

## Deed of variation of S106 REPORT

**Case Officer:** Anna Henderson-Smith  
**Ward:** Okehampton North

**Parish:** Okehampton Hamlets

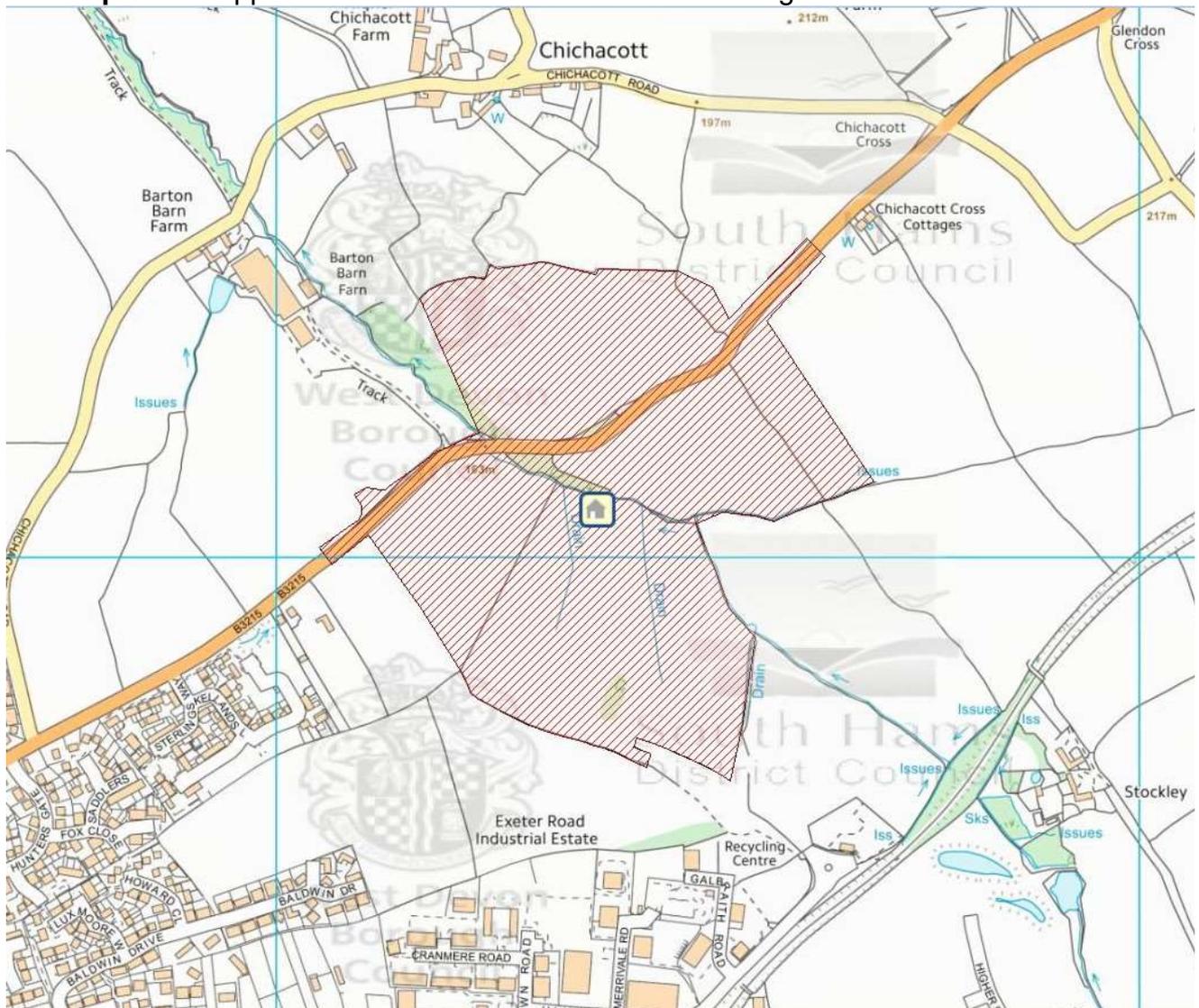
**Application No:** 3581/21/VPO

**Agent/Applicant:**  
Mr Neil Mantell - LRM Planning  
22 Cathedral Road  
Cardiff  
CF11 9LJ

**Applicant:**  
David Wilson - Barratts

**Site Address:** Parcels 3, 4a and 4b, land to the North and South of Crediton Road  
Okehampton.

**Development:** Application for modification of Section 106 agreement on 2731/15/OPA



**Reason item is being put before Committee** – terms of the previously agreed S106 were determined and debated in depth by members at the approval of 2731/15, as such it was considered appropriate for members to decide the proposal before the Council at present.

