
Planning Application no. SL/2021/0161

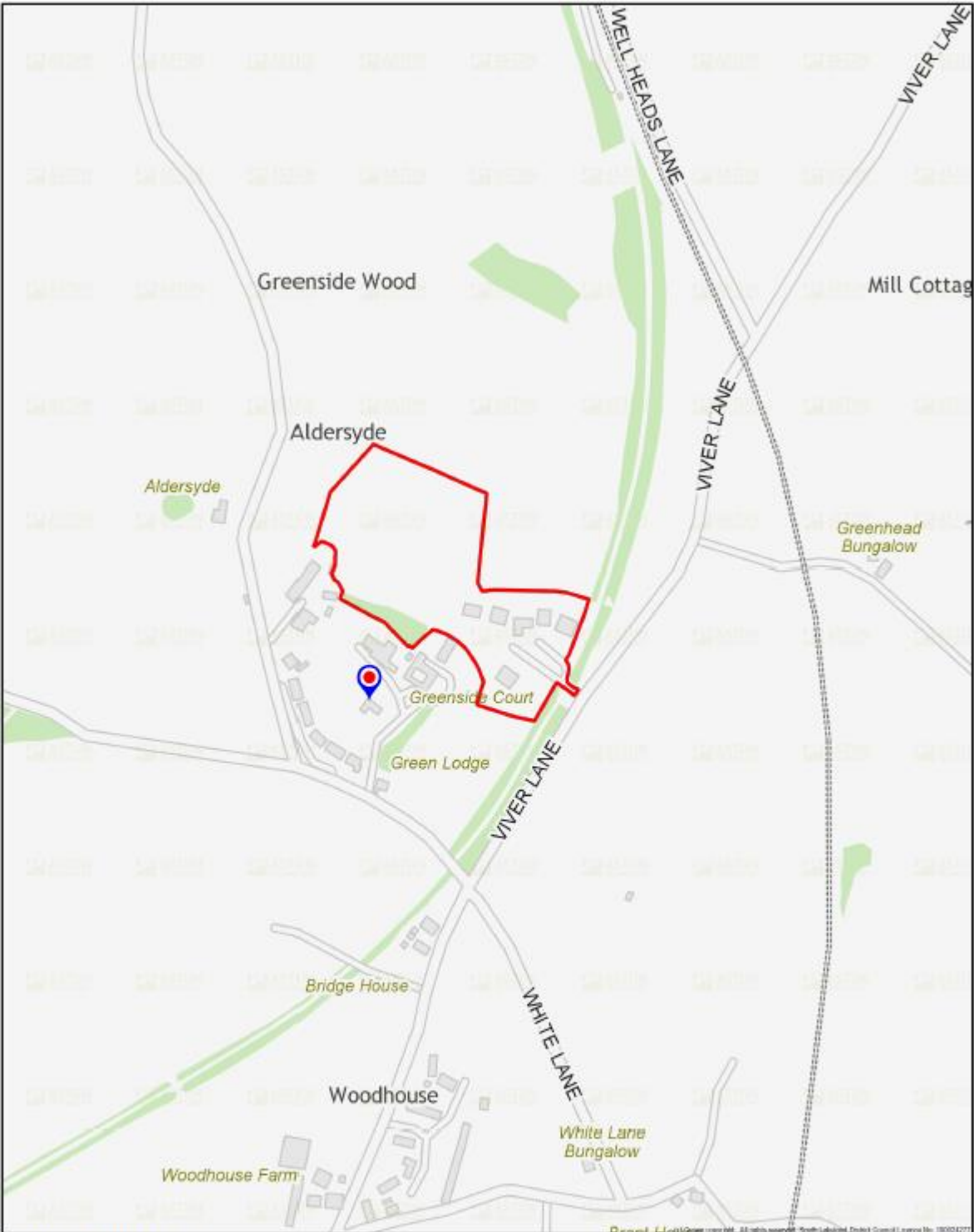
Land at Viver Green, Viver Lane,
Hincaster, MILNTHORPE, LA7 7NA

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SL/2021/0161

Land at Viver Green, Viver Lane, Hincaster LA7 7NA



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Summary

SL/2021/0161

PARISH: Hincaster

Land at Viver Green Viver Lane Hincaster MILNTHORPE LA7 7NA

PROPOSAL: Variation of a Section 106 Agreement.

APPLICANT: Tretonia UK Ltd.

Grid Ref: E: 351070 N: 483964

Committee date: 24th March 2022

Case Officer: Nick Howard

The application was deferred from the February committee in order to seek an update from the Councils independent consultant from Lambert Smith Hampton.

The proposal is for the variation of a S106 agreement relating to a reserved matters approval (reference SL/2015/0497) and an outline approval (reference SL/2013/0594).

