

Planning Committee 16th January 2024

Planning Ref: 23/01119/DOV
Applicant: MR ROBBIE LOCKE
Ward: Bagworth & Thornton



Hinckley & Bosworth
Borough Council

Site: Land Off Beech Drive, Thornton, Leicestershire

Proposal: Deed of variation to remove clause 3 of original deed and replace with alternative provision.

1. Recommendations

- Agree to the proposed deed of variation to application 20/00511/FUL

2. Application Description

The proposal is for a Deed of variation to remove clause 3 of the original deed and replace it with alternative provision. The purpose of the variation is to change the affordable housing delivered on the site to be four units 'gifted' to the Council rather than the agreed 20 affordable homes. The 4 one bedroom units are identified on the submitted plan (drawing reference 02419 – 001).

Address	Land Off Beech Drive, Thornton, Leicestershire
Original Application Details	20/00511/FUL, granted permission at appeal (Appeal Reference Number: APP/K3430/W/21/3285060) for the 'residential development of 49 dwellings with associated infrastructure, access and areas of open space'
Provisions of Agreement	Through a S106 agreement the Application sought to deliver a total of 20 affordable homes in accordance with policy requirements, comprising 15 affordable rent and 5 shared ownership dwellings
Proposed Changes to Agreement	<p>The purpose of the variation is to change the affordable housing delivered on the site to be four units 'gifted' to the Council. The 4 one bedroom units are identified on the attached plan (drawing reference 02419 – 001).</p> <p>The Deed of Variation also includes provisions, in the form of a cascade, to permit the Owner to sell the four gifted units as Discounted Market Sale Housing Units at a discounted price, should the Council determine not to accept the gifted units. If after a 3 month period, the Owner is unable to sell the Discounted Market Housing Units in accordance with the terms of the Deed of Variation, there is a further provision for these plots to be sold on the open market, with a commuted sum then payable to the Council, reflecting the difference between the residual market value of the plots and the residual value of the plots as affordable units. Further detail on the cascade is provided within the Deed of Variation.</p>

3. **Relevant Planning History**

20/00511/FUL - Residential development of 49 dwellings with associated infrastructure, access and areas of open space- Allowed at Appeal subject to a S106 Agreement for the provision of 20 on site affordable units.

4. **Publicity**

4.1 16 letters of representation have been received, all objecting to the proposal, with the main summarised points of objection being:

- It should be noted that the application has been strongly opposed by both local residents and councillors. It had also been declined numerous times in the past before being forced through via an appeal process in 2022 (appeal reference APP/K2420/W/21/3285060)
- The UU (Unilateral Undertaking) makes provision for on-site affordable housing & these obligations are necessary to make the development acceptable in planning terms
- The appeal decision (preliminary matters) states that the planning obligations were taken into account when reaching the decision of the appeal.
- This request to rescind the proposed 20 affordable homes from a 49-dwelling development (40% of the development) feels of incredibly poor taste
- During the appeal process there was significant emphasis put on the fact that there was a waiting list of people wanting affordable housing so they could move into the village. I presume this list has either evaporated or it is no longer a priority?
- There is a general feeling in the village that residents are being disregarded in the pursuit of profit
- Cora Home's latest request feels like an attempt by the developer to move the goalposts having used the promised batch of affordable homes to successfully fight and win the 2022 appeal process.
- One of the main arguments the developers used to win the appeal was the fact that there is not enough affordable housing in the area
- Surely if something as fundamental as this is changed the whole process should start again?
- It feels like the developers want to try and force through the build without any respect for the local residents or the inspectorate
- This is a major change to the development that has not been approved
- The Planning Inspector outlined that the UU meets the tests set out in paragraph 57 of the Framework & that he has 'taken account of the planning obligations in reaching my decision'
- The letter dated 12/12/23 to Hinckley Borough Council from Cora is nothing short of blackmail, withdrawing the agreed 20 affordable homes to gift four ONE BEDROOM maisonettes to the council, this will offer homes to a maximum of 8 people not families, with the only intent as to maximise profit not help residents to afford to buy their first home. It goes against everything that was agreed.
- It seems to me that Cora has been very lax with carrying out its financial viability assessments for this site: as part of the due diligence process
- I would have thought that obtaining a preliminary agreement with an affordable housing supplier (RP) for the delivery of the affordable homes component of the development would be essential.
- The planning process is there for a reason, and Cora needs to abide by the decision taken at the appeal rather than to try and circumvent it.

