

Applicant	Wheatcroft Land Ltd C/O Agent
Agent	Mr P Brailsford Freeths LLP Cumberland Court 80 Mount Street Nottingham NG1 6HH
Proposal	Modification of the Section 106 Agreement in relation to S14/2692 and the provision of affordable housing
Location	Co-op 139 Ermine Street Ancaster Lincolnshire NG32 3QN
Application Type	Modify or discharge planning obligation
Parish(es)	Ancaster Parish Council
Reason for Referral to Committee	This is an amendment to an existing Section 106 Agreement.
Recommendation	That the application is:- Approved without conditions
Report Author	Paul Milne - Area Planning Officer 01476 406080 Ext: 6305 p.milne@southkesteven.gov.uk
Report Reviewed By	Sylvia Bland - Service Manager - Development Management and Implementation 01476 406080 Ext: 6388 S.Bland@southkesteven.gov.uk

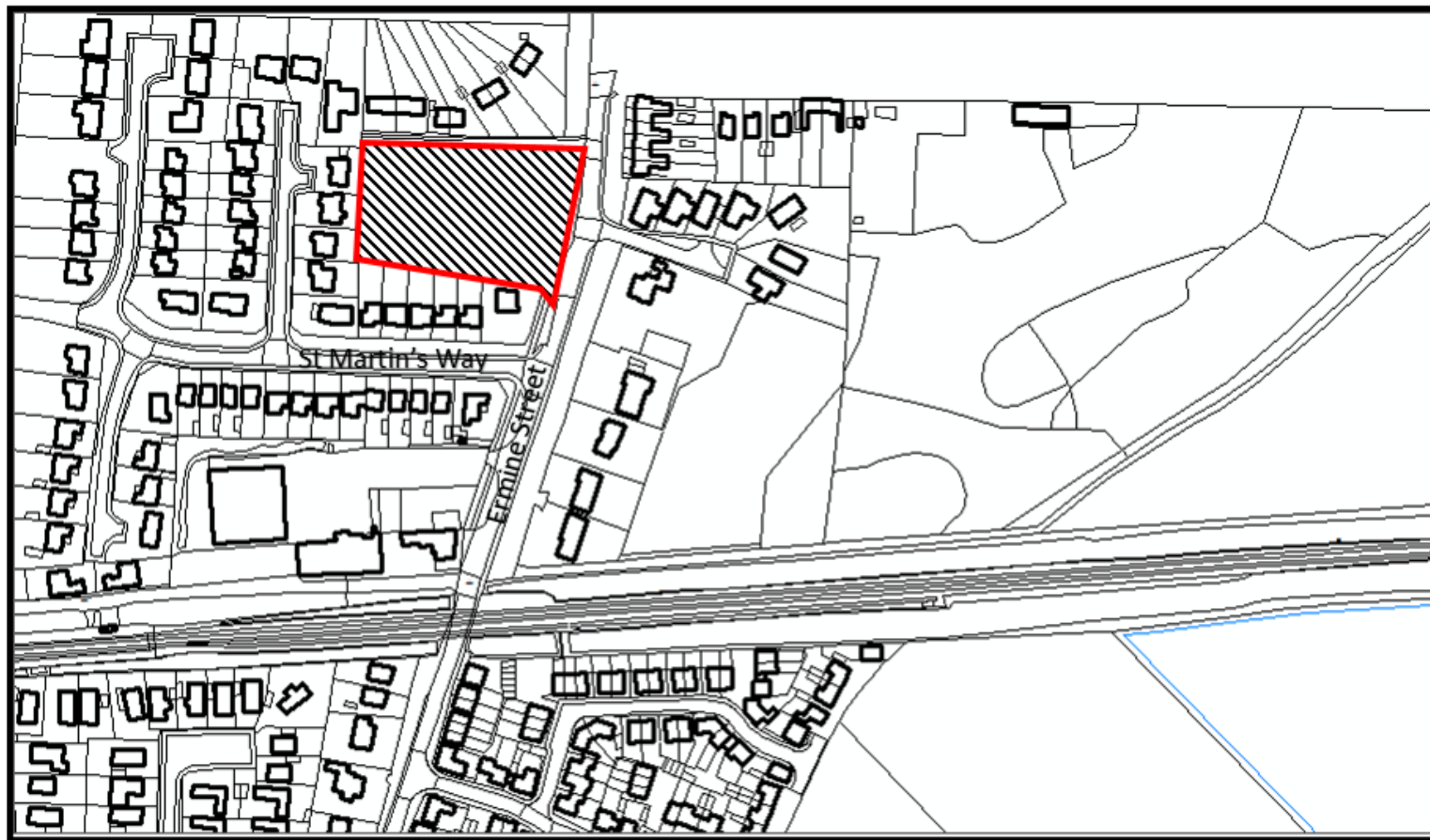
Key Issues

- Viability of the scheme

Technical Documents Submitted with the Application

- Report on Tenders (Enabling works)
- Report on Tenders (Main works)
- Ancaster - Foodstore and Resi Option A - Development Appraisal
- Ancaster Economic Appraisal
- Draft Deed of Modification.

NB. The reports related to viability are CONFIDENTIAL.



Key



Application
Boundary



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1.0 Description of Proposal

- 1.1 This application is one of two separate applications relating to proposed residential development at a site off Ermine Street, Ancaster. Under a hybrid planning application (S14/2692), full planning permission was granted for a CO-OP convenience store, service facility and car park at the frontage to Ermine Street and outline planning permission was granted for 14 houses, a service road and car parking over the remainder of the site. The permission was subject to a Section 106 agreement.
- 1.2 This application proposes a modification of the Section 106 agreement associated with extant permission S14/2692 to allow for removal of the affordable housing requirement.
- 1.3 A separate application (which appears elsewhere on this agenda) has been submitted for approval of reserved matters relating to the outline part of the permission for 14 dwellings.

2.0 Relevant History

Reference	Proposal	Decision	Date
S14/2692	Demolition of existing buildings and Hybrid planning application for part Full and part Outline Consent comprising: Full application for a new retail store and car park and, Outline application for 14 houses with landscaping, access and boundary treatment	Approved Conditionally	06/05/2015

