

## Officer Report

**Reference No:** P/MPO/2023/03270

**Proposal:** Modify section 106 agreement dated 17 August 2016 - Relating to Phases 2-4 at Curtis Fields (WP/14/00777/OUT) - to modify a portion of the affordable housing requirements from 30% to 26.24% following receipt of independent viability report (revised description)

**Address:** Phases 2-4 Curtis Fields Land South of Chickerell Road Weymouth DT4 0TR

**Recommendation:** Grant

**Case Officer:** James Lytton-Trevers

**Ward Members:** Cllr Taylor and Cllr Hope

**1.0** This application has been brought to committee following a scheme of delegation consultation at the request of the Service Manager for Development Management and Enforcement.

**2.0 Summary of recommendation:**

Delegate authority to the Head of Planning and the Service Manager for Development Management and Enforcement to approve subject to the completion of a deed of modification of the s106 dated 17<sup>th</sup> August 2016 to secure 26.24% affordable housing.

**3.0 Reason for the recommendation:**

- The principle of the reduction in affordable housing is acceptable as the development is no longer viable to make full provision.
- There are no material considerations which would warrant refusal of this application.

**4.0 Key planning issues**

Issue	Conclusion
Affordable housing & financial obligations	The proposal would only be able to make provision for 26.25% affordable housing instead of 30%. The proposal would be able to meet all other financial obligations contained within the s106.

**5.0 Description of Site**

**5.1** The application forms part of a large allocation for housing to the south of Chickerell Road, known as Curtis Fields. The site is being brought forward in phases and this modification would apply to phases 2 - 4 of the development. These phases lie to the southern side of the site and would link with Lanehouse Rocks Road and

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the existing built-up part of Curtis Fields at Curtis Way. The first phase of development under the original outline planning permission is nearing completion. Of phases 2 – 4 the following dwellings have been completed:

<b>Curtis Fields Phase</b>	<b>Dwellings Permitted</b>	<b>Dwellings Completed as at May 2023</b>	<b>Dwellings Under Construction as at May 2023</b>	<b>Dwelling Not Started as at May 2023</b>
<b>Phase 2B</b>	99	65	23	11
<b>Phase 4</b>	68	7	29	32
<b>Phases 2A, 3A and 3B</b>	298	0	0	298

  

<b>Curtis Fields Phase</b>	<b>Social or Affordable Rent Completions as at May 2023</b>	<b>Intermediate Rent Completions as at May 2023</b>	<b>Total Affordable Completions as at May 2023</b>
<b>Phase 2B</b>	17	8	25
<b>Phase 4</b>	3	2	5
<b>Phases 2A, 3A and 3B</b>	0	0	0

### 6.0 Description of Development

6.1 The proposal has been revised following receipt of an independent viability report by the District Valuer, commissioned by the Council, and now no longer seeks to modify all affordable housing requirements and financial contributions specified therein. It now only seeks to reduce the provision of affordable housing from 30% to 26.24% in line with the recommendation of the District Valuer.

6.2 The outline permission (WP/14/00777/OUT) secured the affordable housing by means of a section 106 agreement (s106) dated 17 August 2016 which set out the requirements for the provision of the affordable housing. This application would result in the modification of the s106 to reduce the provision of affordable housing from 30% to 26.24%.

### 7.0 Relevant Planning History

There is a substantial planning history related to the area, but only the most relevant decisions are recorded here which directly involve the application to modify the s106.

<b>Application No.</b>	<b>Proposal</b>	<b>Decision</b>	<b>Decision Date</b>

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WP/14/00777/OUT	Outline planning permission (with all matters being reserved including access) for the development of approximately 500 residential dwellings in 3 phases (phases 2 to 4)	Permission Granted	24 August 2016
WP/18/00467/NMA	Amendment to planning permission WP/14/00777/OUT: Variation of conditions 7 and 13 of outline planning permission Ref: WP/14/00777/OUT relating to the provision of the Spine Road and a comprehensive Drainage Strategy for the whole site. Variation to wording of conditions 1,5,17 and 18 to include the words 'on any phase' and 'for that phase' to reflect and clarify the relationship of these conditions to the title of the outline planning permission for a phased development of the site.	Grant of Non-Material Amendments	31 July 2018
WP/18/00749/RES	Application for approval of reserved matters for access and layout of outline application WP/14/00777/OUT ( <i>This did not include the route of the road through phase 2b</i> )	Approved	20 March 2019
WP/19/00635/RES	Application for approval of reserved matters (Phase 4) for Access, Appearance, Landscaping, Layout and Scale of outline application WP/14/00777/OUT (68 dwellings).	Approved	28 May 2021
WP/19/00693/RES	Application for approval of reserved matters (Phases 2A, 3A and 3B) for Access, Appearance, Landscaping, Layout and Scale, of outline application WP/14/00777/OUT (Amended scheme)		21 October 2022
P/MPO/2022/03912	Modification of planning obligations of a S106 agreement dated 17 August 2016 of planning approval WP/14/00777/OUT (This substituted the current Mortgagee Exclusion Clauses (MEC) for one that meets the lending requirements of Approved Providers. This will allow the affordable homes on the site to be acquired by an established Registered Provider).		19 December 2022

