

Report to: PLANNING COMMITTEE **Date of Meeting:** 20th October 2021

Subject: [DC/2021/00124](#)
[Land At Town Lane, Southport](#)

Proposal: Application under s.106BA of the Act to vary the requirements secured by a s.106 planning obligation attached to planning permission S/2012/0400 for:

1. Schedule 1 (Lancashire Highway Contribution) to be deleted in its entirety.
2. Schedule 2 (Sefton Highway Contribution) to be deleted in its entirety.
3. Schedule 9 (Education Contribution) to be deleted in its entirety (this Schedule was introduced pursuant to the supplemental deed dated 27 September 2018).
4. The definition Affordable Housing Supply Plan is to be replaced.
5. The plan at Annex 1 of the deed is to be replaced.
6. The definition Agreed Mix is to be deleted and replaced.
7. Clause 4.1 of the amended section 106 Agreement is to be replaced.

Applicant: BDW Trading Limited **Agent:** Ms Elaine Field
Weightmans LLP

Ward: Kew Ward **Type:** Revised affordable housing obligation

Reason for Committee Determination: Matter of Principle

Summary

The applicant has been faced with major issues during the construction of 759 homes as part of a wider residential led mixed use development, which has impacted on both the viability of the development and the delivery of the housing on the site. In light of the unforeseen works, mainly connected with a failed drainage solution necessitating a complete and costly redesign, the applicant considers that there is now a need to revisit the viability of the scheme to avoid the remainder of the scheme stalling or worse case, seeing the site being mothballed.

The applicant is, therefore, proposing to amend the Section 106 legal agreement (S106) to provide a total of 127 affordable dwellings on site (instead of 144) through the delivery of the scheme, but remove all off-site infrastructure contributions (a combined total of £230,855 when index linked to current prices).

The key issues to consider are whether the planning policy contributions set out in the S106 agreement (including affordable housing and infrastructure contributions) are still necessary and whether they can be viably delivered. If not, what the implications of this may be and whether this would be acceptable.

Taking all matters into consideration, it is considered that the Council should agree to the proposed amendments to the S106 agreement, other than the financial contribution towards the off site highway works, located outside of the Sefton Boundary in neighbouring West Lancashire.

Recommendation: To agree to amend the Section 106 agreement as follows:

- 1. Schedule 2 (Sefton Highway Contribution) to be deleted in its entirety**
- 2. Schedule 9 (Education Contribution) to be deleted in its entirety (this Schedule was introduced pursuant to the supplemental deed dated 27 September 2018).**
- 3. The definition Affordable Housing Supply Plan is to be replaced.**
- 4. The plan at Annex 1 of the deed is to be replaced.**
- 5. The definition Agreed Mix is to be deleted and replaced.**
- 6. Clause 4.1 of the amended section 106 Agreement is to be replaced.**

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Application documents and plans are available at:

<http://pa.sefton.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=QN6LQANW06900>

Site Location Plan



The Site

The application site is a large scale, partially completed residential site in Kew, Southport. It is situated off Town Lane/Birkdale Cop and is bound to the north east /east by residential properties, by Boundary Brook to the south/south east, by Birkdale Cop to the west (with open fields beyond), and by Southport Business Park and open land to the north.

The site forms part of a wider residential led mixed use development, and is a key residential development site being one of Sefton's largest housing delivery sites i.e. it is the largest housing site in Southport. It is located on a previous shallow landfill site with poor ground conditions.

History

Planning Application History

In March 2014, planning permission was granted for:

“Part (A) Erection of 668 houses and apartments; an extra care development comprising of 126 homes and 44 bed respite and dementia care building; a unit comprising 216 sq m retail; associated hard and soft landscaping and new access and highways. Part (B) Outline planning permission for a business park with uses B1, B2, B8 and Sui Generis car Showroom” (Application ref: S/2012/0400)

The application was granted subject to a S106 legal agreement, which secured the following:

- Management and maintenance of all public open spaces, including the Sustainable urban drainage systems
- The delivery of 15.9% affordable housing (by bedspaces) setting out tenures, rental levels nomination rights and the timing of delivery
- Commitment to working with Build Sefton to secure opportunities for Local Labour
- Commuted sum payment of £10,000 towards improved capacity and safety at roundabout Junction of Scarisbrick New Road/Meols Cop Road/New Foul Lane/Town Lane.
- Commuted sum payment of £25,000 towards a scheme of interactive signs and safety measures around the junction of Birkdale Cop/Heathey Lane (outside the Sefton borough), including the need to enter into a separate supplementary agreement with Lancashire County Council to facilitate these works
- The delivery of 30% affordable housing within the extra care facility.

