
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 15-May-2025

Subject: Planning Application 2024/91503 Modification of Section 106 agreement relating to previous permission 2015/92227 for erection of 19 dwellings (as amended by permission 2023/91259) - deletion of affordable housing requirement 1, Row Street, Crosland Moor, Huddersfield, HD4 5BB

APPLICANT

Paul Hargreaves,
Parkview Property
(Lancashire) Ltd

DATE VALID

02-Aug-2024

TARGET DATE

27-Sep-2024

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Crosland Moor and Netherton

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development

1.0 INTRODUCTION

- 1.1 This application is not an application for planning permission. It is an application to modify a legal agreement made under Section 106 of the Town and Country Planning Act (as amended). Section 106A of the 1990 Act and the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (as amended) provide the legislation to consider modifications to planning obligations.
- 1.2 The application seeks to remove the obligation to provide 2 affordable housing units, secured via a Section 106 agreement, on the previously approved planning application referenced 2015/92227. The application approved the erection of 19 single storey dwellings, at land to the rear of Row Street at Crossland Moor.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site is land located to the rear of Row Street at Crossland Moor. The site is approximately 0.7 ha and was previously occupied by Paddock Field Mill but has since been cleared.
- 2.2 Development for the erection of 19 single storey dwellings has commenced, approved via 2015/92227, and is substantially progressed. It has been confirmed via a Certificate of Lawfulness application (referenced 2021/93457) that permission 2015/92227 was lawfully commenced.
- 2.3 The site is bounded by closely spaced terrace properties to the north and a railway line/footbridge to the east. The west of the site is immediately adjoined by an area of unallocated land (former garage site) which itself is then bounded by a tree belt separating it from the adjacent recreational open space further west.
- 2.4 The site is currently accessed from between No.3 Row Street and No.17 Row Street, to the north-eastern corner of the application site. A hard surfaced track then separates the application site from the gardens to the rear of the terraced properties (known as Row Street) and exits back onto Mill Street adjacent to No.43 Row Street.
- 2.5 The surrounding area is predominately residential, and the site is unallocated as part of the Kirklees Local Plan (2019)

3.0 PROPOSAL

- 3.1 The application seeks to remove the obligation to provide 2 affordable housing units on the site (10% provision) that was secured via the section 106 agreement from application 2015/92227. The applicant has provided a Viability Assessment as evidence in support of their request.
- 3.2 At the time 2015/92227 was determined under planning policy which required that, for brownfield sites, 15% of the total floor space be provided as affordable housing. A 15% floor space contribution equated to three units at the time. However, 2015/92227 was subject to a Viability Review which resulted in a reduced provision of two units (affordable rent tenure) being agreed.
- 3.3 Application 2015/92227 also included a Public Open Space contribution of £5,638. This has already been paid to the Council and, given its limited value in the context of the proposal, is not considered further as part of the assessment. Beyond the Affordable Housing and Public Open Space contributions, the original S106 had no other pertinent obligations.

4.0 RELEVANT PLANNING HISTORY (including enforcement history)

- 4.1 2015/92227 – Erection of 19 single storey dwellings including development of associated access and hard and soft landscaping – Section 106 Full Permission

2019/92171 – Discharge of Conditions 10, 11, 12, 16, 18 on previous permission 2015/92227 for erection of 19 single-storey dwellings including development of associated access and hard and soft landscaping – Spilt Decision

2019/92793 – Discharge of conditions 7 (traffic management) and 21 (landscape) on previous permission 2015/92227 for erection of 19 single-storey dwellings including development of associated access and hard and soft landscaping – Spilt Decision

2019/93651 – Discharge of conditions 6 (highway works) and 9 (estate road) of previous permission 2015/92227 for erection of 19 single-storey dwellings including development of associated access and hard and soft landscaping – Refused

2021/93457 – Certificate of Lawfulness to confirm valid commencement of development approved under 2015/92227 for erection of 19 single storey dwellings including development of associated access and hard and soft landscaping within the 3 year time limit given in condition 1 - Granted

2022/90672 - Erection of 19 single storey dwellings, associated access, and hard and soft landscaping, including demolition of 1 Row Street – Refused

Note: Reasons for refusal; on failure to meet housing density, no affordable housing provision, unacceptable layout and appearance, poor standard of amenity for future occupiers, lack of adequate provision of visitor parking spaces, failure to demonstrate access and egress for emergency services and refuse collection, failure to demonstrate 10% biodiversity net gain, to provide green infrastructure, to demonstrate adequate space or provisions for surface water and foul waste drainage, and meaningful open space.

