

Our Ref: RJM/99731

3 April 2025

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PROPERTY
CONSULTANTS

Mr D Williams
The Planning Bureau Ltd

Via Email

**VIABILITY ASSESSMENT
LAND ADJACENT TO OAK COTTAGE, WINCHESTER ROAD, BOORLEY GREEN
PLANNING REF: F/24/97945**

We have received a letter from Aspinall Verdi (AV) dated 28 February 2025 (received by the applicant on the 25 March 2025) in response to our rebuttal letter dated 12 February 2025.

The key differences between consultants have narrowed to the extent that in most areas the parties are now agreed. There remains a small difference (in monetary terms) in relation to profit on the proposed houses, where AV argue a reduction in profit from 20% on GDV to 17.5% on GDV. **For the avoidance of doubt, we do not accept this reduction for the reasons set out in our original rebuttal letter.** In addition, we note that AV have reduced the finance rate by 0.50% to 7.5%. Again, we do not agree that development finance rates have fallen as a result of general BofE interest rates being reduced. Our own experience of the development finance market is that 8.00% is the minimum finance level for development debt, and in the majority of cases finance is significantly higher. We reserve our position on both points should planning be refused.

However, the conclusion of the AV response confirms that, even with this reduction on profit and finance rates, the proposed scheme is unviable and thus unable to meet the planning obligations requested and remain viable.

As part of the AV response, a sensitivity analysis has been completed to demonstrate the impact of changes in construction costs and GDV by a factor of -2.5% and +2.5%. The only scenario that returns a positive land value (£84,333) is a reduction of construction costs by 2.5% coupled with an increase in GDV by 2.5%. In this scenario the scheme would only be able to provide S106 contributions of £84,333.

In conclusion, AV argue that a review mechanism should be included in a S106 agreement. In order for a review mechanism to be requested by the LPA, a Policy is required. No such Policy exists. PPG (paragraph 009) states:

How should viability be reviewed during the lifetime of a project?

Plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles. Policy compliant means development which fully complies with up to date plan policies. A decision maker can give appropriate weight to emerging policies.

Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted

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for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.

It is clear from a number of very recent appeal decisions that where no Policy exists, review mechanisms cannot be demanded. I highlight the following cases:

**APP/V1260/W/24/3351431 – FORMER SOUTHERN GAS NETWORK SITE, CHRISTCHURCH
DECISION – 31 March 2025**

64. The s106 agreement dated 12 March 2025 includes a range of obligations. Those that are necessary cover SANG and SAMM contributions, a NHS contribution, a travel plan, TRO contribution 1, and highway works. The New Forest SAMM contribution has been discussed above.
65. The travel plan clause includes a requirement to include a travel voucher for each market dwelling. This is unnecessary as the site is in a highly accessible location in the town centre. This requirement should have no effect.
66. The scheme does not include affordable housing owing to viability issues on this constrained site. The clause in the s106 obligation which raises the possibility of affordable housing and car club contributions following viability review is disputed by the Appellant. Viability review is referred to in the Council's affordable housing SPD, but there is no reference to it in the development plan and thus no basis in the statutory planning framework to seek it. The clauses in the s106 agreement which relate to viability review, and the related requirements concerning affordable housing, car club and TRO contribution 2 should not therefore have effect.

**APP/C3105/W/24/3351778 – WAVERLEY HOUSE, REGISTRAR, QUEENS AVENUE, BICESTER
DECISION – 27 JANUARY 2025**

26. There is no dispute between the parties that the viability assessment submitted³ by the appellant, and independently assessed for the Council, shows that the scheme is not sufficiently viable to provide a contribution towards affordable housing, community facilities, indoor and outdoor sport, and public art.
27. A legal agreement has been submitted in relation to the provision of a viability review mechanism. This would secure a contribution towards affordable housing, community facilities, indoor and outdoor sport and public art should the scheme increase its profitability at a later date.
28. However, the Planning Practice Guidance (PPG) 4 points out that '*plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles.*'

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29. LP Policy BSC3 states that *'where development is demonstrated to be unviable ... further negotiations will take place. These negotiations will include consideration of: the mix and type of housing, the split between social rented and intermediate housing, the availability of social housing grant/funding and the percentage of affordable housing to be provided'*. The policy nor its supporting text makes no reference to viability review mechanisms and includes little further detail on this matter. It was agreed at the Hearing by the main parties that no other policy is relevant in this regard. There is no reference to a viability review mechanism either in LP Policy INF1, and I have not been directed to any other relevant policy or the other proposed contributions that refers to such a Mechanism.

It is my conclusion that there is no basis for demanding a review in this case and therefore it should not form part of the discussion on this case.

It is clear that the scheme is unable to support the planning obligations demanded and remain viable. Whilst there are disagreements on some of the inputs, the overall conclusion is not disputed by the LPA assessor.

Alder King LLP