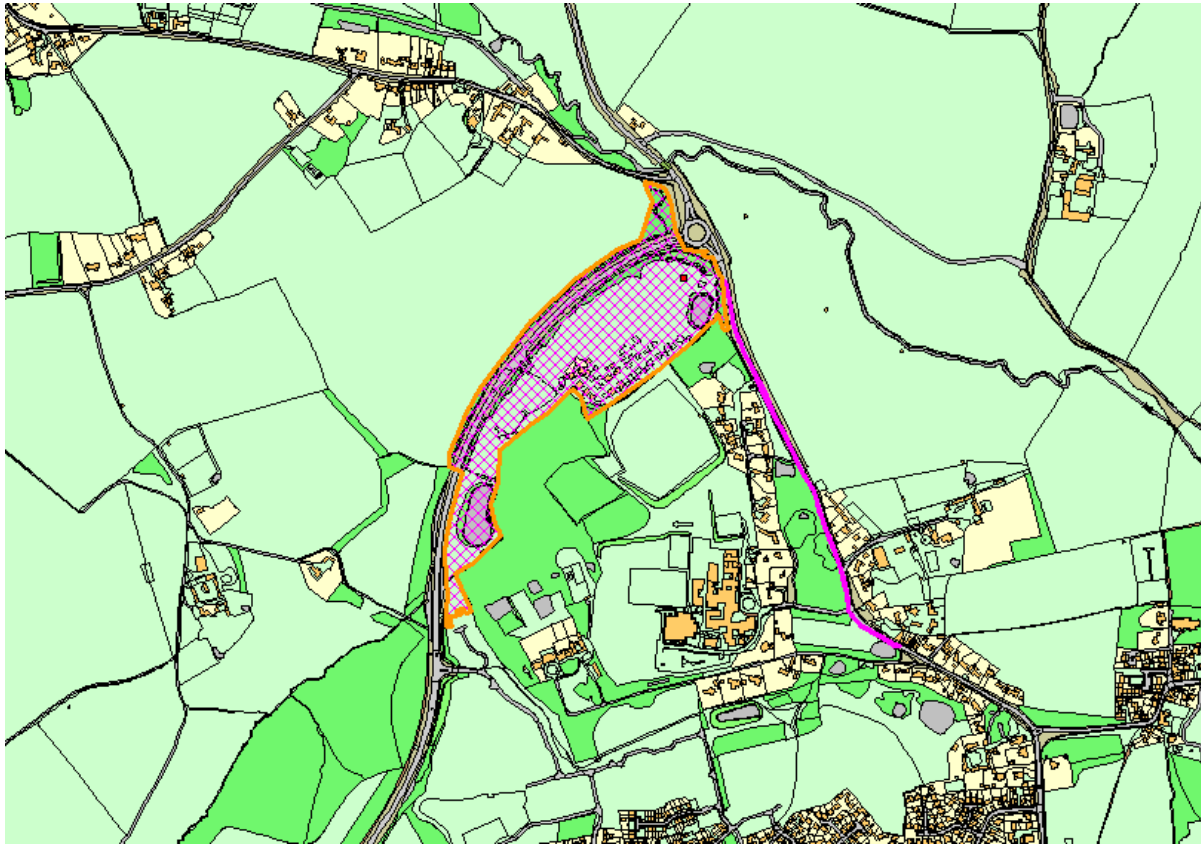


ITEM NUMBER:	8
PLANNING COMMITTEE DATE:	11 January 2023
REFERENCE NUMBER:	UTT/22/1508/DOV
LOCATION:	Sector 4, Woodlands Park, Great Dunmow

SITE LOCATION PLAN:



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Organisation: Uttlesford District Council Date: December 2022

PROPOSAL: Deed of Variation (DoV) to the Section 106 (S.106) attached to Planning Permission UTT/2507/11/OP to reduce the Affordable Housing requirement to 23.7%, to dispose of the land required for the Affordable Housing to a registered provider for £1 and to pay an off-site contribution of £46,000 towards the provision of Affordable Housing.