2023/91259 - Variation condition 2 (plans) and 3 (facing and roofing materials) on previous permission 2015/92227 for erection of 19 single storey dwellings including development of associated access and hard and soft landscaping – Granted

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme)

5.1 Officers secured the agreement for the applicant to fund an independent review of the Financial Viability Assessment.

6.0 PLANNING POLICY

Kirklees Local Plan (2019)

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

6.2 The site is unallocated within the Kirklees Local Plan. The Local Plan policies relevant to this application are:

- **LP1** – Presumption in favour of sustainable development
- **LP11** – Housing Mix and Affordable Housing

Supplementary Planning Guidance / Documents:

6.3 The following are relevant Supplementary Planning Documents or other guidance documents published by, or with, Kirklees Council:

- Affordable Housing and Housing Mix SPD

National Planning Guidance:

6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) and the Planning Practice Guidance Suite (PPGS), together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- **Chapter 4** – Decision-making
- **Chapter 5** – Delivering a sufficient supply of homes

7.0 PUBLIC/LOCAL RESPONSE

7.1 This application has been advertised as an application to modify or discharge a planning obligation. The application was advertised by site notice, press notice and neighbour letter.

7.2 The public consultation period ended on the 11th of October 2024.

7.3 No representations have been received as a result of this publicity.

8.0 CONSULTATION RESPONSES

None required.

9.0 MAIN ISSUES

- Modification of a legal agreement made under Section 106 of the Town and Country Planning Act

10.0 APPRAISAL

Overview

10.1 This application is not an application for planning permission. It is an application to modify a legal agreement made under Section 106 of the Town and Country Planning Act (as amended). Section 106A of the 1990 Act and the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (as amended) provide the legislation to consider modifications to planning obligations.

10.2 Section 106A allows a planning authority by whom a planning obligation is enforceable to agree, modify, or discharge an obligation either by agreement OR after an application, pursuant to Section 106A(3), has been made for modification or discharge. Most modifications, because of the complexity of Section 106 obligations, are concluded by agreement, the precise terms being authorised under the appropriate Scheme of Delegation, but in this case, Members are advised to determine it as a simple application. When considering an application under Sec 106A(3), the range of options available to the Council are (Section 106A(6)) to decide:

- 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; 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 modification

If the recommendation is approved, a decision notice will be issued, pursuant to b) above, discharging the obligation to provide affordable housing

10.3 The Section 106 to the original planning application secured the delivery of 2 units (a 10% provision) as affordable dwellings. The applicant has submitted a Viability Appraisal which asserts that the delivery of 2 affordable units would result in a negative profit on GDV and that, in their view, only a 0% affordable provision would make the scheme viable.

Viability Assessment

10.4 The applicant has provided a Viability Assessment seeking to demonstrate that the proposal would not be viable if the previously secured planning obligations were imposed upon them. The Government's planning practice guidance provides the following overview of the Viability Assessment process, for context:

Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return.

Any viability assessment should be supported by appropriate available evidence informed by engagement with developers, landowners, and infrastructure and affordable housing providers. Any viability assessment should follow the government's recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available. Improving transparency of data associated with viability assessment will, over time, improve the data available for future assessment as well as provide more accountability regarding how viability informs decision making.

In plan making and decision making viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission.

- 10.5 The applicant's viability assessment has been reviewed by an independent viability assessor (Align) appointed by the Council, to advise officers on this specialist subject. The key matter of dispute identified by Align is as follows:

Sales Values: The applicant identified a blended sale price £155,000 per unit (£329.52 per sqft). Following a review of comparable data, the council's assessor concluded a net sale price of £160,000 per unit (equating to £340 per sqft). This resulted in a 5.75% increase in the Gross Development Value (GDV).