The current application has been referred to committee as the original applications, the subject of the S106 agreements, were determined by members.

Recommendation

The recommendation is to approve the application, the variation of the S106 agreements resulting the provision of no affordable housing on-site and no off-site financial contribution for affordable housing.

1.0 Description and proposal

Site Description

- 1.1. The site is located approximately 5.5 miles to the south of Kendal and approximately 2 miles from Milnthorpe. The site is located to the south east of Hincaster, along the northern edge of a collection of dwellings at Greenside.
- 1.2. The application site originally included a former poultry farm and egg production/packing. The site has been partly constructed comprising of eight

dwelling with planning permission for a further 14 dwellings, providing a total of 22 dwellings.

- 1.3. The site is located in open countryside.

Proposal

- 1.4. The proposal is for a variation of the 2014 S106 agreement and revocation of the S106 agreement from 2016 and deed of variation from 2018. One aspect of the application is to remove the obligations relating to affordable housing attached to an outline planning permission for residential development of the site and the other to discharge of the obligations in respect of a subsequent reserved matters application. The proposal is in effect to remove the affordable housing on-site and to provide no off-site financial contribution to affordable housing.

Consultations

- 1.5. No consultations were carried out other than the applicant's viability report was assessed by the Councils independent consultants Lambert Smith Hampton (LSH). Their conclusions are set out in the main body of the report.

Public Responses

- 1.6. Not applicable .

2.0 Relevant planning history

- 2.1. The notable planning applications relating to the application site are as follows:
- SL/2013/0594 – Outline planning permission granted for residential development 18th June 2014. The approval was in outline for an estimated development of 18 dwellings. The approval was subject to a S106 agreement which provided for three affordable on site units, an affordable housing contribution for three off site affordable dwellings of £414,750 and an educational transport contribution of £59850
 - SL/2015/0496- Two dwellings, construction of car park for Hincaster Trailway and car park for Growing Well Orchard approved 9th June 2016.
 - SL/2015/0497 – Reserved matters approval on 9th June 2016 for 20 dwellings, associated access road, landscaping and parking provision for Hincaster Trailway. The three affordable housing units were identified as plots 18-20. This approval was

subject to a S106 which provided for the provision of the on-site affordable housing provision before no more than six market houses were completed and occupied and the obligation to pay half the off-site affordable housing contribution prior to the occupation of seven residential units.

- SL/2018/0086- A modification of S106 agreement attached to planning permission SL/2015/0497 affordable housing contribution approved 13th June 2019. This approval allowed for a modification to the S106 agreement to allow the completion of nine market value houses before the on-site affordable housing provision was provided and to pay the Council half the off-site affordable housing contribution prior to the occupation of 10 units

3.0 Relevant planning policies

National Planning Policy Framework

Chapter 2, Achieving sustainable development

Chapter 4, Decision Making

Local Development Policies

South Lakeland Core Strategy Policies (CS)

CS6.3 Provision of affordable housing

South Lakeland Development Management Development Plan Document Policies (DM)

DM1 – General Requirements for all development

4.0 Assessment

- 4.1. Policy CS6.3 of the Councils Core Strategy refers to the provision of affordable housing. The policy states that on all schemes of nine or more dwellings in the Principal/Key Service Centres, and three or more dwellings outside of these areas, no less than 35% of the total number of dwellings proposed are affordable. The site is located in the open countryside, outside the Principal/Key Services Centres. The policy also states that exceptionally, a lower requirement for affordable housing will be acceptable where there is clear evidence that it would make the development

unviable. The applicant is stating the development is unviable and that the proposal cannot support any affordable housing on-site or a contribution for off-site affordable housing.

- 4.2. The original S106 agreement was signed with application SL/2015/0497 and varied under application SL/2018/0086. This required the provision of 3 no. affordable sale units on site which were identified as Plots 18, 19 and 20. It also required the payment to the Council of an affordable housing contribution of £414,750, payable in two stages: on first occupation of the tenth dwelling with the remainder payable on occupation of the fourteenth dwelling.
- 4.3. The applicant states that previous efforts to assist with cash flow (i.e. the previous Section 106 and variation) were not sufficient to allow the previous developers, Egg Homes, to viably complete the development. As a result the previous developer became insolvent and the lender repossessed the site. This application has been submitted on behalf of the lender so that the development can be completed
- 4.4. In support of the proposed amendments to the S106 agreement, the applicant has submitted a viability and affordable housing report prepared by Bailey Venning Associates. This report argues that the affordable housing requirement should be removed in order to facilitate the completion of this stalled site as in effect the Benchmark Land Value, secured through the planning permission, is zero.
- 4.5. The report states that works commenced in 2014 where 8 of the 22 homes were sold and occupied before the developer, Egg Homes, became insolvent and their lender repossessed the site, just before the revised point at which they would have been required to deliver the affordable housing. Their lender Tretonia (UK) Ltd repossessed the site.
- 4.6. The report continues to state that it transpired that the complex and innovative construction process envisaged for the homes had proved beyond the management capacity of the developer and at the time that the repossession occurred, development costs accounted for all of the value achieved through the first eight homes. The lender had not recouped any of his initial outlay and the collapse of Egg Homes occurred when it did because the development was already in deficit, there was simply no money to provide the required cash payment. Furthermore, some of the drainage pipes laid out as part of the groundworks for the site are under-sized and, whilst they may have sufficient capacity to accommodate the extant homes, they would not be adequate to address the needs of the whole development. In addition to this, some of the existing homes have also suffered problems associated with poor construction including leaking roofs and other faults.

