

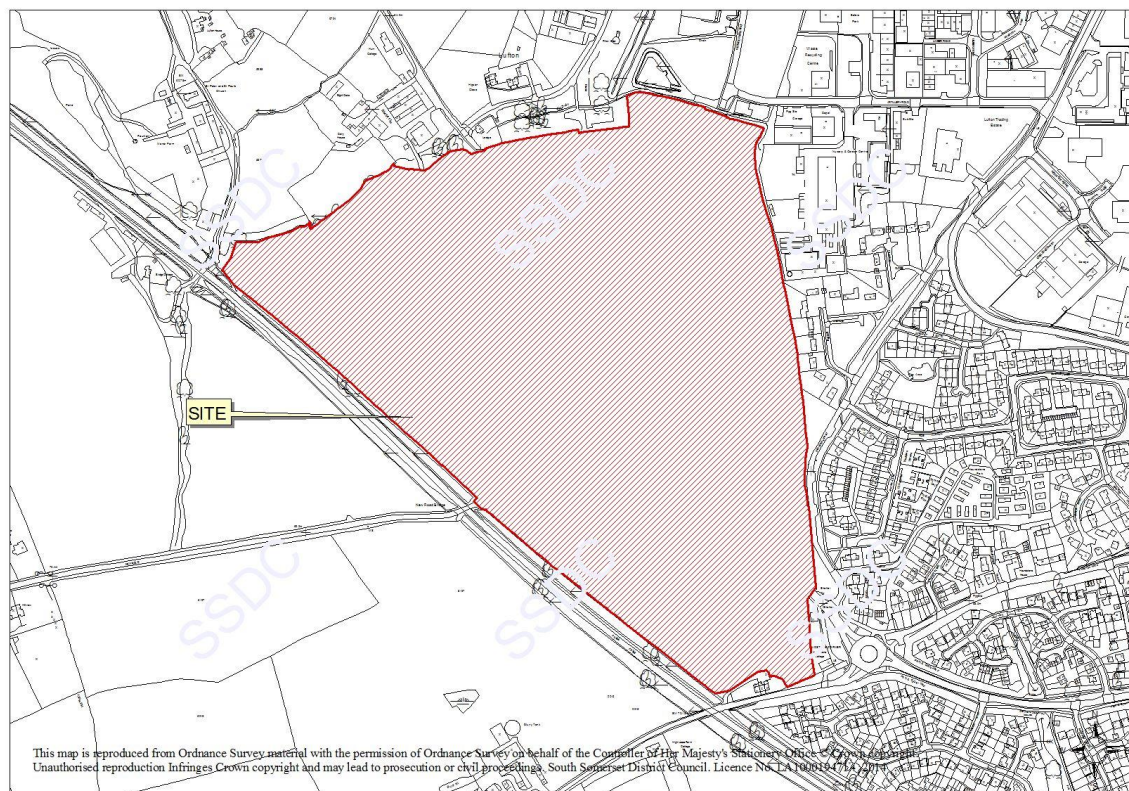
### Officer Report On Planning Application: 14/00463/DPO

<b>Site Address:</b>	Land At Lufton Lufton Yeovil
<b>Ward:</b>	BRYMPTON
<b>Proposal:</b>	Application to modify S 106 agreement relating to affordable housing dated 11th May 2007 and varied 21st October 2013 and S106 agreement relating to public opens space, play, sport and leisure provisions and education dated 11th May 2007 (GR 357652/117726)
<b>Recommending Case Officer:</b>	Simon Fox Tel: (01935) 462509 Email: simon.fox@southsomerset.gov.uk
<b>Target date:</b>	25th March 2014
<b>Applicant:</b>	Abbotsdale Homes Ltd And Royal Mencap Society
<b>Type:</b>	Non PS1 and PS2 return applications

#### REASON FOR REFERRAL TO COMMITTEE

Due to the fact this application concerns an allocated key site and given the significance of the proposed modification this application has been referred to Area South Committee in consultation with the Chairman and Development Manager.

#### SITE DESCRIPTION AND PROPOSAL



The application site comprises primarily agricultural land forming the Lufton Key Site. The application site comprises 27.35 hectares of land located on the northwestern edge of Yeovil. To the northeast of the site is the Lufton Trading Estate. To the east is the residential area of Buller Avenue and Boundary Road. To the southeast is the group of residential cottages at Houndstone Corner and beyond that the recently built residential

area between the site and the hamlet of Alvington. To the southwest and west, the site is bounded by the A3088 Cartgate Link Road linking Yeovil with the A303 Trunk Road, and agricultural land and the historic park and gardens of Brympton d'Evercy beyond. To the northwest and north of the site lie the hamlet of Lufton and the residential and non-residential Lufton College of Further Education. New Road from Montacute to Yeovil runs through the site in a roughly West-East direction and Lufton Lane runs through the site North-South linking the hamlet of Lufton to the north of the site with New Road.