- I am somewhat flabbergasted at the nature of the proposed changes on both a moral and ethical ground as well as the outright brazen nature of what I would consider to be a de facto bribe through the proposed gifting of properties to the council.
- This is clearly an example of a developer who is changing tact purely on the basis of their financial forecasts rather than the promises that they made to the planning committee who had agreed the proposals on the basis of the previous plans.
- We have always argued that the development is not sustainable. Please support us in rejecting this application for the removal of clause 3 for alternative provision.
- This smacks of blatant profiteering and downright opportunism on behalf of the developer. They are displaying no moral ethic whatsoever.
- Dismayed at how the objections to the proposed variation have been responded to by cutting and pasting the same paragraph over and over
- It's a lazy way to respond and shows minimal effort or care on behalf of Cora to this sensitive situation.
- The question is therefore, if Cora started out with this proposal - e.g. building just 4 affordable homes instead of the original 20, would the application have been allowed?
- To relax the rules now would be an admission of a very weak Planning Authority giving in to commercial interests and failing the electorate along with total indifference to due process
- HBBC planning officers have previously not supported this but now seem to. It would be good to know why this has changed and why none of the housing companies do not want to be involved.
- Can you tell me what communications have taken place between the Planning Dept and the developer as the letter from Cora states the Deed of Variation is "the culmination of detailed discussions with representatives of Hinckley and Bosworth Borough Council and subject to its completion, will permit Cora and the landowners to deliver the scheme"?

Officer Note- Appendix A includes a letter from the applicants which contains a response to some of the above questions/comments.

5. Consultation

- 5.1 The application has been publicised through consulting with the Chair of Planning Committee and Ward members. The item has been called to Planning Committee by a Local Councillor.
- 5.2 **Bagworth & Thornton Parish Council**- had a number of questions regarding the proposal which were addressed by the Head of Planning & the Housing Officer.
- 5.3 **HBBC Affordable Housing Officer** -

"This application is for a development of 49 dwellings in Beech Drive Thornton. The original planning application offered the policy position of 40% on site affordable housing This gives a requirement for 20 units of affordable housing on site, 15 for affordable rent and 5 for shared ownership

However, the applicant has provided evidence to show that there is no Registered Provider interest in acquiring the affordable housing on site. The Strategic Housing and Enabling Officer has also contacted RPs active in the borough and has failed to

find an RP with capacity to take the affordable housing. After considering all the alternative options for delivery of affordable housing, including acceptance of a commuted sum, it is considered that the best alternative outcome would be the acceptance of the 4 x one bedroomed dwellings as gifted units to the council for use as rented accommodation. In negotiation of this outcome, the Strategic Housing and Enabling Officer is mindful of:

- The preference for on-site provision rather than a commuted sum;
- The need for rented affordable housing is greater than the need for affordable home ownership;
- The greatest pressures on the housing register are for 1 bedroomed accommodation: current waiting list figures are:

<u>Bedroom size</u>	<u>General list</u>	<u>Local connection applicants</u>
1	145	5
2	72	0
3	40	2
4	19	2
<i>Total</i>	<i>276</i>	<i>19</i>

The proposed variation to the section 106 agreement therefore is accepted in respect of affordable housing as it will meet the criteria outlined above”

5.4 HBBC Compliance & Monitoring Officer- has no objections to the proposal and is happy to follow the expertise of the Housing Officer on this application.

