YORKSHIRE DALES NATIONAL PARK AUTHORITY **ITEM 5**

Committee: **Planning**

Date: **24th January 2023**

Report: **Planning Application reference: S/03/637**
Request to Modify Section 106 Agreement
Full planning permission for erection of 49 No. dwellings at Station Road, Sedbergh

Purpose of the report

1. To seek Member's approval to modify the Section 106 Agreement.

Background

2. Full planning permission was granted for the erection of 49 dwellings at Station Road Sedbergh on the 20th December 2021 (ref. S/03/637). The permission was for 15 open market dwellings, 17 affordable/social rented dwellings and 17 affordable shared ownership dwellings. This permission was subject to a Section 106 agreement (S106) to secure the affordable housing in perpetuity to its respective type:

Allocated site - 7 shared ownership units and 7 social rent units;
Rural Exception Site (RES) - 10 shared ownership units and 10 affordable rent units.

3. The site as approved was a mixed site which included 29 units on that part of the site allocated in the Local Plan for housing and 20 units on a rural exception site. The policy requirement is currently for 50% affordable housing on an allocated site and 100% affordable housing on a rural exception site (RES). Although the units were mixed across the two sites, the outcome of the planning permission was effectively policy compliant with 50% affordable units on the allocated site. The affordable units were split to allocated site and RES units to reflect that the site was partly allocated for housing and partly a rural exception site. This means that the 20 RES units would be externally funded, whereas the 14 allocated site units would be funded by cross-subsidisation from the 15 open market units.

4. The development has commenced and the site is under construction.

Proposed Modification

5. Under S106A of the Town and Country Planning Act 1990, a person may make a formal application to the Local Planning Authority to modify or discharge a S106 planning obligation after five years from the date the obligation was entered into. Within that five year period there is no formal right to apply to modify a S106. A planning obligation may also be modified at any time by agreement between the Local Planning Authority and the

persons against whom the obligation is enforceable (i.e. the landowners). National Planning Policy Guidance confirms, that planning obligations can be renegotiated at any point, where the Local Planning Authority and developer wish to do so. The Authority can decide to approve or refuse such a request and there is no right of appeal against this decision.

5. With regard to the Station Road site in Sedbergh, the S106 was completed on 20th December 2021. The applicant (Broadacres Housing Association) has requested that the S106 be modified in relation to the 7 social rent units within the allocated site so that the requirement for them to be let at an affordable rent is removed. The applicant has supported their request to modify the S106 with a letter which states 'In recent months, our contractor EQUANS has experienced significant additional costs over-runs in the delivery of their contract, primarily due to materials and labour costs inflation. This put at risk our ability to deliver the scheme. With the support of the National Park, we have negotiated some cost reducing revisions to the scheme, and Broadacres has agreed to underwrite a considerable additional contract sum to secure the completion of the development. This has had a very negative impact on scheme viability, and as a not-for-profit charity, this impacts our ability to continue to develop affordable homes.'

6. Broadacres has explored achieving grant funding for these 7 units with Homes England, the Government agency that funds affordable housing, and has confirmed that they are committed to delivering these 7 homes for social rent, but they require their removal from the S106 to allow them to access Homes England grant funding to deliver the homes. Homes England has strict funding rules which prevent funding affordable units that are delivered through a S106; the expectation being that such affordable housing would be cross-subsidised by the open market housing on such a site. Homes England has however confirmed that they are likely to consider favourably a grant application from Broadacres and it is understood that the applicant is in the process of submitting such an application, albeit this would be subject to the outcome of the proposed modification of the S106.

Officers Observations

7. Policy C1 of the Local Plan (2015-2030) states that on sites of 11 or more dwellings, 50% must be affordable housing or alternatively 33% affordable housing and 33% local occupancy restricted housing (as defined in Appendix 5). The proposed modification would result in 7 out of 29 houses secured as affordable housing through the S106, equating to 24%. Although this is considerably lower than the current policy requirement of 50% the following points are worthy of consideration.

8. Firstly, policy C1 states that 'If it is demonstrated that the site cannot deliver the mix of housing required, then the Authority will consider an alternative mix of housing on the basis of an independent viability study.' Broadacres has provided a summary of the scheme viability which shows a loss of £1,245,997 if they cannot secure the grant funding for the 7 units. Furthermore, it is understood that their original partner, South Lakes Housing Association, has withdrawn from the development due to the viability issues faced.

9. The viability issues faced are further supported by the Authority's Economic Viability Assessment (April 2022) prepared by Three Dragons and Rural Housing Support. This report is now the Authority's strategic housing viability evidence for the National Park and,

as well as informing the emerging local plan, it also brings our evidence up to date in support of application decision making. This report concludes that Sedbergh falls within a lower value area where the affordable housing contribution should be 30% rather than 50%. Whilst weight cannot be given yet to emerging plan policy the viability evidence underpinning it is a material consideration which supports the case made by Broadacres at this site. It is therefore considered that there is sufficient evidence to demonstrate that the scheme is not viable to continue without external funding.

10. A second consideration is that the amount and type of affordable housing delivered on the site is very likely to be the same as originally permitted should Broadacres be successful at achieving external funding for the units. It is therefore only the mechanism for delivering the units that will change; instead of being secured by the S106 the units would remain affordable in perpetuity through the Homes England 'social rented grant contract'. As the site is within a designated rural area the units will not be subject to the 'right to acquire' or be permitted to change to shared ownership. Broadacres has also confirmed that the units can still be subject to the local connection criteria within the S106 which applies to the remaining affordable units. The local connection criteria for this site are based on Appendix 6 of the Local Plan but extended to include two additional criteria (those with children attending a local school and those who need to care for a family member in the parish).

Conclusion

11. It is considered that there are relevant factors specifically relating to this site that would justify what, on paper rather than in practice, would appear to be a departure from the Authority's adopted housing strategy, and agree to vary the S106. The applicant has demonstrated that the development, which is under construction, is unviable to complete without the support of external funding from Homes England. Homes England in turn are precluded from funding the affordable housing whilst it is secured as affordable housing within the Section 106 agreement. Without external funding it is likely that the building contractor will withdraw from the development leaving a large building site with little prospect of completion. It is also highly likely that external grant would be approved for the 7 units if they meet the Homes England grant requirements (i.e. their affordability has not been secured through the S106). Therefore, the development will still deliver the level of affordable housing originally proposed; 17 shared ownership units and 17 affordable rent units.

12. It is therefore considered that there is a compelling argument to justify the modification to the Section 106 agreement.

RECOMMENDATION

13. That the Authority agree to vary the Section 106 agreement by removing the requirement for the 7 identified units to be affordable housing for social rent.

Katherine Wood
Principal Planning Officer

5th January 2023
Background documents:
Planning application file S/03/637