The site as a whole has outline permission (05/00931/OUT) from May 2007 for residential development, a local neighbourhood centre, a primary school and associated landscaped areas. Alongside the permission three associated S106 planning obligations cover:-

- Affordable Housing, with SSDC as signatory
- Public Open Space, Play and Sport and Education, with SSDC as signatory
- Highway Infrastructure, with SCC as signatory

Approval of reserved matters has now been granted across the whole site via application 10/018756/REM. In total the site has planning permission for 696 residential units. Work has commenced pursuant to the reserved matters approval for an initial phase of 59 units.

This DPO (Discharge of Planning Obligation) application is made to vary the two S106 planning obligations to which SSDC are signatories relating to Affordable Housing and Public Open Space, Play and Sport and Education associated with planning approval (05/00931/OUT) on the grounds of financial viability. The Independent Viability Assessment shows a viability gap of in the region of £8.75m.

To address this, the applicant is seeking to reduce/alter the planning contributions in the following manner:

- Reduce affordable housing provision from 35% to 17.5% (244 units to 122 units - 72.9% (89 units) for Social Rent, 27.1% (33 units) for Intermediate) Represents £5,703,162 reduction in total cost of affordable housing provision. 59 of the total number of units are being built as part of Phase 1 in Parcel 2C as approved by 13/03753/DPO and 13/03501/S73;
- Reduce commuted sums payable for on-going maintenance of on-site open spaces from £627,180 to £654,462 (10% reduction);
- Reduce commuted sums payable for on-going maintenance of on-site play areas from £186,770 to £130,739 and for on-going maintenance of the on-site Multi-Use Games Area (MUGA) from £32,000 to £8,000, with the removal of indexing for capital and commuted sums of £129,855;
- Remove the contribution towards an off-site swimming pool or upgrading of an existing swimming pool in Yeovil (£122,961), and indexing thereon £26,828;
- Remove the indexing on the community facility contribution (£82,473);
- Adjustment of Pre-School, Primary and Secondary School Education contributions taking into account changes to affordable housing from £3,457,231 to £3,644,808. (indexed) (increase due to effect of greater provision of Social Rent units). Of the original sum £1,746,703 is the Secondary School element which is proposed to be reduced by 50%.

Indexing relates to a provision made within the original agreement where financial figures are related to a specific price index or indices, in this case the BCIS General Building Cost Index of the Royal Institution of Chartered Surveyors or the Basic Need Cost Multiplier for Education. This mechanism ensures that secured monies are inflation proof and represent the true value of the contribution when paid, often several years after the original agreement.

All approval play areas, the MUGA and all open spaces will still be provided on-site. Contributions towards equipping play areas and the provision of community facilities have remained untouched although indexing is to be sacrificed.

A separate request has also been made to Somerset County Council regarding the Highway agreements. For information this request seeks to reduce financial contributions payments towards Bus Services (from £405,000 to £202,500 and the Sustainable Transport Contribution (from £159,083 to £63,633) and indexing thereon (£123,073). All physical highways infrastructure is safeguarded save for a small reduction in the amount of indexing (£97,855). The number of fully equipped bus stops within the site will be reduced from 8 to 2 (removing £70,400).

It is understood the effect of agreeing these reductions and alterations would be to render the site sufficiently economically viable to continue.

## **POLICY AND GUIDANCE**

DCLG: The National Planning Policy Framework (March 2012) (replaced Circular 5/05 - Planning Obligations)

DCLG: Section 106 affordable housing requirements - Review and appeal (April 2013)

DCLG: Laying the Foundations - A Housing Strategy for England (November 2011)

## **HISTORY**

05/00931/OUT: Housing led mixed use development to provide approx. 620 dwellings, local neighbourhood centre and primary school site reservation on Lufton Key Site, Land West of Boundary Road: Approved: 18 May 2007.

10/01875/REM: The erection of 696 dwellings, a local neighbourhood centre incorporating retail/office space with associated highway, drainage and landscaping (Revised Scheme): Approved: 15 March 2012.

13/03501/S73: Application to vary condition No. 01 of planning approval 10/01875/REM (deletion of plan ref ACH5448/AH2/E (affordable housing plan) off schedule): Application permitted with conditions: 23/10/2013.

13/03753/DPO: Application to vary S106 agreement dated 11th May 2007 to amend clause 5 (mortgagees of affordable housing land) and formal substitution of housing areas plan referred to in 4.1 and 4.2 of s106 agreement: Application Permitted: 24/10/2013.

13/04826/S73A: Application to vary planning condition 01 (approved plans schedule) of approval 13/03501/S73 for amendments to approved layout plans (Area 2C - Housing Area 4): Application permitted with conditions: 12/03/2014.

## **CONSULTATIONS**

### Brympton Parish Council:

"APPROVAL, however the Parish Council ask that a review be carried out to look at reducing the affordable housing percentage. The Council consider that a reduction to 15% would be quite acceptable. The Parish Council wish to make it clear that it is not in a position to fund any liabilities that may arise from the proposed reductions".

Given the significance of the key residential sites, in addition to Yeovil Town Council the other neighbouring parishes of Montacute, Yeovil Without and Chilthorne Domer have

been notified.

