



Planning Committee Report

Application Number: 2023/5229/106V

Location: Home Farm Church Way Whittlebury West
Northamptonshire NN12 8XS

Development: Deed of Variation relating to S106 attached to planning application S/2019/0037/MAO Outline application (access included) for redevelopment of existing B1/B2/B8 units with residential development of up to 14 dwellings

Applicant: Pury Hill Ltd

Agent: Nineteen47 Ltd

Case Officer: Daniel Callis

Ward: Deanshanger

Reason for Referral: Viability appraisal relating to existing S106 agreement

Committee Date: 08/06/2023

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: THAT THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT BE GIVEN DELEGATED POWERS TO COMPLETE THE DEED OF VARIATION TO THE EXTANT S106 AGREEMENT, TO REMOVE THE OBLIGATIONS RELATING TO:

- AFFORDABLE HOUSING,
- EARLY YEARS EDUCATION,
- PRIMARY EDUCATION, AND
- LIBRARIES

Proposal

Deed of Variation relating to S106 attached to planning application S/2019/0037/MAO Outline application (access included) for redevelopment of existing B1/B2/B8 units with residential development of up to 14 dwellings

Consultations

- WNC Strategic Housing has confirmed that, in their view, the viability appraisal is robust and the conclusions are accurate and true.

No letters of objection have been received and No letters of support have been received.

Conclusion

The application has been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance as listed in detail at Section 8 of the report.

The key issues arising from the application details are:

- Whether the Council is convinced that the viability situation indicates that a variation to the S106 obligations is justified.

This report looks into the key planning issues in detail, and Officers conclude that the development as approved under S/2019/0037/MAO is unviable and the variation to the S106 is acceptable.

Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.

MAIN REPORT

1 APPLICATION SITE AND LOCALITY

- 1.1 The application site represents an existing employment site located on the edge of the village of Whittlebury. The site covers an area of approximately 0.8 hectares and although relatively flat across the site it is positioned on the edge of a ridge which overlooks open countryside between Whittlebury and Silverstone. The site although on the edge of the village is located outside the village confines and therefore represents an area of open countryside.
- 1.2 Currently maintained as an employment site the buildings on the site are a mix of styles, conditions and in different uses with a variety of small businesses. In terms of heights the majority of the existing buildings are single storey particularly along the edge of the ridge but increasing to two storeys opposite the entrance to the site along Church Way.
- 1.3 Access to the site is maintained at a single point off Church Way. The access is on a blind bend with restricted visibility to the left which is made worse by the existing embankment and dense landscaping along the edge of Church Way.
- 1.4 To the immediate east of the application site is the Church of St Mary which is Grade II*. There are existing residential properties to the north and east.

2 DESCRIPTION OF PROPOSAL

- 2.1 The proposal seeks a variation to the S106 agreement relating to the outline planning permission (S/2019/0037/MAO).
- 2.2 As a result of an independent viability appraisal, the applicant seeks to remove all obligations relating to:
 - Affordable housing,
 - Early years education,
 - Primary education, and
 - Libraries
- 2.3 The only obligation that would remain would be the financial contribution towards provision of refuse and recycling (wheelie bins) for the new dwellings.

2.4 The development would remain CIL liable.

3 RELEVANT PLANNING HISTORY

3.1 The following planning history is considered relevant to the current proposal:

- S/2019/0037/MAO - Outline application (access included) for redevelopment of existing B1/B2/B8 units with residential development of up to 14 dwellings – APPROVED March 2021
- S/2018/1432/OUT - Outline application (access included) for redevelopment of existing B1/B2/B8 units with residential development comprising up to 14 dwellings together with new bakery – REFUSED September 2018.

4 RELEVANT PLANNING POLICY AND GUIDANCE

Statutory Duty

4.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Development Plan

The Development Plan comprises the West Northamptonshire Joint Core Strategy Local Plan (Part 1) which was formally adopted by the Joint Strategic Planning Committee on 15th December 2014 and which provides the strategic planning policy framework for the District to 2029, the adopted South Northamptonshire Local Plan (Part 2) and adopted Neighbourhood Plans. The relevant planning policies of the statutory Development Plan are set out below:

West Northamptonshire Joint Core Strategy Local Plan (Part 1) (LPP1)

4.4 The relevant policies of the LPP1 are:

SA – Presumption in Favour of Sustainable Development
H2 – Affordable Housing
INF 2 – Contributions on Infrastructure Requirements

South Northamptonshire Local Plan (Part 2) (LPP2)

4.5 The relevant policies of the LPP2 are:

LH8 – Affordable Housing
INF1 – Infrastructure Delivery and Funding

Material Considerations

4.7 Below is a list of the relevant Material Planning Considerations

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

5 RESPONSE TO CONSULTATION

5.1 Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website.