**Recommendation:**

Agree variation as proposed

**Key issues for consideration:**

The main issue for consideration here are whether the removal of the 85% trigger which currently prevents the dwellings being commenced on Phase 4a before 85% of the dwellings on parcel 3 are substantially complete is problematic in terms of the spatial growth of the town and its form.

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**Site Description:**

Parcels 3 and 4 comprising TTV14 allocation of the JLP (Joint Local Plan).

**The Proposal:**

Variation of the completed S106 agreement which accompanies approval 2731/15/OPA in order to remove the obligations which require 85% of the Open Market Units in Phase 3 to have been completed prior to the commencement of development on Phase 4a and insert new clauses to which would prevent any more than 80% of the market units on Parcel 4a being occupied until 100% of the Affordable Houses on parcel 4b have been transferred to the registered provider.

The variation will also ensure that the requirement that the whole development provides 20% Affordable Housing across the whole site is secured.

This application proposes NO changes to the wording with reference to the Link Road and its trigger points.

**Relevant Planning History**

2731/15/OPA - Outline application with some matters reserved (access to be considered) for residential development of up to 400 dwellings. Conditional approval 22/1/19

Clause 9.1 and 9.2 of Schedule 4 in relation to Parcel 4 as agreed:

## 9 PARCEL 4

- 9.1 Not to Commence Development of any Dwelling on Parcel 4 until the practical completion of 85% of Dwellings on Parcel 2 and the practical completion of 85% of Dwellings on Parcel 3 and the completion of the Southern Link Road and the Roundabout Works to an adoptable standard and a Part 2 Certificate has been issued and is open for use by the public at large.
- 9.2 Not to Commence Development or permit or cause or allow the Commencement of Development of any Dwelling on Parcel 4 until the practical completion of 85% Dwellings on Parcel 2 and practical completion of 85% of Dwellings on Parcel 3 and the completion of the Southern Link Road and the Roundabout Work to an adoptable standard and the Part 1 Certificate has been issued and it is open for use by the public at large.

### ANALYSIS

#### Change 1

At the date of the original deed the land was in two parcels of private ownership and the application was not made by a developer. The original trigger preventing commencement of the dwellings on Parcel 4 until 85% of the parcel 3 houses were substantially complete was placed on the outline permission, to ensure that spatially, parcel 4a which is physically an outlier to the main body of the allocation, did not come forward alone without the intervening land being developed and therefore did not appear as an 'island'.

This issue has somewhat fallen away and the risk of this is much reduced. Parcel 3 has the benefit of a reserved matters permission which has been implemented and development is underway. In addition all three parcels have been taken on by the same developer, BDW, and as such the risk of the three not being built out, whilst still a possibility, is a lesser risk than at the time of grant of the outline permission.

It is understandable that as the same developer intends to develop parcels 3 and 4 that they would not want to wait until 85% of units are completed on parcel 3 before starting dwellings on parcel 4a. It makes more commercial sense and enables a more efficient delivery of the development to have both running concurrently.

In addition to this the existing triggers under clause 7.1- 8.8 of schedule 4 of the original S106 remain to ensure that certain sections of the link road are delivered alongside certain numbers of houses. If both sites are delivering alongside one another, then in terms of timescale it would be anticipated that these triggers will come to fruition earlier and as such deliver this key piece of infrastructure earlier than would be the case if the parcels 4a and 3 are delivered consecutively.

#### Change 2

This incorporates a clause into the S106 which addresses the fact that the current proposal for parcel 4a is for 89 open market units and contains no Affordable Housing. The risk at present is that if parcel 4a is to be approved and parcel 4b for some reason did not come forward then the remaining Affordable Housing required to deliver the obligation of 20% Affordable Housing across the whole site may not be achieved.

