Deed of Variation to the S106 Agreement dated 2 December 2020 to remove any requirement to provide affordable housing or First Homes. Specifically, Schedule 5 – Affordable Housing of the Agreement would be removed and associated Definitions.
7. The application is accompanied by the following report and documents:
 - 230602 One Horton Heath Viability Assessment – Full Application v3 inc Appends (dated June 2023)
 - Deed of Variation request letter dated 05/06/2023
 - Location Plan
 - Existing S106 Agreement dated 02/12/2022
8. The application has been publicised on the Council's Weekly List of planning applications and via site notices. Individual consultations have also been sent to relevant consultees.
9. Given that the proposed Deed of Variation does not seek to amend size of development that has already been approved it is considered that the proposals do not need to be reconsidered under the Town & Country Planning (Environmental Impact Assessment) Regulations 2017 or The Conservation of Habitats and Species Regulations 2017 (as amended) and the previous assessments remain valid.

Representations Received

10. Site and press notices have been displayed. The closing date for making representation is 30 June 2023. At the time of drafting the report no representations had been received but the committee will be updated at the forthcoming meeting. The Chair and Vice Chair of the committee will be updated on any representations received by the closing date but after the committee meeting.

Consultation Responses

- 11. Housing Enabling Officer**
- 12. HCC Planning**
- 13. Lead Area Manager**
- 14. Fair Oak and Horton Heath Parish Council**

Eastleigh Borough Local Plan Review (2016-2036) Policies

- DM24 (Creating a Mix of Housing);
- DM28 (Delivering Affordable Housing):
- HH1 Land West of Horton Heath mixed use designation

Supplementary Planning Documents

- Affordable Housing (July 2009);
- Planning Obligations (July 2008, updated 2010).

National Planning Policy Framework (2021)

- 15. The National Planning Policy Framework (the 'NPPF' or the 'Framework') advises on dealing with viability considerations and sets down a process which should be followed, including making viability information publicly available.

Planning Practice Guidance

- 16. The Government's Planning Practice Guidance on Viability gives further specific guidance on how viability appraisals should be undertaken. This guidance has been followed.

Relevant Considerations

- 17. With respect to planning conditions and obligations, the NPPF states: (Para 58). 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. 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.'

18. The NPPF outlines in respect to development contributions at Para. 34 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). Such policies should not undermine the deliverability of the plan.'
19. Of primary relevance in considering this Deed of Variation request is the submitted Viability Assessment. This has been undertaken by leading and independent assessors, Aspinall Verdi, and is a thorough and robust review of development costs and returns which follows RICS, NPPF and PPG advice. The most recent plan-wide assessment is the Eastleigh Borough Council Whole Plan Viability Assessment, was produced in 2018 by Dixon Searle Partnership (DSP). This has formed the basis of the latest viability assessment when defining appropriate cost inputs. Where Aspinall Verdi have deviated from these costs, justification is provided in line with Paragraph 20 of the PPG: Viability.
20. Since 2018 the financial climate for development has significantly changed. Due to high site infrastructure costs (a proportion of the wider site delivery costs) and non-housing S106 costs, including those for ecological mitigation, in addition to high build costs exacerbated by recent inflationary pressures, this review concludes that the site is not viable if the affordable housing obligation is not removed entirely.
21. Although the scheme cannot deliver any affordable housing the scheme does provide £6.48m of associated infrastructure works and £33.8m of non-housing s106 obligations. These costs are having a significant impact on the schemes viability but will contribute towards providing the necessary infrastructure in order to deliver the wider One Horton Heath development.
22. A sensitivity analysis has been applied to the viability assessment, testing the viability of the development against a change in build costs and sale values of the properties. In the current economic climate, Aspinall Verdi concluded that the required reduction in the hard build costs and increase in values which would result in a viable scheme is highly improbable.
23. The Development Management team have discussed the viability assessment in detail with Aspinall Verdi and the applicant. The conclusion was reached that the residential development is unviable with any provision of Affordable Housing.
24. This is a critical first phase of the wider 2500 dwelling One Horton Heath development and by removing the affordable housing obligation from S106 this would enable delivery. This in turn ensures wider

housing supply for the Borough and supports the Council's 5-year supply.

25. Although Policies HH1, DM24 and DM28 all support provision of affordable housing, there is a recognition in the NPPF that this is not always possible. It is acknowledged that as part of an allocated site, the Local Plan process concluded at the time of consideration that the site was viable, but regrettably recent significant economic changes in addition to a more detailed analysis of the site's costs have negatively affected viability.
26. There are no other material considerations of relevance for this matter and, subject to consideration of neighbour and consultee responses, the conclusion reached is therefore that Schedule 5 of the 2 December 2022 Section 106 agreement for the site should be removed.
27. Notwithstanding this, and not to be taken as a material consideration as is outside of planning control, is the recommendation to Cabinet meeting 15 June 2023 that all Council planning applications that are proved unviable for affordable housing should be supported by an application to Homes England for affordable housing funding. This is funding which can only be achieved if affordable housing is not delivered through Section 106. If such application(s) are successful affordable housing would then be delivered in a different way.

Equalities Implications:

28. Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states:-
- A public authority must, in the exercise of its functions, have due regard to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
29. When making policy decisions, the Council must take account of the equality duty and in particular any potential impact on protected groups. It is considered that this application does not raise any equality implications.

30. Conclusion

31. In order to enable the site to proceed it is considered necessary to agree to vary the Section 106 agreement dated 2 December 2022 as requested subject to consideration of any further consultation and neighbour responses (consideration delegated to Service Director for Planning and Environment in consultation with Chair/Vice Chair)

F/20/89500



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Address: Land west of Burnetts Lane
Eastleigh, SO30 2HH

Date: 13/09/2021

Scale: 1:5000