Consultee Name	Position	Comment
WNC Strategic Housing	No objection	The applicant has stated that they are unable to provide any developer contributions, including affordable housing. A viability appraisal has been submitted with this application in support of this argument. Having reviewed the viability appraisal information provided it is accepted that it is indeed the case that the provision of developer contributions would make this development financially unviable.

6 RESPONSE TO PUBLICITY

Below is a summary of the third party and neighbour responses received at the time of writing this report.

6.1 There have been no representations submitted.

7 APPRAISAL

Viability

Policy context

West Northamptonshire Joint Core Strategy (JCS)

7.1 Policy INF2 of the JCS expects that on certain applications the development will need to be supported by necessary contributions in the form of a S106 agreement or via a unilateral undertaking from the developer.

7.2 The Policy states that new development will only be permitted if the necessary on and off-site infrastructure that is required to support it, and mitigate its impact, is either already in place, or there is a reliable mechanism in place to ensure that it will be delivered.

7.3 Policy H2 sets a requirement that within the former South Northamptonshire 'rural areas' developments of 5 dwellings or more should provide 50% affordable housing.

South Northamptonshire Part 2 Local Plan (SNLP)

7.4 Policy LH8 of the SNLP reiterates the requirement of JCS policy H2, by requiring 50% provision for affordable housing for sites in rural areas, but sets the threshold as sites of 10 or more dwellings.

7.5 Policy INF1 sets out that new development will be required to provide for the necessary infrastructure requirements and affordable housing obligations arising from the proposal. This will be delivered directly by the developer and/or through an appropriate financial contributions prior to, or in conjunction with, new development.

7.6 Notably, section 2 of policy INF1 talks about viability and states that:

"If infrastructure requirements or other policy obligations such as affordable housing render a development financially unviable, proposals should be supported by an independent viability assessment undertaken on terms agreed by the council and funded by the developer. This will involve an open book approach.

Where viability constraints are demonstrated by evidence, the council may:

- a) Prioritise developer contributions for essential infrastructure, affordable housing and then other infrastructure; or*
- b) Use an appropriate mechanism to defer part of the developer contributions requirement to a later date; or*
- c) Refuse planning permission if the development would be unsustainable without inclusion of the unfunded infrastructure requirements or affordable housing taking into account reasonable contributions from elsewhere including CIL."*

NPPF

- 7.7 Section 4 of the NPPF sets out national requirements for decision-making. Para 58 states:

"Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force."

- 7.8 Section 5 of the NPPF highlights the need to ensure the delivery of sufficient supply of homes. Paragraph 64 states that the 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.

Background

- 7.9 The Section 106 which was agreed with the outline planning permission required 50% affordable housing provision (in line with Policy LH8) as well as financial contributions towards: Early Years Education, Primary Education, Libraries, Refuse and Recycling (provision of wheelie bins) and provision of fire hydrants.
- 7.10 In 2021, the applicant submitted a pre-app for the reserved matters scheme which included a viability appraisal that (in Officers' view) demonstrated the development to be unable to sustain any affordable housing or additional financial contributions. Officers advised that, whilst the viability situation appeared to be as described, a deed of variation which removed all obligations would result in a legal agreement with no substance. Therefore, it was suggested that the smallest contribution (refuse and recycling) be retained, so that the outline permission would still be bound by an agreement with at least some mass.

Applicant's submission

- 7.11 The applicant has provided a report produced by s106 Management (dated July 2022), which shows that, due to a range of factors it would not be viable to provide any

affordable housing or make any developer contributions. The principle factors affecting the ability of the scheme include:

- The existing use value of the Site;
- The cost of development (which has escalated significantly due to recent international events), and;
- The predicted sales values.