3.0 Policy Considerations

- 3.1 **National Planning Policy Framework (NPPF)**
Section 6 – wide choice of quality homes
- 3.2 **South Kesteven District Council Core Strategy**
Policy H1 – Residential Development
Policy H3 – Affordable Housing

4.0 Representations as a Result of Publicity

- 4.1 This application has been advertised in accordance with the Council's Statement of Community Involvement and 1 Letter of representation have been received. The points raised can be summarised as follows:
1. Current applications are contrary to Policy SP4 and H3
 2. The recommendation should now be consistent with that put to the Development Control Committee on 6th January 2015
 3. Objects for the failure to provide affordable housing in accordance with the NPPF, South Kesteven Core Strategy and the South Kesteven Planning Obligations SPD

5.0 Policy Framework

- 5.1 Both national and local planning policy recognise that viability is an important consideration, and a flexible approach should be taken where developments would be rendered unviable by planning obligations.
- 5.2 The National Planning Policy Framework (NPPF) in para 205 states that:

"Where planning obligations are being sought, local planning authorities should take account of market conditions over time, and wherever appropriate, be sufficiently flexible to prevent planned development being stalled."

- 5.3 The National Planning Practice Guidance (NPPG) gives the following advice on viability:

"Decision-taking on individual applications does not normally require consideration of viability. However, where the deliverability of the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary. This should be informed by the particular circumstances of the site and proposed development in question. Assessing the viability of a particular site requires more detailed analysis than at plan level. A site is viable if the value generated by its development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken."

- 5.4 It goes on to say:

"Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations."

- 5.5 The NPPG also provides detailed advice about viability in decision making, including how to determine development costs and land values and makes it clear that in all cases the value of land should reflect policy requirements and Planning Obligations.

