

Application Number:	P/MPO/2026/00670
Webpage:	https://planning.dorsetcouncil.gov.uk/
Site address:	Land To The South Of Howe Lane Verwood Dorset BH31 6JF
Proposal:	Modification of legal agreement dated 15 January 2016 on application 3/13/0674/OUT to remove obligation relating to affordable housing
Applicant name:	Mr J Spencer, Mr D Spencer and Ms C Macy
Case Officer:	Naomi Shinkins
Ward Member(s):	Cllr Coombs, Cllr Flower and Cllr Gibson

1. Reason application is going to committee:

The application is being considered by the Planning Committee as it results in the reduction of a community benefit as required by paragraph 151 of the Dorset Council Constitution.

2. Summary of recommendation:

Grant the removal of affordable housing provision under the Town and Country Planning Act 1990, sect. 106A Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992.

[Officer note – As this is a Section 106A application and the existing agreement is over five years old, the obligation may be removed by the decision notice itself. Accordingly, a Deed of Variation is not required.]

3. Key planning issues

Issue	Conclusion
Impact on viability of the development	It has been demonstrated that the provision of affordable housing is no longer viable.

4. Description of site

- 4.1 The 1.17 hectares application site comprises a small field fronting Howe Lane to the side of Oak Tree Cottage, and a large paddock at the rear/south of Oak Tree Cottage. The large paddock drops approx. 2m from north to south and is

bounded to the south by a woodland (Heathy Howe), which is located in the river valley to the south of the site.

- 4.2 Oak Tree Cottage is a Grade II Listed one and a half storey thatched dwelling with vehicular access from Howe Lane. Howe Lane is characterised by single and two storey detached dwellings of varying designs which are generally aligned parallel to Howe Lane on plots at a right angle to the road.
- 4.3 The western boundary is marked by a drainage ditch which separates the site from open space associated with the adjacent school grounds and south of Howe Lane Education allocation in the Core Strategy (Policy VTSW2). The eastern boundary is shared with two storey residential properties in the Summer Fields cul-de sac. The other site boundaries of the application site are shared with detached bungalows in the Mandalay Close cul-de-sac and detached two storey dwellings fronting Howe Lane.
- 4.4 There are a number of mature trees along the southern boundary of the site. A small group of trees in the south western corner of the site, a line of trees along the northern boundary of the paddock and a group of preserved trees adjacent to Oak Tree cottage are subject of tree preservation orders.

5. Description of the amendment

- 5.1 The applicant is seeking to remove obligations in the Section 106 legal agreement attached to the accompanying planning permission to remove the requirement for affordable housing provision on the basis that any affordable housing provision would render the proposal as unviable.

6. Background and relevant planning history

App No	Proposal	Decision	Date
3/13/0674/OUT	Construct residential development of 29 homes comprising 15x4 bedroom houses, 7x3 bedroom houses, 2x2 bedroom houses, 2x2 bedroom flats and 3x1 bedroom flats with access from Howe Lane as amended by plans rec 25th Nov 13 and	Refused	25/02/2015
		Allowed at Appeal	20/01/2016

	amended application form rec 14.02.14 and as amended by plans rec'd 8.3.14.		
3/19/0019/RM	Approval for Reserved Matters of Landscape, Appearance and layout. Application 3/13/0674/OUT (granted on appeal) for construction of 29 residential dwellings.	Granted by committee	04/07/2019
P/NMA/2022/03717	Non material amendment to approved P/A 3/13/0674/OUT (granted on appeal) for construction of 29 residential dwellings. Non material amendment to conditions 5, 6 and 9 to allow the commencement of plot 1 only.	Granted	30/06/2022

7. List of constraints

Grade: II Listed Building: OAK TREE COTTAGE List Entry: 1154799

Tree Preservation Orders (TPO) reference: EDDC/VE/162, 32, 279,171and 179

Mineral Strategy 2014 – Mineral Safeguarded Policy SG1 - Sand and Gravel

Wessex Water Treatment Works Catchment Other WRC catchments

Bournemouth Water Consultation Area

Higher Potential ecological network

Wildlife Present: Bat

Dorset heathlands - 400m heathland buffer; and 5km Heathland Buffer

High Opportunity Nature Areas

Natural England - RAMSAR - Distance: 926.47m

Site of Special Scientific Interest (SSSI) impact risk zone

New Forest Recreational Area with a 13.8km buffer

Scheduled Monument: Sandalholme pottery works (List Entry: 1002348); - Distance: 415.09m