In addition to the above, and very much separate to the Section 106 agreement (referred to as S106), the applicant entered into a legal contract with the Council to provide a phased commuted sum payment over the life of the housing development of £2.3 million towards the cost of the development of the final phase of Southport Business Park. This is on land described as 'The North East Quadrant' (a payment otherwise known as the 'Commercial Subsidy') comprising land contracted to Wilson Bowden Developments (a sister company of David Wilson Homes). Due to scheme viability changes an amount of £1.15m (i.e. half that in the original contract) is now being

offered to the Council, because of claimed reduced overall scheme viability, and this is subject of separate and ongoing discussions with the Council. This is covered below in greater detail.

Since the original permission was granted, there have been four key 're-plan' applications (i.e. part alternative schemes to that originally granted) which directly relate to this application. These are:

- *DC/2016/01102: Erection of 89 dwellings (including two 4 storey apartment blocks) and all associated works. (Alternative in part to S/2012/0400 approved 03/03/2014) Approved 16 November 2016 (Phase 3).*
- *DC/2018/00085: The erection of 91 dwellings within Phase 4 (including one 4 storey apartment and five 3 storey apartments), 119 dwellings within Phase 6 (including one 3 storey apartment) and all associated works (re-plan of original Plots H1-H58 & J1- J97 from Planning Approval ref: S/2012/0400 plus additional 21 units). Approved 28 September 2018.*
- *DC/2018/01015: DC/2018/01015 – Erection of 46 dwellings within Phase 5A with associated works. Approved 16 November 2018.*
- *DC/2018/02052: Erection of 57 dwellings within Phase 7, 114 dwellings within Phase 8, 93 dwellings within Phase 9 and all associated works (re-plan of original plots C18-C46, D1-D77,E80-E96, F1-F96 & G1-G30 from planning approval S/2012/0400, plus additional 16 units). Approved 29 March 2019.*

All of the above applications relate to changes made to the residential aspect of the development. They sought alternative proposals to various phases of the residential element of the development (9 in total based on the latest development programme), specifically phases 3, 4, 5A, 6, 7, 8, and 9. These applications approved an increase in the number of residential units proposed from 668 to 759 (combined increase of 91 units, of which the number of affordable houses has increased to 144, maintaining the same affordable housing percentage as initially approved). They also secured, through supplementary agreements to the original S106 attached to planning application S/2012/0400, a combined total of £170,331 towards education provision on the additional 91 units added to the original scheme.

A number of other applications have been submitted seeking minor and non-material amendments, as well as discharging conditions relating primarily to enabling works.

Site History

From the outset, the site was known to have very difficult ground conditions, owing to its location in an area comprising soft sand and silts (which have poor bearing capacity), together with its former use as a landfill. The significant site difficulties have resulted in the site taking almost 30 years to come forward for development, having been allocated in two Unitary Development Plans before eventually starting development in 2015.

During the construction process for the housing, the applicant identified major issues with respect to the ground conditions, which has resulted in costs escalating significantly above initial expectations. This has included failed drainage solutions on multiple occasions leading to significant issues with respect to the sewer installations; original engineer contractors going into administration (2018) requiring a third party consultant to design a new costly drainage solution; significant remedial works; additional abnormal costs including the need for a pump station, electrical sub stations, service diversion, cart away and piling. The ground conditions are described by the applicant as the most difficult of any site they have had to deal with nationally and their on-site costs are said to be of a level not experienced by the company on other sites.

As it stands, it is understood that 312 market houses have to date been completed on site with 55 affordable dwellings, with a further 92 dwellings having started but not finished. Overall, 459 dwellings have therefore either been completed or construction has started, leaving 300 to be commenced. It is understood that the applicant has completed Phase 1 and 3 of the residential development and has now started on all phases but one (that being phase 8).

The care home (to be provided by Priory Asset Management), which is not affected by these technical problems due to it being largely an institutional building, has yet to commence on site, whilst the business park (specifically the 'North East Quadrant' controlled by Wilson Bowden Developments) has also stalled.

Consultations

Highways

No objections to the removal of the £10,000 highway contribution.

Lancashire County Council

Object to the loss of a financial contribution of £25,000 to provide safety improvements to the junction of Birkdale Cop and Heathey Lane.

Neighbour Representations

A site notice was displayed but no comments have been received.