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	<b>Other Relevant Decisions relating to Phase 1 (development now complete on adjacent site)</b>		
WP/14/00591/OUT	Outline Application for residential development (approx. 62 dwellings)(revised scheme)		15 July 2016
WP/17/00916/RES	Application for approval of reserved matters for Access, Appearance, Landscaping, Layout and Scale in relation to Outline approval WP/14/00591/OUT		3 May 2018

**8.0 List of Constraints** – None relevant to the consideration of this application to modify the S106 agreement.

### **9.0 Consultations**

Note: The proposal has been revised and the application re-advertised. The following are the responses received after re-consultation where stated.

All consultee responses can be viewed in full on the website.

S106 Officer – Support (as revised).

Housing enabling officer – Support (as revised).

Ward members –

Cllr. Taylor: Although the s106 was agreed in 2016 all costs have increased. Much development by this company across Weymouth and Portland has been done at a time of rising house prices and hence increased profits therefore it is not acceptable that viability is being used on this site to remove the affordable housing elements of this development. We have a dire need for affordable properties in Weymouth and the need for affordable housing far outweighs a company's profits.

Neighbouring Ward Members-

Cllr. Heatley: The developers are asking to be relieved of all the affordable housing obligations. Their case essentially is that various assumptions made in the original viability assessment have now changed, for example there turned out to be asbestos on site, building costs have increased and house prices are expected to decline. The detail of this is set out in a new and highly technical viability assessment.

Is it right for a developer to seek to change the viability assessment after the planning permission has been given? The whole point of employing a private developer is that they take the risk of higher or lower profits. Even if modifying the original viability assessment is permissible, the assessment is inevitably complex. It is entirely possible to come to different conclusions based on the same broad guidance principles set out by the professional body. Accordingly, the Council should seek an independent viability assessment before submitting this variation of

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conditions to the Planning Committee; this application is too important to be subject to delegated decision.

Cllr. Sutton: The developer's case rests on their new viability assessment. Whilst the discovery of asbestos, increased building costs and a likely fall in property prices may have an impact on profit margins, surely this is the risk which all developers run and it is not the role of the planning system to provide a 'cushion' against this. If it were, surely it would be appropriate for this to be balanced with a form of planning 'levy' if profit margins rise substantially?! To in effect relieve the developer of affordable housing obligations on these grounds, especially when affordable housing is so sorely needed, cannot in my view be the correct course of action. If there is any likelihood of this being the outcome, at the very least, this application must NOT be delegated.

### Weymouth Town Council – Objection (as revised)

On the basis that previous profits have not been considered, that the sensitivity analysis shows that with only small changes in costs or selling prices 30% might be possible, Betterment Homes should be held to their commitment to 30% (140 units). The basis for approval of this site was on the basis of affordable homes being included. Weymouth has a shortage of affordable homes and can't afford to lose this promised commitment.

### Representations received

Made on the original submission and in response to the revised assessment.

Objection:

Denies opportunity for buyers to enter the property ladder.  
The developer has made profits leaving the affordable last.

Comment:

Pleased with the increase in the amount of affordable provision since the revised assessment.

Support:

There is affordable housing not being occupied and private buyers should be able to buy these houses.

Total - Objections	Total - No Objections	Total - Comments
2	1	1

Petitions Objecting	Petitions Supporting
0	0
0 Signatures	0 Signatures

## 10.0 Relevant Policies

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### West Dorset, Weymouth and Portland Local Plan

HOUS1 – Affordable Housing

### National Planning Policy Framework

#### 5. Delivering a sufficient supply of homes

Paragraph 58. 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. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

Paragraph 64. Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless: a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and b) the agreed approach contributes to the objective of creating mixed and balanced communities.

#### **11.0 Human rights**

Article 6 - Right to a fair trial.

Article 8 - Right to respect for private and family life and home.

The first protocol of Article 1 Protection of property.

This recommendation is based on adopted Development Plan policies, the application of which does not prejudice the Human Rights of the applicant or any third party.

