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## Appeal Decision

Site visit made on 11 April 2025

by **H Nicholls FdA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 01 May 2025

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**Appeal Ref: APP/D1265/Q/24/3351320**

**Phase 2-4 Curtis Fields, Land south of Chickerell Road, Weymouth, Dorset  
DT4 0TR**

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a refusal to modify a planning obligation.
  - The appeal is made by Betterment Properties (Weymouth) Ltd against the decision of Dorset Council.
  - The development to which the planning obligation relates is outline planning permission (with all matters being reserved including access) for the development of approximately 500 residential dwellings in 3 phases (phases 2 to 4).
  - The planning obligation, dated 17 August 2016, was made between Weymouth and Portland Borough Council, Dorset County Council and Betterment Properties (Weymouth) Ltd.
  - The application Ref P/MPO/2023/03270, was refused by notice dated 20 June 2024.
  - The application sought to have the planning obligation modified as follows: Modify S106 agreement relating to Phases 2-4 at Curtis Fields (WP/14/00777/OUT) to modify a portion of the affordable housing requirements from 30% to 26.24% following receipt of independent viability report.
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### Decision

1. The appeal is allowed. The planning obligation, dated 17 August 2016, made between Weymouth and Portland Borough Council, Dorset County Council and Betterment Properties (Weymouth) Ltd], shall have effect subject to the modifications as set out in the Deed of Variation dated 7 March 2025, entered into between Dorset Council and Betterment Properties (Weymouth) Limited.

### Applications for costs

2. An application for costs was made by the appellant against the Council. This application is subject of a separate decision.

### Preliminary Matters

3. I have taken the description of development from the Council's decision notice as it more adequately describes the nature of the modifications sought following negotiations between the main parties.
4. A completed and executed deed of variation (DoV) was finalised by the appellant and the Council on 7 March 2025. The DoV seeks to amend the extant S106 (S106) agreement in relation to the affordable housing contribution which requires that not less than 30% of the dwellings shall be affordable housing units.
5. An earlier Deed of Variation dated 9 December 2022 was entered into by the Council and appellant but would be unchanged by the proposed modification.

## Context

6. The outline permission allowed for approximately 500 dwellings across a range of phases on an allocated urban extension site. Reserved matters consents have also subsequently been granted and commenced. This modification would apply to phases 2 - 4 of the development.

## Main Issues

7. The main issues are whether the planning obligation relating to affordable housing continues to serve a useful purpose and if so, whether it would serve that purpose equally well if it was modified as proposed.

## Reasons

8. The request to modify the S106 is made having regard to the scheme's financial viability and the unforeseen costs of developing the site which have arisen since the planning permission was originally granted. The effect would be to reduce the affordable housing provision from 30% to 26.24%, amounting to 18 fewer affordable dwellings overall (122 instead of 140).
9. The provision of affordable housing was a policy requirement at the time of the original decision, albeit for the reduced amount of 30% at the time that the negotiations were ongoing. The current policy position is found in Policy HOUS1 of the West Dorset, Weymouth & Portland Local Plan (2015) (Local Plan). This Policy requires that 35% affordable housing is secured from schemes in Weymouth and West Dorset. Where a lower level of affordable housing provision is being sought, an assessment of viability should be provided and such will only be permitted where there are good reasons to bring the development forward and the assessment shows it is not economically viable to make the level of provision being sought.
10. There does not appear to be a dispute between the main parties that an affordable housing need still exists in Weymouth. As such, it is clear to me that the S106 agreement was and continues to be necessarily and fairly related to the development having regard to the policy framework and the area's housing needs. Therefore, given the policy and local housing context, the planning obligation relating to affordable housing continues to serve a useful purpose. However, it is necessary to go on and consider whether the obligation would serve that purpose equally well if it had effect subject to the modifications specified in the application. In other words, whether the modified provision would represent the maximum reasonable amount of affordable housing and thus be policy compliant.
11. It is clear from the appellant's Viability Report<sup>1</sup> which accompanied the S106A application that the full 30% affordable housing provision combined with the other suite of financial contributions would render the scheme economically unviable. The District Valuer's Viability Review Report<sup>2</sup> undertaken on behalf of the Council concurs that based on current costs and values, the scheme could not viably support 30% affordable housing in addition to the full range of other S106 requirements. However, the Viability Review Report indicates that a 26.24% provision of affordable housing (total 122 units) could be supported whilst maintaining the other range of S106 requirements and taking the District Valuer's

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<sup>1</sup> dated March 2023

<sup>2</sup> dated November 2023

adoption of reasonable profit levels based on their professional advice and experience. As a consequence of the District Valuer's recommendations, the 26.24% affordable housing provision and unaltered position in respect of other contributions has been provided for in the DoV.

12. The Council indicate that there has been insufficient time to seek a reappraisal of the scheme based on any changes to costs and values since the December 2023 Viability Review Report. Therefore, any assumption that costs have reduced at the same time as values have increased is not based on cogent evidence before me. Though it is suggested that the costs of developing the site should have been more fully explored, it is still the case that unforeseen abnormal costs have arisen and a substantial period of time has elapsed since the original S106 was agreed. My view on the evidence before me is that the modification would provide for the maximum reasonable amount of affordable housing to be delivered going forward, in compliance with development plan policies, including Policy HOUS1 of the Local Plan.

### **Conclusion**

13. In view of my conclusion above, it follows that the modified obligation would serve its intended useful purpose equally well and so accords with the provisions of S106A(6)(c).

*H Nicholls*

INSPECTOR