



Application Report

Planning, Housing and Health
North Devon Council
Lynton House, Commercial Road,
Barnstaple, EX31 1DG

Application No: 76106
Application Type: S106 Discharge or Modification
Application Expiry: 28 February 2023
Extension of Time Expiry: 28 February 2023
Publicity Expiry: 16 November 2022
Parish/Ward: SOUTH MOLTON
Location: Land off North Road
South Molton
Devon

Proposal: Notice of an application to modify a planning obligation under regulation 3 of the T & C P (modification & discharge of planning obligations) Regulations 1992 in respect of application 61953 to delete paragraphs 1.3 to 1.13 Schedule 2 and to modify paragraphs 3, 4 and 6 of Schedule 8

Agent: Baker Estates Limited
Applicant: Baker Estates Limited
Planning Case Officer: Mr R. Bagley
Departure: N

EIA Development:
EIA Conclusion: Development is outside the scope of the Regulations.
Decision Level/Reason for Report to Committee (If Applicable): Committee – Councillor call in.

Reason for call in to Planning Committee

The application has been called to be heard at the Planning Committee by Councillor Henderson for the following reasons:

“This Planning application goes against Planning Policy and has been submitted as the developer believes the site is now unviable. A large part has already been completed under the original application. It is not acceptable that developer contributions to the community should be removed at such a late stage to protect the commercial profitability for the developer. It would also set a precedent that would see the floodgates open for other amendment to agreed planning approvals.”

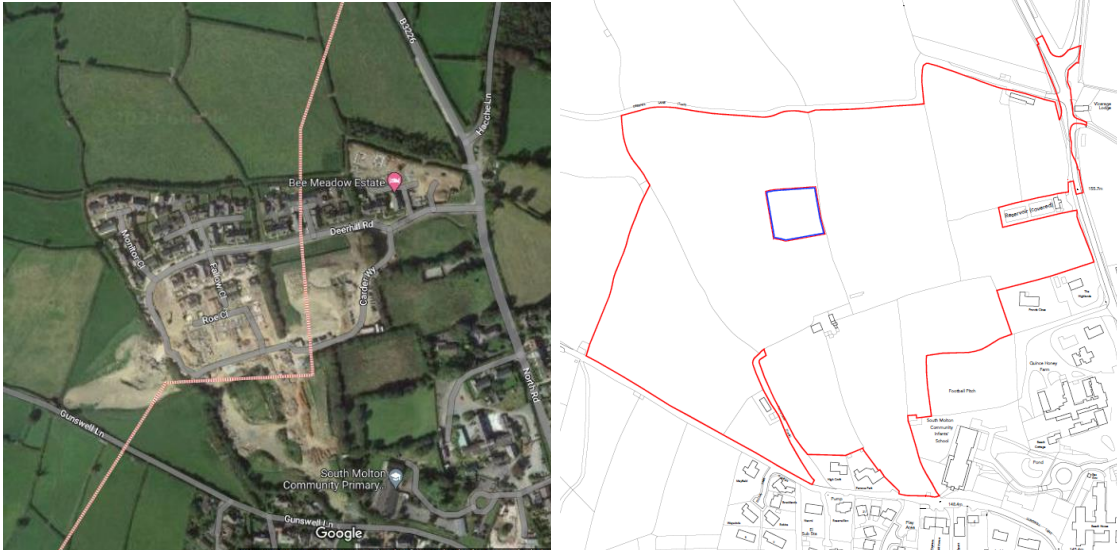
Recommendation

REFUSAL

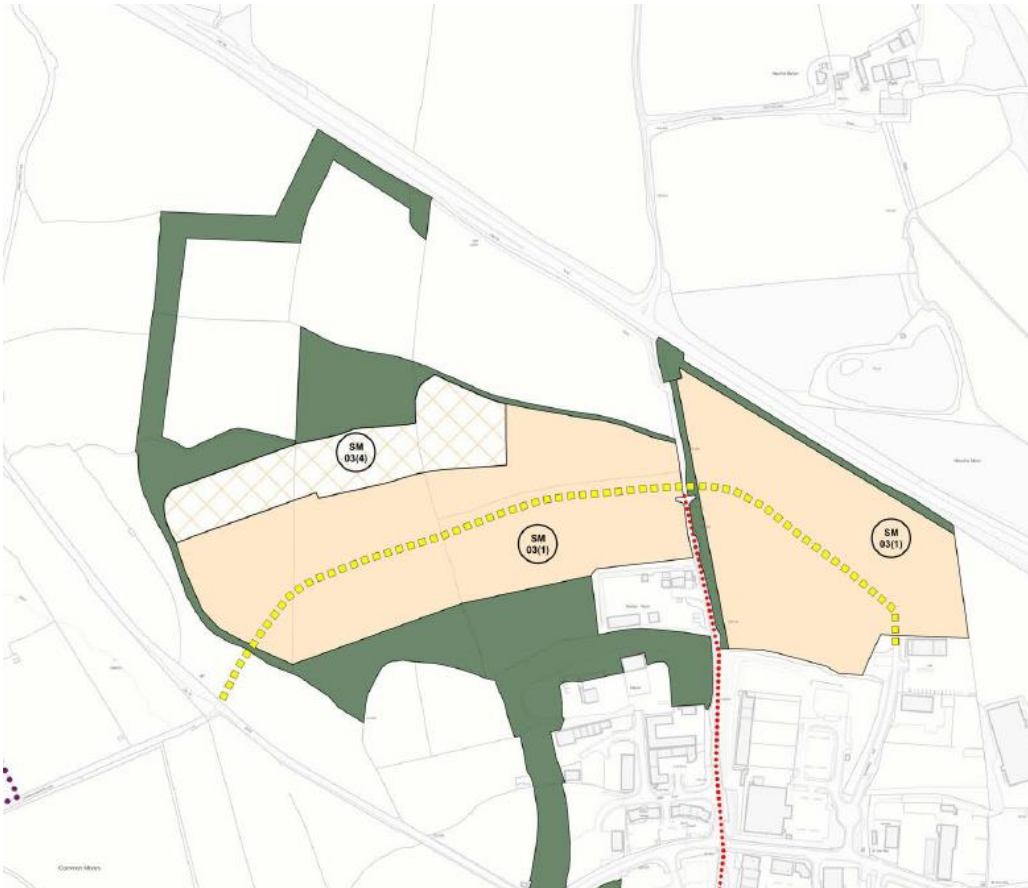
Legal Agreement Required: Yes

Site Description

The housing site at North Road is located to the west of South Molton and comprises approximately 42 ha of mixed use development including housing, and is located to the west of North Road forming part of the wider allocation for the South Molton Strategic Western Extension.



Allocation plan from SM01 - North Devon and Torridge Local Plan



This part of the site is provided through the North Devon and Torridge Local Plan Strategic Policy SM01: South Molton Strategic Western Extension

(1) Land to the west of South Molton (about 42 hectares), as identified on Policies Map 9, will be developed comprehensively to deliver a sustainable, high quality, mixed use development that includes:

