



**DEVELOPMENT MANAGEMENT**

**PLANNING COMMITTEE**

**FOR DECISION**

**9<sup>th</sup> April 2024**

Ladies and Gentlemen,

The applications within this report have been submitted for determination under the Town and Country Planning Acts and associated legislation.

*Jason Hipkiss*

**Head of Development Management (Barrow)**

<b>Application Number</b> : B28/2023/0684	<b>Date Valid</b> :23/10/2023
<b>Address</b> : Land opposite Greenhills Pond, Greystone Lane, Dalton-in-Furness, Cumbria	<b>Case Officer</b> : Barry Jesson
<b>Proposal</b> : Application to modify a planning obligation made under S106 of the Town and Country Planning Act 1990 - by the removal of the requirement to provide the four affordable units (planning application ref:B07/2019/0737).	
<b>Ward</b> : Dalton South Ward	<b>Parish</b> : Dalton Town with Newton Parish Council
<b>Applicant</b> : Mr Tim Jones Harry Barker Properties Ltd	<b>Agent</b> : Mr Angus Hutchinson HG Associates
<b>Statutory Date</b> : 18/12/2023	<b>Recommendation</b> : That S106 agreement be modified to remove the on site affordable housing requirement and accept a reduced financial contribution in lieu.
<a href="#">Barrow Planning Hub</a>	

## Relevant Policies and Guidance

### Local Plan Policies

#### **Policy DS1 - Council's commitment to sustainable development**

When determining planning applications, the Council will take a positive approach to ensure development is sustainable. The Council will work pro-actively with applicants to find positive solutions that allow suitable proposals for sustainable developments to be approved wherever possible.

The Council is committed to seeking to enhance the quality of life for residents by taking an integrated approach to protect, conserve and enhance the built, natural and historic environment whilst ensuring access to essential services and facilities and a wider choice of housing. This will enable the Local Plan's Vision and Objectives to be met and to secure development that simultaneously achieves economic, social and environmental gains for the Borough.

Planning applications that accord with the Development Plan will be approved without delay, unless material considerations indicate otherwise.

Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise, taking into account whether:

- a) Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the National Planning Policy Framework (or any document which replaces it) taken as a whole; or
- b) Specific policies in the Framework (or any document which replaces it) indicate that development should be restricted.

### **Policy H14 - Affordable Housing**

Delivery of affordable housing, including Rent to Buy homes, will be supported where the proposal meets national and local policy. Proposals for housing development will be assessed according to how well they meet the identified needs and aspirations of the Borough's housing market area as set out in the most up-to-date Strategic Housing Market Assessment and/or any more recent evidence of need. It is expected that 10% of dwellings on sites of 10 units or over should be affordable (as defined by the NPPF (2012) or any document which replaces it). Alternatively contributions to the provision of affordable units off-site will be considered where justified. On and off site provision will be secured through a Section 106 Agreement. Tenure split must reflect that stated as required in the latest Strategic Housing Market Assessment where possible.

A lower proportion of affordable housing, or an alternative tenure split, may be permitted where it can be clearly demonstrated by way of a financial appraisal that the development would not otherwise be financially viable either due to this requirement or due to the cumulative impact of this requirement and other required contributions. Early dialogue with the Council on this matter is essential. It is not acceptable to sub-divide a site and purposely design a scheme to avoid making affordable housing contributions.

### **Summary of Main Issues**

The main issue is the balancing of the policy requirement of providing Affordable housing on new residential developments with the need to ensure the development remains viable to allow completion and full delivery of the site.

N/A

### **Response to Publicity and Consultations**

No neighbours listed as consulted

Responses	Support	Object	Neutral
0	0	0	0

## **Organisations Consulted**

### **Consultee**

Planning Policy

### **List of Organisation Responses**

No organisation responses recorded.

## **Officers Report**

### **1.Site and Locality**

1.1 The site is a part built residential housing estate located on the edge of Dalton in Furness on a former greenfield site, which was allocated for housing in the Local Plan. Currently under construction, the site is over 50% complete. The site sits opposite Green Hills Farm and pond, and is accessed from Greystone Lane.

### **2. Proposal Details**

2.1 Application to modify a planning obligation made under S106 of the Town and Country Planning Act 1990 - to remove the requirement to provide four affordable units (planning application ref:B07/2019/0737).

