

**HIGH PEAK BOROUGH COUNCIL
DEVELOPMENT CONTROL COMMITTEE**

Date: 24th May 2021

Application No:	HPK/2020/0518	
Location	Former Forge Works, Forge Road, Chinley, High Peak.	
Proposal	Variation of section 106 planning obligation to reduce affordable housing provision relating to HPK/2012/0323 (appeal ref. APP/H1033/A/13/2189819).	
Applicant	Wainhomes North West Ltd	
Agent	Hourigan Connolly	
Parish/Ward	Chinley	Date registered: 27/11/2020
If you have a question about this report please contact: Rachael Simpkin rachael.simpkin@highpeak.gov.uk 01538 395400 extension 4122		

REFERRAL

This scheme has been referred to DC Committee as relates to a major development.

1. SUMMARY OF RECOMMENDATION

REFUSE, the scheme is contrary to Adopted Local Plan Policies in relation to Affordable Housing Provision.

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

2.1 The application relates to the former Forge Mill premises, more recently known as the Dorma Works, which is located off Forge Road, Chinley. The whole site covers a total of 12.44 ha (hectares) and lies in a dip between the villages of Chinley and Whitehough. The site is nestled between Black Brook to the north and the Peak Forest Tramway to the south. It is located immediately to the south of the village of Chinley and north of the hamlet of Whitehough. The Peak Forest Tramway runs alongside the southern boundary of the site and the Black Brook watercourse borders and crosses the site on its northern side. Aligning the western boundary of the site is footpath 124, which links Forge Road to the Tramway. There are some habitats of local value within the site, as well as tree cover to the boundaries of the site.

3. THE APPLICATION PROPOSAL

3.1 An application under Section 106A of the Town & Country Planning Act 1990 (as amended) has been received by the Council to modify the affordable housing provisions of the original Section 106 Agreement in relation to original

the outline planning permission ref. HPK/2012/0323 allowed at appeal in May 2013 ref. APP/H1033/A/13/2189819.

3.2 The original Section 106 Agreement requires inter alia the development to provide for 30% of the total number of dwellings to be erected on the site to be affordable units (60% as Social Rented and 40% as Shared Ownership).

3.3 A Supplementary Legal Agreement was entered into on the 20th November 2017 with revised clauses ensuring the provision of good quality affordable housing and facilitating a balance between securing the delivery of affordable housing in relation to the development of this part of the site, construction of a bridge and the commercial dwellings. There were also other amendments reflecting a phased approach such as timing of agreeing a site management company for onsite private roads and any unsold areas of open space on the site. In relation to the onsite roads, it was noted that the Phase 1 roads were to be adopted and this also required a minor amendment. In addition, the Parish Council requested that offsite highways contribution be amended to better reflect need in the village and this was applied to improving accessibility to the railway station.

3.4 The first reserved matters approval ref. HPK/2013/0577 issued in January 2014 consisted of 91 dwellings and provided 27 affordable homes. The applicant has confirmed that the scheme has been developed and all commercial dwellings sold. As well, the 27 affordable homes secured as part of the original permission for this phase of development have all been transferred to a Registered Provider.

3.5 Reserved Matters approval ref. HPK/2016/0313 provides a further 62 dwellings of which 18 are to be affordable homes. The applicant states that the proposed number of affordable dwellings is slightly less than the policy compliant position of 19 units (due to rounding), but this position was agreed with the Council at the time of the reserved matters application on a tenure basis. The applicant confirms that 28 of these dwellings have been developed and sold. This includes 3 properties which have been transferred to the Registered Provider. Accordingly, a total of 15 affordable dwellings are required to be delivered under the provisions of the original Section 106 Agreement for this phase of the development.

3.6 The now applicant seeks the following amendments to the original Section 106 Agreement:

3.7 The Definitions Section provides that:

“Affordable Unit or Units means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available at the open market and which comprise 30% of the total number of Dwellings to be erected on the Site and shall comprise 60% Social Rented Housing and 40% Shared Ownership Housing”.

3.8 Clause 2.5 further provides that:

“Subject to clauses 2.1 to 2.4 above 30% of the Dwellings which are constructed on the Site shall be Affordable Units (in accordance with current Homes and Communities Agency Standards) to be provided in accordance with each and every Reserved Matters Approval”.

3.9 The applicant proposes that the Definitions Section of the original Section 106 Agreement be amended to:

“Affordable Unit or Units means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available at the open market and which comprise 30 of the total number of Dwellings to be erected on the Site and shall comprise 16 Social Rented Dwellings and 14 Shared Ownership Dwellings”.