Yeovil Without PC:

*"Noted with regret*

It is very regrettable that, once again, with the unfortunate encouragement of the Government, the developer of another Key Site in Yeovil is able to apply for revisions to existing planning approvals to relax the two Section 106 Agreements relating to affordable housing and to public open space, play, sport and leisure provisions, and education.

We note the arguments put forward in the Independent Viability Report and we acknowledge that the Lufton Key Site Development should not be allowed to become stalled, mothballed or put on hold, due to the financial unviability of the project for the developer.

We also note that the construction of this development commenced relatively recently, before the submission of this planning application. Presumably at that stage the development was considered to be viable.

We recognise the need for more housing - in particular affordable and social housing. Therefore, we deplore the severe reduction in social housing proposed in these revisions.

We are concerned that more housing must be matched by adequate, well maintained, sustainable facilities. Acceptance of this planning application will not only result in less affordable housing, but also in the reduction in the provision of finance for secondary education and for the commuted sums for maintenance of open space, play and sport facilities. Effectively, local councils are being expected to subsidise developers profits. Much has been written about the importance of sustainability of new housing developments. Developers also have a responsibility for the sustainability of new developments. A development cannot be considered to be sustainable if the developer is allowed to make promises to achieve outline planning permission or to get agreement to Section 106 Agreements, only for them to be allowed, or even encouraged by the Government, to later renege on those promises and agreements, or slow down the provision of infrastructure and facilities, whenever they are able to argue that the profitability of a particular development is jeopardised by temporarily adverse economic conditions. Developers are aware that the housing market experiences good times and bad, and they should be required to ensure that the sustainability of all aspects of the whole development, not only their profitability, is achievable at all times.

If the feasibility of developments is threatened because those developments are no longer financially viable, then they should not be considered to be sustainable. It is the residents of such developments who have to suffer in the long term when inadequate facilities are provided.

Given that you are unlikely to refuse this application, we strongly support the proposal that any revised Section 106 Agreements should include overage (clawback) clauses whereby a review of the terms of the agreements will be undertaken if economic circumstances change for the better. However, in the interests of transparency, we would be grateful if you would publish the details of how this will be monitored and by whom".

Yeovil Town Council:

"Recommend approval subject to clause suggested by District Valuer".

Chilthorne Domer PC:

"Although the area in question is not in the Parish, Chilthorne Domer Parish Council wish to object to the application. They consider the arguments put forward in proposing this amendment to be doubtful. They also consider that passing on maintenance costs to both the District and possibly the Parish Council to be unrealistic bearing in mind the pressure from Central Government on the budgets of both Councils. This proposal could well lead to the majority of social benefits included in the original application ie. play areas, MUGAs etc. being excluded leading to social deprivation on the site and affecting the sustainability as much as major changes to infrastructure might do. They also took into consideration the considerable increase in the number of houses already agreed compared to the original application and believe this has already added to the profit margin any developer may make from the site.

They also commented that this application was predictable bearing in mind the concessions made to Barratts on their site off Lyde Road - which was closely followed by Barratts announcing record profits".

Odcombe PC:

"Members unanimously disagreed with the proposed variations to the original scheme".

All parishes were notified on the initial proposal and the comments are noted above. Whilst there has been tweaking of the amounts related to various categories since that consultation, the viability gap figure on which this initial consultation was made, and the essence of the reductions, has not changed.

SSDC Strategic Housing:

"There have been a number of conversations with the relevant parties concerning the proposed changes to the s106 agreement governing the Lufton Key Site in the light of current viability issues.

In the light of there being proposed reductions in a number of the areas benefiting from the planning obligations sought in the s106 agreement, I wanted to confirm that, under the circumstances, I am content with a proposed reduction in the affordable housing element down to 17.5% without access to grant, with the bulk being made available under the social rent regime. There is an underlying assumption here that the level of affordable housing will be increased in the light of more favourable economic circumstances through the use of an overage clause. Another important caveat is that the distribution of the remaining affordable housing follows the pattern of the previously agreed plan, but with each cluster becoming smaller as a result of the drop in overall %. Further, I would expect all parties to seek opportunities for grant funding to bring the level of affordable housing back up towards the original 35% target.

This position is in the light of discussions between the various portfolio holders and the parish council in seeking to strike a balance between the areas of obligations to be 'sacrificed' in order to achieve viability (at today's financial position). I am aware that there remains a potential for further savings to be required from the total obligations package, but would have to say that a further reduction to below 17.5% affordable housing would not be acceptable".

SSDC Open Spaces Officer:

Advises that SSDC should not adopt the land with a 70% reduction in the commuted sum, which would be unviable unless other funds are found. The land should therefore be adopted by the PC or a management company.

This is now general acceptance of the revised proposal.

SSDC Community, Health and Leisure:

Due to the length and detail of the response this consultation is appended to the report, see **Appendix 1**.

**REPRESENTATIONS**

One letter was received from a local resident.

The representation questions taking the average house price from November 2007 and using this as a set point to calculate the deficit when prices were lower in Jan 2007.