### **3. Relevant History**

3.1 57/1993/0721 Land to the east of Greystone Lane Dalton-in-Furness Cumbria Re-modelling of south western edge of tarn, excavation of new tarn and laying of a connecting over flow pipe APPCOND 07/12/1993

3.2 B07/2018/0070 Proposed housing site at land adjacent to Greenhills Pond, Greystone Lane Dalton-in-Furness Cumbria Outline Planning Permission with all matters reserved for the erection of up to 36 dwellings APPCOND 07/10/2019

3.3 B07/2018/0362 Proposed housing site at land adjacent to Greenhills Pond, Greystone Lane Dalton-in-Furness Cumbria Outline Planning Permission with all matters reserved for a housing development (14 dwellings - consisting of bungalows and two storey semi detached houses) - in conjunction with application ref 2018/0070 WITHDRAWN 08/03/2019

3.4 B07/2019/0737 Land opposite Greenhills Pond, Greystone Lane Dalton-in-Furness Cumbria Application for approval of reserved matter following the grant Outline Planning Permission 2018/0070 with all matters reserved for the erection of up to 36 dwellings. APPCOND 11/03/2020

3.5 B26/2008/0880 Land to rear of 7 Dunlin Drive Dalton-in-Furness Cumbria LA15 8PY Application for a Lawful Development Certificate for agricultural buildings used for agricultural purposes APPROVED 12/08/2008

3.6 B28/2021/0876 Greystone Lane Dalton-in-Furness Cumbria Application for approval of details reserved by Condition No. 3,(Greystone Lane improvements including footway) No. 4 (Street lighting to Greystone Lane) No.8 (Estate road and footway details) and No. 15 (foul drainage details) of planning permission 018/0070 (Outline Planning Permission with all matters reserved for the erection of up to 36 dwellings) APPROVED 16/12/2021

3.7 BIN/2017/0755 Land adjacent to Greenhills Farm Greystone Lane Dalton-in-Furness Cumbria Outline Planning Permission with all matters reserved for a housing development (40-50 dwellings - consisting of bungalows and two storey semi detached houses) INVALID 22/12/2017

#### **4. Officer Assessment**

##### Background

4.1 Outline planning permission (B07/2018/0070) was granted for up to 36 dwellings in October 2019. A Unilateral Undertaking (UU) was entered into to provide, amongst other things, 10% of the dwellings as Affordable units in the reserved matters submission.

4.2 Reserved Matters approval (B07/2019/0737) was granted in 2021 for the construction of 36 dwellings. In accordance with the UU and Local Plan Policy H14, which expects that 10% of dwellings on sites of 10 units or over should be affordable (as defined by the NPPF), a supplemental Section 106 agreement was entered into requiring plots 7, 8, 9 and 10 to be designated as affordable units. Construction has commenced with around half of the dwellings signed off by Building Control.

4.3 NPPF paragraph 58 advises that planning applications which comply with up-to-date policies that set out contributions expected from a development should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment, which are ordinarily carried out at the application stage prior to entering into a S106 agreement. No such assessment was put forward prior to entering into the agreement. However, construction and material costs have increased during/ since the pandemic which, in addition to significant ground works due to the slope of the site, (requiring levelling/retaining walls), has brought into question the successful completion of the site as the profit margin is forecast to be minimal at less than 5%. Typically a developer profit in the region of 18% is expected, with the National Planning Practice Guidance advising a profit range between 15-20%.

4.4 Given the increased costs and minimal profit forecast, the applicant has now submitted a Viability Assessment prepared by Harry Barker Properties, dated August 2023. This concludes that due to the high level of abnormal costs primarily arising from the groundworks (over £1m) the scheme is unable to provide 10% of the site as affordable housing and remain viable. Their submission states that potentially the site will remain unfinished, and as such seeks agreement to remove the obligation to provide 4 affordable dwellings.

4.5 Policy H14 does provide for a lower proportion of affordable housing, or an alternative tenure split, where it can be clearly demonstrated by way of a financial appraisal that the development would not otherwise be financially viable, either due to this requirement or due to the cumulative impact from other required contributions.

#### Obligation removal method

4.6 The formal mechanism to vary or remove such an obligation is provided by s106A of the Town and Country Planning Act 1990 (the Act). This states that a planning obligation may not be modified or discharged except *either* by agreement between the "appropriate authority" (the Local Planning Authority responsible for enforcing the agreement [LPA]), and the person(s) against whom the obligation is enforceable, *or* in accordance with a formal application under s106A, or s106B (on appeal). In essence this provides two avenues, firstly, it can be modified or discharged at any time when in agreement with the LPA; or secondly, via a formal application in accordance with the Act, which brings into play a right of appeal. This second, formal route is only available after the 'relevant period' has expired - that period being 5 years after the agreement was entered into (10/11/21 given no other period was specified within).