5.5 LCC Highways- “Clause 3 of original deed was not advised by the Local Highway Authority (LHA) who therefore have no comments to make on these details”

6. Policy

6.1 Core Strategy (2009)

- Policy 15: Affordable Housing

6.2 National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2023)
- Planning Practice Guidance (PPG)

6.3 Other relevant guidance

- Housing Needs Study (2019)
- Affordable Housing SPD (2011)

7. Appraisal

7.1 Planning permission was granted on 12th May 2022 (Application reference number: 20/00511/FUL and Appeal Reference Number: APP/K3430/W/21/3285060) for the residential development of 49 dwellings with associated infrastructure, access and areas of open space. The application included the delivery of a total of 20 affordable homes comprising 15 affordable rent and 5 shared ownership dwellings which was secured through the S106 agreement.

7.2 Following the grant of planning permission, as is standard practice, the applicant sought offers from affordable housing providers (RPs). As is set out in the cover letter below the offers have been sought from 14 different RPs, these RPs had no interest

in purchasing the affordable units within the development. The applicant did receive offers from 2 RPs but neither was considered to be a realistic prospect given it represented less than 50% of Open Market Value for the affordable plots and would require the delivery of affordable housing at a loss.

7.3 It is suggested the main reason for the lack of interest is the 'Homes England grant funding scheme'. The majority of RPs active within Hinckley and Bosworth have secured strategic partnership status with Homes England and have access to grants on schemes delivering additional affordable homes outside of s106 requirements. The Grant Funding scheme is nearing the conclusion of the first period, and purchasing sites with grant funding is now the primary driver for active RPs (as Homes England will allocate grant funding for the second period based on use in the first). Given the purchase of s106 affordable plots does not attract grant funding, RPs interest is minimal.

7.4 Following the lack of interest from RPs the applicant engaged in discussions with Hinckley & Bosworth Borough Council regarding the provision of alternative means for delivering the affordable homes required. The Strategic Housing and Enabling Officer has also contacted RPs active in the borough and has failed to find an RP with capacity to take the affordable housing. After considering all the alternative options for delivery of affordable housing, including acceptance of a commuted sum, it is considered that the best alternative outcome would be the acceptance of the 4 x one bedroomed dwellings as gifted units to the council for use as rented accommodation. In negotiation of this outcome, the Strategic Housing and Enabling Officer is mindful of:

- The preference for on-site provision rather than a commuted sum;
- The need for rented affordable housing is greater than the need for affordable home ownership;
- The greatest pressures on the housing register are for 1 bedroomed accommodation

7.5 Concerns have been raised with regards to the reduction in affordable units compared to the previous s106 requirements and financial motives of the applicant. With this in mind it is useful to understand the different tenures of affordable housing, of relevance:

- Shared Ownership: An entry level form of property ownership that permits a resident to buy a share of a property (typically between 25 – 75%), the remainder being owned by the RP.
- Affordable/Social Rent: A rental property where the rental rates are set in accordance with the Government's rent policy for social/affordable rent or is at least 20% below local market rates.
- Gifted Unit: A property which is fully constructed by the developer and handed over to the LPA or RP for nil price. The Gifted Unit is then used by the LPA/RP to meet local affordable housing needs.

Gifted units therefore differ from other tenures of affordable housing which are purchased from developers by RPs at a discounted rate, in this case the applicant would fully construct four homes within the development hand these over to the Council for free, therefore not receiving any money for these units (unlike the alternative tenures). The provision of gifted units requires the applicant to entirely fund the build without receiving any income for the home, therefore the applicant has stated it is only possible for the applicant to offer a reduced number of gifted plots when compared to the full s106 requirement. In addition to this, RPs would typically

provide staged payments throughout the build programme, reducing the level of finance required to deliver the development. In the absence of any staged payments, the applicant will need to finance the entire development and will be liable to further repayment costs.