The writer also states that 76 extra units, from outline to REM, and therefore increased revenue, are not taken into account.

**CONSIDERATIONS**

Development viability has been a material consideration for a number of years; the necessary flexibility to be adopted by local planning authorities has been stressed by central government so as to avoid so-called 'stalled sites', to increase house building in the country and promote economic development. Guidance advocates a collaborate approach to inform joint working to assist with openness, maintaining viability and delivering development.

In his statement accompanying the Department for Communities and Local Government (DCLG) consultation 'Renegotiation of Section 106 Planning Obligations' on 13 August 2012, the Communities Secretary said *"Tackling problems with stalled development is essential to getting builders back on moth-balled sites and building the homes we need. There is a huge potential in sites to boost local economies and we simply cannot afford to have them lying idle because of earlier agreements that are no longer viable"*.

Paragraphs 203 to 206 of the National Planning Policy Framework (NPPF) deal with planning obligations and conditions. Paragraph 205 states, *"Where obligations are being sought or revised, local planning authorities should take into account of changes in market conditions over time and wherever appropriate, be sufficiently flexible to prevent planned development being stalled"*.

Section 106A of the Town and Country Planning Act 1990 allows a developer to submit an application to modify the requirements of a planning application. The LPA must determine:

- a) That the planning obligation shall continue to have effect without modification;
- b) If the obligation no longer serves a useful purpose, that it shall be discharged (cancelled); or
- c) If the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

SSDC takes a collaborative approach to reviewing planning obligations when viability is cited, involving all relevant stakeholders in discussions prior to the submission of a formal application.

When modifications are sought on the basis of viability developers are to follow a process devised by SSDC and agreed at District Executive in April 2011. Following requests from Members a full investigation into the processes and procedures of 'Discharging Financial Planning Obligations' was commissioned and undertaken independently by SWAP. The final report has been issued to Management with the findings that internal controls are in place and operating effectively and risks against the achievement of objectives of the audit are well managed. SWAP have credited it a

"substantial assurance". This was endorsed by the South Somerset's District Council's Audit Committee of 24th April 2014.

It should also be noted however that The Government's Growth and Infrastructure Act (2013) inserted new provisions (Section 106BA) into the 1990 Town and Country Planning Act 1990. This section introduces a new application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing only. In such cases the lack of viability still has to be evidenced but savings to restore viability would mean a reduction in affordable housing only. If this tack was taken by the developer in this case the viable level of affordable housing would be nearer 10-12%. In addition upon receipt of such an application the LPA has just 28 days to make a determination under Section 106BA, unless otherwise agreed. If after the 28 days or extended period a decision has not been made the applicant has the right to appeal, which the Planning Inspectorate indicating a quick turnaround. So, given the simplicity and speed this new route offers you would question why the developer simply doesn't take this opportunity?

Officers have tried to resist this crude approach and instead encourage the developer to use the Section 106A route which as stated allows a voluntary renegotiation of all aspects of planning gain including affordable housing. During the various discussions with the developer, that have occurred prior to this application being submitted, the LPA has sought to limit the reduction to affordable housing to a more reasonable degree rather than it completely bearing the burden of the viability gap. The provision of affordable housing is a corporate aim but at all times it has been necessary to balance this with the aspiration of creating a sustainable community for the long term. A working party comprising the LPA and relevant stakeholders made the request to the developer that the LPA would favour negotiating all matters of planning gain under Section 106A than just sacrifice a greater amount of affordable housing under the Section 106BA route.

The developer, as per this approved process, has supplied a financial viability appraisal (produced by a Chartered Surveyor specialising in Development Viability) of the scheme showing they are unable to fulfil the current obligations. The worst case scenario is that development ceases beyond the current commitment of 59 units until viability is restored. In mitigation the developer points to the deterioration of the housing market since the granting of the outline application and the impact this has had generally on development viability across the country. Rising construction costs are also cited. The developer claims these events could not have been foreseen when the planning obligations were being sought or being agreed in 2007 when economic circumstances were much more favourable.

One might legitimately ask how the site cannot be economically viable when work has commenced on site. The initial development of 59 units in partnership with Yarlinton Homes is just that, an initial and tangible start, which does not require major infrastructure to be installed, such as the new road, or trigger the large financial planning contributions to be made.

Although the financial information is largely commercially sensitive, SSDC has instructed the District Valuer, at the developer's expense, to independently assess the developer's case in line with the agreed process. The initial response from the DV is attached to this report as **Appendix 2**, concluding the site is not viable. Further confirmation of this in light of the final figures showing how the viability gap is to be closed is forthcoming and Members will be given an oral update.

The package of reductions and alterations ensure that cash-flow is maintained and

ultimately the development will continue to completion, should market conditions not worsen. Overall this application and that to be submitted to the County Council seek to reduce the planning obligations package by approx. £8.75m.