Policy Context

The site has been earmarked for residential development for many years, preceding the Sefton Local Plan and having been allocated for housing in two successive Development Plans. However, whilst previously allocated for housing, the Local Plan recognised the longstanding nature of the site, planning permissions and commencement of development. Strictly speaking, therefore, and for the avoidance of doubt, the application site lies within an area designated as primarily residential in the Sefton Local Plan which was adopted by the Council in April 2017.

Assessment of the Proposal

Introduction

As recognised in the planning history, the applicant has been faced with major issues during the construction phase, which has impacted on both the viability of the development and the delivery of the housing on site. The applicant has continually emphasised that these issues are unprecedented and could not have been anticipated at the time of the original application. In light of the significant additional unanticipated works and costs, the applicant considers that there is now a need to review the viability of the scheme to avoid it from stalling or, worse case, seeing the site being mothballed.

The applicant is, therefore, proposing to amend the S106 agreement to provide a total of 127 (instead of 144) affordable dwellings on site through the delivery of the scheme, but remove all infrastructure contributions (a combined total of £230,855 when index linked to current prices).

The key issue to consider, therefore, is whether the planning policy contributions set out in the S106 agreement (including affordable housing and infrastructure contributions) are still necessary and whether they can be viably delivered. If not, what the implications of this may be and whether this would be acceptable.

Affordable Housing Provision

Despite the fact that, at the time, the policy requirement for affordable housing provision was 30% by bedspaces, the housing element of the development was subject to a comprehensive viability assessment, acknowledging the longstanding technical problems which the site faced. This was analysed by the Council's retained viability consultants at the time, Three Dragons, who considered that just over 15% affordable housing by bedspaces was acceptable. This was based on a constrained development site and reflective of the requirement to make a reasonable return on existing use land value and, in the case of this development, to provide a financial contribution (of £2.3 million) to the wider business park development (the Commercial Subsidy). A total, therefore, of 127 affordable housing units were secured via the S106 agreement in the original permission. These were proposed to be interspersed throughout the development in line with the Council's 'peppercotting' requirement and a phasing programme.

As recognised in the planning history, the number of houses approved on the development has increased to 759 houses. Under the various 're-plan' amendments, the number of affordable housing units increased to 144 (increase of 17 units). This was retaining the 'just over 15% affordable housing by bedspaces' but equivalent to 19% affordable housing by dwellings (because the affordable housing units are, in general, smaller than the market dwellings in this scheme.).

The proposed amendment to the S106 would limit the provision of affordable housing to 127 dwellings (which is what the applicant has already contractually agreed with the registered

provider – the body which would manage these dwellings). This would be less than the 15.9% provision (based on bed spaces) secured by the S106 agreement because of the increased number of dwellings subsequently proposed. It must be noted that the legal agreement sought to calculate affordable housing provision based on bedspaces as this was the policy requirement at the time. The Council's current guidelines, however, for calculating affordable housing provision, which were recently amended in line with National Planning Policy, are based on housing units. Consequently, if the proposed affordable housing provision were calculated on housing units rather than bedspaces, the overall affordable housing provision would work out at just shy of 17%.

There are a couple of aspects therefore which need to be considered. Firstly, the applicant is still committed to providing a large number of affordable homes within the residential element of the development (127 in total). Secondly, whilst it is unfortunate that the applicant cannot accommodate the additional affordable houses agreed under the various amendments, when calculated as units rather than bedspaces, the difference in housing provision is marginal (i.e. 2%).

The Council's Strategic Housing Market Assessment has calculated the affordable housing need across the Borough. In this instance, it is recognised that Southport has the highest affordable housing need across Sefton as a whole, both quantitatively and by the proportion of borough households in Southport. To put it into perspective, over 50% of Sefton's annual (and total) affordable housing need is in Southport. Consequently, there is a continuing need for affordable housing in the area and a matter of principle to secure as much affordable housing as possible.

The original permission secured the full 30% affordable housing delivery on the 126 units of the extra care scheme. This is unaffected by the proposed amendments being sought.

Highway Safety

Highway safety improvements within Sefton

The Transport Assessment submitted with the 2012 application assessed the impact of the development on the roundabout junction of Scarisbrick New Road (A570)/Meols Cop Road/New Foul Lane/Town Lane (Kew)/McDonald's/Tesco access road. A very modest improvement to the Town Lane (Kew) approach was identified as required, but this would have had limited benefit in terms of the existing levels of congestion that is regularly experienced at this junction. Rather than implement the identified improvement which would admittedly address the effects of the proposed development, a contribution of £10,000 was secured towards a more comprehensive scheme to improve the capacity and safety in the longer term.