Environment Agency (EA) – Groundwater

EA Susceptibility to flooding - Risk of Surface Water Flooding Extent 1 in 30 ,1 in 100 and 1 in 1000

Surface water flooding - 1 in 100year event plus 20% and plus 40% allowance

Radon: Class: 1.0 (low risk, protective measures not required)

8. Consultations

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

Consultees

- 1. Verwood Town Council** - Members support the comments of the Housing Enabling Team and object to the application pending further viability investigations.
- 2. Verwood Ward Members** – Cllr Flower requested the application to be determined by committee.
- 5. DC - Housing Enabling Team** – While it is clearly vital to secure affordable housing, particularly in light of increasing numbers on the housing register and the ongoing shortage of general needs provision, I acknowledge that in this instance the evidence supports the applicant's position. Although this is not an ideal outcome, I am satisfied with review of the viability assessment and therefore reluctantly agree to the proposed modification of the Section 106 Agreement to remove the affordable housing obligation.

Representations received

Total - objections	Total - No objections	Total - comments
1	0	0

Summary of comments of objections:

- Objection to the removal of affordable housing requirements

9. Duties

Section 106A of the Town and Country Planning Act requires the Council to consider whether the agreement no longer serves a useful purpose or would serve a useful purpose equally well if modified as set out in the application.

10. Relevant policies

The Development Plan for this application is the adopted Christchurch and east Dorset Local Plan – Part 1, Core Strategy 2014 and saved policies from the East Dorset Local Plan 2002

Christchurch and East Dorset Local Plan 2014

The following policies are considered to be relevant to this proposal:

KS1 - Presumption in favour of sustainable development

LN1- Size and Types of New Dwellings

LN3 – Provision of Affordable Housing

Material considerations

Christchurch and East Dorset Affordable Housing Supplementary Planning Guidance

Emerging local plans:

Paragraph 49 of the NPPF provides that local planning authorities may give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant plan policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to the NPPF (the closer the policies in the emerging plan are to the policies of the NPPF, the greater the weight that may be given).

The Dorset Council Local Plan

The Dorset Council Local Plan Options consultation took place between January and March 2021, with further consultation between 18 Aug – 31 October 2025. Being at a very early stage of preparation, the relevant policies in the draft plan should be accorded very limited weight in decision making.

National Planning Policy Framework 2024 (as amended 2025)

Paragraph 11 sets out the presumption in favour of sustainable development. Proposals that accord with the development plan should be approved without delay. Where the development plan is absent, silent or relevant policies are out-of-date then permission should be granted unless specific NPPF policies protecting areas or assets provide a

strong reason for refusal and/or any adverse impacts of approval would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole, with particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well designed places and providing affordable homes.

Other relevant NPPF sections include:

- Section 4 'Decision making': Para 39 - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available...and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
- Section 5 'Delivering a sufficient supply of homes' This outlines the government's objective in respect of land supply with subsection 'Rural housing' at paragraphs 82-84 reflecting the requirement for development in rural areas.

National Planning Practice Guidance

Viability guidance - [Viability - GOV.UK](https://www.gov.uk/guidance/development-viability-guidance)

Housing land supply

Dorset Council is unable to demonstrate a 5-year housing supply as required by National Policy. In addition, the strategies for meeting housing needs in the adopted local plans are not designed to deliver the housing need under the Government's standard method and therefore, in accordance with NPPF footnote 8, the housing policies within the adopted Development Plan(s) are out of date and the presumption in favour of sustainable development applies. The emerging Dorset Local Plan is not sufficiently progressed and can be afforded very limited weight in decision making.

This does not result in automatic approval of residential development. Paragraph 11(d) requires that permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusal, or unless the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole.

Housing Delivery Test (HDT)

The latest HDT results (2023 measurement) show that enough homes have been delivered within the local plan area to demonstrate 106% of the target.