The suggested variations are outlined in the opening section of this report. It is clear affordable housing still bears the brunt of the reductions but to a level that still provides many much needed affordable homes and more than would be secured if the developer took the Section 106BA. Other reductions are suggested by reducing commuted sums for open space and play area maintenance. Other obligations such as contributing money for a new swimming pool for Yeovil are simply proposed to be omitted as they are not deemed critical, given the viability issue, to this development notwithstanding the comments of colleagues in the Community, Health and Leisure Team. Accrued indexation would also represent a significant saving. Notably the financial sum requested for the provision of secondary school education is proposed to be halved.

Importantly it should be noted that given the significant task of trying to ameliorate reductions across a number of departments, whilst maintaining 17.5% affordable housing the identified and verified viability gap will not be closed completely and residual gap of approx. £1m will persist. The developer is prepared to assume this risk by increasing the review trigger (the House Price Index) from 5% (cited due to the same figure used at Lyde Road Key Site) to 6%. This is on the basis that the difference is broadly equivalent to this deficit, so some improvement in the market is necessary to completely render the site viable, and before a viability review mechanism would commence. The clause to reappraise viability in the future in the event economic circumstances improve is called an overage clause. In such a scenario increased obligations could be secured and distributed. For information, see **Appendix 3** for the overage clause used at Lyde Road Key Site.

Whilst indexing accrued since the signing of the original agreement will have been reduced it will start to be accrued again upon completion of the proposed varied agreement.

During the course of the application one representation received from a member of the public. In response to the points raised the author of the applicant's viability appraisal has responded accordingly:

- The key viability evidence that was provided in conjunction with the application consisted of a very detailed/extensive confidential Independent Viability Assessment (IVA) which was scrutinised, in depth, on behalf of the Council and the County Council, by the District Valuer Service (DVS). DVS provided the Council with a detailed confidential report on the viability of the scheme, based on its scrutiny of the IVA and also its own research. The DVS report will be the key document that will inform the Council viability-wise when determining the application. Based on his observations, the document reviewed by [the contributor] was my Non Confidential Independent Viability Report (NCIVR) of January 2014, which only provided a brief background/overview of some of the key viability issues;
- My reference in Section 2 of the NCIVR to the general Somerset-wide fall in sales values since the housing market 'crash' post 2007 was simply an attempt to provide context/background to the application, rather than being site-specific evidence of sales revenue. The confidential IVA included a very comprehensive current analysis of sales revenue (and development costs), which was reviewed by DVS when arriving at its conclusions on viability. This revenue/cost analysis also related to the approved total of 696 dwellings, which includes the additional 76 units (referred to below by [the contributor]) that were approved by the Council on 15 March 2012.

The main question therefore is would the two agreements, inclusive of the modified



package of planning gain, continue to serve a useful purpose? The view of officer's is given the discussion and collaborative working with the various departments, the applicant, Ward Members and the Parish Council a revised package of measures has been put forward that best meets the needs of the development moving forward, safeguards key infrastructure and includes a suitable review mechanism and so a revised planning obligation would continue to serve a useful purpose hereon.

As a sense of viability can only be restored by varying all the agreements and therefore it is important that the County Council resolve to modify the Highways agreement in tandem. A different method of securing highway bonds is being investigated which would have the effect of saving the developer paying the financial institutions interest and which could otherwise be used to close the viability gap further. Confirmation of this arrangement will rest with the County Council who are currently being assisted by District Council colleagues. If the developer 'saves' money by utilising a different (less expensive) highway bond mechanism or receives third party funding (directly or indirectly) for say off-site highway works then the money 'saved' will be redistributed amongst the planning obligation categories as per the intentions of the overage clause.

## **CONCLUSION**

It is concluded that the applicants have demonstrated in accordance with South Somerset District Council's protocol, which was devised to ensure transparency, that the scheme is unable to fulfil the current obligations. Overall the scheme before us has been subject to extensive consultation and consideration and presents a pragmatic route forward in accordance with all relevant policy and guidance.

## **RECOMMENDATION**

1. To approve the modifications as requested.
2. To instruct the Council's Solicitor to modify the S106 agreements.

**APPENDIX 1** - SSDC Community, Health and Leisure Consultation

**APPENDIX 2** - Non-Confidential District Valuer Report

**APPENDIX 3** - Overage Clause example

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## Memo

**To:** Simon Fox – Development Management  
**From:** Lynda Pincombe – Community Health and Leisure Manager  
**Date:** 17/2/14  
**Re:** 14/00463/DPO Application to modify S106 agreement relating to affordable housing and S106 agreement relating to public open space, play, sport and leisure provisions and education at land at Lufton.

Dear Simon,

During the viability discussions relating to this site to date, the Community Health and Leisure service has highlighted the well documented importance of adequate provision of formal and informal public open space and community facilities to ensure sustainable and healthy communities in the **long term**.

In considering the social and economic impact of this application, members should also be mindful that modifications to the S106 agreement will place an additional burden on existing infrastructure and a greater financial burden on the authority, as sums will need to be found from SSDC capital or revenue sources to address deficiencies.

