

<b>Application Number</b>	<b>19/00693/REM</b>
<b>Site Address</b>	<b>Land at Sherriff Street Industrial Estate</b>
<b>Description of Development</b>	Deed of Variation under s106A (1) (a) of the Town and Country Planning Act 1990 (as amended)
<b>Expiry Date</b>	n/a
<b>Applicant</b>	Sherriff's Gate Limited
<b>Agent</b>	Gregory Gray Associates
<b>Case Officer</b>	Andrew Thompson
	andrew.thompson@worcester.gov.uk
<b>Ward Member(s)</b>	Cathedral Ward
<b>Reason for Referral to Committee</b>	Major application
<b>Key Issues</b>	The delivery of affordable housing.
<b>Web link to application</b>	<a href="https://plan.worcester.gov.uk/Planning/Display/19/00693/REM">https://plan.worcester.gov.uk/Planning/Display/19/00693/REM</a>

<b>Recommendation</b>	<p><b>That the Planning Committee is minded to approve the further variation of the Section 106 Agreement dated 13<sup>th</sup> December 2018 as previously amended by a Deed of Variation dated 6<sup>th</sup> July 2020, subject to:-</b></p> <ul style="list-style-type: none"> <li><b>i) the applicant and all persons having an interest in the land entering into a Deed of Variation of the S106 Agreement to the satisfaction of the Corporate Director – Planning and Governance in accordance with the details set out in the report; and</b></li> <li><b>ii) The applicant depositing a Bond from a reputable financial institution to the satisfaction of the Corporate Director - Planning and Governance for the payment of a sum of monies to Worcester City Council equivalent to the amount of the off-site affordable housing contribution as detailed in section 7.7 of the report.</b></li> </ul>
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## **1. Background**

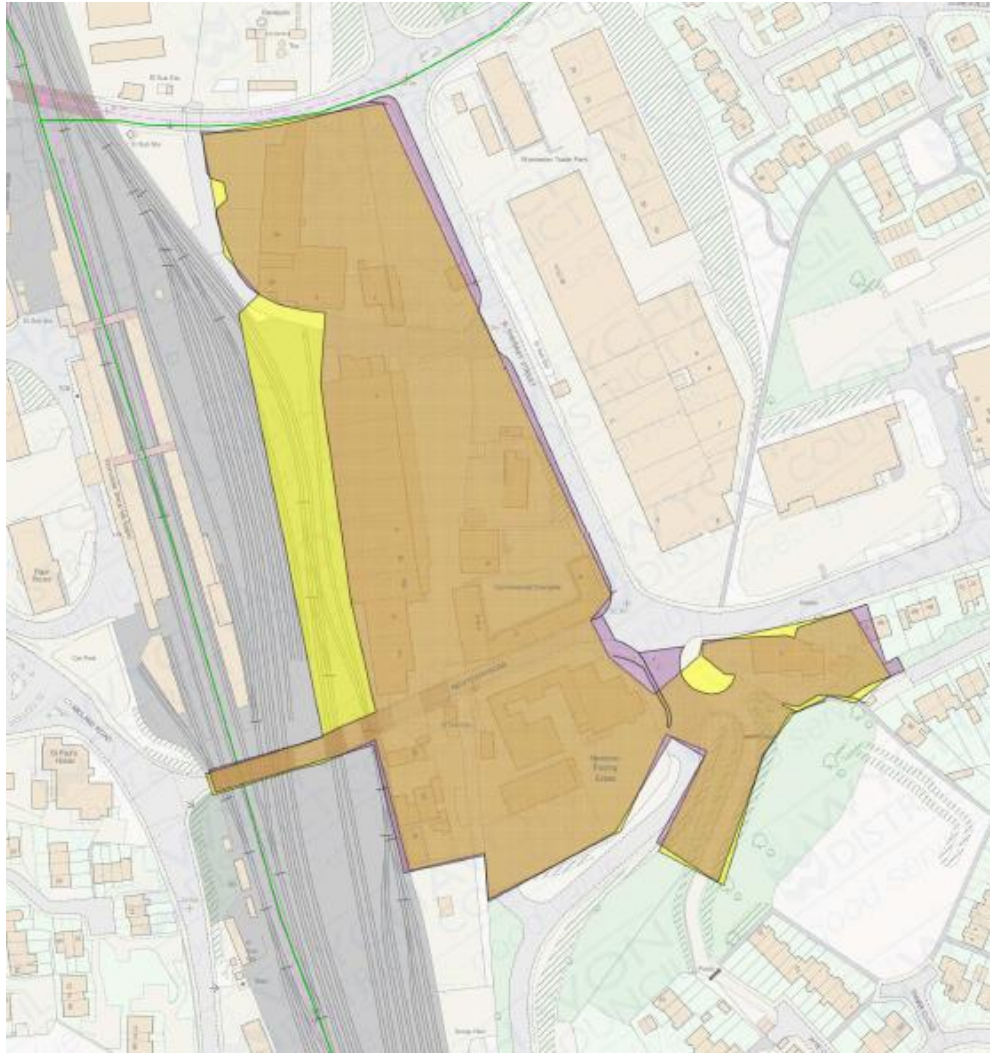
- 1.1 The application has been referred to the Planning Committee at the request of the Corporate Director Planning and Governance in accordance with the Scheme of Delegation.
- 1.2 Planning permission P12G0199 for outline and full planning permission for the comprehensive redevelopment of the site with a mixed-use development proposed in 4 phases was granted planning permission on 14 December 2018 following the completion of a S106 Agreement dated 13<sup>th</sup> December 2018 which included several financial contributions totalling £4,791,158 and the provision of 40% affordable housing.
- 1.3 On 19th December 2019 the committee approved 2 applications to discharge and vary conditions subject to the completion of a Deed of Variation with respect to affordable housing matters, including a reduction in the level from 40% to 30% in accordance with SWDP 15, amendments to highway obligations and to the timing of the various financial contributions. The Deed of Variation was signed on 6 July 2020 and the decision was issued on 14 July 2020.
- 1.4 On 29th July 2021 the committee considered a request supported by an updated viability assessment to further vary the terms of the S106 Agreement to reduce the affordable housing to 10% , to delete the requirement to make a public open space contribution and an education contribution and to reduce the amount of the transportation contributions from £4,14,710 to £2,630,000, subject to a deferred contingency 'clawback' clause capped at an amount that is equivalent to the difference between policy compliant provision and the proposed provision of 10% affordable housing and reduced contributions. This was minded to approve subject to the completion of a further Deed of Variation. Following the decision of committee on 29th July 2021 officers have been negotiating the precise wording of the Deed of Variation. During the course of negotiations the applicant has requested that further variations in respect of the affordable housing provision be included in the Deed of Variation as detailed in section 2 of this report