APPLICANT: Mr Stephen Hammond – Wickford Development Company Limited

AGENT: Mr M Harman

EXPIRY DATE: 22 July 2022

EOT Expiry Date TBA

CASE OFFICER: Laurence Ackrill

NOTATION: Outside Development Limits; site within 2KM of SSSI; Tree Preservation Order & Public Rights of Way

REASON THIS APPLICATION IS ON THE AGENDA: Deed of Variation to a Legal Agreement of a Major Planning Application - UTT/2507/11/OP.

1. EXECUTIVE SUMMARY

- 1.1** A Deed of Variation (DoV) application has been submitted by the Applicant (Wickford Development Company) seeking permission to make revisions/amendments to the Section 106 Legal Agreement that was attached to the outline permission reference UTT/2507/11/OP.
- 1.2** The development has commenced and is partly complete. However, in the interim, the Planning Authority has since been approached by Wickford Development Company, who have expressed concerns regarding the viability of the development.
- 1.3** This application has been submitted to amend the S106 to reduce the Affordable Housing requirement from 40% on site to 23.7% by way of disposing of the land required for the Affordable Housing to a registered provider for £1 and to pay an off-site contribution of £46,000 towards the provision of Affordable Housing.

- 1.4 Previous Financial Viability Reviews of the site have arrived at various conclusions with regards to the extent to which Affordable Housing could be provided as part of the development.
- 1.5 This report concludes that the proposed variations/amendments to the Legal Agreement attached to the outline permission are appropriate and that the variations/amendments are recommended for approval.
- 1.6 The application was deferred at the Planning Committee meeting on 23rd of November 2022 to explore the specifics of the delivery of the affordable housing and to allow the S106 to be revisited. The applicant has subsequently included a covenant clause to the extent that would prevent the occupation of more than 65 Open Market Housing Units until - the Affordable Housing Land has been transferred to an Approved Body and the construction of the Affordable Housing Units has been commenced.
- 1.7 As such, the proposal remains unchanged following the deferral of the application from the 23rd of November 2022 Planning Committee. This report has been amended to reflect the additional detail provided by the applicant in relation the aforementioned elements.

2. RECOMMENDATION

That the Director of Planning be authorised to GRANT the variation to the Section 106 Legal Agreement attached to application reference UTT/2507/11/OP.

3. SITE LOCATION AND DESCRIPTION:

- 3.1 The site is former agricultural land and has an area of 11.1 hectares. The land is enclosed by the approved route of the bypass and 5.5 hectares is proposed for residential development. It has a curving; almost crescent shape and its northern and western edges are defined by the line of Woodside Way (B184).
- 3.2 From the line of Woodside Way, the site slopes down towards Hoglands Brook on the south-eastern boundary and there is an overall slope down from west to east. To the south are areas of woodland and the playing fields of the Helena Romanes Secondary School.
- 3.3 The application site is located outside of the boundary Great Dunmow Neighbourhood Plan boundary.
- 3.4 The site is also located within the sensitive rural setting of Thaxted, as designated by the Thaxted Neighbourhood Plan.

4. PROPOSAL

4.1 This deed of variation application seeks agreement to make revisions/amendments to the Section 106 Legal Agreement that was attached to the outline planning permission reference UTT/2507/11/OP. The main revisions are outlined as per below:

- 4.2**
- To reduce the Affordable Housing requirement from 40% to 23.7%.
 - To dispose of the land required for the Affordable Housing to a registered provider for £1 rather than constructing all the homes and selling them to an RP.
 - To pay an off-site contribution of £46,000 towards the provision of Affordable Housing

5. ENVIRONMENTAL IMPACT ASSESSMENT

5.1 The development does not constitute 'EIA development' for the purposes of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

6. RELEVANT SITE HISTORY

6.1 UTT/2507/11/OP - Demolition of derelict former Brookfield Farmhouse and construction of up to 125 No. dwellings and associated estate roads, garages, car parking spaces, footpaths, cycleways, cycle stores, refuse storage, public open space, landscaping and foul and surface water drainage with pumping station, foul sewer along the B184 and dry balancing pond. Access to the development will be obtained from the un-constructed northern section of the Great Dunmow Northwest By-pass of approximately 0.55km in length (approved under Ref No. UTT/0084/01/FUL but amended by this application to incorporate a right-hand turn lane). Removal of existing spur from roundabout - Sector 4 Woodlands Park Great Dunmow Parsonage Downs Great Dunmow Essex - Approve with Conditions – 02/08/2012.

