

From: Daniela.Smith <Daniela.Smith@horsham.gov.uk>
Sent: 08 December 2025 12:24:04 UTC+00:00
To: "Daniel.Holmes" <Daniel.Holmes@horsham.gov.uk>
Subject: Planning Advice: Permission in Principle for Oxcroft Farm, Henfield Road, Small Dole DC/25/1506

Dear Daniel,

Permission in Principle for Oxcroft Farm, Henfield Road, Small Dole DC/25/1506

Thank you for your enquiry for advice on the above matter. I have now had the chance to review the position and can provide the following advice.

Your enquiry was as follows:

1. Is it legally sound for the Council to treat the Neighbourhood Plan allocation (20 dwellings) as a single strategic site for the purposes of applying the affordable housing policy, notwithstanding that the current PiP covers only a 9 unit parcel.
2. Whether a s106 agreement at the TDC stage can require the development to deliver a policy compliant proportion of the affordable housing across the allocation as a whole and whether this can include:
 - a. Securing affordable housing within the part of the site subject to the TDC application, or
 - b. If phased, ensuring that later parcels cannot be implemented without affordable housing being secured on the site as a whole.
3. Whether it would be appropriate to include an informative on the PiP decision signalling that affordable housing will be required at TDC stage.

Legal advice:

Policy 16 Strategic Policy: Meeting Local Housing Needs

Policy 16 of the HDPF states that:

*3 (a) On sites providing **15** or more dwellings, or on sites over 0.5 hectares, the Council will require **35%** of dwellings to be affordable.*

*3 (b) On sites providing between **5** and **14** dwellings, the Council will require **20%** of dwellings to be affordable or where on-site provision is not achievable a financial contribution equivalent to the cost of the developer of providing the units on site.*

4. If a development site is sub-divided so as to create two or more separate development schemes one or more of which falls below the relevant threshold, the Council will seek an appropriate level of affordable housing to reflect the provision that would have been achieved on the site as a whole had it come forward as a single scheme for the site.

The PiP which is currently being considered for a total of 9 houses falls within Policy 16 (3)(b) which requires the developer to deliver **20%** affordable housing at that site. This affordable housing provision will be secured at TDC stage via the s106 agreement.

When the subsequent planning application is submitted for the remaining 11 (approximate) dwellings, the total affordable housing requirement across the site as a whole will be

aggregated, and the relevant proportion of affordable housing to be delivered by the developer will increase to **35%**.

On the basis that phase one is built out to deliver the 20% affordable housing. On delivery of the potential second phase, the developer will be required to deliver a further 15% affordable housing. This obligation also being secured through a further s106 agreement.

A s106 agreement will generally only bind the development carried out pursuant to that planning permission to which the agreement relates, it would only apply to subsequent permissions for later phases where it has been drafted to do so. The Council's current s106 templates are drafted to make it clear that the obligations relate and bind future or subsequent s73 permissions, including those for later phases and I understand that this is not confined to s73 applications. However it would be prudent to draft the legal agreement for the first phase with express wording to say that should an application be submitted for a second phase at this site, the developer would be obliged to build out the remaining affordable housing allocation to bring the total allocation across the whole site (phase 1 and phase 2) to 35%.

When submitting your instructions to the planning lawyers for the legal agreement, please do specify this in your instructions so that the lawyer instructed can include a form of words in the s106 agreement.

In terms of the informative, this can be used to draw the developer's attention to the affordable housing requirements of the future development of the site but it cannot be used in lieu of a planning obligation. As you will be aware, informatives are only advisory and not legally binding.

I hope that is helpful, but if you have any further questions, please do let me know.

Kind regards,
Daniela

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