## **2. The proposals**

- 2.1 The current S106 Agreement requires all of affordable housing in respect of the whole development (being 47 units) to be provided in Phase 1 and restricts the commencement of the remaining phases on the development until the affordable housing has been provided. The applicant has submitted a request to further vary the terms of the S106 Agreement to allow Phase 1 of the development to be completed without any affordable housing provision and for the whole provision to be delivered in Phase 2 instead.

## **3. The site and surrounding area**

- 3.1 The application site is located to the east of the city centre comprising a parcel of land which is approximately 4.3 hectares in size and currently consists of a variety of low density industrial/commercial structures and uses. It incorporates Sherriff Street Trading Estate, Sherriff Street commercial Complex and Newtown Road Trading Estate. It also includes land on the south east corner of Newtown Road and Williamson Road currently occupied by a commercial business (Ron Smith Ltd) and open space associated with Cromwell's Trench, a Civil War feature.
- 3.2 The site is bordered by the railway line to the west, Sherriff Street to the east, Tolladine Road to the north and Newtown Road/Williamson Road to the south.
- 3.3 The surrounding area has a variety of land uses including low density industrial and commercial units, retail, health care and residential.
- 3.4 The application site forms part of wider site allocated as an Opportunity Zone for mixed use development in the South Worcestershire Development Plan (Shrub Hill SWDP44/4).
- 3.5 The application site does not contain any listed buildings, is not located in a conservation area and is not governed by any environmental designations. However the former Locke building (a Victorian factory producing china products which once rivalled Royal Worcester Porcelain) is a building of local significance and part of the site is within an archaeologically sensitive area due to its proximity to a Scheduled Ancient Monument and part of the site adjoins a Green Network.
- 3.6 A footpath runs adjacent to the existing Ron Smith building which will need to be diverted in order for the full development to proceed.