3.10 The applicant further proposes that Clause 2.5 of the original Section 106 Agreement be amended to:

“Subject to clauses 2.1 to 2.4 above 30 of the Dwellings which are constructed on the Site shall be Affordable Units (in accordance with current Homes and Communities Agency Standards)”.

3.11 The application to vary the legal agreement would deliver 19.6% affordable units on the site rather than 30% and is based on the justification that it is no longer viable to deliver the amount of housing as required by the planning obligation. The submission is supported by the submitted Grasscroft (GDS) Residential Viability Report dated November 2020 (the FVA) together with an email from the applicant dated 8th March 2021 with an attached print out of sales to date latterly submitted with the appeal for non-determination as is discussed below.

3.12 On the 23rd March 2021, the applicant has submitted to the Council a Notice of intention to submit an appeal in respect of the proposed variation of the original s106 agreement. This is on the basis that it is no longer viable to deliver the amount of affordable housing as required by the legal agreement. Contrary to the applicant’s view, the submitted appeal has not yet been validated by the Planning Inspectorate and until it is, the Local Planning Authority is able to issue a decision to either refuse or approve the application if Members are minded to do so. If the appeal is validated before officers are able to issue a decision notice, then we would not be able to issue the refusal of planning permission but that it would serve as the basis on which the Council would defend the appeal.

3.13 The application has also been resubmitted to allow negotiations to continue towards a positive outcome whilst the Appeal is in progress.

4. RELEVANT PLANNING HISTORY

HPK/2018/0143 Residential development comprising 12 dwellings (open market and affordable), public open space and associated

infrastructure together with a new car park for 1st Chinley Scout Group. Approved 26th March 2021.

- HPK/2016/0313 Reserved Matters application with details of the appearance, landscaping, layout and scale for Phase 2 of the residential development comprising of 62 dwellings and associated works pursuant to planning appeal reference APP/H1033/A/13/21898819 (HPK/2012/0312). Approved November 2017.
- HPK/2014/0582 Erection of a building to accommodate a D1 day nursery with ancillary worker accommodation and construction of a bin store – Approved February 2015.
- HPK/2013/0577 Application for Approval of Reserved Matters following Outline Approval For Phase 1 - Construction Of 91 No. Dwellings, 1no. B1 Office Unit And 1no.D1 Creche Unit Including Access From Green Lane / Whitehough Head Lane and Associated Works (Reserved Matters - Large-Scale Major) – Approved January 2014.
- HPK/2012/0323 Demolition of remaining structures & redevelopment for up to 182 dwellings, up to 1,672 sqm business floorspace (use class B1), up to 279sqm of non residential institution floorspace (use class D1), community facilities & associated infrastructure – Allowed at appeal May 2013.
- HPK/2011/0683 Outline application for the redevelopment of the site – Withdrawn February 2012.

5. PLANNING POLICIES RELEVANT TO THE DECISION

Adopted High Peak Local Plan 2016

- Policy S1 Sustainable Development Principles
Policy S1a Presumption in Favour of Sustainable Development
Policy H4 Affordable Housing
Policy CF7 Planning Obligations and Community Infrastructure Levy

Supplementary Planning Guidance

- Housing Needs Survey
- Planning Obligations

National Planning Policy Framework (NPPF) July 2018

National Planning Practice Guidance (NPPG)

6. CONSULTATIONS

Council's Independent Financial Viability Consultant

13.05.21:

"The Grasscroft (GDS) Residential Viability Report dated November 2020 (the FVA) together with the email from the Applicant dated 8 March 2021 with attached print out of sales to date.

Having completed this exercise we will require further information from the applicant to enable us to complete our review of the FVA and so provide advice to you regarding the viability of the development and the extent of affordable housing that can be supported.

In relation to the FVA then, we will require the following further information from the applicant.

- 1. Please can the applicant provide the print out of sales either in excel or word rather than PDF.*
- 2. With reference to figure 3 of the FVA please can GDS provide two tables; one showing the phase 2 revenues from the sold properties to date, and then the second showing the assessed values for the balance that GDS have adopted.*
- 3. Please can the applicant/GDS confirm which are the phase 2 affordable sales and the amounts.*
- 4. Please can GDS provide the cashflows for their appraisals in excel. I have noted with reference to the appraisals that there is a period of 27 months from the purchase of the site, until construction commences. Please can GDS confirm what was happening during this 27 month period and the reason for the delay in commencing construction once the site was purchased?*
- 5. Phase 1 construction costs – there is a figure of £10.98m for the phase 1 construction costs together with £448,730 in abnormals and £39,633 relating to topsoil. I have spoken with our Quantity surveyor regarding his requirements to allow verification of these figures. To verify the costs he will require auditable accounts for the phase 1 works. Please can the applicant therefore provide the required information.*
- 6. Phase 2 construction costs - please can GDS provide a breakdown of the base rates of £97.50 for the houses and £110 for the apartments. Can they confirm how they have arrived at these figures i.e. have the phase 1 costs been used to inform the rates and if so how have they been adjusted for phase 2.*
- 7. Phase 2 abnormals – GDS state that the applicant has provided copies of detailed investigations, studies and reports that have been prepared*