- 5.6 Core Strategy policy H3 (Affordable Housing) requires a target of up to 35% affordable housing provision on new residential developments. Policy H3 states:

"In negotiating the level of affordable housing on sites, the Council will have regard to the overall viability of individual development schemes. An Affordable Housing Supplementary Planning Document will set out in detail how these requirements will be calculated on a site by site basis."

- 5.7 Core Strategy policy SP4 (Developer Contributions) confirms that developer contributions will be required via Section 106 agreements where necessary and states:

"Site specific requirements will be secured using dedicated Section 106 Agreements negotiated on an individual site basis."

- 5.8 The South Kesteven Planning Obligations SPD recognises that in some cases, provision of the full level of contributions would make a proposal unviable and that reductions will be considered in certain circumstances:

"In cases where applicants claim that the scale and/or range of items for which provision and/or contributions are being sought, would be too burdensome, inappropriate, not justified or otherwise unreasonable, the onus will be on the applicant to make a convincing case for any reduction in the scale and/or scope of the contributions. In considering the applicants' cases, the Council will, where appropriate, involve other stakeholders such as service providers in assessing priorities."

- 5.9 In respect of affordable housing the SPD states:

"The general presumption will be that the cost of providing affordable housing will be offset in the negotiation of the land purchase or option. Where the applicant proposes to demonstrate that there are abnormal costs that cannot be offset by depreciated land value or where they cannot be recouped in the open market sale price for the new homes then viability will need to be assessed."

In all cases it should be assumed that public funding will not be available at the outset, and the site value will be calculated at the time of assessing viability. The viability assessment will consider a range of factors that impact upon viability, including:

- o Site considerations (including land value at existing, or in the case of a vacant or derelict site, its last use, before any application for residential development, not its purchase price or hope value).*
- o Local sales values and development costs including reasonable applicants profit.*
- o Policy constraints (e.g. cost of compliance with other LDF policies).*
- o Scheme mix (e.g. design, type and tenure of housing).*
- o Unknown abnormal site development costs.*
- o Necessary infrastructure costs.*
- o Greenfield/Brownfield site.*
- o Availability of public funding.*

If following completion of a viability assessment (in the form of a development industry standard development appraisal) the applicant is able to demonstrate that there are genuine viability problems then a revision may be agreed either to the overall scale of affordable provision or to the property mix and/or tenure type."

6.0 Background

- 6.1 When the hybrid planning permission (S14/2692) was granted in 2015 it was subject to a section 106 agreement requiring the provision of 2 on-site affordable housing units within the approval of 14 dwellings.
- 6.2 When the original application was considered at Committee in 2015, the applicant proposed to provide 4 affordable housing units on site unless a further Viability Review (to be undertaken on the sale of Unit 10) indicates that such provision is not financially viable. The applicants were concerned that the viability of their proposals were marginal at best and, at that time, had submitted a Viability Review to support their case. The Committee did not concur with this proposal. The Committee resolved to grant permission for the development subject to the provision of 2 affordable housing units and incorporating an overage clause. Since the granting of the original permission, the applicants have remained concerned that the proposals are sufficiently viable to include any level of affordable housing.
- 6.3 The evaluation of the current viability of the development first commenced during the assessment of the applicant's reserved matters application (S16/0981). The evaluation has been carried out by the Valuation Office Agency (VOA) who have also sought advice from VOA's Building and Machinery Specialists Team who has specialist knowledge of build costs.
- 6.4 The latest appraisal carried out by the applicant included costs related to both the housing element of the scheme and the retail element. The latter has been built and occupied by the CO-OP since the original appraisal submitted as part of S14/2692 was carried out, therefore, the actual costs and sales values are included.

7.0 Evaluation

- 7.1 The VOA have carried out an appraisal with 14.29% affordable housing. This equates to 1 x 2 bedroom terraced social rented property and 1 x 3 bedroom semi-detached shared

ownership dwelling. This reflects the requirement of the original planning permission (S14/2692).