#### **4. Planning Policy**

4.1 The Town and Country Planning Act 1990 ('the Act') establishes the legislative framework for consideration of this application. Section 70(2) of the Act requires the decision-maker in determining planning applications/appeals to have regard to the Development Plan, insofar as it is material to the application/appeal, and to any other material consideration. Where the Development Plan is material to the development proposal it must therefore be taken into account. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the application/appeal to be determined in accordance with the Plan, unless material considerations indicate otherwise.

4.2 The Development Plan for Worcester now comprises:

- The South Worcestershire Development Plan (SWDP) which was adopted February 2016, and;
- The Worcestershire Waste Core Strategy, which was adopted on December 2012.

#### **South Worcestershire Development Plan**

4.3 The following policies of the SWDP are considered to be relevant to the proposal:  
SWDP 1 – Overarching Sustainable Development Principles  
SWDP 2 – Development Strategy & Settlement Hierarchy  
SWDP 7 – Infrastructure  
SWDP 13 – Effective Use of Land

## **The Waste Core Strategy for Worcestershire - Adopted Waste Local Plan 2012-2027**

- 4.4 The Waste Local Plan was adopted by Worcestershire County Council on 15 November 2012 and is a plan outlining how to manage all the waste produced in Worcestershire up to 2027. The following policies are relevant to this application:

WCS1 (Presumption in favour of sustainable development)

### **Material Considerations**

#### **1. National Planning Policy Framework**

#### **2. National Planning Practice Guidance**

#### **3. Supplementary Planning Documents**

- 4.5 The following Supplementary Planning Documents (SPD) are relevant to the application proposals:-

- Developer Contributions SPD
- Affordable Housing SPD

#### **4. Worcestershire's Local Transport Plan (LTP4) 2018 – 2030**

#### **5. Worcestershire County Council Streetscape Design Guide (2018)**

#### **6. Relevant Legislation**

- 4.6 The following legislation is also relevant and has been taken into account when considering this application:

Town and Country Planning Act 1990 (as amended)

Planning Act 2008

Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

Planning and Compulsory Purchase Act 2004

The Town and Country Planning (Development Management Procedure)

(England) Order 2015

## **5. Planning History**

- 5.1 The following application is of relevance in the determination of this application:

- 5.2 P12G0199 – Proposed urban renewal and regeneration scheme (4 Phases) for mixed use development. Approved 14th December 2018. P12G0199 gave full detailed planning permission for the provision of Phase 1 to include:

- 135 no. apartments;
- 633sqm food retail;
- 442sqm café/bar/takeaway;
- 2742 trade counter space;
- 597 space multi-storey car park (200 for the station);
- 17 parking spaces for new Ron Smith buildings;
- Improvements to the Newton Road tunnel under the railway;
- Highway mitigation measures.

The outline part of the application related to:

- Further residential;
- Residential care home;
- Hotel, retail;
- Leisure;
- Commercial;
- Car parking;
- Trade counters (sui generis);
- Café/bar/takeaway along with associated works.

5.3 19/00694/RM - Approval of all matters reserved by condition 5 of planning permission P12G0199. Approved 14 July 2020.

5.4 19/00693/REM Variation of conditions. Approved 19 January 2020.

5.5 21/01144/VARCO – Variation to Condition 1 of 19/00693/REM – Under consideration - this relates to various amendments to the layout and design.

## **6. Consultations**

6.1 The consideration is not a formal amendment to the application which has been the subject to consultation requirements. The proposed submission relates to an amendment to the agreed principal Heads of Terms and resolution of the Planning Committee and whilst officers continue to liaise with Housing Officers to ensure that appropriate safeguards are in place there is no formal requirement for wider consultation.

## **7. Planning Assessment**

7.1 Policy SWDP1 of the South Worcestershire Development Plan sets out overarching sustainable development principles and these are consistent with the Framework. The various impacts of the development have to be assessed and the benefit and adverse impacts considered, to establish whether what is proposed is sustainable development. Taking the above matters into account I consider the main issues raised by the proposal relate to the principle of development and whether the development would be sustainable, having regard to the 3 dimensions of sustainability set out in the Framework.

### **The Principle of Development and Alterations to the National Planning Policy Framework**

7.2 Since the granting of planning permission the National Planning Policy Framework has been updated in July 2021. The Framework continues the principles of sustainable development and support redevelopment of previously developed land. Whilst there is no change in circumstances that would alter the principle or consideration of detailed design matters it should be noted that the Framework has updated the definition of affordable housing.