regarding the site which have been taken into account. We will require copies of these documents and the relevant reference points. Figure 5 of the GDS report contains an abnormal cost of £3,203,895 for phase 2 for the items listed please can the applicant provide details of the make-up of the cost in terms of quantification, rates and any quotes to support the cost. I assume that the reports and studies referred to by GDS will provide justification for the abnormal costs however if not please can the applicant provide the necessary justification for the various costs listed.

8. *Sales and marketing costs – please can the applicant provide details of expenditure to date in relation to these matters”.*

HPBC Regeneration Officer (Affordable Housing): awaited following the receipt of the Council’s Independent Valuation Advisor.

7. OFFICER COMMENTS

7.1 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) are a mechanism which makes a development proposal acceptable in planning terms, which would not otherwise be acceptable. In this case, the planning obligations, amongst other matters, secured onsite affordable housing provision and specified the type and timing of this housing.

7.2 If the s106 is not complied with, it is enforceable against the person whom entered into the obligation and any subsequent owner. The legal tests for a s106 agreement are: (i) necessary to make the development acceptable in planning terms, (ii) directly related to the development, and, (iii) fairly and reasonably related in scale and kind to the development. Under the Planning Act s106 (A) a person bound by the obligation can seek to have the obligation modified or discharged after five years. The principles for modifying an obligation are to consider whether the agreement continues to serve a useful purpose and should remain; that it no longer serves a useful purpose and should be discharged; or that it continues to serve a useful purpose, but would serve the purpose equally well if the modification proposed took effect

7.3 When a developer makes an application under Section 106A to vary an affordable housing obligation, the Council must assess the affordable housing obligation and decide whether it prevents the development from being economically viable (i.e. when assessed together with all the other contributions due, the costs of development, for example abnormal costs associated with remediating contaminated land and expected profits) and if it does prevent the development from being completed whether that means the obligation no longer continues to serve a useful purpose. If the Council finds that the obligation prevents the development from being economically viable, then the application should be dealt with in a way that safeguards and promotes the economic viability of the permitted scheme to which it relates balanced against a reduced affordable housing provision. In order to achieve

this, the Council has two options: (1) it can modify the obligation either in the way the application suggests (or in another way if the applicant agrees), (2) it can remove the obligation altogether.

7.4 The applicant states that the submitted FVA (Financial Viability Assessment) provides a justification for not delivering the final 15 affordable dwellings on the site as required by the planning obligation. Although, the applicant states that all other financial obligations have been paid relating to off-site highway works, open space, play space and primary school improvements and established a site wide management company all as required by the original Section 106 Agreement and subsequent Supplementary Agreement.

7.5 In addition, the applicant further considers that it is a material consideration that the reserved matters approval has been granted for 153 dwellings rather than the 125 dwellings anticipated at the outline planning application stage. In response to this point, the original planning permission description included “up to” 182 dwellings rather than a fixed quantum of development and is material in these regards. The subsequent reserved matters schemes have delivered a total of 153 dwellings in accordance with Adopted Local Plan policy. The applicant does not envisage any more than 153 dwellings on the site through any subsequent planning applications. However, ref. HPK/2018/0143 has secured a scheme of 12 mostly executive dwellings on land adjoining the nursery.

7.6 In consideration of the above, LP (Local Plan) policy H4 ‘Affordable Housing’ includes a financial viability test to justify any reduced provision of affordable housing below the required 30% onsite provision policy level. However the Council’s Independent Financial Viability Consultant considers that the submission is currently insufficient to properly assess whether the viability submission. Accordingly the council is unable to assess whether the modification of the agreement would serve a useful purpose and it therefore recommended for refusal.

8. RECOMMENDATIONS

8.1 REFUSE the variation as requested to vary the provision of affordable housing at follows:

- 1. Insufficient information has been submitted by the applicant to enable the Council to conclude that the 106 agreement as relating to the provision of 30% affordable housing no longer serves a useful purpose and therefore it should be not modified.**

8.2 The recommendation is made following careful consideration of all the issues raised through the application process and thorough discussion with the applicants. In accordance with Paragraphs 186 and 187 of the NPPF the Case Officer has sought solutions where possible