6.2 UTT/13/1663/DFO - Details following outline application UTT/2507/11 for demolition of derelict former Brookfield Farmhouse and construction of up to 125 No. dwellings and associated estate roads, garages, car parking spaces, footpaths, cycleways, cycle stores, refuse storage, public open space, landscaping and foul and surface water drainage with pumping station, foul sewer along the B184 and dry balancing pond. Access to the development will be obtained from the un-constructed northern section of the Great Dunmow North West By-pass of approximately 0.55km in length (approved under Ref No. UTT/0084/01/FUL but amended by this application to incorporate a right hand turn lane). Removal of existing spur from roundabout - Details of appearance, landscaping, layout and scale - Sector 4 Woodlands Park Great Dunmow Parsonage Downs Great Dunmow Essex - Approve with Conditions – 25/06/2013.

6.3 UTT/21/1249/DOV - Request to vary 106 agreements dated 2nd August 2012 between Uttlesford District Council and Wickford Development Company Ltd and Barclays Bank PLC and 14th May 2014 between

Uttlesford District Council and Wickford Development Company Limited.
Relating to provision of affordable housing and public transport contribution - Sector 4 Woodlands Park Great Dunmow Parsonage Downs Dunmow – Received: 25/03/2021 - Not yet determined.

- 6.4** UTT/22/2052/FUL - Erection of 28 no. dwellings (comprising of 23 open market dwellings and 5 social/affordable dwellings) - revised scheme to that approved under outline application UTT/2507/11/OP and details approved under UTT/13/1663/DFO. - Sector IV Woodlands Park Great Dunmow Parsonage Downs Dunmow – Received: 21/07/2022 – Not yet determined.

7. PREAPPLICATION ADVICE AND/OR COMMUNITY CONSULTATION

- 7.1** No formal pre-application discussions or community consultation have taken place. Advice has been provided to the applicant by officers.
- 7.2** Full details of the applicant's engagement and consultation exercises conducted is discussed within Section 6.0 the supporting Planning Statement.

8. SUMMARY OF STATUTORY CONSULTEE RESPONSES

- 8.1** None

9. CONSULTEE RESPONSES

9.1 Updated Comments UDC Housing Enabling Officer – Objection.

- 9.1.1** This proposal raises concerns and I therefore object to the application for the following reasons: -

1. Total segregation of the affordable housing from the market housing in a single cluster of 28 properties.
2. On site delivery of the affordable homes directly by the developer is expected and is the norm for a site totalling 118 properties and there is no valid reason to make an exception in this case.
3. The mix of the proposed 28 affordable homes upon the land for transfer to a Registered Provider does not correspond with the identified affordable housing need in the SHMA 2017.

The affordable housing provision previously approved for the site via application UTT/13/1663/DFO consisted of three separate clusters of affordable housing including a cluster with lower density semi-detached properties with in-curtilage parking provision. The three separate clusters when considered together provided a good mix of affordable properties which met the identified housing need at the time.

The cluster of 28 affordable homes proposed via the transfer of land to an RP would be totally segregated from the market housing, be higher density and the proposed mix does not meet the identified housing need.

Affordable Rented housing identified need: SHMA 2017	%	Proposed affordable housing mix upon the land to be sold to an RP for £1	Number	%
1-bedroom flat	16.5%	1-bedroom flat	6	21%
2-bedroom flat	12%	2-bedroom flat	10	36%
2-bedroom house	30%	2-bedroom house	7	25%
3-bedroom house	32%	3-bedroom house	3	11%
4-bedroom house	9.5%	4-bedroom house	0	0%
		1-bedroom bungalow	2	7%
Total	100%	Total	28	100%

The SHMA 2017 states that the combined need for affordable rented 1- and 2- bedroom flats equate to 28.5% whereas the applicant is proposing that 16 of the 28 affordable properties upon this site be 1- and 2- bedroom flats which equates to 57% of the proposed affordable housing provision. This is double the percentage of flats which the SHMA 2017 identifies as being required.

