

The Planning Bureau Limited

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Via email: localplan@york.gov.uk

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Dear SIRS

RESPONSE ON BEHALF OF McCARTHY STONE TO THE CITY OF YORK CONSOLIDATED MAIN MODIFICATIONS CONSULTATION, JANUARY 2023

Thank you for the opportunity to comment on the City of York Main Modifications Consultation, January 2023. McCarthy Stone is the leading provider of specialist housing for older people. Please find below our comments on the consultation.

MM15.1 - Policy DM1: Infrastructure and Developer Contributions - Review Mechanism

We note that MM15.1 states that 'Where developers demonstrate that there are exceptional circumstances which justify the need for a viability assessment at the application stage, the Council will consider the assessment. If the development is demonstrably unviable, consideration will be given to modifying the phasing of obligations and may extend to including a review mechanism in any legal agreement'.

Paragraph: 009 Reference ID: 10-009-20190509 of the government guidance on Viability states the following:

'Plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles. Policy compliant means development which fully complies with up to date plan policies. A decision maker can give appropriate weight to emerging policies.'

With respect to planning obligations or s106, Para 57 of NPPF states '*Planning obligations must only be sought where they meet all of the following tests ²⁶:*

- (a) necessary to make the development acceptable in planning terms;*
- (b) directly related to the development; and*
- (c) fairly and reasonably related in scale and kind to the development'*

Para 004 Reference ID: 23b-004-20190901 of the PPG on Planning Obligations identifies where policies on seeking planning obligations should be set out and states:

'Policies for planning obligations should be set out in plans and examined in public. Policy requirements should be clear so that they can be accurately accounted for in the price paid for land.'

And

'It is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination.'

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Therefore, to introduce a review mechanism, there must be a clear and specific policy basis and justification for any such mechanism to be brought in. A significant number of recent Planning Appeals and case law have reinforced this point. A review mechanism and any detail that will form part of it also needs to be considered fully and assessed through the Local Plan process. This should include the consideration of variables such as trigger points, costs, land values, how surplus is split and other definitions. The plan should also include an exemption from the review mechanism for smaller single phased developments. The Planning Inspectorate have repeatedly noted the review mechanisms are unnecessary for smaller sites, whilst for a large multi-phased development that maybe delivered over a long period it would make sense to determine if viability has changed with market movements over time.

Recommendations

The requirement for a review mechanism has not been supported by any justification, evidence or process where specific inputs, to be within any review mechanism, could be considered in public examination. In order for the plan to be found sound, the plan must set out a clear process and terms of engagement regarding how and when viability may be assessed over the lifetime of a development and the process and specific inputs that will go into any review. The proposed main modification saying that the Council may include a review mechanism does not achieve this and should be deleted.

Thank you for the opportunity for comment.

Yours sincerely

N. Styles

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