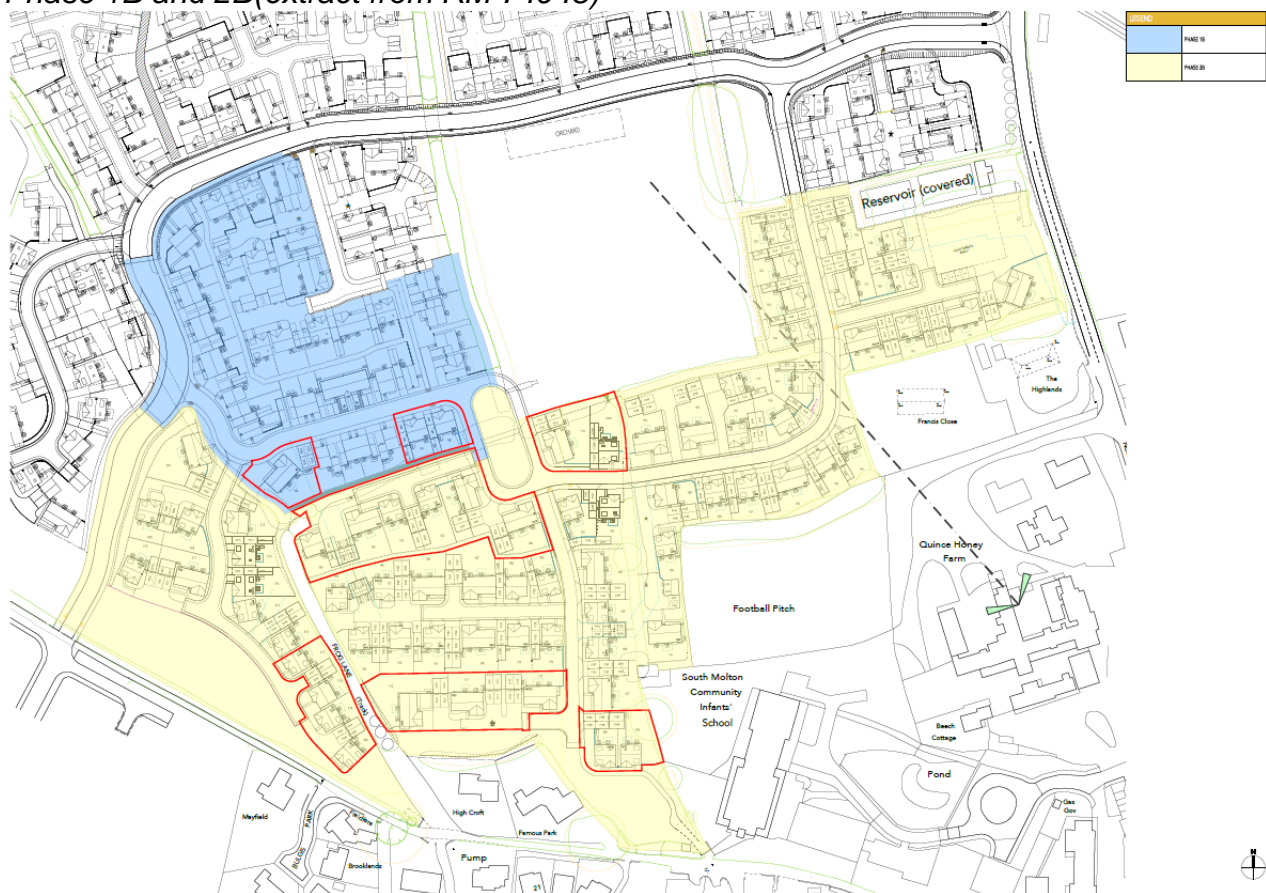
(a) approximately 890 dwellings, the size and tenure of which will be reflective of local needs;

This application forms part of the development of the entire allocated site, and is required by SM01 to provide:

(2) The residential development will be delivered as follows:

(a) area 1 (north of Gunswell Lane) for approximately 250 dwellings including the historic setting of the listed buildings at Quince Honey Farm being safeguarded

Phase 1B and 2B (extract from RM 74948)



The site has extant planning permission for residential development and much of the site is completed.

Outline planning permission 61953 was granted permission on the 17th March 2017 for the erection of c.250 dwellings, allotments, public open space and associated infrastructure on the site.

61953 – outline Masterplan



The Masterplan from outline planning permission 61953 shows the south western part of the site delivering medium to low density housing areas. The Masterplan shows the provision of a roundabout to the eastern section from North Lane, which then leads through the site to a linking road through the southern part of the site and out on to Gunswell Lane. The site is currently accessed via a T-junction off North Road. This phase of the development of the site are intended to link through to Gunswell Lane to the south, which will form part of the spine road that will link with the wider allocation, wrapping around the western edge of South Molton.

A condition was attached to the outline approval that would not permit more than 200 dwellings to be built prior to the construction of a roundabout on to North Road.

The S106 for the outline scheme required the Gunswell Link to connect to the estate road on the occupation of **225 dwellings**.

A separate application for 6 dwellings (ref. 65256) on land previously identified for a medical centre, was subsequently approved on the 10th of January 2019.

There have been various Reserved Matters applications approved across the site.

In the last RM application:- 73446, the overall housing numbers within the development shows a total of 220 units. Of those 6 form part of planning permission 65256 which is a full standalone permission not tied to the outline consent or the s.106 agreement. 20% of remaining 214 units equates to 42.8 (rounded up to 43).

To date the scheme has delivered approximately 150 dwellings with 10% (18 Affordable dwellings). The S106 would require the applicants to provide the required balance of the s106 contributions for this stage, including an additional 26 affordable units within the 40 unit to complete phase 2 to meet the original s106.

Planning History

Reference Number	Proposal	Decision	Decision Date
74948	Reserved matters application for the erection of 20 residential dwellings and their associated garages, parking, & landscaping previously approved under reserved matters 65257 & 71971 (outline planning permission 61953 mixed use development comprising approx 250 dwellings , allotments, public open space and other associated infrastructure) at Land West of North Road South Molton Devon E: 271033 N: 126289	Not yet determined	
75727	Approval of details in respect of discharge conditions 4 (written scheme of investigation) 5 (lighting), 8 (bat & bird boxes), 9 (LEMP), 12 (CEMP), 19 (engineering plans). 21 (site compound/car parking). 24 (drainage) and 25 (waste) attached to planing permission 71251 (erection of 187 dwellings together with associated infrastructure, public open space and landscaping). at Land off Nadder Lane South Molton Devon	Not yet determined	
75981	Application for a non-material amendment to planning permission 71251 (Erection of 187 dwellings together with associated infrastructure, public open space & landscaping (Amended Plans)) in respect of amendment to landscaping plans in order to increase BNG value by increasing the amount of planting onsite, specifically an increase in boundary planting alongside the attenuation basin. at Land North of Nadder Lane South Molton Devon	Not yet determined	
76682	Application for a non-material amendment to planning permission 70681 (reserved matters application for erection of 15	Not yet determined	

Reference Number	Proposal	Decision	Decision Date
	dwelling (phase 1D - plots 107 to 121) together with associated roads, drainage, garages, parking, landscaping & open space (outline planning permission 61953)) in respect of minor reorientation of the double garage associated with Plot 107 at Land West of North Road South Molton Devon		
21148	PROPOSED ERECTION OF AGRICULTURAL BUILDING at LAND OFF (PT OS 8620), GUNSWELL LANE, SOUTH MOLTON, EX36 3RA	FULL PLANNING APPROVAL	2 January 1996
22608	PROPOSED ERECTION OF OVERHEAD LINE FROM HEDDON CROSS TO PATHFIELDS INDUSTRIAL ESTATE (AMENDED PARISH) (AMENDED PLANS - NEW ROUTE) at FROM HEDDON CROSS TO SOUTH MOLTON, HEDDON CROSS, CHITTLEHAMPTON, SOUTH MOLTON, EX379RE	FULL PLANNING APPROVAL	14 February 1997
28454	OUTLINE APPLICATION RESIDENTIAL DEVELOPMENT WITH ACCESS FROM NORTH ROAD VIA GUNSWELL LANE at LAND OFF, GUNSWELL LANE, SOUTH MOLTON, EX364DH	WITHDRAWN	23 March 2000
28678	APPLICATION UNDER REGULATION 3 OF THE T & C P GENERAL REGULATIONS 1992 NOTIFICATION BY DEVON COUNTY COUNCIL IN RESPECT OF PROPOSED ERECTION OF NEW INFANTS SCHOOL CONSISTING OF 6 CLASSROOMS & CLOAKS AREA, OFFICES, PLANT ROOM, HALL, KITCHEN & STORAGE AREAS TOGETHER WITH EXTERNAL WORKS, ACCESS ROAD, PARKING, HARD PLAY AREAS & ENVIRONMENTAL STUDY AREA at , LAND R/O BEECH HOUSE, NORTH ROAD, , , SOUTH MOLTON, EX363AZ	APPROVE REG 3/4	13 July 2000
31152	OUTLINE APPLICATION IN RESPECT OF RESIDENTIAL DEVELOPMENT at , LAND OFF (OS 8822 & 9523), GUNSWELL LANE, , , SOUTH MOLTON, EX364DH	WITHDRAWN	1 June 2001
29372	OUTLINE APPLICATION RESIDENTIAL DEVELOPMENT WITH ACCESS FROM WEST STREET (FURTHER AMENDED	FINALLY DISPOSED OF	15 December 2005