The proposed clause shows the developer commitment to developing parcel 4b and delivering the Affordable Housing balance on this site. This clause would prevent any more than 80% of the market units proposed under application 1391/21/ARM being occupied until such time as 100% of the Affordable Housing units on parcel 4b are transferred to a registered provider.

The existing s106 ensures that 20% Affordable Housing is achieved overall three sites (3, 4a and 4b) and the amount of Affordable Housing is not being reduced.

### **Conclusion:**

Overall, Officers consider that the 2 proposed changes are acceptable, the 85% dwellings trigger was necessary and expedient at the time it was included, but is considered excessively restrictive now given the reduction in risk of parcel 4a being built out alone. It is accepted by officers that it makes commercial sense to develop both sites together now that they are in the control of one housebuilder and given the current climate in the construction industry.

The introduction of the Affordable Housing clause gives comfort to officers that Parcel 4b will deliver the remaining Affordable Housing units necessary to meet the obligation across the whole site. Officers do not consider it problematic that parcel 4a proposes no Affordable Housing units in principle as 4b and Parcel 3 are better located to accommodate these dwellings. As such this clause is welcomed and should offer similar comfort to members, if agreed, when considering the current reserved matters application.

***This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004***

### **Planning Policy**

#### Relevant policy framework

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of decision making, as of March 26th 2019, the Plymouth & South West Devon Joint Local Plan 2014 - 2034 is now part of the development plan for Plymouth City Council, South Hams District Council and West Devon Borough Council (other than parts of South Hams and West Devon within Dartmoor National Park).

On 26 March 2019 of the Plymouth & South West Devon Joint Local Plan was adopted by all three of the component authorities. Following adoption, the three authorities jointly notified the Ministry of Housing, Communities and Local Government (MHCLG) of their choice to monitor at the whole plan level. This is for the purposes of the Housing Delivery Test (HDT) and the 5 Year Housing Land Supply assessment. A letter from MHCLG to the Authorities was received on 13 May 2019. This confirmed the Plymouth, South Hams and West Devon's revised joint Housing Delivery Test Measurement as 163% and that the consequences are "None". It confirmed that the revised HDT measurement will take effect upon receipt of the letter, as will any consequences that will apply as a result of the measurement. It also confirmed that that the letter supersedes the HDT measurements for each of the 3 local authority areas (Plymouth City, South Hams District and West Devon Borough) which Government published on 19 February 2019. On 13<sup>th</sup> February 2020 MHCLG published the

HDT 2019 measurement. This confirmed the Plymouth, South Hams and West Devon's joint HDT measurement as 139% and the consequences are "None".

Therefore a 5% buffer is applied for the purposes of calculating a 5 year land supply at a whole plan level. When applying the 5% buffer, the combined authorities can demonstrate a 5-year land supply of 6.1 years at end March 2020 (the 2020 Monitoring Point). This is set out in the Plymouth, South Hams & West Devon Local Planning Authorities' Housing Position Statement 2020 (published 22<sup>nd</sup> December 2020).

The relevant development plan policies are set out below:

**The Plymouth & South West Devon Joint Local Plan was adopted by South Hams District Council on March 21st 2019 and West Devon Borough Council on March 26th 2019.**

SPT1 Delivering sustainable development  
SPT2 Sustainable linked neighbourhoods and sustainable rural communities  
SPT3 Provision for new homes  
SPT8 Strategic connectivity  
SPT9 Strategic principles for transport planning and strategy  
SPT13 Strategic infrastructure measures to deliver the spatial strategy  
TTV14 East of Okehampton  
TTV27 Meeting local housing needs in rural areas  
TTV28 Horse related developments in the countryside  
TTV29 Residential extensions and replacement dwellings in the countryside  
DEV1 Protecting health and amenity  
DEV8 Meeting local housing need in the Thriving Towns and Villages Policy Area  
DEV9 Meeting local housing need in the Plan Area  
DEV10 Delivering high quality housing  
DEV20 Place shaping and the quality of the built environment  
DEL1 Approach to development delivery and viability, planning obligations and the Community Infrastructure Levy

Other material considerations include the policies of the National Planning Policy Framework (NPPF) including and guidance in Planning Practice Guidance (PPG). Additionally, the following planning documents are also material considerations in the determination of the application: JLP SPD

**Considerations under Human Rights Act 1998 and Equalities Act 2010**

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.