However, since planning permission was granted, the Council's Highways Manager has confirmed that funding has been secured separately by the Combined Authority towards the Southport Eastern Access scheme, which includes modifications to the roundabout. Given the small amount of money secured under the original permission and the recent developments towards the wider highway network, the Highways Manager is satisfied that the contribution is no longer necessary to make the development acceptable in highway safety terms.

Highway safety improvements to the junction of Birkdale Cop and Heathey Lane (within West Lancashire)

Under the original 2014 permission, Lancashire County Council determined that there was a detrimental impact on highway safety within the vicinity of the site, at the junction of Birkdale Cop and Heathey Lane. In order to address the safety risk present, a contribution of £25,000 was sought and secured to provide safety improvements to the junction of Birkdale Cop and Heathey Lane.

In assessing whether the measures previously secured are still necessary, Lancashire County Council's Highways team have carried out a further analysis of the collision data available to them. The analysis has identified that the risk to drivers at this junction, due to speed influencing the ability for drivers to manoeuvre the junction, remains present. Lancashire County Council have therefore objected to the loss of the financial contribution.

With no evidence to argue otherwise, it is considered that the loss of this financial contribution would give rise to a highway safety risk. Negotiations have been had with the applicant on this matter, who has agreed to maintain this payment should it be considered necessary. Based on the advice received and lack of evidence to argue otherwise, such requirement remains necessary and should be retained.

Education Contributions

The Council currently secure contributions towards primary education from new housing development in some parts of Sefton, including Southport. These contributions are not allocated to any specific school until it is clear which schools require additional capacity. This decision may be made several years after the contribution is secured and combined with contributions from other local developments. It may not always be the nearest school to a development that is proposed for expansion.

The original proposal for 668 houses pre-dated the requirement for developer contributions for local primary schools (i.e. September 2017). Nevertheless, in anticipation of the additional housing in the area, Kew Woods Primary was expanded to a two form entry (60 places per year group) to address any additional demand from the development.

The key 're-plan' applications identified in the planning history were assessed under the adopted Local Plan, which in accordance with Policy IN1 (Infrastructure and Developer Contributions) required a financial contribution of circa £170,000 towards primary education costs in the Kew and Norwood Wards.

In all of the key 'replan' applications it was considered reasonable that education contributions be assessed on the basis of the increase in units over and above what was previously approved but discounting the 1 bed units. The contributions were sought prior to the occupation of a unit on

any of the affected phases.

The contribution from these additional homes would have contributed to the longer term requirement for additional primary school capacity in Southport. However, there has been some additional capacity in the Southport area in recent years, in part to accommodate the growth likely to be generated by the implementation of the Sefton Local Plan, and it is considered that additional capacity can be funded through contributions secured on developments that do not have the same viability concerns as this site

Consequently, whilst the current proposal to remove the entire education contribution would fail to meet the requirements of Local Plan Policy IN1, it is considered that the loss would not undermine education provision in these wards and such requirement is no longer necessary.

Viability

Para 57 of the National Planning Policy Framework confirms that planning applications that comply with the local plan policies should be assumed to be viable. It is up to the applicant to demonstrate whether circumstances justify the need for a viability assessment. It does go on, however, to say that the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. Additionally, Planning Practice Guidance suggests that an acceptable profit for a developer is between 15% and 20%, and in less than straightforward schemes, which this is, would likely be closer to the higher figure due to the complexity of the site. This is the risk incentive to developing a site.

In justifying the applicant's case, Cushman and Wakefield have been appointed by the applicant to undertake an initial assessment of the viability of the scheme. This report concludes that, based on the usual parameters of a viability assessment, there is a strong justification to remove the S106 contributions in order to prevent the scheme from stalling.

The applicant suggests that even with the removal of these financial obligations and whilst it would move the scheme closer to profitability it would not put it to a point that would make the scheme viable, although they believe that it should 'enable the Group to continue with the development of the site.' For clarity, the scheme does make a profit, however, this is not at a level which would make the scheme viable and normally incentivise a developer to take the project forward. It is evident, however, that the applicant is demonstrating a commitment to continue with the development, despite the financial difficulties they are facing.