7.2 The VOA conclude that the scheme cannot viably support the provision of Affordable Housing. This is shown in Table 1 where the DV's appraisal for a 14.29% affordable housing provision generates a significant deficit of approximately -£124,556.

7.3 It is the conclusion of the VOA that a scheme providing 2 affordable housing units is not viable.

7.4 The VOA have tested the scheme with a 0% affordable provision. This shows that the scheme still remains unviable producing a nominal deficit of -£24,436. The applicants' agents have confirmed that in this situation the developer will accept a lower level of profit in order to complete the scheme.

7.5 A summary of the VOA's conclusions are shown in the table below:

7.5.1 14 dwellings with 2 affordable units

Total Income		£2,693,732
Total outgoings		£2,818,289
Outcome	(Any surplus deemed to show a viable scheme)	- £124,556
Conclusion		UNVIABLE

7.5.2 14 dwellings with 0 affordable housing units

Total Income		£2,843,576
Total outgoings		£2,867,962
Outcome	(Any surplus deemed to show a viable scheme)	- £24,386
Conclusion		UNVIABLE

7.6 It is the VOA's independent conclusion that that the scheme cannot therefore viably support any level of affordable housing contribution.

7.7 Conclusion

7.7.1 In the case of this application, the local planning authority (LPA) have to assess the affordable housing obligation and decide whether it prevents the development from being economically viable. After making this assessment, if the LPA find that the development remains economically viable then it has no choice but to keep the obligation as it is. If the LPA find that the obligation prevents the development from being economically viable then it can deal with the application in a way that safeguards and promotes the economic viability of the development proposal to which it relates. In order to achieve this, the LPA has three options:

1. it can modify the obligation either in the way the application suggests or in another way if more appropriate;
2. it can replace the obligation again in the way suggested by the application or with another obligation if more appropriate; or
3. it can remove the obligation altogether.

7.7.2 It is considered that in the circumstances, sufficient evidence has been submitted to justify the removal of the affordable housing contribution from the section 106 agreement.