Reference Number	Proposal	Decision	Decision Date
	PLANS & LETTER) at LAND ADJ GUNSWELL LANE, SOUTH MOLTON, EX364DH		
54384	MIXED USE DEVELOPMENT (HYBRID APPLICATION) COMPRISING 115 DWELLINGS, ALLOTMENTS, PUBLIC OPEN SPACE, HIGHWAY ACCESS & OTHER INCIDENTAL DEVELOPMENT (PHASE 1 - FULL DETAILS); TOGETHER WITH UP TO 135 DWELLINGS, A MEDICAL CENTRE (USE CLASS D1, UP TO 750SQM), PUBLIC OPEN SPACE & OTHER INCIDENTAL DEVELOPMENT (PHASE 2 - OUTLINE, WITH MEANS OF ACCESS ONLY TO BE APPROVED AT THIS STAGE) at Land at North Road South Molton Devon	FULL PLANNING + S106 APPROVAL	16 July 2014
59461	LISTED BUILDING APPLICATION IN RESPECT OF EXTENSION & ALTERATIONS TO DWELLING & FORMATION OF ONE UNIT OF HOLIDAY ACCOMMODATION at THE OLD RECTORY, NORTH ROAD, , , SOUTH MOLTON, DEVON, EX36 3RA	LB (EXECUTION WORKS) APPROVAL	3 September 2015
60094	APPLICATION FOR A NON-MATERIAL AMENDMENT TO PLANNING PERMISSION 54384 IN RESPECT OF REVISED ACCESS TO RESERVOIR SITE AND REVISIONS TO PLOTS 1 AND 2 (AMENDED DESCRIPTION AND PLANS) at LAND AT, NORTH ROAD, , SOUTH MOLTON, , DEVON,	APPROVE NON-MATERIAL AMENDMENT	13 November 2015
61953	OUTLINE APPLICATION FOR MIXED USE DEVELOPMENT COMPRISING CIRCA 250 DWELLINGS (USE CLASS C3), ALLOTMENTS, PUBLIC OPEN SPACE & OTHER ASSOCIATED INFRASTRUCTURE (AMENDED DESCRIPTION) at Land at North Road South Molton Devon	OUTLINE +S106 APPROVAL	17 March 2017
63215	RESERVED MATTERS APPLICATION FOR 56 DWELLINGS & THEIR ASSOCIATED GARAGES, PARKING, ROADS, DRAINAGE, LANDSCAPING & OPEN SPACE (OUTLINE PLANNING PERMISSION 61953) at LAND OFF OF, NORTH ROAD, , SOUTH MOLTON, , DEVON,	RESERVED MATTERS APPROVAL	14 September 2017

Reference Number	Proposal	Decision	Decision Date
65257	RESERVED MATTERS APPLICATION IN RESPECT OF ERECTION OF 46 DWELLINGS & ASSOCIATED ROADS, DRAINAGE, GARAGES, PARKING, LANDSCAPING & OPEN SPACE (OUTLINE PERMISSION 61953) (AMENDED PLANS) at LAND OFF NORTH ROAD, SOUTH MOLTON, DEVON,	RESERVED MATTERS APPROVAL	7 December 2018
65256	ERECTION OF 6 DWELLINGS & ASSOCIATED LANDSCAPING, ROADS, DRAINAGE, PARKING & GARAGING (LAND IDENTIFIED AS MEDICAL CENTRE ON OUTLINE PERMISSION 61953) (AMENDED PLANS) at LAND OFF NORTH ROAD, , SOUTH MOLTON, , DEVON,	FULL PLANNING + S106 APPROVAL	11 January 2019
66528	APPLICATION FOR A NON-MATERIAL AMENDMENT TO PLANNING PERMISSION 65256 (ERECTION OF 6 DWELLINGS & ASSOCIATED LANDSCAPING, ROADS, DRAINAGE, PARKING & GARAGING) TO ALLOW CHANGE OF WINDOW DESIGN, GARAGE FINISHES, WITH MINOR GARAGE LAYOUT CHANGES (AMENDED DESCRIPTION) at LAND OFF NORTH ROAD, , SOUTH MOLTON, , DEVON,	APPROVE NON-MATERIAL AMENDMENT	25 April 2019
66529	APPLICATION FOR A NON-MATERIAL AMENDMENT TO RESERVED MATTERS PERMISSION 63215 (OUTLINE APPLICATION 61953) TO ALLOW CHANGE OF WINDOW DESIGN, AMENDED GARAGE FINISHES, AMENDED FINISHES TO PLOTS 105 & 106, MINOR LAYOUT CHANGES TO PLOTS 74, 75, 59 & 62, SUBSTITUTION OF PLOTS 74 & 75 FROM 3 BED CHALET TO 2 BED BUNGALOW; & INCLUSION OF REAR DORMER ON HOUSE TYPE B4 (AMENDED DESCRIPTION) at LAND AT, NORTH ROAD, SOUTH MOLTON, DEVON, EX36 3AZ	APPROVE NON-MATERIAL AMENDMENT	25 April 2019
66581	APPROVAL OF DETAILS IN RESPECT OF DISCHARGE OF CONDITION 19 (ARBORICULTURAL METHOD STATEMENT) ATTACHED TO PLANNING PERMISSION 61953 OUTLINE APPLICATION FOR MIXED	DISCHARGE OF CONDITION APPROVE	7 June 2019

Reference Number	Proposal	Decision	Decision Date
	USE DEVELOPMENT COMPRISING CIRCA 250 DWELLINGS (USE CLASS C3), ALLOTMENTS, PUBLIC OPEN SPACE & OTHER ASSOCIATED INFRASTRUCTURE (AMENDED DESCRIPTION) at LAND OFF, NORTH ROAD, , SOUTH MOLTON, , DEVON,		
66799	ERECTION OF CONSERVATORIES TO ALL 6 PLOTS GRANTED PLANNING PERMISSION UNDER 65256 (ERECTION OF 6 DWELLINGS & ASSOCIATED LANDSCAPING, ROADS, DRAINAGE, PARKING & GARAGING)AMENDED DESCRIPTION at LAND OFF, NORTH ROAD, SOUTH MOLTON, DEVON	Approved	15 July 2019
66800	RESERVED MATTERS APPLICATION FOR ERECTION OF 46 DWELLINGS & ASSOCIATED ROADS, DRAINAGE, GARAGES, PARKING, LANDSCAPING & OPEN SPACE (OUTLINE PERMISSION 61953) (AMENDED PLANS) TO INCLUDE 12 NO. CONSERVATORIES (OUTLINE PLANNING PERMISSION 61953) (AMENDMENTS TO APPROVED RESERVED MATTERS 65257) at LAND OFF NORTH ROAD SOUTH MOLTON DEVON	Approved	15 July 2019
70333	Application for a non-material amendment to planning permission 65257 in respect of provision of car ports to plots 69 & 70 and parking relocation for plots 70 & 71 at LAND OFF OF NORTH ROAD SOUTH MOLTON DEVON	Approved	20 August 2019
70170	Amended reserved matters application for 56 dwellings & their associated garages, parking, roads, drainage, landscaping & open space (outline planning permission 61953) to include amendments to parking, garages plots 1,2 & 3, conservatories and plot substitution plot 11 (amendments to reserved matters 63215) (Amended Description) at Granite Close South Molton Devon EX36 3FD	Approved	27 August 2019
70252	Approval of details in respect of partial discharge of condition 9 (archaeology) attached to planning permission 61953	Approved	16 September 2019

Reference Number	Proposal	Decision	Decision Date
	(Outline application for mixed use development comprising circa 250 dwellings (use class c3), allotments, public open space & other associated infrastructure) in respect of the land subject to reserved matters applications 66800/65257/63215 and full application 65256 (amended description) at Land off North Road South Molton		
70354	Approval of details in respect of discharge of condition 4 (surface water drainage) attached to planning permission 65257 (Reserved matters application in respect of erection of 46 dwellings & associated roads, drainage, garages, parking, landscaping & open space (outline permission 61953)) at Land off North Road South Molton	Approved	1 November 2019
70681	Reserved matters application for erection of 15 dwellings (phase 1D - plots 107 to 121) together with associated roads, drainage, garages, parking, landscaping & open space (outline planning permission 61953 at Land West of North Road South Molton Devon	Approved	19 December 2019
71163	Application for a non material amendment to planning permission 70681 Reserved matters application for erection of 15 dwellings (phase 1D - plots 107 to 121) together with associated roads, drainage, garages, parking, landscaping & open space (outline planning permission 61953) in respect of change of the material finish on approved garages (plots 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119, 120, and 121) from brick to render. at Land Off Of North Road South Molton Devon	Approved	24 February 2020
71271	Extension to dwelling to create utility room and extension to garage at 8 Monitor Close South Molton Devon EX36 3FG	Approved	21 May 2020
71232	Reserved Matters Application for phase 2A erection of 10 residential dwellings and	Approved	28 May 2020