To verify the viability assessment, the Council's retained viability consultants, CP Viability, have been instructed to undertake an independent assessment of this report. To support their assessment and recognising the complexity of any appraisal (and the financial/viability interrelationship between the requested S106 changes and the Business Park Commercial Subsidy) they have engaged specialist cost consultancy support to appraise the abnormal development costs. The cost consultancy's findings are reflected in CP Viability's final report.

Accordingly, CP Viability have concluded:

- (i) The Planning Practice Guidance on viability is clear that the minimum level of profit for a housing scheme sold on a speculative basis is 15% on revenue. However, in their experience this tends to be for smaller projects with low or nil associated abnormal costs. For large, multi-phased schemes with significant abnormal costs, the level of return expected for a housebuilder should typically be higher (pushing towards the upper end of the range set out in the guidance, which is 20% on revenue).
- (ii) Given the large scale nature of the subject scheme and the high level of abnormal costs, a developer profit of 19.09% on revenue would be expected if a third-party developer were to complete the scheme (which is how viability must be assessed – based on what the ‘typical’ or ‘average’ developer would require as a return).
- (iii) Notwithstanding the above, in all three of CP Viability’s tested scenarios (which excludes the adjusted commercial subsidy payment – see below point (iv)) the scheme generates a developer profit well below the guidance minimum of 15% on revenue (i.e. the range of profit shown is 10.13% to 12.90% on revenue). They argue that this points to the scheme being unviable when measured against the parameters of viability set out in the guidance.
- (iv) As stated above, all three of the scenarios tested exclude any Commercial Subsidy payment (see below). As noted, the applicant (through discussions/negotiations with the Council’s officers) is proposing to make a payment of £1.15m towards the Commercial Subsidy. With this payment included the developer profit shown in the appraisals reduces to 9.04% to 10.44% on revenue (i.e. the scheme is even less viable).

Accordingly, CP Viability have advised that following the requirements of the viability guidance the scheme does not meet the minimum profit deemed necessary for a viable scheme (even before the commercial subsidy payment of £1.15m is included). On this basis, they conclude that the applicant’s assertion that the scheme is unviable and subsequently requires some assistance to continue, by way of relaxation of planning policy contributions, is justified by the viability outcomes.

It is important to note that whilst DWH accept the overall findings of the CP Viability report they disagree over abnormal costs totalling £3.5m and other miscellaneous costs. However, given CP Viability's overall conclusions, DWH do not wish to challenge this element. Furthermore, and notwithstanding this, CP Viability conclude that the development has a viability gap of £13.2m i.e. that is the amount of additional net revenue which would be required to get to 19.09% profit on the scheme.

Consequently, and following the requirements of the national guidance for undertaking viability testing, it can be concluded that the scheme is unviable.

Other Matters

Commercial Subsidy

In addition, the applicant is looking to renegotiate the separate agreed legal contract to pay, subject to key dates over the life of the development, £2.3m by staged payments towards the cost of the development of the final phase of Southport Business Park namely land denoted as 'the North East Quadrant'. This is known as the Commercial Subsidy.

The applicant has sought agreement to pay a significantly reduced amount of £1.15m. Whilst this is a matter that is being considered separately by the Council, it is important to be aware of this negotiation as the viability of the original scheme (particularly with regards to the agreed reduced affordable housing provision) did have regard to the Commercial Subsidy.

As demonstrated above, however, whether the Council agree to the reduced Commercial Subsidy or not, the development would still have a significant shortfall in developer profit and the scheme would still be unviable having regard to the planning requirements.

For the avoidance of doubt the Commercial Subsidy matter is a separate matter and any agreement to the S106 changes requested will not prejudice the Council's consideration of the matter at a later date

Insurance Claim

It is understood that the applicant is seeking an insurance claim of up to £5 million against Hydrock Contracting (the Contractor) through their protection and indemnity insurance (PPI) cover, given the difficulties experienced to address the difficult ground conditions. The outcome of this claim is unknown (and may not be known for some time), but even if it was successful, there would still be a significant viability gap which would not lead to the planning recommendations in this report changing.

Conclusion

The 759 dwelling capacity housing site comprises approximately 6% of the total borough's Strategic Housing Land Availability Assessment (SHLAA) housing supply of circa 11,500 dwellings. Furthermore, the site is assumed to deliver circa 250 units (50 dwellings per annum) as part of the borough's five-year supply position, comprising some 5% of the overall five-year supply. After Land to the East of Maghull it is the largest housing site in the borough and the largest in Southport.

To date, 367 dwellings have been recorded as completed on site, including 55 affordable dwellings, and a further 92 dwellings are under construction. There remains, however, a significant number of units left to construct (392 or 300 if excluding those that have already commenced), including affordable housing.