11. 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. 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 proposal does not include any physical changes to the previously approved scheme where this matter is considered.

13. Public Benefits

The proposals results in a loss of affordable housing and therefore a reduction in community benefits. However, it is notes a contribution to the housing land supply still remains, albeit without an affordable housing contribution if the modification is approved.

14. Planning Assessment

Impact on viability of the development

14.1 Policy LN3 of the Core Strategy states that greenfield residential development resulting in a net increase of housing is to provide up to 50% of the residential units as affordable housing. This was secured in the Outline application allowed at appeal, PA 3/13/0674/OUT. The Reserved Matters application considered submitted a policy compliant scheme when submitted in 2019.

14.2 Policy LN3 also notes:

Any Planning Application which on financial viability grounds proposes a lower level of affordable housing than is required by the Policy Percentage Requirements must be accompanied by clear and robust evidence that will be subject to verification.

14.3 The applicant has submitted this application to fully remove obligations from the S106 legal agreement that requires the provision of 50% affordable housing units as part of the development approved at appeal, PA 3/16/1446/OUT.

14.4 The applicant has undertaken a review of the viability of the scheme and a summary of reasons for viability changes provided includes:

- A 50-metre diversion of a main Wessex Water drain, in the range of £100,000
- Non-standard drainage requirements across the site
- Construction of a sacrificial road to protect existing trees, with costs exceeding £30,000
- Installation of an electricity substation to serve the site, at a cost of over £254,000
- Substantial increases in material and labour costs across all build elements
- Additional energy and sustainability requirements, including the installation of air source heat pumps to each unit, with costs exceeding £70,000

14.5 Information submitted with the application notes these combined factors along with materials and labour increases, place a significant additional financial burden on the scheme which was not anticipated or reflected in the original viability position underpinning the Section 106 Agreement.

14.6 Paragraph 59 of the NPPF notes:

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

14.7 It is noted in appeal decision APP/D1265/W/23/3320357 (7 November 2023), for 15 flats at 184 Ringwood Road, St Leonards and St Ives, that the inspector states:

‘..... I am more persuaded by the appellant’s argument that the Local Plan Evidence Base, being almost 10 years old, is out of date, especially given the economic uncertainties and challenges provided by Covid and Brexit that have had an impact on the housing market and construction costs since the production of the local plan evidence. Consequently, I attach great weight to the appellant’s EVA, independently verified by the District Valuer, that demonstrates that the proposal is not viable to provide 40% on-site affordable housing but can, however, provide a financial contribution for one off-site affordable dwelling.’

- 14.7 The Town and Country Planning Act 1990 allows for applications to modify planning obligations under section 106A. The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 sets out regulations for these applications and this application has followed due process in line with these regulations. It is noted the Section 106 agreement in this case is more than 5 years old.
- 14.8 The Council has employed the District Valuation Service (DVS) to provide an independent assessment of the viability appraisal. The DVS is the specialist property arm of the Valuation Office Agency (VOA – now part of HM Revenue and Customs) who provide independent, impartial, valuation and professional property advice across the entire public sector, and where public money or public functions are involved.
- 14.9 The DVS has reviewed submitted information and is of the professional opinion that affordable housing provision is not viable as set out below.
- 14.10 A summary of the submitted viability information compared to the DVS assessment is as follows:

Policy Inputs	Agent	DVS	Agreed (Y/N)
Assessment Date	December 2026	April / May 2026	N
Scheme Description	Development consisting of 29 residential dwellings which includes 11no affordable homes. Modification of legal agreement dated 15 January 2016 on application 3/13/0674/OUT to remove obligation relating to affordable housing.		Y
Development Period	32 months	21 months	N
Gross Development Value	£11,512,701	£11,604,143	N
Market Housing GDV	£9,490,000	£9,495,000	N
Affordable Housing GDV	£2,022,701	£2,109,143	N
Planning Policy	£234,828	£42,162	N
Construction Cost	£7,198,102	£6,683,162	N
External Cost	£1,961,671	£1,586,223	N
Abnormal Cost	£1,122,268	£930,356	N
Professional Fees	8% (£863,753)	8% (£735,979)	Y % N Value
Contingency	5% (£514,139)	5% (£459,987)	Y% N Value
Finance Interest	7%	7%	Y
Marketing Sales & Agency Fees	2.5%	2.5% OM 1% AH	N
Legal Fees for Disposal	£1,000 per OM unit £10,000 AH	£750 per OM Unit £400 per AH Unit	N
Land Acquiring Costs	Not Disclosed	Negative land value so non included.	N
Profit Target	17.5% OM 6% AH	17.5% OM 6% AH	Y
Residual Land Value	-£2,569,805	-£1058,126	N
Benchmark Land Value	£675,000	£425,000	N
Existing Use Value	£67,260	£42,300	N
Premium	10 x EUV	10 x EUV	Y

