

<b>ITEM:</b>		<b>RECOMMENDATION:</b> Allowed
<b>REF NO:</b>	3OB/2020/0021/OB	<b>CASE OFFICER</b> Chris Hobson
<b>LOCATION:</b>	YAXHAM Land North of Norwich Road Yaxham	<b>APPNTYPE:</b> Planning Obligation <b>POLICY:</b> In Settlemnt Bndry
<b>APPLICANT:</b>	Glavenhill Strategic Land(number9)ltd c/o Lanpro	<b>CONS AREA:</b> N
<b>AGENT:</b>	Lanpro Brettingham House Pottergate	<b>LB GRADE:</b> N
<b>PROPOSAL:</b>	Affordable Housing Provision changes in both policy the economic environment and ability to secure development approved planning permission 3PL/2019/1346/D	
		<b>TPO:</b> N

#### **REASON FOR COMMITTEE CONSIDERATION**

The application has been called in to be considered by by a local ward member and Chairman's Panel considered that the application should be considered at Planning Committee.

#### **KEY ISSUES**

The acceptability of the proposed modifications to the legal agreement to reduce affordable housing provision from 40% to 25%, and triggers for delivering the affordable housing on site.

#### **DESCRIPTION OF DEVELOPMENT**

Modification of Section 106 Agreement dated 27th March 2018 in connection with outline planning permission reference: 3PL/2016/1499/O to:

- reduce affordable housing requirement from 40% to 25% and amend wording to meet registered providers requirements.
- amend triggers for affordable housing to be half at occupation of 40% of market dwellings and the remaining half at occupation of 60% of the market dwellings; from 100% of AH to be provided at occupation of 40% of market homes.

#### **SITE AND LOCATION**

The application site comprises a broadly rectangular parcel of land to the north of Norwich Road in Yaxham. The site extends to approximately 1.3 hectares. Immediately to the west of the site is Yaxham Settlement Boundary and residential development including semi-detached two storey dwellings. The site currently comprises agricultural land forming part of a larger parcel of land to the north and east in the applicant's ownership. Surrounding land use other than residential is largely agricultural. The site and surrounding landscape is generally flat and level.

The site benefits from outline and reserved matters permission (ref: 3PL/2016/1499/O and 3PL/2019/1346/D) for the erection of 25 dwellings and associated works.

### RELEVANT SITE HISTORY

3PL/2016/1499/O - Erection of 25 dwellings with new access point and associated landscaping, open space and car parking - Refused - Allowed at Appeal.

3PL/2019/1346/D -Reserved matters application for 25 dwellings with new access point and associated landscaping, open space and car parking following outline permission 3PL/2016/1499/O - Granted - 14/05/20.

### POLICY CONSIDERATIONS

The following policies of the Breckland Local Plan, including the Proposals Maps, have been taken into consideration in the determination of this application. The provisions of the National Planning Policy Framework and National Planning Policy Guidance have also been taken into account, where appropriate

HOU07	Affordable Housing
INF02	Developer Contributions
NP	Neighbourhood Plan
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

### OBLIGATIONS/CIL

The following obligations were attached to the outline permission 3PL/2016/1499/O via a unilateral undertaking:

- Provision of 40% affordable housing;
- Provision of public open space on site in accordance with open space policies;
- Provision of maintenance contribution for open space land;
- Library contribution of £75 per dwelling;
- Green infrastructure contribution of £120 per dwelling.

### CONSULTATIONS

#### YAXHAM P C

This application seeks to amend obligations set out in the s106 agreement signed at the time of the successful appeal on this site. The s106 agreement with these obligations was in place through the recent reserved matters application which was permitted only a month before this application was submitted.

They key point from this is that the reserved matters application was assessed against the new Local Plan, and despite the Local Plan policy requirement of 25% Affordable Homes, the applicant none-the-less retained the 40% commitment/obligation and did not seek to vary this or the related

trigger point for a proportion of the affordable homes to be built by. The Housing Enabling Officer drew attention to only requiring 25% in the note of 18th December 2019. So, the applicant had every opportunity to challenge the 40% - and would have been fully aware in the run-up to a decision on the application of any change in circumstances such as arising from Covid-19.

Given the reserved matters application has been decided against the Local Plan, then the sensible way for the applicant to seek a reduction to 25% would be by the production of a viability assessment, as per NPPF Para 57, rather than scribbled unsubstantiated assertions. The other route would be to submit a new full application.