It is recognised that there have been significant difficulties with the site during the construction phases, which have significantly increased costs on site. These have forced the applicant to review the viability of the scheme and consequently the applicant is seeking to remove a number of S106 contributions as identified above.

It is evident from the information provided that the scheme would not be viable, as verified by the Council's retained viability consultants, and its continuation is at significant risk. The subsequent impact on the housing delivery within Sefton should the scheme be stalled or in a worst case scenario mothballed, would be significant with a possible risk of the Council failing to demonstrate a 5 year supply. This would put significant pressure on other developments elsewhere to ensure they are delivered and would still be challengeable on appeal.

In terms of affordable housing provision, the applicant is still proposing to provide 127 affordable housing units. This would be a marginal reduction to that previously agreed and in essence equates to a reduction of only 17 units. When calculated as dwellings, the reduction is minimal at around 2%. Nevertheless, and as highlighted above, Southport is seen as having the highest affordable housing need and any reduction would be very disappointing. However, should the development be mothballed the loss of in excess of 70 affordable homes in the Southport would be significant. Furthermore, there is clear justification that the developer could propose to provide no further affordable housing on viability grounds and should the developer appeal on such grounds, the loss of the outstanding affordable housing to which the developer is committed to providing would significantly outweigh the number of affordable homes proposed to be removed from the scheme. It is considered therefore that the amendment proposed would secure the highest amount of affordable housing on site.

There would be a significant loss in education contributions. Whilst such contributions were secured late on (as a result of amendments to the scheme increasing the number of houses proposed) they were necessary to comply with Policy IN1 of the Local Plan, which was adopted after the original scheme was approved. That said, the difficulties experienced by the developer were unknown at the time that such contributions were secured. Had they been, the developer

would inevitably have challenged the viability of such requests and this would have been likely to have been supported at any appeal, particularly given the fact that the local schools had already been extended in anticipation of this residential development as a whole.

In terms of highway safety, Lancashire County Council have objected to the loss of the financial contribution towards the off site highway works (outside of Sefton). They have advised that there remains a highway safety concern, which the financial contribution would help to overcome. This requirement remains necessary to ensure highway safety. The Council's Highways Manager has not objected to the removal of the highway's contribution towards the off site highway works (within Sefton) as it is no longer considered necessary.

It is acknowledged that the applicant is in discussion with the Council regarding the renegotiation of the Commercial Subsidy contractual agreement. However, even if it were agreed that there would be a reduced payment, the scheme would still not be viable. It is also understood that the applicant is continuing to pursue their legal claim against Hydrock Contracting through their protection and indemnity insurance (PPI) cover, which may result in compensation being received by the applicant. However, it is unclear as to when a conclusion on this may be or if it would be successful. Furthermore, the degree of compensation is limited to a maximum of £5 million and would unlikely be enough to raise profit levels to an acceptable range, having regard to national guidance. In short, if it were successful it would only raise profits from the development to a maximum of 16.29% on revenue, significantly short of the 19% plus expected for a development of this nature.

Whilst this current situation is highly unfortunate, the applicant has confirmed that the developers remain very much committed to the development of the site which is clearly demonstrated through the submission of this application. They do not want to stall or mothball the site if they can avoid it. Demand for their homes is good and sales have been progressing well to date. They remain on site and the development continues to progress. As such, and taking all matters into consideration, should the development not continue to be built out, it is considered that the risk to housing delivery and the provision of affordable housing (albeit at a lesser amount) would be significant should the Council not agree to the amendments proposed. That said, the loss of the financial contribution towards off site highway works (outside of Sefton) would also be a significant risk. However, if this application were approved, the applicant is willing to meet this requirement in light of the need to prevent harm to highway safety.

It is considered that the Council should agree to the proposed amendments to the S106 agreement, other than the removal of the financial contribution towards the off site highway works, outside of the Sefton Boundary. It is considered that the S.106 as amended would still serve a useful purpose, particularly with regards to delivering affordable housing in Sefton.

Recommendation – To agree to amend the Section 106 agreement as follows:

- 1. Schedule 2 (Sefton Highway Contribution) to be deleted in its entirety.**
- 2. Schedule 9 (Education Contribution) to be deleted in its entirety (this Schedule was introduced pursuant to the supplemental deed dated 27 September 2018).**
- 3. The definition Affordable Housing Supply Plan is to be replaced.**
- 4. The plan at Annex 1 of the deed is to be replaced.**
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