Reference Number	Proposal	Decision	Decision Date
	their associated roads, drainage, garage, parking, landscaping & open space and discharge of conditions 11 (noise) , 12 (waste audit), 13 (construction programme) ,15 (construction management plan), 17 (landscaping) and 21a (LEAP details) of the outline permission (61953) (amended description) at Land West of North Road South Molton Devon		
71930	Application for a non-material amendment to planning permission 70681 in respect of substituting the approved timber cladding with Marley Cedral Lap Cladding - Light Oak at Land off North Road South Molton	Approved	18 August 2020
71931	Application for a non-material amendment to planning permission 70170 in respect of substituting timber cladding with Marley Cedral Lap Cladding - Light Oak CL104 at Land off North Road South Molton	Approved	19 August 2020
71717	Notice of an application to modify a planning obligation under regulation 3 of the T & C P (modification & discharge of planning obligations) Regulations 1992 in respect of affordable housing clauses attached to application 61953 at Land at North Road South Molton (Easting 270907 Northing 126429)	Approved	19 November 2020
71971	Reserved matters for approval of appearance, landscaping, layout & scale for outline planning permission 61953 for the erection of 89 residential dwellings and their associated roads, drainage, garages, landscaping & open space (Amended redoutline & documents) at Land West of North Road South Molton Devon	Approved	30 November 2020
72108	Submission of Deed of Adherence at Land off North Road South Molton North Devon	Approved	15 February 2021
73134	Non material amendment to planning permission 71971 in respect of changes	Approved	20 April 2021

Reference Number	Proposal	Decision	Decision Date
	to materials on plots 135, 143, 148, 149, 154 & 159. at Land at North Road South Molton Devon		
73446	Reserved matters for approval of appearance, landscaping, layout & scale for the erection of 89 residential dwellings and their associated roads, drainage, garages, landscaping & open space (outline planning permission 61953) at Land West of North Road South Molton Devon	Approved	12 August 2021
71251	Erection of 187 dwellings together with associated infrastructure, public open space & landscaping (Amended Plans) at Land off Nadder Lane South Molton Devon	Approved	28 June 2022
75442	Application for a non-material amendment to planning permission 73446 (Reserved matters for approval of appearance, landscaping, layout & scale for the erection of 89 residential dwellings and their associated roads, drainage, garages, landscaping & open space (outline planning permission 61953)) in respect of Plot 184 - reorientation to the approved position, Plot 211 Minor increase in FFL to improve the approved road line and level and Plot 217 Housetype substation from B1 to B4V2 at Land west of North Road South Molton Devon	Approved	10 August 2022
75899	Application for a non-material amendment attached to planning permission 71251 (Erection of 187 dwellings together with associated infrastructure, public open space & landscaping) in respect of replacment of reconstituted stone cills, headers and reveals with Sytex cills, headers and reveals at Land off Nadder Lane South Molton Devon	Approved	12 October 2022
75942	Siting of 4 non-illuminated flag poles and 1 non illuminated stack sign at Land North Of Nadder Lane South Molton	Approved	15 November 2022

Constraints/Planning Policy

Constraint / Local Plan Policy	Distance (Metres)
Advert Control Area Area of Special Advert Control	Within constraint
Burrington Radar Safeguard Area consultation required for: All buildings, structures, erections & works exceeding 90 metres in height.	Within constraint
Landscape Character is: 3A Upper Farmed & Wooded Valley Slopes	Within constraint
Listed Building Curtilage (Adjacent to)	2.62
Public Right of Way:Footpath 257FP11	Within constraint
Public Right of Way:Footpath 257FP2	Within constraint
Public Right of Way:Footpath 257FP3	Within constraint
Public Right of Way:Footpath 257FP34	Within constraint
Tree Preservation Order: 151 - A1, The Vicarage, South Molton	Within constraint
USRN: 27501571 Road Class:Q Ownership: Private	Within constraint
USRN: 27501582 Road Class:R Ownership: Highway Authority/Private	3.55
USRN: 27501583 Road Class:R Ownership: Highway Authority	Within constraint
USRN: 27503082 Road Class:B Ownership: Highway Authority	Within constraint
USRN: 27506240 Road Class:YFP Ownership: Highway Authority	Within constraint
USRN: 27506243 Road Class:YFP Ownership: Highway Authority	2.99
USRN: 27506244 Road Class:YFP Ownership: Highway Authority	Within constraint
USRN: 27506248 Road Class:YFP Ownership: Highway Authority	Within constraint
USRN: 27506715 Road Class:B Ownership: Highway Authority	Within constraint
USRN: 27507371 Road Class:G Ownership: Highway Authority	3.39
USRN: 27507583 Road Class:Q Ownership: Private	Within constraint
USRN: 27507584 Road Class:Q Ownership: Private	Within constraint
USRN: 27507585 Road Class:Q Ownership: Private	Within constraint
USRN: 27507586 Road Class:Q Ownership: Private	Within constraint
USRN: 27507587 Road Class:Q Ownership: Private	Within constraint
USRN: 27507616 Road Class:Q Ownership: Private	Within constraint
USRN: 27507617 Road Class:Q Ownership: Private	Within constraint
Within 50m of Adopted New or Upgraded Road: SM01 Land west of Parklands	Within constraint
Within 50m of Adopted Proposed Footpath/Cycle Route:NA Gunswell Lane, South Molton	3.03
Within 50m of Adopted Proposed Footpath/Cycle Route:NA Hacche Lane, South Molton	Within constraint

Constraint / Local Plan Policy	Distance (Metres)
Within adopted Development Boundary: South Molton Development Boundary ST06	Within constraint
Within Adopted Housing Allocation: SM01 Gunswell Lane	Within constraint
Within Adopted Sports Hub: South Molton Recreation Ground	Within constraint
Within Adopted Unesco Biosphere Transition (ST14)	Within constraint
Within:Exmoor Heaths, SAC 10KM Buffer if agricultural development consider need for AQIA	Within constraint
SSSI Impact Risk Consultation Area	Within constraint
DM01 - Amenity Considerations DM04 - Design Principles DM05 - Highways DM10 - Green Infrastructure Provision SM01 - South Molton Strategic Western Extension SMO - South Molton Spatial Vision and Development Strategy ST01 - Principles of Sustainable Development ST03 - Adapting to Climate Change and Strengthening Resilience ST04 - Improving the Quality of Development ST06 - Spatial Development Strategy for Northern Devon's Strategic and Main Centres ST08 - Scale and Distribution of New Development in Northern Devon ST10 - Transport Strategy ST17 - A Balanced Local Housing Market ST18 - Affordable Housing on Development Sites	

Consultees

Name	Comment
Arboricultural Officer	no comments received
Councillor D Worden	No comments received
Councillor M Bushell	No comments received
Councillor P Henderson	The application has been called to be heard at the Planning Committee by Councillor Henderson for the following reasons:
Reply Received 16 November 2022	This Planning application goes against Planning Policy and has been submitted as the developer believes the site is now unviable. A large part has already been completed under the original application. It is not acceptable that developer contributions to the

Name	Comment
	community should be removed at such a late stage to protect the commercial profitability for the developer. It would also set a precedent that would see the floodgates open for other amendment to agreed planning approvals.
DCC - Childrens Services	No comments received
DCC - Development Management Highways Reply Received 20 October 2022	<p>I have no objection to the purpose of the application, however, the specific wording of amendment to the section 106 agreement needs amending.</p> <p>The current agreement requires the Gunswell Lane link to be built before 225, that means that the link can be built at 185 dwellings, but the applicant's amendment to secure that in the agreement is accepted.</p> <p>The agreement should dedicate the land required for both the roundabout, and the Gunswell Lane link, as public highway within the amended agreement. Works can then be carried out by the developer for the Gunswell Lane link, but in the event that the trigger is not met again in the future, it could be completed by others, and the land required for the roundabout is then secured, without the need for exchanges of letters and separate legal fees with future possible different land owners/management company.</p>
DCC - Historic Environment Team	No comments received
DCC - Lead Local Flood Authority Reply Received 10 November 2022	(DCC Flood & Coastal Risk Management Team) have no comments to make on this planning application.
DCC - Public Rights Of Way	No comments received
Designing Out Crime Officer Reply Received 24 October 2022	<p>24/10/2022 14:57 - Re Application 61953 to delete paragraphs 1.3 to 1.13 Schedule 2 and to modify paragraphs 3, 4 and 6 of Schedule 8 at Land off North Road South Molton - 24th October 2022</p> <p>Thank you for this application, I have no comments from a designing out crime perspective pertaining to the proposed schedule modifications.</p>
District Valuer Reply Received 6 March 2023	Valuation report received