Members should also note that based on the current S106 agreement, there is already an existing open space deficiency of in excess of 22,000m<sup>2</sup> on this site if current Saved Local Plan Policy CR2 and existing Needs Assessments were to be applied today. This shortfall is **not** offset by formal open space provision in the wider area. Brympton Parish currently has a shortfall of 13,694m<sup>2</sup> of equipped play, youth facility and formal playing pitch space and Yeovil overall has a deficiency of 304,664m<sup>2</sup> of space for these facility types.

### Impact Assessment

The table below details the potential financial impact of this application on play, sport and leisure provisions at the Lufton development site:

Facility Type	Capital agreed in S106	Proposed Capital Payment (no indexing)	Revenue agreed in S106	Proposed Revenue Payment (no indexing)	Potential Overall loss
Neighbourhood Equipped Area for Play (NEAP) - Phase 1	£131,000	£131,000	£64,490	£45,143	<b>£19,347</b>
Mini Football Pitch - Phase 1	£40,000	£40,000	£43,370	£30,359	<b>£13,011</b>
Local Equipped Area for Play (LEAP) - Phase 2	£52,500	£52,500	£39,455	£27,618.50	<b>£11,836.50</b>
Local Equipped Area for Play (LEAP) - Phase 3	£52,500	£52,500	£39,455	£27,618.50	<b>£11,836.50</b>

Floodlit MUGA - Phase 1	£100,400	£100,400	£32,000	£8,000	<b>£24,000</b>
Swimming Pool	£122,961	£0.00	N/a	N/a	<b>£122,961</b>
Community Facility	£378,000	£378,000	N/a	N/a	<b>£0</b>
<b>TOTALS:</b>	<b>£877,361</b>	<b>£754,400</b>	<b>£218,770</b>	<b>£138,739</b>	<b>£202,992</b>

### Impact of Reduced Commuted Sums

The proposed reduction in commuted sums will have a cost implication for the organisation that manages the play, youth and sport facilities. This could fall to SSDC if Brympton Parish Council is not willing to take on the local management of these facilities. Excluding staff costs and inflation, the maintenance costs to SSDC over a 10 year period for the play areas, mini pitch and MUGA would be expected to be in excess of £200,000; the revised figure payable if this application is approved would be £138,739 prior to any indexation.

### Impact of the loss of Swimming Pool contribution

The swimming pool contribution of £122,961 was identified to address the quantitative shortfall of swimming pools in Yeovil (299 m2 in 2014 and 486 m2 in 2027). The loss of this contribution will therefore impact on the delivery of future provision of new or enhanced facilities in Yeovil and will increase the financial burden on SSDC.

### Indexing implications

This application recommends that indexing is not paid on equipped play, playing pitch, MUGA, and community hall contributions. Based on a current assessment, the value of indexing payments foregone if this application is approved would equate to £239,156.

This means that some additional capital will be required if SSDC or the parish council is to deliver and manage these facilities to an acceptable public standard. Currently we would expect a very basic LEAP to cost a minimum of £60,000.

If this application is approved, it is recommended that indexing be applied to all revised leisure facility sums from the point of agreement forward.

### Trigger points

It is our understanding that the previously agreed trigger points for leisure facilities would not be affected by this application.

### Review Mechanism

In the event that the economic climate improves, it is recommended that a review mechanism is built into any amended S106 agreement to recoup any surplus profits to further contribute to offsite S106 infrastructure including play, sport and leisure provision.

Yours sincerely

Lynda Pincombe  
**Community Health and Leisure Manager**

**DVS** Property Specialists  
for the Public Sector

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S Fox Esq.  
Planning Officer  
South Somerset District Council  
Brympton Way  
Yeovil  
BA20 2HT

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Somerset  
TA1 4BF

Tel. 03000 506995  
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e-mail. rob.gill@voa.gsi.gov.uk

Your Reference :  
Our Reference : 1468341/WRG  
Please ask for : Rob Gill

Date : 12<sup>th</sup> February 2014

Dear Simon

**DEVELOPMENT VIABILITY ASSESSMENT AND REVIEW  
LUFTON KEY SITE, YEOVIL**

I write further to the above matter, and my detailed report addressed to your Council of today's date.

My report addresses your instructions in detail, and provides a commentary and review of an independent viability assessment together with supporting information prepared for the developers by Messrs Belvedere Vantage Ltd. My report to you followed, with colleagues, a detailed review of the development scheme as currently proposed at the Lufton Key Site, off Boundary Road, Yeovil. It follows methodology informed by both governmental and RICS guidance, together with precedents established in planning appeal decisions.

My report specifically provides:

- a) A review of the financial viability as submitted by the consultant for the developers.
- b) An analysis and conclusions as to the appropriate level of Section 106 contributions taking into account viability.

I understand that Outline planning permission (ref. 05/00931/OUT) was granted in May 2007 for the construction of a "housing led mixed use development to provide approx. 620 dwellings, local neighbourhood centre and primary school site reservation". An amended scheme was approved under a reserved matters consent dated 2012 to include "the erection of 696 dwellings, a local neighbourhood centre incorporating retail/office space with associated highway, drainage and landscaping (Revised Scheme)". In addition, it is understood that section 106 agreements were entered into, and were attached to the original outline consent.