4.7 As the obligation is therefore less than 5 years old, it remains at the Council's discretion as to whether it should remain, or voluntarily agree to the omission of this element of the obligation. If it were decided it should remain, there is no right of appeal at this stage but such discretion must be reasonably exercised because the decision may be challenged in the High Court by way of an application for judicial review.

#### Policy position on reduced/no obligation

4.8 As financial viability is a specialised area, it was considered necessary to peer review the submission. *Aspinall Verdi*, a specialist practice of Chartered Surveyors and Town Planners, were appointed to review the submitted assessment. Whilst using a slightly different methodology to the applicant, their conclusion was the same - the resulting profit level was insufficient to viably provide affordable housing.

4.9 Local Policy H14 does recognise there are circumstances where for certain sites to be developed a different approach to affordable housing may be required.

*"A lower proportion of affordable housing, or an alternative tenure split, may be permitted where it can be clearly demonstrated by way of a financial appraisal that the development would not be otherwise be financially viable either due to this requirement or due to the cumulative impact of this requirement and other required contributions.."*

4.10 As no specific lower proportion or percentage is specified, the policy allows for a situation where no affordable housing is provided in a development and it would still accord with the policy, provided it is fully justified in the appraisal. This is further clarified in the Council's "Affordable Housing & Developer Contributions" July 2022 (AHDC) SPD, which explains that:

*"There may be planning applications where the total cumulative cost of affordable housing provision and/or the requested developer contributions will undermine the deliverability of the development. In such cases, each planning application will be assessed on its individual merits."* (para. 1.15)

4.11 It also advises in the case of viability assessments:

*"The developer will send its viability assessment to the Council, robustly justifying why the required affordable housing or contribution (whichever is relevant) is not viable. The Council will consider whether the benefits of the proposed development would outweigh the disadvantages of a more limited planning obligation, or no planning obligation at all."* (para. 2.29)

### Assessment

4.12 In this case the benefits of the development/additional housing provision have already been considered and accepted, stemming from an allocated housing site with planning permission granted. The consideration is therefore whether insisting on the continued provision already agreed will negatively impact the delivery of the site, and what the likely implications of this are. To this end the applicant's submission acknowledges the importance of affordable housing in securing mixed and inclusive communities, and that potential residents may be unable to afford the houses without such provision.

4.13 However, as detailed in the viability assessment, this is a site with specific remediation costs and associated viability issues. The issue at hand is whether those objectives would be harmed to a greater degree by leaving the site undeveloped in its part-constructed condition for an extended period which, as stated by the applicant in their planning statement, would be the likely consequence if the 106 Agreement was not to be modified.

4.14 A requirement for 119 dwellings per year over the plan period 2016-2031 was identified as the Council's housing requirement through the Local Plan. Any under delivery of the site due to the stopping of construction would potentially impact this requirement, and potentially result in a shortfall. The Barrow Borough Housing Land Statement (HLS) (2017) shows there have been such shortfalls previously, with the average number of net additional dwellings being only 68 per year between 2003-2017 (para 3.6). This figure doesn't relate to the current plan period, but it still evidences a historic trend of under-delivery year on year. The current situation is improved, but still falls slightly short of the 119 target, with an average of 109 net additional dwellings between 2016-2023. Ideally, to grow the area in line with housing and employment projections the target would be consistently met or exceeded; unfinished sites are detrimental to this aim.

**4.15** The submitted appraisal shows that with the forecast profit being 4.64% with the delivery of the four affordable units, this only rises to 8.45% if the obligation is removed; this profit is still less than half of what would typically be expected in a viable development (15-20% profit).

**4.16** Whilst considered to be not feasible to deliver the affordable dwellings as agreed, the developer initially offered to provide a reduced provision in the form of a £2.5k financial contribution per unit, therefore totalling £10k. Such financial contributions have been provided to the Council before in lieu of on-site provision, with this money used to provide affordable housing on other sites or use to renovate older housing stock to make them fit for habitation. The figure proposed, however, is a very small sum in contrast to the costs involved in delivering even 1 affordable dwelling on site. If this figure were accepted in any decision, it would form the basis of an amended S106 requiring its payment to the Council by an agreed date. However, any offer has to satisfy the tests for a section 106 obligation - one being that it is necessary to make the development acceptable in planning terms. In this situation the viability assessments already demonstrate that the development can be considered acceptable without any such provision when taking into account the abnormal costs and low developer profit.