Name	Comment
	<p>I have reviewed the observations made by the applicant and their advisor, Herridge Property Consulting as set out in the documents attached to your message below.</p> <p>Based on information currently available, I am of the opinion that my report to you dated 14 December 2022 remains robust and can be relied upon.</p> <p>Clearly as our assessments are based on current costs and values, matters will evolve with the market. No evidence has been provided in regard to most recent sales/reservations to indicate a fall in achieved unit prices however. Most recently available BCIS data actually suggests a marginal fall in build costs over the last 3 months. I allowed for an increase in finance rate, however notwithstanding base rate movement, most recently this has been reduced following consideration of evidence in other assessments, and further analysis of the methodology, where viability assessments assume 100% debt funded schemes, whereas in the 'real world', this is vanishingly rare. Actual financing is on a proportion of costs rather than 100%, and analyses at a reduced finance rate over 100% debt funding.</p>
Environment Agency	No comments received
Environmental Health Manager Reply Received 28 October 2022	<p>I have reviewed this application in relation to Environmental Protection matters.</p> <p>I have no objection from an Environmental Health perspective.</p>
Heritage & Conservation Officer Reply Received 1 November 2022	1/11/2022 09:34 - I have no comments to make on this application.
Housing Enabling Officer Reply Received 9 November 2022	<p>9/11/2022 15:10 - Thank you for your consultation.</p> <p>The applicant's Supporting Statement states that the Applicant seeks to delete Schedule 2, Part 1, Paragraphs 1.3 - 1.13 of the Section 106 Agreement dated 17th March 2017.</p> <p>The Supporting Statement refers to appendices regarding a viability appraisal, assessment of the appraisal and the response to the assessment. I have however been unable to locate on the Planning portal the appendices referred to. I should therefore be grateful if you would please advise how Housing Enabling can access the appendices. Housing Enabling would need to view the appendices before commenting on the application.</p>

Name	Comment
DCC Highways Reply received 18 th August 2022	<p>On the basis of the planning permission not requiring the roundabout until the 200th dwelling, and there being no Local Plan policy specifying a roundabout instead of a T junction, I am willing to accept that technically the T junction will be acceptable for the development and that in the longer term with the dedication of land for the roundabout, it could be built by others if necessary.</p> <p>It is Local Plan policy, and part of the Reserved Matters application, for the link to Gunswell Lane, so that does need to be built. The cycleway which was to be finished with the new roundabout also needs completing.</p>
Natural England Reply Received 8 November 2022	<p>Planning consultation: Notice of an application to modify a planning obligation under regulation 3 of the T & C P (modification & discharge of planning obligations) Regulations 1992 in respect of application 61953 to delete paragraphs 1.3 to 1.13 Schedule 2 and to modify paragraphs 3, 4 and 6 of Schedule 8 Location: Land off North Road, South Molton, Devon</p> <p>Thank you for your consultation.</p> <p>Natural England currently has no comment to make on removal of paragraphs 1.3 to 1.13 Schedule 2 & the modification of paragraphs 3, 4 & 6 of Schedule 8.</p> <p>Should the proposal be amended in a way which significantly affects its impact on the natural environment then, in accordance with Section 4 of the Natural Environment and Rural Communities Act 2006, Natural England should be consulted again. Before sending us any further consultations regarding this development, please assess whether the changes proposed will materially affect any of the advice we have previously offered. If they are unlikely to do so, please do not re-consult us.</p>
NDC Waste, Recycling & Commercial Services	No comments received
NHS England	No comments received
Open Space Officer Reply Received 28 October 2022	<p>28/10/2022 14:56 - I need further clarification from the applicant as to how the proposal affects the delivery of on-site POS requirements as set out in Schedule 3 of the S106 Agreement.</p> <p>A change in the delivery of the number of homes/bedrooms would potentially mean a change in quantum/contribution for each type of POS required on-site and off-site. However there will still be requirements for each type of POS - this could be a lower sq.m. or contribution depending on the number of dwellings/bedrooms now proposed. The triggers for delivery in Schedule 3 are staggered to</p>

Name	Comment
	<p>help the applicant with cash flow, but there are still requirements to be met if the triggers aren't reached and we need to get to position of understanding if this application is approved, which elements will be delivered on-site; and if not delivered on-site what the equivalent off-site contributions will be and when these will be received. For example it would not be satisfactory to not deliver the MUGA and Youth Shelter or provide a contribution towards provision elsewhere just because the trigger of 220 dwellings isn't reached.</p> <p>As I have recently taken the post responsible for S106 POS, it would be helpful to have an update on the current progress regards the delivery of on-site facilities already due; and off-site contributions paid so far. Have we received the off-site contributions that were due prior to occupation of 116 dwellings? I cannot see anything banked against application 61953. Also an update of the set up of the management company expected prior to the completion of 115 dwellings.</p>
<p>Planning Policy Unit</p> <p>Reply Received 6th April 2023.</p>	<p>As we discussed yesterday, the preferred position from a policy perspective would be for Baker Estates to develop the site to which they have planning permission for 220 homes including 20% affordable housing and the first phase of the western link completed to their boundary in order to deliver policy compliance (apart from affordable housing) in accordance with Policies SMO and SM01. If I understand the situation correctly, the contentious issue being tested by the developer is the fact that the original wording of the s106 has not been amended to reflect the likely development being proposed on the site in terms of housing numbers?</p> <p>However, whilst I have no in principle policy objection to the remaining 40 dwellings being re-planned to deliver 20 bungalows, delivering a total of 200 dwellings across the site, there is a fundamental policy objection to the remaining 20 bungalows not delivering 20% affordable housing (4 units) and the threat to walk off site without completing the final phase and western link up to their boundary. If I understand our position correctly, the original scheme of 220 homes with 20% affordable housing and policy compliance thereafter was considered viable by the DV also, the amended scheme of 200 homes with 20% affordable housing and policy compliance thereafter is again, considered to be viable by the DV.</p> <p>This stance by the developer is very concerning considering the much publicised housing crisis across the Country and the need for affordable housing, particularly in areas such as North Devon. Therefore, I would support your current stance to recommend refusal on this basis as evidence would suggest that both schemes are viable.</p>

Name	Comment
South Molton Town Council Reply Received 16 November 2022	16/11/2022 11:36 - It was resolved that this application be refused on the grounds that there was currently insufficient information available and there was no Independent Valuers Report . Councillors were also concerned that all documents were not available in the first instance.
South West Water Reply Received 24 October 2022	I refer to the above application and would advise that whilst here are no objections, a public sewer (laid in 2019) crosses the southwest corner of the site, and various 160mm public water mains lie within the site (laid in 2019). Please find attached plans titled "North Road South Molton Sewer records" and "North Road South Molton Water Mains records". Please note that no development will be permitted within 3 metres of the sewer, or within 3.5 metres of the water mains, and ground cover should not be substantially altered. Asset Protection – Sewer Should the development encroach on the 3 metre easement, the sewer will need to be diverted at the expense of the applicant. Please click here to view the table of distances of buildings/structures from a public sewer. Further information regarding the options to divert a public sewer can be found on our website via the link below: www.southwestwater.co.uk/developer-services/sewer-services-and-connections/diversion-of-public-sewers/ Asset Protection – Water Main Should the development encroach on any 3.5 metre easement, the water main(s) will need to be diverted at the expense of the applicant. The applicant/agent is advised to contact the Developer Services Planning Team to discuss the matter further
Sustainability Officer	No comments received
The Biosphere Service	No comments received

Neighbours / Interested Parties

Comments	No Objection	Object	Petition	No. Signatures
0.00	0.00	0.00	0.00	0.00

No objections or comments received.

Considerations

Proposal Description

This application seeks modification to the S106 signed in connection with approval 61953: *Outline application for mixed use development comprising circa 250 dwellings (use Class C3), Allotments, Public open Space and other associated infrastructure (amended description)*. Outline application 61953 was granted permission for the above housing, POS and associated highways and other infrastructure subject to an agreed S106 which is attached as **APPENDIX 1**

As the S106 Agreement is in excess of 5 years old the applicants seek to modify the Agreement under S106A (3)(a) of the Town and Country planning Act 1990, and the Application is made under the S106A(6)(c) on the grounds that the obligation would better serve its intended purpose if it had effect subject to the modifications specified in this Application.

The applicants make this Application pursuant to s106A(6) (c) on the grounds that they consider *'the obligations would better serve its intended purpose if it had effect subject to the modifications specified in this application.'* The applicants further consider that the purpose of the provisions of the s.106 were to maximise the number of affordable houses that would be delivered as part of the development subject, importantly, to viability. *If the development is not close to being viable, work will have to cease before more than 180 dwellings have been constructed on the site. It is in no one's interest for much needed houses to be left unbuilt simply because the planning obligations are no longer viable.'*

The applicants propose to change the current approved 220 scheme which requires S106 contributions including 20% affordable Housing across the site, and associated S106 contributions. The applicants consider that *'The intended purpose of the Section.106 is far better served through the delivery of the maximum number of dwellings on the site as is viable having regard to the package of infrastructure works being delivered'*.

The proposed changes would see the scheme completed with 20 further bungalows units after 180, **with a total of 200 units, with no S106 contributions provided on those that would be triggered after 180 units.** The applicants have submitted a Viability Assessment (VA) which seeks to demonstrate that this would leave sufficient and acceptable residual profit, on the assumption that none of the S106 contributions are provided and that the Gunswell Lane Road Link is provided as part of this.