The proposal to include two 1-bedroom bungalows is welcomed but more 3-bedroom houses need to be included within the proposed affordable housing mix.

10. REPRESENTATIONS

- 10.1** There is no statutory obligation to notify third parties in respect to the application proposals.

11. MATERIAL CONSIDERATIONS

- 11.1** In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, The Development Plan and all other material considerations identified in the "Considerations and Assessments" section of the report. The determination must be made in accordance with the plan unless material considerations indicate otherwise.

- 11.2** Section 70(2) of the Town and Country Planning Act requires the local planning authority in dealing with a planning application, to have regard to
(a)The provisions of the development plan, so far as material to the application,;

- (aza) a post-examination draft neighbourhood development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

11.3 The Development Plan

- 11.4** Essex Minerals Local Plan (adopted July 2014)
Essex and Southend-on-Sea Waste Local Plan (adopted July 2017)
Uttlesford District Local Plan (adopted 2005)
Felsted Neighbourhood Plan (made Feb 2020)
Great Dunmow Neighbourhood Plan (made December 2016)
Newport and Quendon and Rickling Neighbourhood Plan (made June 2021)
Thaxted Neighbourhood Plan (made February 2019)
Stebbing Neighbourhood Plan (made 19 July 2022)
Saffron Walden Neighbourhood Plan (made 11 October 2022)
Ashdon Neighbourhood Plan (made December 2022)

12. POLICY

12.1 National Policies

- 12.2** National Planning Policy Framework (2021)

12.3 Uttlesford District Plan 2005

- H9 – Affordable Housing
- H10 – Housing Mix

12.4 Supplementary Planning Document or Guidance

- Uttlesford Local Residential Parking Standards (2013)
- Essex County Council Parking Standards (2009)
- Supplementary Planning Document- Accessible homes and play space
- homes Essex Design Guide
- Uttlesford Interim Climate Change Policy (2021)

13. CONSIDERATIONS AND ASSESSMENT

- 13.1** The main issues to consider in the determination of this application is whether the proposed revisions/amendments to the original S106 agreement attached to the outline consent continue to make the development acceptable in planning terms.
- 13.2** It is important to understand the recent planning history of the site as this helps to provide an understanding behind the submission of the Deed of Variation application.

- 13.3** On the 2nd of August 2012 outline planning permission was granted under application reference UTT/2507/11/OP for the Demolition of derelict former Brookfield Farmhouse and construction of up to 125 No. dwellings and associated estate roads, garages, car parking spaces, footpaths, cycleways, cycle stores, refuse storage, public open space, landscaping and foul and surface water drainage with pumping station, foul sewer along the B184 and dry balancing pond. Access to the development will be obtained from the un-constructed northern section of the Great Dunmow Northwest By-pass of approximately 0.55km in length (approved under Ref No. UTT/0084/01/FUL but amended by this application to incorporate a right-hand turn lane). Removal of existing spur from roundabout. This permission was granted subject to conditions and to a Section 106 Agreement which secured various obligations and outlined specifications for the proposed development.
- 13.4** One of the material considerations weighing in favour of granting permission, amongst others, was that the proposal involved the provision of affordable housing in compliance with the Council's Local Plan Policy H9 requirement of 40%. This was a public benefit of the scheme that helped to justify harm caused by the development by being outside development limits (Policy S7 of the Local Plan). Other benefits of the development included the completion of the North-West By-pass (B184) and that the proposal would make a substantial addition to the District's housing land supply.
- 13.5** In March 2021, the applicant submitted an application for a Deed of Variation to UTT/21/1249/DOV to remove the requirement to provide any Affordable Housing contributions as part of the development. As part of that application, a Financial Viability Assessment (FVA) carried out by BNP Paribas concluded in its viability appraisal that the scheme could not viably contribute towards the provision of affordable housing. As part of that application process, the FVA was independently assessed by Essex County Council District Valuer Services, which found that a scheme of 60% private housing and 40% Affordable Housing could viably be provided.
- 13.6** Given the significant divergence between the two appraisals, officers commissioned a third party, independent Financial Viability Assessment by Altair Consultancy and Advisory Services Ltd, who reviewed the submitted viability assessment by the applicant and Essex County Councils subsequent review. This concluded that the scheme could viably provide a contribution towards affordable housing comprising of 30 homes based on 18 homes for affordable rent and 12 homes for shared ownership equating to a 24% provision on site plus a £46,000 financial contribution to affordable housing.
- 13.7** The applicant has submitted this current application to vary the S106 to base the Affordable Housing provision on the conclusions arrived at by Altair (as set out above).