- 10.6 The council's assessor has accepted all other parameters of the appraisal as set out below:

Developer Costs: The council's assessor concludes the build costs and abnormal costs are appropriate and have adopted them within their own appraisal. They are also satisfied with the contingency allowance adopted. In terms of professional fees, the council's assessor has adopted a similar figure, (although they used a percentage approached based on 8% GDV instead of individual costs). They also agree with the adopted methodology of a 6% finance rated based on 100% debt finance and the timescale is in line with industry standards.

Developer's Profit: The applicant has shown an appraisal resulting in a negative 3.46% profit (i.e., a loss to build and sell the units). The council's assessor concludes to provide a pragmatic approach to viability and delivery of affordable homes, they have adopted 15% profit on GDV as a baseline.

Land Value: The council's assessor is satisfied with this figure and have adopted this within their appraisal.

- 10.7 Utilising their amended sales values, a summary of the council's assessor's findings is as follows:
- The applicant's profit level for 2 affordable units would be 2.57%.
 - The applicant's profit level for 0 affordable units would be 9.54%.
- 10.8 Planning Practice Guidance indicates that a profit level of 15-20% of gross development value is generally considered to be a suitable return to developers. There are a number of factors that determine what a reasonable level of profit might be, including the availability of development finance, the state of the market and the consequent risk in proceeding with schemes, as well as development values and demand. In determining the appropriate level for an individual development, regard is had to the individual characteristics of that scheme.
- 10.8 As noted above, the council's assessor recommended a pragmatic approach to viability and delivery of affordable homes and therefore advise the LPA to consider a 15% profit on GDV as a baseline. They go on to conclude a 2.57% profit is too low and would be notably beneath the range established within the NPPF.
- 10.9 The council's assessor concludes that the applicant cannot viably deliver any affordable housing with the scheme. Furthermore, without delivering any affordable housing provision, the profit level for a zero housing contribution (9.54%) is still beneath the range established within the NPPF (although this is a commercial decision for the applicant). Officers concur with the assessment undertaken by the independent assessor and accept that the previously required provision of two affordable units would result in an unacceptable profit level and represent an unviable scheme.
- 10.10 In accordance with Section 106A of the Act, the evidence has demonstrated that the obligation no longer serves a useful purpose, and officers recommend that it be discharged.
- 10.11 Officers acknowledge that a viability assessment was reviewed as part of the recent planning application referenced 2022/90672, at the same site. Application 2022/90672 sought permission for a similar scheme of 19 single storey dwellings, associated access, and hard and soft landscaping, including demolition of 1 Row Street. At the time of the previous application's decision, the committee report outlined that the independent assessment undertaken at that time had concluded that the proposal would be viable – able to achieve a profit of 19.8% on sales – with the inclusion of the 2 affordable dwellings.
- 10.12 Whilst officers are mindful of the recent timeframe of 2022/90672 and the current proposal, each application must be assessed on its own merits. The principal difference between the viability assessments of 2022/90672 and the current application is the abnormal costs (i.e., costs other than those typically encountered). In 2022/90672, the applicant claimed an abnormal costs of £881,897. This was disputed by the independent assessor at the time, who concluded on a figure of £275,000. These were, however, largely based on professional judgement and speculation (which is typical, for a development yet to commence). Given that the development has now progressed, many of the actual values of the abnormal costs are known. The applicant has now identified abnormal costs of £440,993, which the independent assessor has accepted, given the more developed understanding of the site.

Representations

10.13 No public representations were received.

11.0 Summary and Recommendation

11.1 The applicant has gone through the independently assessed formal process to demonstrate viability issues with the development. Based on the details provided and the advice of the independent assessors, officers accept that the originally secured provision of two (10%) affordable housing units on this site would result in unreasonable viability issues.

11.2 Given the findings of the viability assessment process undertaken, officers recommend that the previously secured the obligation no longer serves a useful purpose, that it should be discharged, resulting in a zero affordable housing provision.

Background Papers

Application and history files, available at:

[Planning application details | Kirklees Council](#)

Certificate of Ownership: Certificate A signed.