The 40% provision for this site has significant history for this site. The site was outside the Local Development Framework settlement boundary. If it had remained outside the settlement boundary for the new Local Plan, then Yaxham would have had 324 dwellings rather than 349. Under HOU04 any application must not lead to the settlement size being increased significantly by over 5% i.e. 18 homes. There are an extra 7 new dwellings permitted, so the number required for 5% is now 11. An application for 25 new dwellings would, therefore, have been open to challenge and potential refusal if this site had not been permitted at appeal in May 2018. However, it was permitted, so it is important to understand why. The Inspector states in "The Planning Balance" considerations that (Para 31) he found that balanced against the moderate harm to the rural character "is the contribution of up to 25 new homes with 40% of those affordable, which would also be delivered in the short term, to which I have given significant weight". and in his remarks on Planning Obligations (Para 18) he states "the first obligation deals with the provision of 40% of the development as affordable housing."

The Inspector also states in The Planning Balance considerations that (31) he found that balanced against the moderate harm to the rural character "is the contribution of up to 25 new homes with 40% of those affordable, which would also be delivered in the short term, to which I have given significant weight".

For all these reasons Yaxham Parish Council strongly opposes this application and recommends refusal in line with the Hopkins Application for the Gladman Site 3OB/2019/0036/OB which was refused by the Planning Committee in December 2019. There the Outline application was decided before the Local Plan was adopted, whereas here the latest application for reserved matters was decided under the Local Plan. The Council therefore also calls for this application to be considered by the Planning Committee.

#### **HOUSING ENABLING OFFICER**

The first point - reduction to 25% - is considered acceptable, in line with protocol, provided the original decision did not reference the level of affordable housing as a key reason for approval. The second proposal is rather higher than I would like. I do not think I can sustain an objection on this point, but would prefer to see it at more like 30/50 rather than 40/60.

#### **HOUSING ENABLING OFFICER**

No Comments Received

#### **REPRESENTATIONS**

The Council has received 36 separate representations from members of the local community to the application raising objections for the following reasons:

- There is a real need for AH in the area.
- The affordable housing was a key reason and condition on granting planning permission in the first place.

Yaxham Neighbourhood Plan Group raised the following matters:

The Planning Inspector stated in his decision to allow the appeal of 14.05.2018 (Reason 12) that a development of 25 houses would undoubtedly erode the openness at this part of Yaxham and in (15) there would be some moderate harm to the character and appearance of the area. However when considering the Planning Obligations, he confirmed that the first obligation deals with the provision of 40% of the development as affordable housing. He also confirms in (20) that the obligations meet the necessary tests in law and "I have taken them into account in reaching my decision". When considering the Planning Balance, he states (31) that the development would result in moderate harm to the rural character but balanced against this is the supply of housing of up to 25 new homes with 40% of those affordable, which would also be delivered in the short term, to which I have given significant weight.

It is clear to parishioners that planning permission was granted on this site because of the lack of a 5 year housing land supply and on the presumption that the developer would actually deliver the 40% affordable housing that both Breckland planners and the Planning Inspector at appeal have said would outweigh the harm to the landscape. NPPF Para 54 states what would otherwise be unacceptable development could be made acceptable through the use of such planning obligations.

The Yaxham Neighbourhood Plan Working Group also notes that the first application to develop this site was made in 2016, the appeal was successful in May 2018 - with the Inspector noting it could be delivered in the short term, however another two years on and the site is still untouched.

The Working Group also notes the number of obligations needing to be discharged make an early delivery of build out very unlikely. The extension to Footpath No4 is welcome but there is no play area open to young children any longer.

There was very considerable village opposition to this development specifically because of the harm to the landscape and the only mitigating factor was the provision of affordable housing to young local people. It now looks as though the village and local people will have no benefit whatever. The variation in affordable housing by 15% should be refused because the obligation was a clear and unambiguous requirement by both Breckland and the Planning Inspector.

## **ASSESSMENT NOTES**

### **1.0 Principle of Modifications to Affordable Housing Provision**

1.1 The applicant seeks a reduction of affordable housing from 40% to 25% from that agreed under the unilateral undertaking dated 27th March 2018 in connection with planning permission reference: 3PL/2016/1499/O for up to 25 dwellings. This reduced requirement would bring the proposed development in line with Policy HOU 7 in the adopted Breckland Local Plan (2019). This particular level of affordable housing requirement has been underpinned by Council's Local Plan and CIL Viability Assessment, 2017 and it is consistent with the NPPF 2019. The reduction in affordable housing would therefore accord with the

presiding development plan and policies contained within it.

1.2 The objections of the local community, Yaxham Neighbourhood Plan Group and Yaxham PC are noted with respect to the Inspectors reasoning for granting permission at appeal. The appeal Inspector in allowing the appeal notes that the provision of 40% affordable housing would make a valuable contribution to local housing needs. In the Inspectors conclusions and when weighing the adverse impact against the benefits (the balancing exercise), he states, "Balanced against this is the contribution to the supply of housing of up to 25 new homes with 40% of those affordable, which would also be delivered in the short term, to which I have given significant weight." Significant weight was clearly given by the Inspector to the provision of the 25 dwellings 40% of which being affordable and to their short term delivery, in ultimately deciding to grant permission. That said at this time the Council could not evidence a five year housing land supply so significant weight would be given to the provision of houses and 40% affordable housing would have been policy compliant at that time. It is considered that these matters were considered as a whole and given significant weight by the inspector not that the provision of affordable housing solely was given significant weight in the planning balance.