**4.17** The £10k would not therefore provide any meaningful or tangible contribution in its own right, or make the development acceptable, as it doesn't represent any form of equivalent provision for even one affordable dwelling. On that basis, accepting such low a figure adds no real value to the scheme and would not satisfy the statutory tests required for a S106 obligation. It was further discussed with the applicant, and whilst the appraisals do not point to a lower proportion of affordable housing being viable, the developer is still mindful of the original requirement and local need. A revised offer has subsequently been submitted which offers a payment in lieu, based on the equivalent provision of one affordable house rather than four. The formula to calculate this new sum is taken from the Council's SPD, and arrives at a figure of £63k, which equates to 30% of the expected market value for one of the units originally earmarked as an affordable. The same methodology was used in a recent approval on Dalton Lane which required a single affordable dwelling, with a payment of 30% of the market value accepted in lieu, as integrating a single unit on a larger site and/or finding a registered provider interested in taking on a single house raises other difficulties.

**4.18** Unlike the initial £10k, this increased figure comprises a contribution which reflects the calculation of the SPD and is the financial equivalent of providing one dwelling on site. The developer considers that with the ability to sell the other three dwellings at market value, this contribution can still be made and the site completed despite the overall lower profit margins. The contribution is also now of a level that can more realistically be put to effective use on alternative sites or other means of affordable provision (renovation etc).



## 5. Conclusions

5.1 The applicant has demonstrated through their appraisal that it is not financially viable to deliver the agreed affordable housing units, and this has been peer reviewed and verified by a specialist consultancy. This brings into question the completion of the site, which is a little over half complete. Instead, a financial contribution of £63k has been proposed. Whilst this is much less than the costs associated with providing four units, the forecast developer profit even without the affordable housing is still far short of what is typical from a development.

5.2 Whilst the obligation can only be removed with the agreement of the Council, with no right of appeal available should it be minded to retain the requirement, it has to be considered that the implications of this are likely much more harmful than omitting the provision. An unfinished site would be problematic for existing residents and would reduce the overall housing delivery if never completed. Had the appraisal been provided prior to granting planning permission, it is likely the development would still have been in accordance with the Local Plan, as it does make allowances for such viability issues, which are strong material planning considerations.

5.3 An initial offer of £10k didn't, in reality, have a tangible value in order to make a meaningful contribution and meet the aims of why such provision or contributions are required in the first place. However, the improved offer is based on the SPD calculation, and whilst it is based on the costs of one unit rather than the four units currently required, the contribution is now significant enough to make a meaningful contribution and meet the tests within the S106.

5.4 It is therefore advised that the increased financial contribution is accepted and the S106 obligation to provide 4 affordable dwellings should be varied accordingly. This appears to represent the best option to increase the likelihood of a completed development which, whilst providing a lower affordable contribution than originally envisaged, does still make a worthwhile contribution and would allow completion of the development, bringing the economic and social benefits associated with providing new residential areas and housing for local people.

5.5 Members may have concerns that this proposal sets a precedent that could result in similar applications, leading to the supply of affordable housing being compromised. However, each application, as in this case, would be carefully scrutinised by a specialist and each determined on its merits. As is normal practice, the applicant would meet the Councils legal costs in amending the existing legal agreement.

