

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL**

**Report to Planning Applications Committee**

**17<sup>th</sup> October 2019**

<b>TITLE:</b>	<b>Section 106 Agreement at Churnet View Road.</b>
<b>CONTACT:</b>	<b>Ben Haywood – Head of Development Services</b>
<b>WARDS INVOLVED:</b>	<b>ALL</b>

**Appendices Attached - None**

**1. REASON FOR THE REPORT:**

- 1.1 To seek the approval of the committee to enter into a Deed of Revocation in respect of the Section 106 Agreement attached to planning permission SMD/2015/0161 and SMD/2017/0713

**2. RECOMMENDATION**

- 2.1 That the committee to resolve to enter into the Deed of Revocation.

**3. DESCRIPTION OF SITE**

- 3.1 The application site previously had residential properties sited upon it and historical maps dated 1938 and 1970 submitted with the proposal identify their location. These properties have long since been demolished, but remnants of their existence are still present in the form of utilities etc. Despite this, the site is considered to be greenfield in nature and lies within the Oakamoor Development Boundary. To the north of the site is woodland; to the south is the River Churnet and open country side is located to the north, south and west. To the east is the access to Churnet View Road and the neighbouring residential properties. Since the original planning approval (February 2015), the application site, together with trees along its northern, southern and western edges have been included within the recently designated Oakamoor Conservation Area boundary.

## 4. BACKGROUND

4.1 Application ref. SMD/2015/0161 – Outline Planning Permission with some matters reserved (except access and layout) was approved in February 2016 for a housing development of 5 detached dwellings and 2 semi-detached dwellings (affordable provision).

4.2 The consent was subsequently modified under a Section 73 application (SMD/2017/0713 refers). Generally, the overall approved layout remained unaffected. However, an amendment was made to the footprints. Reserved matters approval was then subsequently granted in 2018 under reference SMD/2018/0195 for the external appearance of the buildings and the landscaping of the site

4.3 The outline planning permission SMD/2015/0161 was subject to a Section 106 Agreement which secured the affordable housing provision. A deed of variation was also submitted to accompany the s.73 application. This ensured that the obligations of the original outline planning permission securing affordable housing provision were carried through to the amended permission.

4.4 The provision of 2 affordable housing units was in accordance with Policy H2 of the Staffordshire Moorlands Core Strategy which states: *The provision of affordable housing will be delivered through the following measures:*

1. *In the towns, residential developments of 15 dwellings (0.5 hectares) or more shall provide a target of 33% affordable housing on-site from all sources. The actual level of provision will be determined through negotiation taking into account development viability and other contributions*
2. *Elsewhere, residential developments of 5 dwellings (0.16 hectares) or more shall provide a target of 33% affordable housing on-site from all sources, unless there are exceptional circumstances which dictate otherwise. Exceptionally this may be provided through a commuted sum payment in lieu. The actual level of provision will be determined through negotiation taking into account development viability and other contributions.*

4.5 The Core Strategy was adopted in 2014. However, the National Planning Policy Framework adopted in 2019 states:

*Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount.*

4.6 This is reiterated in the Planning Practice Guidance which states:

*Are there any specific circumstances where contributions through planning obligations should not be sought from developers?*

*Planning obligations for affordable housing should only be sought for residential developments that are major developments. Once set, the Community Infrastructure Levy can be collected from any size of development across the area. Therefore, the levy is the most appropriate mechanism for capturing developer contributions from small developments.*

*For residential development, major development is defined in the National Planning Policy Framework as development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000 square metres or more, or a site of 1 hectare or more, or as otherwise provided in the [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#).*

4.7 Policy H3 of the Staffordshire Moorlands Local Plan submission version places a requirement for sites of more than 5 dwellings in the rural areas to provide affordable housing. However, under the proposed Main Modifications, which are currently being consulted upon, this policy has been updated to reflect the more recent National Planning Guidance and states:

*Residential developments of 10 dwellings (or 0.5ha) or more shall provide 33% affordable housing. Where justified, the Council will consider a lower level of provision taking into account the Local Plan and Site Allocations Viability Study, other up-to-date viability evidence and other contributions. Affordable housing should normally be provided on-site. Provision through a commuted sum payment in lieu will only be considered where it will be of broadly equivalent value to on-site provision and it can be robustly justified in delivering affordable homes through mixed and balanced communities.*

4.8 In the light of the more recent national guidance and the emerging policy the Applicant is seeking to remove the affordable housing requirement from this scheme and has requested that the Council enter into a Deed of Revocation in respect of the Section 106 Agreement attached to planning permission SMD/2015/0161 and SMD/2017/0713.

4.9 The Council's solicitor has been consulted and has commented that the agreement attached to the original 2016 consent provides for 2 affordable units with no other obligations and the deed of variation attached to the 2017 permission simply carried the 106 obligations forward to a new consent issued under s73. As a result the applicant has drafted a Deed Of Revocation for the Council to sign. This is a pure Deed Of Revocation which the committee can authorise as an agreement relating to the regulation of development or use of land but it is not an agreement under s106 of the Planning Act (as drafted by the Applicant). However, this is a minor drafting issue which can be corrected prior to execution.

## **5. CONCLUSION & PLANNING BALANCE**

5.1 The determination of a planning application is to be made pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004, which is to be read in conjunction with section 70(2) of the Town and Country Planning Act 1990.

5.2 Section 38(6) requires the local planning authority to determine planning applications in accordance with the development plan, unless there are material circumstances which 'indicate otherwise'. Section 70(2) provides that in determining applications the local planning authority "shall have regard to the provisions of the Development Plan, so far as material to the application and to any other material considerations." The Development Plan currently consists of the adopted Staffordshire Moorlands Core Strategy.

5.3 As noted above Core Strategy policy indicates that this development should provide 33% affordable housing as it is a site of over 5 units in a rural area. However, National Planning Policy and guidance which is an important material consideration and afforded significant weight indicates that an affordable housing provision should no longer be sought in these circumstances. Furthermore, the emerging Staffordshire Moorlands Local Plan also now seeks to remove this requirement, although, given that this modification is currently subject to public consultation, it can only be afforded limited weight at this time.

5.4 Nevertheless, this does not outweigh the weighty material consideration that is national planning policy and accordingly it is recommended that the Committee agree to remove the affordable housing requirement in respect of this site and resolve to enter into the Deed of Revocation requested.