- 7.5 Overall, the evidence submitted with the application shows a lack of interest from RPs which is regrettable. In addition to the evidence submitted by the applicant the Strategic Housing and Enabling Officer has also contacted RPs active in the borough and has failed to find an RP with capacity to take the affordable housing. Alternative options have been considered as outlined above due to the information submitted with this application as outlined above and the consultation responses received it is considered this is the best route to securing housing benefit to the community. The proposed variation to the section 106 agreement is therefore judged to be acceptable in respect of affordable housing. It is also noted that failure to resolve the issue of affordable housing delivery would delay the construction development on the site and its role in contributing to housing in the Borough.

8. Equality implications

- 8.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 8.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application.

- 8.3. There are no known equality implications arising directly from this development.

- 8.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

9. Conclusion

The Council accept there is a lack of interest from RPs and that in this case the preferred option is the delivery of 4 x affordable homes as gifted units on the development. The HBBC Affordable Housing Officer & S106 Compliance Officer have no objections to the proposed and officers are therefore satisfied that this Deed of Variation is acceptable.

10. Recommendation: Approve the Deed of Variation

Appendix A- Cover Letter from Developers

Cora has, in accordance with best practice, persistently sought offers from affordable housing providers (RP's) since the grant of planning permission, however given the relatively small quantity of affordable homes required as part of this development, Cora has received remarkably limited interest. Cora has sought offers from the following RP's who have all confirmed they have no interest in purchasing the affordable units within the development:

• Future Housing Group • Orbit Homes • Midland Heart • EMH • NCHA • Platform • Riverside • Places for People • Muir • Longhurst • Stonewater • Midland Rural Housing • Tuntum • St Arthur

Cora has received offers from two RPs – Sage and HSPG. Neither offer was considered to be a realistic prospect given it represented less than 50% of Open Market Value for the affordable plots and would require the delivery of affordable housing at a loss.

The primary driver for the lack of interest from RPs is the result of the Homes England grant funding scheme. The majority of RPs active within Hinckley and Bosworth have secured strategic partnership status with Homes England and have access to grants on schemes delivering additional affordable homes outside of s106 requirements. The Grant Funding scheme is nearing the conclusion of the first period, and purchasing sites with grant funding is now the primary driver for active RPs (as Homes England will allocate grant funding for the second period based on use in the first). Given the purchase of s106 affordable plots does not attract grant funding, RPs interest is minimal.

At this point, Cora began initial discussions with Hinckley and Bosworth Borough Council in respect of securing an alternative means for delivering the affordable homes required as part of this development. Initial considerations revolved around the following scenarios:

1. Change of affordable tenure to Discount Market for Sale, or increased delivery of shared ownership units.
2. Provision of a reduced number of affordable units, which are to be gifted to the Council.
3. Provision of a financial contribution to be used for off-site affordable housing delivery. The Council confirmed on the 26th September 2023 that the provision of a commuted sum for off-site affordable housing delivery would be the least favourable option. This was discounted from further consideration.

The Council subsequently confirmed in writing, on the 20th October, that the preferred option was the delivery of 4 x affordable homes as gifted units on the development. For clarity, the provision of gifted units means Cora will fully construct four homes within the development and hand these over to the Council for free. This differs from other tenures of affordable housing which are purchased by RPs at a discounted rate. The Council will then use these units to house local people on the affordable housing register.

The Council also importantly confirmed the support of the Head of Planning at Hinckley and Bosworth Borough Council in writing to both the principle of delivering gifted units in lieu of other affordable tenures, along with the quantity of gifted units proposed.

To aid decision makers in understanding the specific nature of these proposals, it is helpful to first define the different tenures of affordable housing of relevance:

- **Shared Ownership:** An entry level form of property ownership that permits a resident to buy a share of a property (typically between 25 – 75%), the remainder being owned by the RP.
- **Affordable/Social Rent:** A rental property where the rental rates are set in accordance with the Government's rent policy for social/affordable rent or is at least 20% below local market rates.
- **Gifted Unit:** A property which is fully constructed by the developer and handed over to the LPA or RP for nil price. The Gifted Unit is then used by the LPA/RP to meet local affordable housing needs.