The s106 agreements detail the required planning contributions, with headline requirements and sums as follows:

**Affordable Housing:**

35% affordable housing provision, across the phased scheme, in groups of no more than 15 houses or 3 apartment blocks.

Initial target tenure split between rented and Shared Ownership units to be 50:50, but subject to an increase in rented housing if grant funding can be secured, to a maximum split of 80:20 rented to shared ownership.

In terms of phasing, 25% of the affordable housing must be provided prior to the occupation of 50% of the market units, 50% prior to the occupation of 65% of the market units and 100% prior to the occupation of 80% of the market units.

**Public open space:**

Areas to be transferred to the Council after a satisfactory 5 year maintenance period, together with commuted sums for future maintenance

**Provision of Sport and Play Areas including:**

1 no. Neighbourhood Equipped Area for Play (NEAP)

2 Local Equipped Areas for Play (LEAP)

A playing field

Multi Use Games Area (MUGA).

Commuted sums for maintenance of same

Swimming Pool Contribution of £122,961

**Education contributions as follows:**

Community facilities contribution: £378,000

Pre-school Education Contribution: £58,765

Primary School Contribution: £1,038,863

Secondary School Contribution - £1,139,019

Temporary Classroom Contribution - £146,000

(If the number of qualifying units (all not affordable/social rented) exceeds 511, education contributions are to be increased by £115, £2,033 and £2,229 per qualifying dwelling)

A suitable area of land for a primary school must be identified and agreed before commencement of development.

**Highways Works:**

Bluebell Road Roundabout contribution: £420,000

Transport Infrastructure Contribution: £1,822,500.

Controlled Crossing Contribution: £45,000

Bus Gate Commuted Sum: £15,000

**Additional transport and highway provisions include:**

Commuted sum of £12,000 is payable on provision of individual bus shelters.

Re-alignment of New Rd

Primary Loop Rd (East) including link to George Smith Way & provision of Bus Gate Primary Loop Rd (West)

Works to northern section of Lufton Lane

Cost of provision of Traffic Regulation Order and associated works, capped at £50,000

Bus Service Contribution of £405,000

Sustainable Travel Incentive Contribution of £159,083

All payments are index-linked.

The whole site is understood to extend to 27.11 hectares (66.99 acres) (inclusive of a site extending to 1.33 hectares (3.29 acres) designated for a Primary School development) or thereabouts, and currently comprises gently undulating agricultural land bound by a mix of residential and commercial development to the East, Lufton hamlet to the North, and the A3088 road to the South and West.

It is understood that all approvals to date have been based on a policy required 35% affordable housing provision, with additional public open space, highways improvements and other section 106 contributions.

The Applicants contend that due to the recession since the grant of consent and signing of the s106 agreements, the scheme is no longer financially viable. In the light of this, the applicants are seeking to modify the section 106 agreements in order to reduce overall planning contributions, and thereby ameliorate the financial viability of the scheme. I am instructed to test the development viability assertions forwarded by consultants for the applicants in this regard.

The scheme comprises 59,568 square metres or thereabouts Gross Internal Area (GIA) of residential development, identified in provided documents as 696 dwellings, comprising a mix of flats, town houses, conventional estate housing.

In addition, the proposals include 437 square metres GIA of office accommodation, and 219 square metres GIA of retail space.

The consented scheme comprises 245 units for affordable housing, representing 35% of the whole. These are to be approximately 50% for rent, and 50% shared ownership, unless grant funding enables a greater proportion of rented units. The revision proposed by the applicants will appreciably reduce the number of affordable units to be provided on the scheme.

My report analyses each major input into the viability assessment of the proposed scheme. This assessment was been undertaken following our own detailed research into both current sales values and current costs, however in some cases we have used figures put forward by the developer if we believe them to be reasonable.

The current accepted methodology in development viability assessments is on the basis of current costs and values. I have assessed the development proposals in order to draw proper conclusions in regard to viability for planning policy compliance in current market conditions. Based on the originally agreed policy compliant scheme, incorporating 35% affordable housing and other fully indexed section 106 contributions, I conclude that with current costs and values, the scheme would result in a net deficit, and is therefore not financially viable. In respect of a number of options regarding revised schemes as proposed and assessed by the applicants (ranging from 12% to 20% affordable, and full indexed s106 down to £7,000,000), I have concluded that the scheme can be rendered financially viable in current market conditions.

To illustrate such a potential balance, the table below represents my view of potential other section 106 contributions (inclusive of any indexation) at different levels of affordable contribution:

Level of affordable housing	Indicative level of other s106, inclusive of any indexation
12%	£9,590,000
13%	£9,270,000
14%	£8,950,000
15%	£8,620,000
16%	£8,300,000
17%	£7,970,000
18%	£7,650,000
19%	£7,330,000
20%	£7,000,000
21%	£6,680,000
22%	£6,350,000
23%	£6,030,000
24%	£5,710,000
25%	£5,380,000

It is noted in sensitivity analysis however that a potential improvement in market values of completed market housing, coupled with increased demand and accelerated sales rate, could result in a surplus or 'super normal' profit available to the developer. On this basis, your Authority may wish to include a review mechanism in any amended s106 agreement, designed to recoup a proportion of any available surplus (up to a maximum represented by policy compliance) to further contribute to off site section 106.