7.3 The definition of Affordable Housing is set out as:

**Affordable housing:** housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) **Affordable housing for rent:** meets all of the following conditions: (a) the rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

b) **Starter homes:** is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household's eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

c) **Discounted market sales housing:** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

d) **Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.

7.4 The amended definition of affordable housing should therefore be noted.

### **Affordable Housing Delivery**

7.5 The applicant sets out that in the process of securing a registered provider for the affordable element of the scheme, that despite best endeavours, it has transpired that the design of phase 1 can't accommodate the affordable housing element due to the fact that the proposed affordable housing was based on the RentPlus Model being used for the 47 affordable units. and the design is unsuitable for a Registered Provider providing traditional Affordable Housing. Rentplus is a provider of alternative types of affordable housing but is not currently a Registered Provider and does not provide social rented units or traditional shared ownership units.

7.6 The applicant sets out that the only solution to this which enables a start on site during the first part of next year is for all of the Affordable Housing to be provided on phase 2. This would be provided using a traditional Registered Provider and comprise the Council's preferred mix, i.e. 38 social rented units and 9 intermediate units.

7.7 In terms of the risk to the Council the issue would be the potential for Phase 1 to be built out and development to cease and therefore no affordable housing would be delivered on the development. In order to safeguard the Council's position several options and clauses are suggested by Officers:

- a) The development of all phases of the development be explicitly linked within the legal agreement as a single development to ensure that any profit from Phase 1 should not be excluded from any subsequent discussion or submission on viability to the remaining Phases, if submitted.
- b) In the event that Phase 2 is not commenced within 6 months of 80% occupation of Phase 1 the payment to the City Council of an off-site affordable housing contribution in the sum of £1,203,919 in lieu of the on-site provision of 22 affordable housing units in Phase 1 (being 10% of the 212 units being provided in Phase 1) such sum being calculated in accordance with the provisions of the South Worcestershire Development Plan adopted Affordable Housing SPD.
- c) In the event that the off-site affordable housing contribution is paid to the City Council pursuant to sub-paragraph b) above the provision on-site of the balance of the affordable housing in Phase 2.
- d) The provision of a bond to secure the payment to the City Council of the said commuted sum in the event that either the affordable housing is not provided in Phase 2 or Phase 2 is not commenced within 6 months of 80% occupation of Phase 1. Such Bond to be released on the transfer of the affordable housing to an approved Registered Provider.

7.8 Whilst it cannot be guaranteed that future submissions would not be forthcoming, it is considered that the above elements would reduce the risk to the Council and aid the delivery of housing and affordable housing.

7.9 The amendments to the delivery of affordable housing would mean that the development on Phase 2 would provide all of the affordable housing (being previously agreed as 10% of the whole scheme) however the mix of tenure would avoid the ghettoization of this Phase.

7.10 As such, Officers recommend that subject to suitable safeguards, that the amended s106 be progressed.

## **8 Planning Balance and Conclusion**

8.1 The Government sets out that it expects Local Planning Authorities to be positive and proactive in the delivery of housing and that there is a broad definition to the definition of affordable housing.

8.2 In the delivery of regeneration, costs such as remediation and land contamination, are significant factors in the delivery of affordable housing and that viability needs to be carefully considered.

8.3 The delivery of affordable housing should be carried out in a manner that does not create ghettoization or isolation of affordable housing and allows for integration of a mix of communities within the development. Further affordable housing should not be banished to the least desirable part of the application site in order to maximise market value.

8.4 In consideration of the above, it is noted that the development as a whole would deliver a lower level of affordable housing (10% of the development in total) and that the amendment would mean that a proportion of the development on Phase 2 would be affordable housing.

8.5 However the mix of tenure (social rent and intermediate) and the mix with market housing would not result in isolation of the affordable housing.



It was previously agreed that the provision of the affordable would be in one phase which assists in the management of affordable housing units by future Registered Providers. There is no suggestion that the proposals are being pushed to a less desirable phase of the development.

8.6 As such, it is considered that the proposed amendments to the s106 would be acceptable and aid the delivery of market and affordable housing and the wider regeneration benefits of the proposed development.

**9. Recommended amendment under s106A (1) (a) of the Act:**

9.1 That authorisation be given to negotiate and complete the variation of the s106 Agreement to allow the full balance of 47 affordable units to be provided on phase 2 in accordance with the City Council's required mix, i.e. 38 social rented units and 9 intermediate units with the appropriate safeguards detailed in paragraph 7.7 to protect the delivery of the affordable housing.