The applicants consider that the intended purpose of the S106 would be better served through the delivery of the maximum number of dwellings on the site as is considered viable, and to deliver a safe highway network through and from the site.

Member's are asked to weigh in the balance that the applicants have stated that if this is not possible, then the alternative for them is to leave the scheme incomplete at 180 units, thus avoiding the triggers for the remaining obligations and **with no Gunswell Lane Link or the remaining 26 Affordable Houses.** The applicants consider that to do so would be at a loss to them. **The key consideration is that this option does not deliver any contributions past 180 units, nor deliver the Gunswell Lane Link.**

The S106 has 10 schedules. The proposed changes to the S106 would read as follows: The developer does not consider the current S106 is financially viable and the relevant schedules to be deleted or amended in this case are:

Clause 1.1: Meanings of the s106:

- **Changes to the definition of 'Roundabout' Works at Schedule 1.1**

- **Schedule 2: Affordable Housing:- Part 1: paragraphs 1.3 to 1.13**
- **Schedule 8: Highways Works:-, paragraphs 3, 4 and 6**

The applicants propose 5 amendments in relation to the above sections of the s106 from 61953 as follows:

1. Delete definition of "Roundabout Works" in clause 1.1. and replace with the following:

"Roundabout Land" means the area of land shown hatched blue on drawing number BE011-1001 A a copy of which is appended hereto"

2. Delete Schedule 2, Part 1, Paragraphs 1.3 – 1.13

3. Delete Schedule 8, Paragraphs 3 and 4 and replace with the following:

"3.1 Until such time as the County Council serves its request pursuant to paragraph 4 below, the Owner shall not cause or permit any development being carried out on the Roundabout Land which would be inconsistent with its use for the construction and use of a roundabout

3.2 In the event that the Roundabout Land is required for the construction and use of a roundabout the Owner shall within 20 Working Days of receipt of a written request from the County Council to do so dedicate the Roundabout Land as public highway land PROVIDED THAT the Owner shall only be required to dedicate the Roundabout Land in the event that on the date that the Roundabout Land is dedicated, the Roundabout Land shall be adopted by the County Council as highway maintainable at public expense

4. *The provisions in paragraphs 3.1 and 3.2 above shall cease and determine on 31 December 2032"*

5. Delete Schedule 8, Paragraph 6 and replace with:

"Unless otherwise provided in the said Section 38/ Section 278 Agreement complete the Gunswell Road Works prior to the first Occupation of 185 Dwellings"

Planning Considerations Summary

Discussion of the provisions of Outline Permission 61953 and associated s106.

- Viability Assessments: The DV considerations of the viability of the proposed changes to the agreement in 76106
- Gunswell Lane Link, provision of the roundabout, and comments of Devon County Council Highways Authority
- Planning Balance and Conclusions

Planning Considerations

In the determination of a planning application Section 38 of the Planning & Compulsory Purchase Act 2004 is relevant. It states that for the purpose of any determination to be made under the planning Acts, the determination is to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for this area includes the Devon Waste Plan and North Devon and Torridge Local Plan. The relevant Policies are detailed above.

As well as the policies referred to above, the National Planning Policy Framework (NPPF) is a material consideration.

Discussion of the provisions of Outline Permission 61953 and associated S106.

The reasons why the application to vary the S106 is before planning committee refers back to Outline application 61953 and the outline S106 agreement (61953) which required the following criterion which are relevant to this Committee report:

- Affordable Housing: Schedule 2(1.2) 15% of the first phase (115 dwellings) to be provided as affordable dwellings, equating to 17 affordable dwellings. Schedule 2 (1.3) requires that prior to commencement of phase 2 the developer shall submit a Viability Appraisal.

- The provision of an access up to the boundary with Gunswell Lane (the 'Gunswell Road Works') to be provided prior to the first occupation of 225 dwellings (Schedule 8, Clause 6).

- The provision of a roundabout onto North Road (the 'Roundabout Works') prior to the first occupation of 200 dwellings (Schedule 8 Clauses 3 and 4)

Viability Assessment for application 61953 (required by s106)

In response to the S106 (61953) a Viability Appraisal (VA) was submitted to the Council in May 2020, which concluded that a policy compliant scheme was not feasible at that time.

The LPA undertook an independent review of the VA findings which concluded the requirement for 20% Affordable Housing, which was verified by an independent assessor (Plymouth CC). The 20% affordable housing provision was subsequently agreed by the LPA for the remainder of the site. The S106 agreement requires delivery of the balance of the affordable housing in phase 2 before more than 60 open market homes are occupied.

At this point there was no indication that the scheme could not deliver the infrastructure that is associated with this development and secured through the S106 for 61953. The original scheme was implemented, and the developer bought the site on that basis. The tenure split of the S106 agreement requires a mix of 75% (social rent) and 25% (intermediate). Across the development as a whole there was a combined total of 32 social rent units and 11 intermediate units across both phases which equates to a 75/25 split which was wholly in accordance with the s.106 agreement at the point of determination of 73446. In terms of delivery; the section 106 Agreement required all phase 2 affordable dwelling to be certified as practically complete prior to the occupation of 60 phase 2 open market dwellings and the affordable housing proposals were considered to be acceptable.

This meant that 180 homes can be occupied on the site before the final affordable homes would be required to be available for occupation, leaving a final 40 dwellings to complete with 20% Affordable housing provision in the final phase, equating to 26 of the final 40 homes being affordable.

The history shows that subsequent to the outline permission a number of Reserved Matters have been submitted and approved, delivering around 214 dwellings through all approved permissions. It is understood that the site has delivered around 150 dwellings on the site to date.

Informal Enquiry (ENQ/0186/2022) (March 2022) –

Prior to the current application, the applicants sought the advice of the LPA on the principle of amending the S106, asking the LPA to consider a number of different scenarios for the

delivery of the site. The reasoning for this was that Baker Estates is bank funded and development sites are revalued by their funders regularly. The final 40 homes to be delivered to complete the site were considered by the applicant's assessors to be unviable. The applicants considered that the previously submitted Viability Assessment appraisal which, resulted in the 20% provision of Affordable Housing, was flawed, because the land values were not linked to the final results constituting an initial error to agree 20% delivery of AH for Phase 2, due to the negative impact on the site viability as a whole. The implication of this is that the final 40 homes to complete with the provision of the Affordable Housing was not viable and the LPA required full assessment through independent Viability Assessment.

A Viability Appraisal was submitted, with 4 potential scenarios to finish the site. However, this this was at pre-application stage and not within the public realm. This did enable the LPA to consider the initial viability issues through independent assessment by the District Valuer, around the delivery of the last phase of the site, which subsequently informed the proposal submitted before Members. The LPA informed the applicants of the implications of the 20 units to complete scheme, preventing effective delivery of the Affordable Housing and that the Roundabout and Gunswell Lane connection were proposed to be changed, and that the VA required further consideration by the District Valuer.

At this stage, the applicants confirmed that unless the alternative S106 scheme could be confirmed, they would cease operations at 180 residential units and therefore avoid the triggers for remaining phase 2 S106 contributions. This would leave a scheme of 180 units with a total of 18 affordable units (10%) and no Gunswell Lane Link, the roundabout or required s106/S278 contributions.

This has culminated in the submission of 75442 whereby what is presented for consideration is: instead of delivering the 40 dwellings to complete, in line with the requirements of the agreed S106, the scheme would replan this last phase to deliver 20 bungalows after the initial 180 units, the layout of which is shown in Reserved Matters application 74948. The scheme would finish at 200 units and not at the currently agreed 220 units.

For the 20 bungalows to complete option to be viable, the applicants considered that this **element of the site delivers nil Affordable Housing.**

Viability Assessments: The DV considerations of the viability of the proposed changes to the agreement in 76106

The applicants seek to reaffirm that the final 40 to complete scheme with 20% affordable housing is not viable.

The applicants advise the LPA that due to current market conditions, and following the claimed land value error, that, without the changes to the scheme, they would be unable to proceed with development past 180 dwellings, leaving the Gunswell Lane strategic link, undeliverable under the current permission.

What is submitted to the Committee for consideration is a final option for the delivery of the remaining phase of the site, where the dwellings are proposed to be re-planned as 20 bungalows with all 20 dwellings are open market dwellings and no affordable housing being offered.

The applicants consider that the Council has failed to secure the delivery of the link road to Gunswell Lane as part of the current planning permissions. This is because the existing

S106 agreement does not require the delivery of the link road until the occupation of 225 dwellings (the outline permission was for up to 250 dwellings), but considering the total number of homes approved by the Council via reserved matters consent is 220 homes across the site, the permissions granted by the Council, do not reach the S106 trigger. Although the current scheme does include the connection of the estate road to Gunswell Lane, the applicants understand this to be a priority for Council, and have factored this cost into the VA. The applicants consider that the sales premiums associated with bungalows make this scheme a viable solution as of February 2023 this year.