- 4.7. The report further states that the existing homes are blighted and the developer from whom they might ordinarily have sought redress is insolvent and on the verge of collapse. It is therefore in their interests that the development is completed and the remedial works undertaken and a new, retrospective planning permission is issued in order to cover the deviations from the original proposals.
- 4.8. The report concludes that by providing up to date valuations based upon the sale of the original completed homes, and secondly, a detailed cost plan with the benefit of the completion of the eight units already constructed on the site would have a negative residual land value of minus £839,740. Therefore, the report states that if the affordable housing obligations were to be retained as per the Section 106 agreement, completion of the development is simply not economically viable and the landowner would not only receive zero value for the land, he would have to pay a developer to complete it. If the affordable housing obligation is omitted, the report concludes that the development still has a negative Residual Land Value, albeit a much smaller negative amount of £12,458.
- 4.9. Lambert Smith Hampton (LSH) on behalf of the Council reviewed the viability report. The average value for property in LA7 7 stood at £395,963 in April 2021. This is an increase of 12% since April 2020. Based on the comparable evidence from 37 sales within 1.5 miles of the site LSH would suggest new build open market sales values for the subject site will be in the range of £280/sq. ft. - £300/sq. ft.
- 4.10. LSH state that the applicant has identified a total build cost for the units of £181.43/sq. ft. which is above average build costs for the North West. However they understand that the site is not straight forward and in isolation the 14 units will not generate great levels of economies of scale.
- 4.11. The LSH report refers to the applicant's report which considers that there is a viability gap of c. £12,000. LSH consider that this figure could be absorbed by contingency should savings be made in construction. However LSH state that the viability gap to be higher than this at £177,104. The reason for the difference is partly due to the inclusion of CIL within the LSH appraisal. Therefore LSH has included a second appraisal to test a scenario in the event that there was a concession on CIL for this development. This would result in a development surplus of £26,648. A figure which could be available to the council as an affordable housing off site contribution.
- 4.12. However the Council would seek a CIL contribution of £207,000 which will result in a scheme with a viability gap of £177,104. This is equal to a reduction in the profit level of 1.82% to 15.5% on GDV.

- 4.13. LSH advises in conclusion that the development is unlikely to be delivered if affordable housing contributions are levied on the development or affordable housing is provided on the site. The development is currently unviable using standard industry inputs including CIL at 2021 indexed rates; however it is LSH's view that a developer might proceed with the development at risk of an underperformance on profit, as the scheme is not likely to make a loss. LSH has been involved with a number of sites in the North West where a developer has decided to accept a profit level below that of what is considered industry standard.
- 4.14. Overall the assessment by LSH advises that the development will be unviable if the Council require an affordable housing contribution either on-site or off- site or both. As a result it is unlikely the development would proceed leaving the eight occupied dwellings living in close proximity to an undeveloped site and in effect blighting the completed dwellings. Policy CS6.3 allows exceptionally, a lower requirement for affordable housing where there is clear evidence that it would make the development unviable. In this case there is clear evidence that no affordable housing can be provided and given the circumstances of the development, it is considered the proposal accords with Policy CS6.3.

5.0 Recommendation

- 5.1 Given the inclusion of an affordable housing requirement will ensure the development is unviable and will not go ahead Officers recommend the application to vary the 2014 S106 agreement and revoke the 2016 s106 and Deed of variation from 2018 be approved. It is considered the content of the Section 106 agreement dated 7th June 2016 which relates to planning application SL/2015/0497, is formally discharged in accordance with Section 106a (6) of the Town and Country Planning Act 1990 (As Amended) and that the original Section 106 agreement to the outline planning permission (ref: SL/2013/0594) is varied to omit the requirement for any affordable housing contributions, either on site or as a commuted sum.