5.6 In assessing this application, I confirm that the Authority has exercised the following duties:

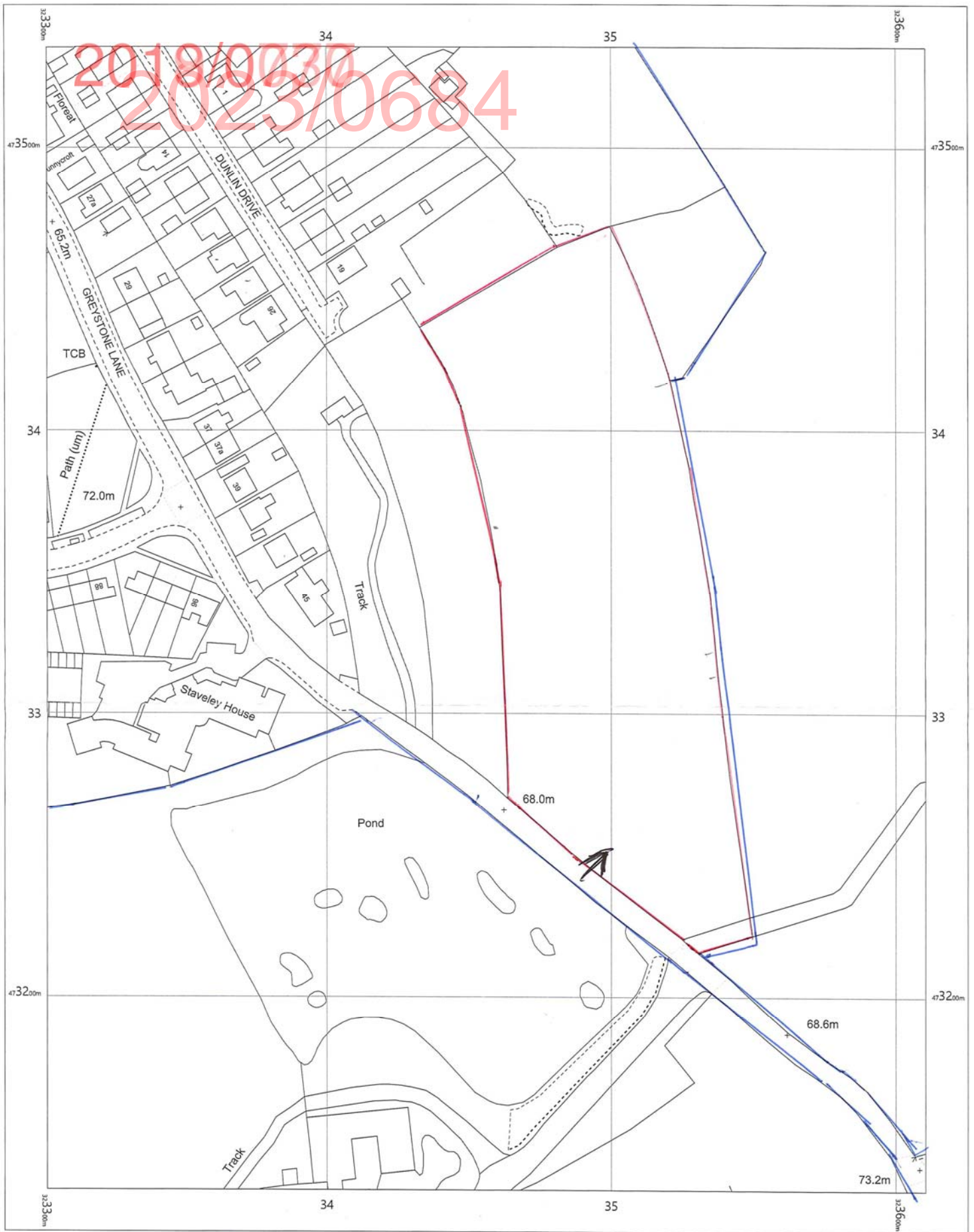
1. Under Section 149 of the Equality Act 2010 Local Planning Authorities must have due regard to the following when making decisions (i) eliminating discrimination, (ii) advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and (iii) fostering good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics are age (normally young or older people) disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

2. In determining applications, the Council must ensure that all parties get a fair hearing in compliance with the provisions of Article 6 under the European Convention on Human Rights, as now embodied in UK law in the Human Rights Act 1998.

## **6. Recommendation**

I recommend that;

The existing S106 obligation is modified to remove the requirement to provide affordable houses on plots 7-10 inclusive and to replace it with an obligation for a payment of £63k being made to the Council towards off-site local affordable housing provision.





2019/00370  
2023/0684



OS MasterMap 1250/2500/10000 scale  
 Thursday, November 16, 2017, ID: CM-00670543  
 www.centremapslive.co.uk  
 1:1250 scale print at A3, Centre: 323456 E, 473334 N  
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## **Appendices of Saved and Emerging Policies**

### **Note to Members**

Below are the full wordings of the policies relevant to the applications found on the agenda today.

### **Barrow Borough Local Plan 2016-2031**

#### **Policy DS1 - Council's commitment to sustainable development**

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## Planning Committee

9<sup>th</sup> April 2024

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