- 13.8** As part of this proposal, the number of 'affordable housing units' on the site would be reduced from 50 to 28 and the land required to provide the Affordable Housing units (approximately 0.6 hectares) would be conveyed to a registered provider for the sum of £1 (essentially at no cost). The registered provider would be responsible for building the units acting as the developer. The registered provider would have full control over construction costs and is able to extract any potential developer's profit should there be one.
- 13.9** Furthermore, the number of overall dwellings on the site is to be reduced by 7, which the applicant advises results in improved viability. This may seem counter-intuitive, but the applicant advises it allows for a better overall configuration in terms of being able to provide the affordable housing land.
- 13.10** In addition to this, the applicant has offered an off-site contribution of £46,000. This contribution would be pooled to contribute towards the provision of social rented homes within Uttlesford.
- 13.11** The ECC Principal Development & Viability Officer has reviewed the submitted detail and considers that, in light of the current economy and the ongoing effects on the industry which has resulted in extremely fine margins and increased lending criteria (rates & risk), they would support the counter offer the applicant has made and agree with Altair's assumptions that this is a fair offer.
- 13.12** The variations to the original Section 106 Legal Agreement as discussed above are considered acceptable in this case in that it would facilitate the provision of affordable housing, albeit below the local plan target of 40%, which is regrettable. However, when considering an affordable housing target individual site viability is also a consideration. The weight to be given to a viability assessment is a matter for the decision maker. In this case officers give significant weight to the latest FVA and consider the 24% AH (achieved by offering land) plus £46,000 is the maximum affordable housing possible while retaining development viability. Accepting the conclusions as set out by the latest appraisal, 40% affordable housing provision at the site would render the development unviable.

Location of Affordable Housing Units

- 13.13** The Affordable Housing units would be located to the western part of the site, in a cluster of 28 units. Whilst this would result in a total segregation of the affordable housing from the market housing in a single cluster. This would only represent an increase of 3 affordable housing units being added to this cluster, over and above that of the extant permission, which included 25 affordable housing units in a single cluster in this location.
- 13.14** Whilst the proposal would not be considered policy compliant when reviewed against current guidance, given the approved layout of the

affordable housing within the extant permission, the increase in 3 additional affordable housing units in this location would not warrant refusal of the application.

14. ADDITIONAL DUTIES

14.1 Public Sector Equalities Duties

14.2 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers.

14.3 The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

14.4 Due consideration has been made to The Equality Act 2010 during the assessment of the planning application, no conflicts are raised.

14.5 Human Rights

14.6 There may be implications under Article 1 (protection of property) and Article 8 (right to respect for private and family life) of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions; however, these issues have been taken into account in the determination of this application

15. Conclusion

15.1 Given the outcomes of the commissioned Financial Viability Assessment carried out by Altair, it is considered that, in the circumstances, the revised contribution would equate to what is reasonably viable on the site and would enable an affordable residential scheme to be built out. It is therefore recommended that a deed of variation to the S106 Agreement to reflect the revised financial contribution and the new affordable housing units is agreed.