1.3 The applicants have submitted a supporting statement that confirms that a local small/medium sized housebuilder has entered into a contract to purchase the site, and that the proposed modifications are critical to them taking forward the site. They have also stated that without the modifications, the development would simply not occur in the current market conditions and as such are required to ensure that this site can be built out in the immediate future. This is because the affordable housing deals currently available require additional security to be provided to protect their money in the event of a default, which also reduces the security to any development lender, which compounds the overall security available on the site. They have also highlighted that this application represents significant investment from a local small/medium sized housebuilder, who is reliant on taking this site forward for the future of the business and its related employment.

1.4 In the supporting statement they also identify three other similar sites where permission for the reduction of affordable housing from 40% to 25% has been granted, and the consider the application should be considered in the same manner. The examples cited are as follows:

- Land at Grove Road, Banham; Application reference 3OB/2019/0028/OB.
- Land to the Rear of 35-61 Westfield Road, Dereham; Application reference 3OB/2019/0010/OB.
- Land on the East of Brandon Road, Swaffham; Application reference 3OB/2019/0018/OB.

1.5 Paragraph 57 of the NPPF states that planning applications that comply with adopted policy should be assumed to be viable. The Local Plan requires that the affordable housing contribution for qualifying developments should provide 25% affordable housing, less than the previously required 40%. For the purposes of assessing applications there is no policy requirement to contribute more than the required 25% unless this was required to make the development acceptable, for example exemption sites. While, as stated above, the Inspectors report notes the provision of 40% affordable housing as part of , the level of affordable housing provision is not stated as the sole reason that the application was approved. As such to approve the application would not result in a decision that would be unreasonable.

1.6 Were the applicant required to submit a new application for planning permission to be assessed against the current Local Plan. This application would be assessed and go through due process and consultation as required and, in the absence of any material considerations in the contrary, being located within the settlement boundary and benefiting from an extant planning permission would be recommended for approval with affordable housing at 25%. This option is available to the applicant. However, to require the applicant to do so could slow the delivery of houses and the delivery of affordable housing. The NPPF at paragraph 70, provides guidance on ensuring that developments are implemented in a timely manner which demonstrates

the focus towards delivering appropriate development.

1.7 The Council's own Local Plan and CIL Viability Assessment, 2017 which underpins the current policy requirement for affordable housing (Policy HOU07) identifies that more than 25% affordable housing would make residential schemes unviable. In this regard it is noted that the Inspector appointed by the Secretary of State to examine the Local Plan in his report dated 25 October 2019 made the following comments in connection with Policy HOU07 and the level of affordable housing that should be required in the district: "Policy HOU07 of the Plan sets out that 25% of qualifying developments should be affordable units. This is based on the Plan Wide Viability Assessment (LP\_V\_2). The viability assessment demonstrates that higher levels of affordable housing provision would make most developments unviable."

1.8 The NPPF requires Local Planning Authorities to approach decision making in a positive and creative way. Recent guidance concerning CIL/S106 set out in the NPPG advises that "Local authorities should take a pragmatic and proportionate approach to the enforcement of section 106 planning obligations during this period. This should help remove barriers for developers and minimise the stalling of sites."

1.9 The decision to grant permission at appeal was made at a certain point in time when the policy requirement for affordable housing required the provision of 40% of residential sites as affordable. The Breckland Local Plan has now been adopted (November 2019) and is the starting point for assessing planning applications at this point in time. This requires applications to deliver 25% affordable housing going forward and the proposals as modified would continue to provide the level of affordable housing required by planning policy and the presiding development plan. Accordingly it is not considered that providing such a level of affordable housing would be unreasonable.

1.10 Having regard to the comments of the Housing Enabling Officer, the proposals to delay the provision of half of the affordable units until 60% occupation of the market dwellings is considered to be a reasonable response to the current market conditions and the ability for the local small/medium sized house builder to access lending.

## 2.0 Conclusion

2.1 Based on the foregoing, and in light of the policies contained within the adopted Local Plan and the guidance contained within the NPPF and NPPG, it is considered that the provision of 25% affordable housing and the delay in providing the final half of the affordable housing at 60% occupation of the market dwellings are acceptable and the proposed modifications should be allowed.

### RECOMMENDATION

The proposed modifications to the obligations contained within the second schedule of the S.106 Agreement dated 27th March 2018 is recommended for approval.

### CONDITIONS

- 1 Planning Oligation - Decision Notice Text**  
Enter all the text required for your decision notice