8.0 Crime and Disorder

8.1 It is considered that the proposal would not result in any significant crime and disorder implications.

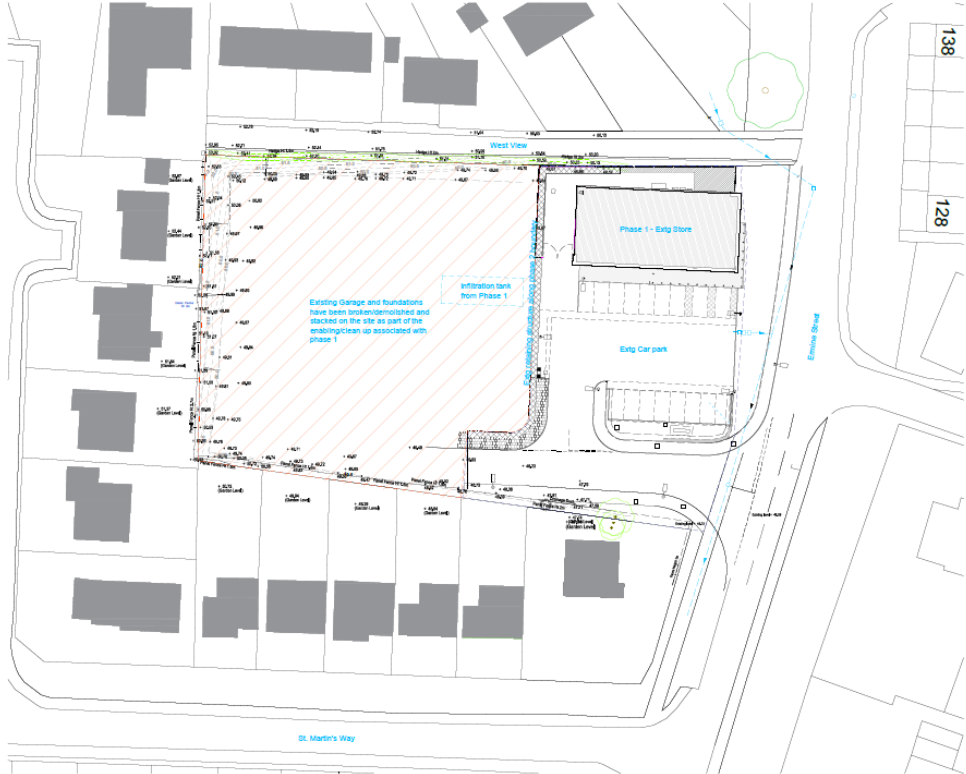
9.0 Human Rights Implications

9.1 Articles 6 (Rights to fair decision making) and Article 8 (Right to private family life and home) of the Human Rights Act have been taken into account in making this recommendation.

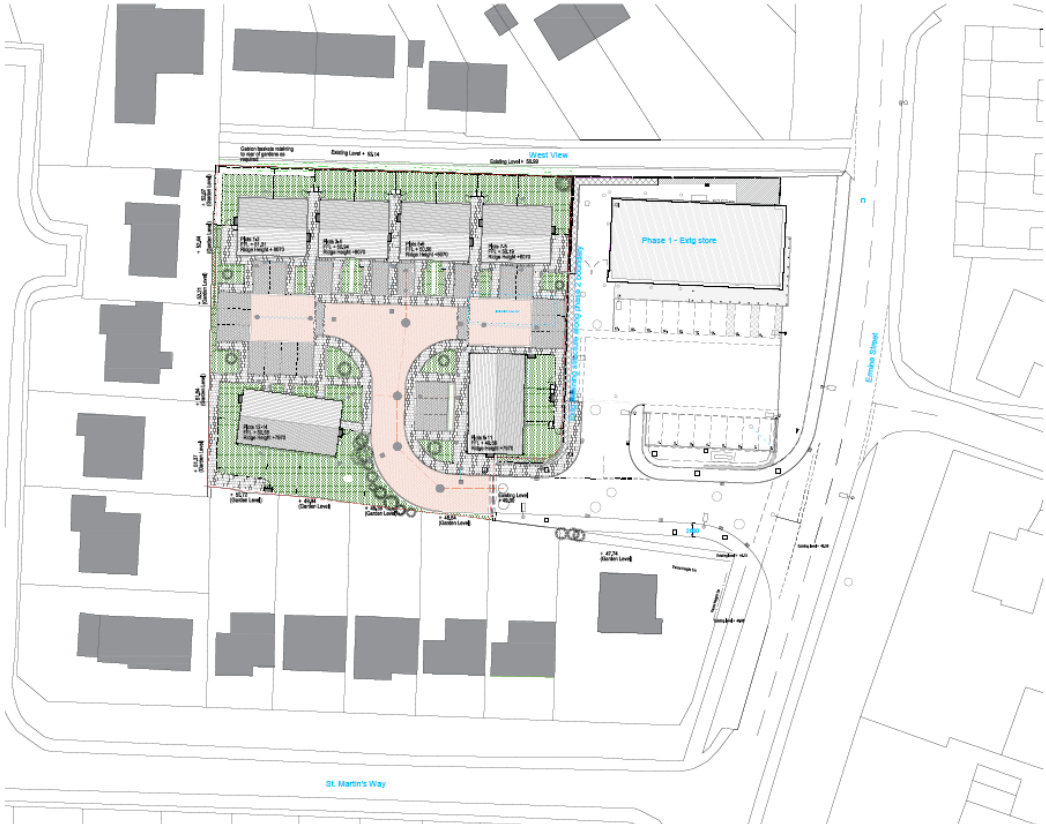
9.2 It is considered that no relevant Article of that act will be breached.

10.0 RECOMMENDATION: To approve the removal of the requirement for an affordable housing contribution from the section 106 agreement relating to S14/0927

Site location plan



Proposed layout plan



Proposed Elevations