#### **12.0 Public Sector Equalities Duty**

As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have “due regard” to this duty. There are 3 main aims:-

- Removing or minimising disadvantages suffered by people due to their protected characteristics
- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have “regard to” and remove or minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the Public Sector Equalities Duty. The modification to the

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affordable housing provisions is not considered to have any impact on persons with protected characteristics.

### 13.0 Financial benefits

What	Amount / value
Material Considerations	
Affordable housing	122 dwellings
Market housing	343 dwellings
Contributions	£4,526,964.00 (see below for breakdown)
Non-Material Considerations	
Council Tax	To be decided
New Homes Bonus	To be decided

### 14.0 Climate Implications

None relevant to this application.

### 15.0 Planning Assessment

#### Principle of Development

15.1 The outline permission (WP/14/00777) was for approximately 500 dwellings. This breaks down for applications made for reserved matters as follows:

Phase 2B – 99 dwellings

Phase 4A – 68 dwellings

Phases 2A, 3A, 3B – 298 dwellings

TOTAL 465 dwellings.

The total number of dwellings is therefore below the maximum allowed under the outline permission.

The permission was subject to a s106 agreement to secure 30% affordable housing and financial obligations as set out in the table below.

s106 Recreation Contribution (paid, inc. indexation)	£348,540
s106 Transport Contributions (paid, inc. indexation)	£332,312
s106 Ecology Contribution (paid, inc. indexation)	£8,270
s106 Education Contribution (paid, inc. indexation)	£1,090,924
s106 Education Contribution (outstanding)	£1,838,362

Indexation will apply to the outstanding education contribution, and this is provisionally calculated as £667,306. An additional contribution towards travel plan is understood to amount to £116,250 and is not subject to indexation. It is understood

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that the developer is also required to provide a Neighbourhood Equipped Area for Play (NEAP), and Multi Use Games Area (MUGA).

### Affordable Housing & financial obligations

15.2 The applicant initially sought removal of all financial obligations and provision of affordable housing and provided their own viability review to support their case. This was then referred to the District Valuer under the instruction of the Council and the District Valuer issued a final review in November 2023 after discussion with the applicant and the council.

15.3 The review by the District Valuer has reported that phases 2 – 4 are viable to deliver a portion of the affordable housing requirements, reduced from 30% to 26.24%, which equates to 122 affordable homes on this site, 84 rented and 38 shared ownership (compared with 140 originally). The District Valuer also considered that all the financial obligations could still be met. The applicant has not further challenged the findings of the District Valuer. The report of the District Valuer should be read in full and is available on the Council's website. However, pertinent extracts from the report are included below and in reaching these conclusions, the District Valuer considered the following (in italics):

*15.4 Developments are expected to meet the policy provision as prescribed in the Local Plan. In this case the planning requirements are set out in a s106 agreement, and the scheme has commenced. The application under consideration proposes modification of the s.106 requirements. The applicant's agent states that scheme financial viability has been compromised, and states that 'during work preparations for the ensuing phases and more detailed site investigations it became apparent that parts of the site are heavily contaminated with asbestos and that considerably more ground retaining works than were expected are required. Due to these unforeseen circumstances, the costs of developing the site is significantly in excess of those that were anticipated when the Section 106 terms were agreed.'*

*15.5 The VOA database contains details of sales of residential properties including accommodation details, age of property, number of bedrooms, reception rooms, age, floor areas and so forth as well as transactional information such as new build sales, part exchange, shared ownership or connected party sales etc. We also have access to Energy Performance Certificates which enables analysis. We have also considered sales information about current and forthcoming schemes. All of this enables the valuer to confirm or dispute the applicant's evidence.*

*15.6 Further to my investigations and research, particularly in regard to the most recently available sales data on this scheme, I have a differing view in regard to most of the projected completed residential unit values.*

*The development costs and the following cost inputs have not been accepted as reasonable:*

- *Plot build costs and external works*
- *Abnormal site costs*



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15.7 My observation is that the issues relating to the majority of these costs appear commensurate with the site, and narrative relating to site conditions. It is somewhat surprising however that additional unforeseen costs relating to asbestos and ground conditions (cut and fill, retaining walls and groundworks) have come to light at this stage of the development, especially in the context of the site being previously undeveloped. It is reasonable to assume that appropriate due diligence would have been carried out in the early stages of the project, and detailed ground investigations undertaken.