- 7.12 The report calculates that the proposals will deliver substantially under the 15-20% developer profit advocated within national guidance. In a situation where no affordable housing or other developer contributions are provided, a 6.78% profit is achievable, which is substantially below the recognised profit margins that most developers work to in view of the inherent risks associated with development.
- 7.13 If all the S106 obligations were added into the viability equation, the development would reduce even further, or potentially result in a loss.
- 7.14 The report concludes that the development cannot viably provide any affordable housing or additional Section 106 contributions, which includes the existing agreement to contribute towards Early Years, Fire Hydrants, Libraries, Primary Education and Refuse & Recycling.
- 7.15 Whilst the applicant is confident that they may be able to make some savings that would bring the predicted profit up nearer to the lower 15% benchmark (i.e. make the proposal more appealing to finance – meaning it can go ahead), Officers are satisfied that such savings are not going to result in any opportunity for any developer obligations becoming viable.

Assessment

- 7.16 As set out in the Development Plan (SNLP policy INF1, part 2) and the NPPF, viability is a material planning consideration. However, the weight to be given to a viability assessment is a matter for the decision maker (i.e. the LPA). It is considered in this case relevant to note that the original consent was granted once the applicant convinced officers the employment site could be released to a residential use. The Committee report for application S/2019/0037/MAO concluded the consideration of loss of employment as follows: 'Although it is accepted that the proposal will result in a loss of employment use it is accepted that the applicant has provided adequate justification to warrant an exception to the restrictive adopted Policies resisting the loss of employment use on the site. For these reasons it is now considered that the principle of a residential re-development of the site is acceptable'. In this regard the provision of affordable housing and infrastructure obligations covering libraries, primary education, and early years was not directly relevant to whether the site was acceptable to be released from its employment designation. As such it is considered that the key consideration is whether the applicant has been able to prove the development is not viable.
- 7.17 Officers with extensive experience in viability appraisals have assessed the applicant's submission and concur with its findings, that the development would be technically unviable with the obligations included within the existing S106 agreement. Even with all obligations removed, the development would still be unviable (although not unprofitable).
- 7.18 Officers have negotiated with the applicant to retain the smallest financial contributions (refuse and recycling and fire hydrants), which has a combined value of £1,662 (£770

and £892, respectively), partly to ensure that the original agreement retains some substance.