I trust that my report adequately addresses your instructions. Please let us know if you require any further information or clarification in regard to any aspect of it.

Yours sincerely

A handwritten signature in black ink, appearing to read 'W Robert J Gill', enclosed within a simple, irregular hand-drawn rectangular border.

W Robert J Gill BSc MRICS  
RICS Registered Valuer  
Development Consultant  
DVS

## PLANNING OBLIGATION REVIEW MECHANISM

### SCHEDULE 1

- 1 The following definitions apply in this Schedule:
  - 1.1 "**Appraisal**" means a study into the financial viability of carrying out and completing the Development, including the likely developer profit to be generated and the amount of planning gain it would be reasonable for the District Council (and the County Council) to require from the Owner in those circumstances.
  - 1.2 "**Baseline Appraisal**" means the financial viability study prepared for the Owner by Belvedere Vantage Limited on 5<sup>th</sup> February 2013 that was reviewed by the DVS and the subject of a report dated 20<sup>th</sup> April 2013 ("**the Baseline Date**") and against which the planning obligations as amended by this deed have been assessed as reasonable.
  - 1.3 "**DVS**" means the District Valuer Services and Valuation Office Agency.
  - 1.4 "**the House Price Index**" means the Average House Price Index report for the Somerset area published by the Land Registry, using a commencing index figure of 270.21.
- 2 The revised planning obligations required as a result of the amendments made to the Original Agreements by this deed are based on an assessment of the planning gain that may reasonably be sought taking into account the housing market conditions prevailing at the date of this deed and are justified by the Baseline Appraisal.
- 3 Subject to paragraph 4, the District Council may by serving notice on the Owner require a first review of the financial viability of the Development following the occupation of at least 600 Dwellings on the Site provided that the House Price Index has increased by 5% or more between the Baseline Date and the date on which the District Council serves notice on the Owner of a review
- 4 A final review of the financial viability of the Development shall be made as soon as reasonably practicable following the occupation of 800 Dwellings on the Site and no new assessment of the viability of the Development shall be required or made once that review has been carried out
- 5 Each new Appraisal shall be:
  - 5.1 prepared by a valuer appointed by the Owner and reviewed by the DVS acting on behalf of the District Council and the cost of both the preparation of the Appraisal and the review shall be borne solely by the Owner but be taken into account as a development cost in preparing the Appraisal
  - 5.2 based on a reassessment of the Baseline Appraisal taking into account the actual sale prices achieved and development costs incurred up to that date, all costs and income that can reasonably and properly be expected to arise from completing the Development and having regard to the latest relevant market information available at the time
  - 5.3 completed by the Owner's valuer and delivered to the DVS for review within a period



of 8 weeks from the date on which the District Council serves notice requiring a reassessment of viability under paragraph 3 or the date on which the Owner notifies the Council of the occupation of the 800<sup>th</sup> Dwelling under paragraph 4

- 6 The Owner's valuer and the DVS shall seek to agree all relevant inputs and variables in preparing the new Appraisal and in the event of disagreement between the valuers about the methodology of the review or any matter to be taken into account in conducting the review then such disagreement shall be resolved using the disputes resolution procedure set out in clause 12 of this deed save that in the event the issue in dispute is not referred to the Expert within 4 weeks of the delivery of the new Appraisal to the DVS then the parties will be deemed to have accepted the Appraisal.
- 7 The Owner shall at all times act in good faith in facilitating the preparation of a new Appraisal and shall make available all documents and other information needed to properly consider and review the Baseline Appraisal on an open book basis, fully disclosing and justifying all costs and receipts arising from the Development to the satisfaction of the District Council acting reasonably and with a view to establishing an accurate assessment of the residual development value available as planning gain.
- 8 If on completing a review of the Baseline Appraisal the DVS reasonably concludes that in completing the Development there is in the Site residual development value that can reasonably be added to that already provided as planning gain under the Original Agreements (as varied by this deed) then he shall advise on the amount of that value when delivering his report to the District Council save that in any event the residual development value identified by the DVS together with the planning gain already received or paid to the Council under the Original Agreements (as varied by this deed) shall not exceed the value or cost to the Owner of delivering the planning obligations in the Original Agreements.
- 9 Any residual development value identified by the DVS pursuant to Paragraph 8 above shall be shared by the Council and the Owner on a 50:50 basis and for the avoidance of doubt any residual development value identified in the final review carried out under paragraph 4 shall take into account the residual development value paid or delivered following the first review under paragraph 3.
- 10 The District Council shall (acting reasonably and after having consulted the Owner) determine how and at what time its share of additional residual development value identified by the DVS shall be paid through new or revised planning obligations by the Owner in its carrying out the remainder of the Development and the parties shall enter into a supplementary agreement made under Section 106A of the 1990 Act to amend the planning obligations contained in the Original Agreements as varied by this deed in accordance with that determination