15.8 The abnormal costs are however a potentially significant factor affecting the viability of the scheme.

15.9 In the light of my most recent experience of development proposals of this nature, particularly in the county, I have rather adopted 17.5% of market residential GDV in my assessment as a reasonable target profit level. It is also noted that this target is indicated as reasonable in your Council's input assumptions document underpinning policy requirements. In regard to the affordable element, I have also adopted a target profit level of 6% as is widely adopted and reflecting reduced risk on the basis of a forward sale to a Registered Provider

15.10 Appraisal 1 can be found at **Appendix (i)** reflects the combined policy requirements of 30% on site Affordable housing and s.106 contributions of £4,526,964 (financial and build obligations), and fixes developer's profit of 17.5% on market GDV and 6% on affordable GDV.

Based on the inputs I have outlined above the residual output presented as the amount available for land which is then compared to the valuer's opinion of the BLV to determine the viability of the scheme.

As detailed in this report, I have a difference of opinion regarding revenue and construction costs. The cumulative effect of these changes is that my viability appraisal generates a residual land value of £4,217,349, which is below the BLV of £5,532,000.

**It is my independent conclusion that the consented scheme with associated planning obligations is not financially viable.**

15.11 As the scheme cannot meet full policy requirements, I have considered the maximum contributions that the scheme could viably provide. Through a series of iterations to the appraisal I have established that the maximum planning policy that can be delivered is 26.24% affordable housing (122 units) together with £4,526,964 in other s106 contributions.

Appraisal 2 - which can be found at appendix (ii) reflects a scheme with these reduced policy requirements and a fixed developer's profit of 17.5% on market GDV and 6% on affordable GDV. The appraisal generates a residual value for land of £5,536,085, which is marginally above the BLV of £5,532,000.

**It is my independent conclusion this scheme can support 26.24% affordable housing and £4,526,964 in other s.106 policy requirements.**

15.12 Further to my conclusion above and the advice that your Council's full planning policy requirements will not be met; a review clause might be appropriate as a condition of the permission, in line with paragraph 009 of the PPG Review

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*mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.*

15.13 The applicant states that during work preparations for these phases and more detailed site investigations it became apparent that parts of the site were heavily contaminated with asbestos and that considerably more ground retaining works than were expected are also required. The costs of these additional works are included in the applicant's report which the District Valuer reviewed. In consideration of the outline application, contamination was not raised as a known issue.

15.14 The NPPF at paragraph 58 states that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. In this case the applicant has submitted a viability assessment post decision and some 9 years after the adoption of the local plan citing the reasons set out above with regards to abnormal costs. Policy HOUS1 of the adopted local plan states similar to the NPPF in that applicants seeking to justify a lower level of affordable housing will be expected to provide an assessment of viability, which the applicant has done in this case. The policy then goes on to say that "A lower level of provision will only be permitted if there are good reasons to bring the development forward and the assessment shows that it is not economically viable to make the minimum level of provision being sought". The development already has consent and is partially built out and to continue with the development would enable much needed open market and affordable housing to be brought forward in this sustainable location in Weymouth. The information submitted by the applicant and the subsequent assessment review by the DVS explains why the applicant considers the development is not viable with 30% provision of affordable housing, but it would be viable with the provision of 26.24%.

15.15 It is noted that representations have been received suggest past profits made by the applicant have been sidelined but given the length of time that has elapsed since permission was granted, it is to be expected that costs will fluctuate and unforeseen costs may be encountered, as has been the case here. It is also not a function of the planning system to impose levies on developers for past profits. Furthermore, in respect of the representation that says that affordable housing provides less for open market buyers, this does not acknowledge that the provision of affordable housing is a policy requirement based on an evidence base and detailed analysis to set the right amount that should be provided. In this case 30% was considered to be the requirement at the time of granting the outline permission.

15.16 The District Valuer indicates that a review clause could be considered by the Council if permission is granted. There is currently no local plan policy to support this stance and as such could not be justified as part of the modification to the S106 agreement.

### **16.0 Conclusion**

16.1 The proposal would only be able to make provision for 26.24% affordable housing instead of 30%. Provision of the housing would still be on the development

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site as opposed to off-site or through a financial contribution. The proposal would be able to meet all other financial obligations contained with the s106. A deed of modification of the s106 would need to be prepared to make the adjustment to the amount of affordable housing provision. The proposal is in accordance with Policy HOUS1 of the West Dorset, Weymouth and Portland Local Plan (2015) and paragraphs 58 and 64 of the NPPF (2023).

### **17.0 Recommendation**

17.1 Recommendation: Delegate authority to the Head of Planning and Service Manager for Development Management and Enforcement to approve the modification of the S106 agreement subject to a deed of modification secure 26.24% affordable housing having been satisfactorily completed.