8 FINANCIAL CONSIDERATIONS

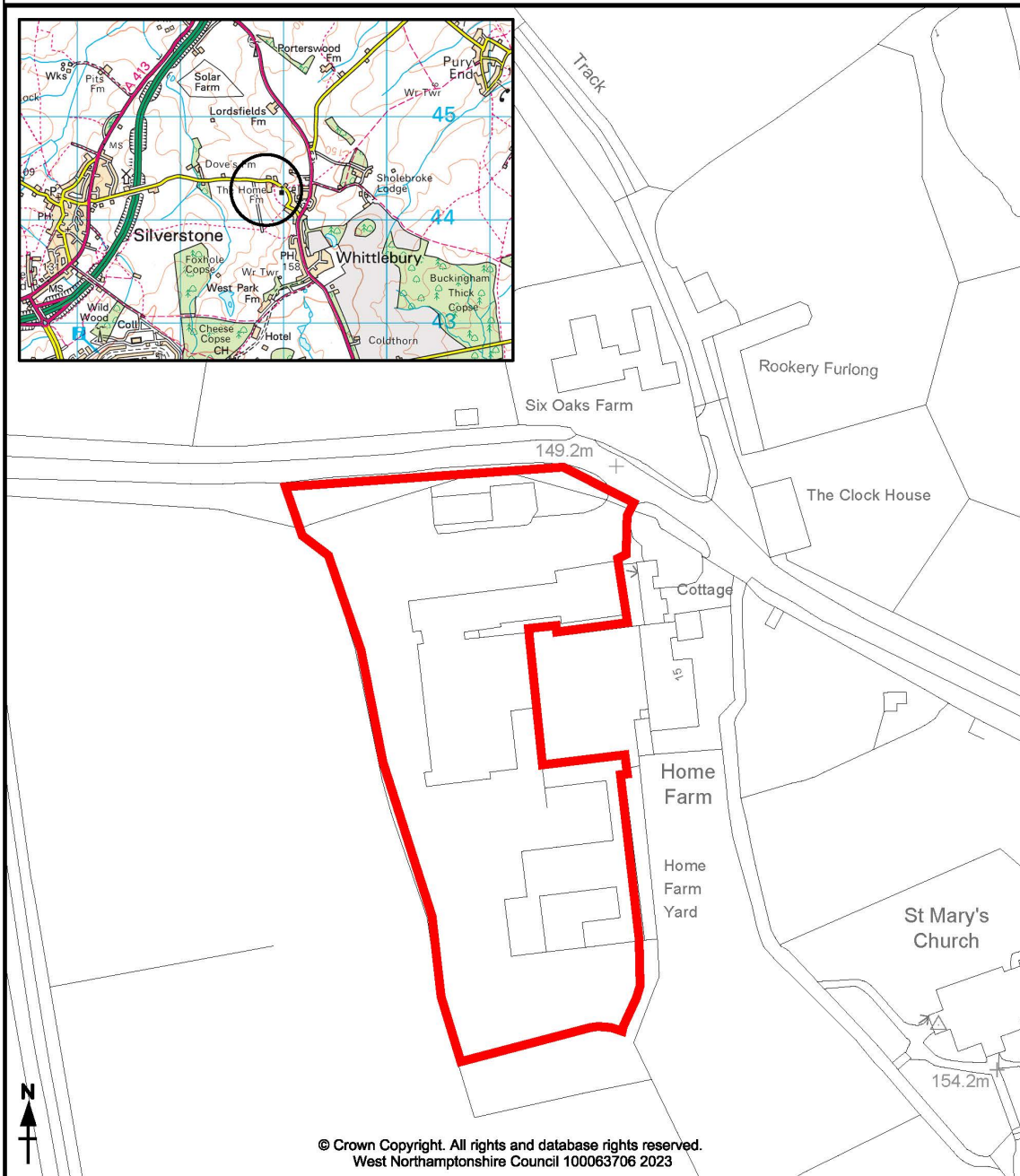
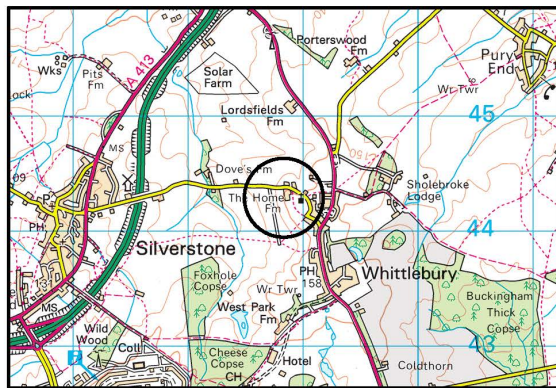
- 8.1 The development is CIL liable. With no affordable housing being provided, 100% of the net increase in floor area would be required to pay CIL (i.e. no 'social housing relief' exemption could be claimed).

9 PLANNING BALANCE AND CONCLUSION

- 9.1 In terms of attributing weigh and weighing the planning balance (i.e. determining if the DoV is acceptable), the primary consideration is whether or not the proposal would be deemed to constitute unsustainable development without the existing obligations and, therefore, would be in conflict with the Development Plan for the area.
- 9.2 Given the relatively modest scale of development and the modest additional burden it would place on existing infrastructure, (the merits of redeveloping a somewhat unattractive brownfield site on the edge of a village, and the fact that the development would remain fully CIL liable - meaning the developer was obligated to make a contribution towards infrastructure provision in the region of £350,000), the development, on balance, in this instance, would not be considered unsustainable without affordable housing or the additional financial contributions (except refuse and recycling and fire hydrants).
- 9.3 Therefore, removal of the obligations relating to affordable housing, early years, primary education and libraries, in this instance, (whilst regrettable) is not considered to make the overall proposal unacceptable in planning terms.
- 9.4 In conclusion, Officers are of the view that, notwithstanding the conflict with JCS policy H2 and SNLP policy LH8, the development, on the basis of the evidence provided, would remain compliant with SNLP policy INF1(2) and para 58 of the NPPF and would be in overall accordance with the Development Plan. Consequently, it is recommended that the Council agrees the DoV proposed by the applicant.

Application Number: 2023/5229/106DV

Parish: Whittlebury CP



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West Northamptonshire Council 100063706 2023

Town/Village: Whittlebury

 Site

Site Area: 0.7890 Ha

Grid Location: SP 68822 44276

Map Scale: 1:1250

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VARIATION TO THE EXTANT S106 AGREEMENT, TO REMOVE THE OBLIGATIONS RELATING TO:

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