
**REQUEST TO VARY S.106 PLANNING AGREEMENT IN RELATION TO
LINGFIELD POINT**

1. Background

In July 2009, Members granted outline planning permission for a mixed use regeneration scheme comprising of residential development and various other commercial and community uses at Lingfield Point. The permission was subject to a planning agreement to secure various benefits including construction to a high standard of sustainability, improvements to the local highway network, affordable housing provision and financial contributions to the provision of education.

Code for sustainable homes

The original planning application was supported by assertions from the developer about the desire to create an energy efficient place including highly sustainable new homes on the site. The developer subsequently committed to an obligation requiring all residential development to be constructed to a high standard of energy efficiency. This meant that houses would be built with energy saving measures such as solar panels, and better insulation. This obligation is in line with the aspiration in the Council's recently approved and adopted Core Strategy to achieve the appropriate national sustainable building standards in the Code for Sustainable Homes.

The Core Strategy recognises the important role that the design of new development can have in minimising carbon emissions so that all opportunities are taken to dramatically cut energy and water use, reduce carbon dioxide emissions, save resources and use sustainable drainage techniques.

The current planning agreement with Lingfield Investments requires all residential properties to be constructed to what is known as Code level 4. To achieve code level 4, it is necessary for a development to incorporate certain types of energy efficient measures. Each measure gives the property points and the code level is reached by achieving a certain number of points. In this way it is possible for the code to be reached through utilising a variety of measures. Each of the measures is weighted and so it is possible for two properties to achieve code 4 status by using a different mix of measures.

This code 4 standard of development will become the mandatory national standard from 2013.

Education provision

A further element of the planning agreement requires the developer to make a financial contribution to the provision of education in Darlington to cover the additional demands on the education service as the development is brought forward. The appropriate level of contribution for each phase of development is to be calculated at the time the relevant reserved matters planning application is made.

2. Purpose of the report

The current landowners, Lingfield Investment are seeking to release land in order to bring forward the first phase of the Lingfield Point site for residential development. This first phase of development will consist of the development of 250 dwellings on greenfield land.

However Lingfield Investments, who are seeking to dispose of the site for development have raised concerns that if the dwellings have to be built to the Code Level 4 standard it will significantly add to the cost of the development and will mean the company are unable to achieve the price they are seeking for the land. Furthermore the company raise concerns that the uncertainty of the education contribution would also threaten the viability of the scheme.

Consequently the company are seeking a variation to the planning agreement to enable the development to be constructed to the lower Code Level 3 and also for the education contribution to be capped. This will mean that construction costs are lowered and that there is more certainty about the overall cost of the scheme. This would enable the company to sell the land for a higher price.

The purpose of this report is therefore to consider whether it would be appropriate to allow the planning agreement to be varied to allow the first phase of the Lingfield development to proceed:-

- i) at the less sustainable standard of construction and
- ii) with the education contribution provision capped at £500,000

3. Current position and feasibility study

In order to help check the developer's case for varying the agreement an independent assessment of the scheme's viability was commissioned. This commission was at the expense of the developer.

The study has essentially compared the costs of building the development with the overall value of the scheme once constructed and has then considered the amount of money that should be left over to finance the purchase of the site. Calculating the so called 'residual' value of the land in this way is a typical and established method used within the industry to assess economic viability.

This independent assessment concluded that taking into account the existing value of the site as greenfield open space there would be sufficient value in the uplift of the land to make the disposal of the land viable, even if the development was constructed to code level 4 standards.

The report however acknowledges that it is possible to use an alternative method to assess economic viability. This alternative method compares the residual value of the land to the gross development value of the site and is based on the principle that landowners will only become incentivised to dispose of land if they can achieve a certain proportion of the gross development value, in this case 18 percent. Assessing viability in this way would mean that it would not be viable to construct at the higher code level 4.

Lingfield Investments are relying on this latter assessment to help justify their case that the construction cost of the development ought to be reduced. The company would argue that whilst the scheme might appear viable in accordance with the first method of assessment, the land value of the whole Lingfield Point site has fallen significantly in recent years and securing a higher return on the land would be fundamental to them achieving internal financial targets and facilitating the wider regeneration of the Lingfield Point site.

The report concludes that if the Council are minded to approve a variation to the s.106 agreement, economic viability should be reviewed at agreed points through the development period to assess whether later parts of the first phase should be developed to code level 4 as viability improves.

Since publication of the report the company have provided evidence of various other abnormal costs associated with the development of the site which further threatens the viability of the scheme.

4. Consideration of Issues

Code for sustainable homes

The issue for Members to consider and balance in this case are the importance of promoting sustainable energy efficient development with the fact that the start of residential development at Lingfield Point might be delayed if the landowner cannot achieve the value they are hoping to get for the land.

The development of Lingfield Point is likely to have significant wider economic benefits for the Borough of Darlington such as through the creation of construction related jobs and an increase in footfall and therefore spending within the town centre. Furthermore, the Council's recently adopted Local Development Framework Core Strategy relies on 1200 houses being delivered at Lingfield Point over the next 15 years, 400 of these in the period 2011-2016. Even if development commences soon, these housing numbers will be increasingly difficult to achieve, and the Council will have to identify additional housing land elsewhere, possibly on greenfield sites, in order to meet the Borough's overall housing requirements.

The phase 1 residential scheme is likely to take between 8 and 9 years to complete and over this period it is expected that conditions in the residential market will improve. To allow the standard of construction to be relaxed for this period of time would be out of keeping with the national standard of new development being constructed to code level 4 by 2013 as acknowledged in the Council's Core Strategy, and would undermine the Council's ability to achieve its Core Strategy and Climate

Change Strategy objectives of reducing greenhouse gas emissions; if energy efficiency measures are not built in from the start, it will be very costly and difficult to retrofit energy efficiency measures later, and the opportunity will be lost forever.

Education provision

The proposal to cap the contribution at £500,000 has been considered and there is no objection raised to this.

5. Conclusion

Taking the above factors into account, it is considered reasonable to allow a variation of the planning agreement to permit the first 100 dwellings (approximately 4 years worth of development at recent housebuilding rates) to take place at the lower code level 3 with the remainder to be at code level 4. The agreement could then be re-visited when the code level 4 requirement is due to come into effect in the event that the market has still not improved sufficiently.

The company has confirmed that it would be agreeable to this compromise.

It is also considered that the capped education contribution would be reasonable.

6. Recommendation

That the variation of the planning agreement is granted:

- i) limited to an allowance of 100 dwellings in Phase 1 to be constructed to Code Level 3 and
- ii) the education contribution in relation to Phase 1 to be capped at £500,000

in recognition of the current downturn in the market and with a view to trying to bring forward development on the site in a reasonable time.