Purchase Price	-	-	N
Alternative Use Value	-	n/a	Y
Viability Conclusion Full Policy Scheme	Not Viable	Not Viable	Y
Viability Conclusion Max Policy/ Deliverable Scheme	Not Viable	Not Viable	N

14.11 From the assessment provided by the DVS it is considered any affordable housing provision is not viable. This is given the difference in residual land value (RLV), where the RLV is the amount remaining once the gross development cost of a project is deducted from the gross development value.

14.12 Based on the assessment the following points are noted:

- The DVS has adopted a slightly higher gross development value than the applicant. This is based on research carried out by the DVS which officers have reviewed and have agreed with.
- Construction and external costs – The DVS has adopted lower construction and external costs than the applicant and this has been verified by the quantity surveying team who work with the DVS.
- Abnormal build costs - The DVS has adopted lower construction and external costs than the applicant and this has been verified by the quantity surveying team who work with the DVS.
- Profit target levels – are standard percentages adopted for open market and affordable housing units.
- CIL – the development was originally approved pre CIL and is not CIL liable.
- BNG – the development is also BNG exempt.

14.13 At the assessment date, the DVS surveyor concludes that when assessed with regards to full planning policy requirements (comprising 11no affordable housing, S.106 contributions of £42,162), the above scheme is not viable. The DVS surveyor also advises it is significant to note that the scheme assessed without any financial policy requirements produces a deficit of around £1,483,126 and is also considered unviable. Therefore, the deliverability of the proposed development may be a concern, however this is a commercial decision and not a material planning consideration.

- 14.14 Officer's have considered whether or not viability review mechanism is required. The Council's legal advice regarding the potential for imposing a viability review is that as the Section 106 agreement is more than 5 years old, on an application under s106A, the Council are obliged to consider only the modification proposed in the application and a viability review mechanism cannot be applied.

15 Impact on the original planning balance

- 15.1 The original permission 3/13/0674/OUT was judged to be acceptable in all respects subject to conditions by an inspector at appeal. The provision of affordable housing was to be secured in accordance with policy LN3 by legal agreement.
- 15.2 Proposed development will not change other than the exclusion of affordable housing provision. Policy LN3 remains applicable and although the policy seeks affordable housing provision it also provides for situations where developers are able to fully justify proposals for housing schemes with lower levels of affordable housing.

16.0 Conclusion

- 16.1 On the basis of the independent analysis of the viability statement submitted by the applicant, taking account of the details set out above, the approved development is not considered to be viable if the affordable housing secured by Section 106 needs to be provided. As advised by the DVS, the provision of affordable housing is not viable.
- 16.2 Officers therefore consider that permission should be granted for the removal of the affordable housing provision obligations in the associated Section 106 legal agreement in accordance with LN 3 of the Local Plan.
- 16.3 Section 106A of the Town and Country Planning Act 1990 requires the Council to consider whether the planning obligation continues to serve a useful purpose or would serve that purpose equally well if modified in the manner proposed. In this case, the provision of affordable housing remains a useful planning objective. However, robust viability evidence demonstrates that the affordable housing requirement renders the development unviable and acts as a barrier to delivery. The proposed modification would therefore facilitate the implementation of the scheme and the delivery of new housing. On balance, the loss of affordable housing is outweighed by the wider public benefit arising from the delivery of the development.

17.0 Recommendation

Grant the removal of affordable housing provision under the Town and Country Planning Act 1990, sect. 106A Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992.