The proposal seeks further modifications to omit the provision of the roundabout, and to use the existing junction access into the site.

There would be no other s106 obligations past 180 dwellings.

Planning policy position

Planning Policy have considered the principle of the revised scheme from Baker Estate and have commented as follows:

'The preferred position from a policy perspective would be for Baker Estates to develop the site to which they have planning permission for 220 homes including 20% affordable housing and the first phase of the western link completed to their boundary in order to deliver policy compliance (apart from affordable housing) in accordance with Policies SMO and SM01. If I understand the situation correctly, the contentious issue being tested by the developer is the fact that the original wording of the s106 has not been amended to reflect the likely development being proposed on the site in terms of housing numbers?

However, whilst I have no in principle policy objection to the remaining 40 dwellings being re-planned to deliver 20 bungalows, delivering a total of 200 dwellings across the site, there is a fundamental policy objection to the remaining 20 bungalows not delivering 20% affordable housing (4 units) and the threat to walk off site without completing the final phase and western link up to their boundary. If I understand our position correctly, the original scheme of 220 homes with 20% affordable housing and policy compliance thereafter was considered viable by the DV also, the amended scheme of 200 homes with 20% affordable housing and policy compliance thereafter is again, considered to be viable by the DV.

This stance by the developer is very concerning considering the much publicised housing crisis across the Country and the need for affordable housing, particularly in areas such as North Devon. Therefore, I would support your current stance to recommend refusal on this basis as evidence would suggest that both schemes are viable'.

Members will see that the removal of the remaining required Affordable element of this housing scheme is not supported in policy terms as this would not support the need for Affordable Housing within North Devon. Members will appreciate that the 20 bungalows to finish option leaves this scheme significantly and undesirably deficient in provision of infrastructure and affordable units across the site. The amendment to the s106 and revised Reserved Matters Scheme would leave the site with the 10%(18) affordable units across the site, which has been confirmed by housing Enabling to be unacceptably low for a housing scheme of this size. The alternative to stop at 180 falls significantly short of the delivery of requirements of the s106 for 61953, but, can effectively occur within the remits of the s106 triggers.

Viability Assessment:

The District Valuation Officer (DV) was instructed to independently verify the submitted viability information submitted by the agent and the assigned DB Officer has provided a written report to the Council, which is appended to this Committee Report for Members ease of reference appended to this report as **APPENDIX 2**.

The DV has assessed both the original (Whole) scheme in the light of the application to amend the S106 agreement, and has considered the proposed amended option to complete the scheme with 20 units after 180, making a revised scheme of 200 units. The DV has compared the scheme to finish at 220 against the scheme to finish at 200, with the proposed changes to the s106, summarised at paragraph 6.2.

Members will see from the VA that the DV has provided a summary of the applicants viability assessment, highlighting a number of differences between the Baker Estate Valuation and the DV Evaluations as follows:

Gross Development Value (GDV)

In respect of a whole 220 unit scheme, the assessment of gross completed market housing (net of 20% affordable housing) amounts to **£59,702,000**. The applicant's assessment is £56,026,234, and therefore circa 6% lower.

In respect of an applicant preferred '20 unit to complete' scheme, the proposed accommodation schedule shows the revised projected completed value of market housing in the latest Herridge Property Consulting assessment is £7,760,000. The assessment amounts to **£7,532,000**, or some 3% lower than the applicants.

Market Value of Affordable Housing Dwellings

The DV has shown comparative valuations between the applicants VA and the DV valuations which shows a difference of £54,054 (1.2% difference). The DV considers there is insufficient data available to properly compare the respective valuations.

Gross Domestic Value (GDV)

At 8.4 the DV shows disparities between the GDV valuation concluding that the total GDV would amount to £64,134,318 which is £3,621,982 higher than the applicants valuation. The proposed 20 units to complete scheme would have GDV total of £7,532,000 which is £228,000 lower than the applicants valuation.

Summary of Total Development Costs

The summary of the total development costs takes account of all factors which may affect the viability of the scheme. Members will also see that in the summary of costs at 9.0 the DV has assessed all relevant factors which may affect the viability of the scheme. The conclusion is that the DV has not accepted the cost inputs from the applicants VA as reasonable:

Developer profit

The DV has used recent experience of developer proposals for this type of proposal and adopted a 17.5% market residual value GDV as a reasonable target profit level, and a target of 6% affordable housing which equates to 20.42% of the Total Development Costs on the assumption of the original 220 unit scheme.

Benchmark Land Value(BLV)

At section 11, Members can see where the DV has balanced the reasonableness of the applicants original scheme £2,500,000 BLV, considered against the above factors and, in conclusion, it is the DVs balanced opinion that an appropriate BLV in the case of the

consented 220 unit scheme would be **£2,500,000**. This comprises an EUV £326,000 and a premium £2,174,000 (7.7 x EUV) as a minimum requirement to incentivise release for development.

DVS viability Assessment Summary

Using the above summarised results, at paragraph 12 the DV considers both the Viability of the consented 220 unit scheme and the 20 units to complete (200 units) scheme. At paragraph 12.1, in respect of the originally consented 220 scheme, the DV considers that:

'It is my independent conclusion therefore that the originally consented scheme, with originally required s106 requirements (however excluding the roundabout cost), based on current costs and values, is financially viable.' (Appendix 1 of the DV report)

Members will see from paragraph 12.2 that in respect of the proposed changes to the s106 and the Proposal for 20 bungalow units to complete, the DV considers that the proposal would only be acceptable where:

'It is my independent conclusion therefore that the '20 units to complete' scheme, without affordable units, however with reduced s106/s278 contributions of £718,729, based on current costs and values, is financially viable.' (Appendix 2 of the DV report)

The Viability conclusions are important in informing Members that overall the original consented scheme remains viable, but also that the proposed option is viable for the applicants to deliver a reduced scheme:

*'I have concluded that based on available information, the originally consented 220 unit scheme, when assessed on the basis of current costs and values and including an appropriate Benchmark Land Value is financially viable when including consented scheme planning requirements, including 20% affordable housing. **There is therefore in my view no financial viability justification to support an amendment to the original S106 requirement.***

*This conclusion is however arguably superfluous, as the applicant has indicated that unless measures are taken to mitigate claimed financial viability issues, they will simply cease operations at 180 residential units, and thereby avoid the trigger for additional s106 contributions. **This would leave a scheme of 180 units with 18 affordable units (10%), and in all likelihood no Gunswell Lane link, Roundabout, or the balance of required S106/S278 contributions.***

The expressed preferred developer option is to provide 20 more units beyond 180 to complete an ultimately reduced 200 unit scheme. It is implied that this option, when including the Gunswell Lane link only and no other s106/s278 contributions will result in a sufficient developer return to incentivise scheme completion.

In my assessment, a '20 units to complete' scheme option would be financially viable with no additional affordable housing, but with reduced s106/s278 contributions totalling £982,691.

*I therefore agree with the applicants that notwithstanding my finding that the original 220 unit scheme is financially viable, the '20 unit to complete' option is the most financially viable. I disagree with the applicants however in that my analysis suggests that a sum of **£406,728 is available to fund construction of the Gunswell Lane Link, and a balance sum of £312,001 in respect of balance s106 requirements is financially viable in this scenario.***

The overall available sum is £718,729, and this in my opinion is available for s106/s278 contributions, or could be used to fund on or off-site affordable housing.'

Following the DV findings the applicants submitted an addendum to the VA on 16th February 2023. The DV has had opportunity to consider the findings of the addendum and concludes:

'I have reviewed the observations made by the applicant and their advisor, Herridge Property Consulting as set out in the documents attached to your message below.

Based on information currently available, I am of the opinion that my report to you dated 14 December 2022 remains robust and can be relied upon.

Clearly as our assessments are based on current costs and values, matters will evolve with the market. No evidence has been provided in regard to most recent sales/reservations to indicate a fall in achieved unit prices however. Most recently available BCIS data actually suggests a marginal fall in build costs over the last 3 months. I allowed for an increase in finance rate, however notwithstanding base rate movement, most recently this has been reduced following consideration of evidence in other assessments, and further analysis of the methodology, where viability assessments assume 100% debt funded schemes, whereas in the 'real world', this is vanishingly rare. Actual financing is on a proportion of costs rather than 100%, and analyses at a reduced finance rate over 100% debt funding.'