Given the provision of gifted units requires Cora to entirely fund the build without receiving any income for the home, it is only possible for Cora to offer a reduced number of gifted plots when compared to the full s106 requirement. In addition to this, RPs will typically provide staged payments throughout the build programme, reducing the level of finance required to deliver the development. In the absence of any staged payments, Cora will need to finance the entire development and will be liable to further repayment costs.

Subject to securing the deed of variation, Cora will start construction in March 2024 and will deliver the first plot for sale at the end of the year. It is recognised that this site plays a small, but meaningful role in the Council's five-year housing supply assessment and it is imperative that development commences as soon as possible.

Failure to resolve the issue of affordable housing delivery will render the scheme unviable, such that development will not commence, and the Council will be at risk of entering into a housing shortfall.

Other Matters

The applicant has also responded to neighbour objections/ correspondence with 'A' being the answer provided to each question provided:

1. This application has been strongly opposed by both local residents and councillors. It had also been declined numerous times in the past before being forced through via an appeal process in 2022 (appeal reference APP/K2420/W/21/3285060)
- A. The site now benefits from detailed planning permission. The nature of this application does not have any bearing on the planning status of the site. This application seeks to vary one specific element of the approved planning consent to allow the site to come forward.
2. Removing the requirement for 20 affordable homes replacing them with four units gifted to HBBC on the basis that CORA have not been able to find a developer for these properties – in other words – the whole development is not profitable if it includes affordable housing.
- A. The proposed alterations to the delivery of affordable housing will not materially impact the profitability of the development. The justification for the changes to affordable housing delivery, as set out above, is solely based on the lack of interest from registered providers of affordable housing. The approved scheme requires a registered provider to purchase the affordable homes. Without altering the existing delivery mechanism, there is a risk that construction activity on site halts during the build process. The proposed alteration removes this risk, ensuring any disruption to local residents is

minimised as far as possible, whilst also retaining an element of affordable housing delivery on site.

3. The appeal decision (preliminary matters) says that they submitted a Unilateral Undertaking (UU) under s106 of the Town and Country Planning Act 1990. This UU makes provision for on-site affordable housing. Then in Planning Obligations (section 22 & 24) this UU is again mentioned, and also states that these obligations are necessary to make the development acceptable in planning terms. It also states that the planning obligations were taken into account when reaching the decision of the appeal.
 - A. This is all factually correct. All major development (e.g. any unit over 10 dwellings) will require a legal agreement to secure financial contributions and affordable housing delivery. Similarly, the decision maker (e.g. in this case the Planning Inspector) will take into account all material considerations when arriving at his decision. This will include any legal agreements. To clarify, the proposed amendments are being pursued in response to the lack of interest for the affordable homes required by the legal agreement for the development. Cora has sought guidance from Hinckley and Bosworth Borough Council on the revised tenure of affordable plots within the scheme, and the Council has confirmed that the provision of gifted units, is the preferred option.
4. This request to rescind the proposed 20 affordable homes from a 49-dwelling development (40% of the development) feels of incredibly poor taste. More so when during the appeal process there was significant emphasis put on the fact that there was a waiting list of people wanting affordable housing so they could move into the village. I presume this list has either evaporated or it is no longer a priority? A cynic might conclude it was simply used to reach a positive verdict in the appeal process.
 - A. To clarify, Cora is not removing the affordable housing provision from the scheme. Cora is looking to change the tenure of affordable homes delivered on site, reflecting the lack of interest Cora has received since from affordable housing providers, despite numerous attempts to secure an offer. Cora's proposals will ensure some affordable housing is delivered on site. There is no dispute that the total number of affordable plots have been reduced, this is reflective of the fact that these units will be gifted (e.g. handed over at no cost) to the local planning authority. Evidence of Cora's attempts to secure an affordable housing partner for this scheme has been submitted as part of this application and the Council's housing officer is fully aware of the unique difficulties all developers are experiencing in this respect.
5. There is a general feeling in the village that residents are being disregarded in the pursuit of profit. Cora Home's latest request feels like an attempt by the developer to move the goalposts having used the promised batch of affordable homes to successfully fight and win the 2022 appeal process.
 - A. To clarify, Cora is not removing the affordable housing provision from the scheme. Cora is looking to change the tenure of affordable homes delivered on site, reflecting the lack of interest Cora has received since from affordable housing providers, despite numerous attempts to secure an offer. Cora's proposals will ensure some affordable housing is delivered on site. There is no dispute that the total number of affordable plots have been reduced, this is reflective of the fact that these units will be gifted (e.g. handed over at no cost) to the local planning authority. Evidence of Cora's attempts to secure an affordable housing partner for this scheme has been submitted as part of this