Summary

Consequently, in summary, the proposal to implement 20 bungalow units with no Affordable housing could deliver a 'completed' scheme, but this would not provide the required agreed contributions, nor the overall available sum of £718,729, leaving the scheme well short of what is normally required of a large housing scheme. Members will appreciate that the LPA has made concessions through previous applications in respect of viability and the amount of AH across the site (20%), what is being asked is a retraction of the majority of contributions required to make the scheme acceptable in the first instance.

Based on the DV findings, the LPA cannot agree to the proposed changes, which fall significantly short of the s.106. The financial and market based reasoning put forward in the applicants VA have been assessed, but do not provide a bespoke or insurmountable reason to deviate from the original scheme. Whilst the LPA notes that the concessions provided in the 20 to complete option could deliver the Gunswell Lane link, this forms part of the agreed infrastructure for the site, albeit the parameters for the trigger point of the link have changed in terms of the quantum of dwellings has changed to 220. Nonetheless the link should be provided in the interest of highway safety, and local amenity, and should not be used as a bargaining tool to under deliver for the rest of the site.

Members are asked to consider that whilst the DV finds the 20 units to complete option viable, he has also clearly set out that the original scheme of 220 units to complete remains viable to be implemented. As the original scheme remains essentially viable, the alternative options should not preclude the requirement to adhere to matters agreed in the original 106. The DV has acknowledged that consideration of the original scheme may prove 'superfluous' as the applicants would seek to walk off the site at 180 units, but on balance the results of the DV report must be weighed in the balance against approval of this case.

Therefore, Members are asked to consider that the proposed amendment to the scheme would not deliver the sums required for a development of this scale, nor would the scheme deliver the agreed highway solutions for the site in terms of the roundabout, falling

significantly short of the requirements for policies SM0 (South Molton Spatial Vision), SM01 (South Molton Strategic Extension), ST23 (Infrastructure) ST17 (A Balanced Housing Market), ST18 (Affordable Housing on Development Sites), DM05 (Highways), DM10 (Green Infrastructure Provision).

Gunswell Lane Link, provision of the roundabout, and comments of Devon County Council Highways Authority:

As members will be aware part of the s106 was to secure a suitable package of highway works considered necessary at the time to effect safe travel within and from the site.

The Gunswell Lane Link remains an important strategic link to other parts of the Western Development, facilitating connectivity for vehicles and providing essential highways links through the site and within South Molton. This link would contribute positively towards national and Local Plan Policy to provide effective connectivity for all users of the site, and to link to other developed parts of South Molton, essentially in the interests of ensuring safe and well-designed vehicular access and egress from the site, and an effective and safe highway layout in accordance with NPPF 110, SM01, ST10 and DM05.

Without the Gunswell link the site would be served principally by the T Junction into North Road to the west and would rely heavily on North Road to take traffic through South Molton, or towards Barnstaple and the Link Road.

As part of discussions around this case the applicants have submitted a highway capacity and safety review of the existing junction and have sent the findings for review by Devon County Council Highways. This concluded that based on the analysis, there is not considered to be any justification for the provision of a roundabout junction to replace the existing priority T Junction for either capacity or safety reasons. The data can be viewed at reference 3332310708/TAU/PH/AS/LG and included at Appendix 3 of the applicants supporting statement.

At this point I reiterate to Members that the trigger point for the Gunswell Lane link was at 225 dwellings in the Outline approval. The applicants and DCC highways have acknowledged that number of dwellings to be provided on site has subsequently changed to 220 dwellings. This effectively makes the 225 trigger point obsolete for the provision of the Gunswell Lane Link as this trigger point would not be reached through the lifetime of the scheme.

The trigger point would therefore change as per the applicants planning statement as follows:

5. Delete Schedule 8, Paragraph 6 and replace with:

“Unless otherwise provided in the said Section 38/ Section 278 Agreement complete the Gunswell Road Works prior to the first Occupation of 185 Dwellings”

This would deliver the Gunswell Link within the proposed 200 dwelling units.

DCC highways have discussed the provision of the roundabout at the site entrance (as agreed in the s106 -) and have considered that, on the basis of the permission not requiring the roundabout until the 200th dwelling, and there being no Local Plan policy specifying a roundabout instead of a T Junction, Highways would accept that technically the T junction will be acceptable for the development. Highways consider that it is local plan policy that the Gunswell Lane Link be built, but in light of the traffic and accident data submitted with the application, the roundabout is not required to make the development acceptable in highways

planning terms, and the site can be suitably accessed via the current T-junction access. Hence, modification 1 is put forward to:

Delete definition of “Roundabout Works” in clause 1.1. and replace with the following: “Roundabout Land” means the area of land shown hatched blue on drawing number BE011-1001 A a copy of which is appended hereto”,

and the deletion of paragraphs 3 and 4 of Schedule 8 and replacement as follows;

*“3.1 Until such time as the County Council serves its request pursuant to paragraph 4 below, the Owner shall not cause or permit any development being carried out on the Roundabout Land which would be inconsistent with its use for the construction and use of a roundabout.
3.2 In the event that the Roundabout Land is required for the construction and use of a roundabout the Owner shall within 20 Working Days of receipt of a written request from the County Council to do so dedicate the Roundabout Land as public highway land PROVIDED THAT the Owner shall only be required to dedicate the Roundabout Land in the event that on the date that the Roundabout Land is dedicated, the Roundabout Land shall be adopted by the County Council as highway maintainable at public expense’*

Members are asked to weigh in the balance DCC Highways acceptance of the proposed changes to the highway layout and to the provision of the Gunswell Lane link as follows:

I have no objection to the purpose of the application, however, the specific wording of amendment to the section 106 agreement needs amending.

The current agreement requires the Gunswell Lane link to be built before 225, that means that the link can be built at 185 dwellings, but the applicant’s amendment to secure that in the agreement is accepted.

The agreement should dedicate the land required for both the roundabout, and the Gunswell Lane link, as public highway within the amended agreement. Works can then be carried out by the developer for the Gunswell Lane link, but in the event that the trigger is not met again in the future, it could be completed by others, and the land required for the roundabout is then secured, without the need for exchanges of letters and separate legal fees with future possible different land owners/management company.

The changes required by DCC highways could be incorporated into a revised S106 as set out above. With these measures there are no overriding highway objections to the proposed highway changes to the s106.

Planning Balance and Conclusions of VA assessment

The LPA finds that as the original S106 has been independently test and is considered to remain viable then the decision is one of **refusal**.

In light of the DV findings the LPA would require the provision of all contributions as per the original S106, as this is the agreed scheme, and there is insufficient evidence to conclusively suggest otherwise.

The findings of Baker Estates VA, and the subsequent findings of the DV report effectively leave the Council with 2 options to balance:

1. Approve the proposed changes, and deliver a scheme which is not policy compliant, and which would deliver the further 20 bungalow units (total of 200 units) with the

Gunswell Lane Link, but without delivery of the S106/S278 requirements for the scheme. This will fall short of the required provisions of the original S106 and would fail to deliver a scheme which could provide suitable delivery of Affordable Units to accord with ST17 or ST18 of the Development Plan. The amendments to the scheme would not accord with policies: SM0 (South Molton Spatial Vision), SM01 (South Molton Strategic Extension), ST23 (Infrastructure) ST17 (A Balanced Housing Market), ST18 (Affordable Housing on Development Sites)

2. Refusal of the proposed changes to the S106 could mean that Baker Estates effectively could walk away from the site at 180 units, leaving the scheme uncompleted, and would not deliver the remaining S106 requirements in accordance with the phasing of the S106, including the Affordable units. The site would remain uncompleted and without the Gunswell link.

In the absence of overriding evidence to the contrary, the LPA would expect to see the scheme delivered in line with the original S106/S278 and the conditions attached to the outline and subsequent permissions. The intention of the permissions is to deliver an acceptable and good quality scheme, and one which is policy accordant. The LPA would expect to see the entire scheme implemented in accordance with the agreed S106/S278, and with associated infrastructure delivery, to ensure accordance with all parts of the development plan.

On this basis the proposal is recommended for refusal on the grounds that the evidence in the Viability Assessment shows that the original the original scheme remains fundamentally viable and not so flawed as to be rendered undeliverable. The original s.106 has been independently tested and considered to be viable and can therefore deliver all of the benefits which the site should deliver. The LPA must recommend refusal of the scheme because the revisions would not accord with policy, and because the originally approved scheme is proven through viability assessment to be viable.

If Members were minded to approve the proposal, the application would be subject to the wording of a revised s.106 Agreement, or as subsequently amended by Planning Committee.

Human Rights Act 1998

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols identified below were considered of particular relevance:

- Article 8 – Right to Respect for Private and Family Life
- THE FIRST PROTOCOL – Article 1: Protection of Property

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.

Recommendation Date	Case Officer	Lead Officer	Admin	Check