application and the Council's housing officer is fully aware of the unique difficulties all developers are experiencing in this respect

6. What would the outcome of the appeal have been if this affordable home obligation wasn't included?
 - A. The Inspectors Decision Notice in respect of the Appeal is helpful in setting out the determining factors of the decision; most notably that at the time the Appeal was granted, the Council was unable to demonstrate a sufficient supply of housing and as a result, the most important policies for determining the application were considered out of date. There were clear and logical reasons for approving the development. To clarify, Cora is not removing the affordable housing provision from the scheme. Cora is looking to change the tenure of affordable homes delivered on site, reflecting the lack of interest Cora has received since from affordable housing providers, despite numerous attempts to secure an offer. Cora's proposals will ensure some affordable housing is delivered on site. There is no dispute that the total number of affordable plots have been reduced, this is reflective of the fact that these units will be gifted (e.g. handed over at no cost) to the local planning authority.
7. As you know this development was in only authorised after an appeal and one of the main arguments the developers used to win the appeal was the fact that there is not enough affordable housing in the area. Surely if something as fundamental as this is changed the whole process should start again?
 - A. The Inspectors Decision Notice in respect of the Appeal is helpful in setting out the determining factors of the decision; most notably that at the time the Appeal was granted, the Council was unable to demonstrate a sufficient supply of housing and as a result, the most important policies for determining the application were considered out of date. There were clear and logical reasons for approving the development. To clarify, Cora is not removing the affordable housing provision from the scheme. Cora is looking to change the tenure of affordable homes delivered on site, reflecting the lack of interest Cora has received since from affordable housing providers, despite numerous attempts to secure an offer. Cora's proposals will ensure some affordable housing is delivered on site. There is no dispute that the total number of affordable plots have been reduced, this is reflective of the fact that these units will be gifted (e.g. handed over at no cost) to the local planning authority. Both the strategic housing officer and Head of Planning are supportive of the proposed arrangements to alter the delivery mechanism for affordable housing.
8. It feels like the rules don't count for anything and that once a developer has planning permission they can move the goal posts and try and push through changes that were not given a fair level of scrutiny. The fact they have also tried to get a large amount of the conditions stipulated during the appeal to be discharged without being met, only further highlights the fact they want to try and force through the build without any respect for the local residents or the inspectorate who authorised the original plans based on very specific conditions and based on a certain level of affordable housing being available.
 - A. Cora has submitted a number of applications to discharge pre-commencement conditions and is working with the Council to ensure these are sufficiently addressed. Cora has not sought to alter or amend any of the approved conditions. To clarify, Cora is not removing the affordable housing provision from the scheme. Cora is looking to change the tenure of affordable homes delivered on site, reflecting the lack of interest Cora has received since

from affordable housing providers, despite numerous attempts to secure an offer. Cora's proposals will ensure some affordable housing is delivered on site. There is no dispute that the total number of affordable plots have been reduced, this is reflective of the fact that these units will be gifted (e.g. handed over at no cost) to the local planning authority.