



---

**Report of the Chief Planning Officer**

***South and West Plans Panel***

**Date: 11 January 2024**

**Subject: 23/05968/S106 - Application under S106A for the modification or discharge of Planning Obligations pursuant to Section 106A of the Town and Country Planning Act 1990 to vary the existing S106 Agreement to application 18/01501/OT to remove the build to rent and PRS covenants at Former Airedale Mills, Moss Bridge Works, Town Street, Rodley, Leeds, LS13 1HP**

**Applicant: Rodley Limited**

---

**Electoral Wards Affected:**

**Bramley & Stanningley  
Calverley & Farsley**

Yes

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

---

**RECOMMENDATION: DEFER AND DELEGATE to the Chief Planning Officer for approval subject to the S106 agreement, as amended, being completed after the expiry of the 21 day publication period.**

---

**PROPOSAL**

- 1 This Application has been brought to Plans Panel in accordance with the Chief planning Officers delegation arrangements whereby the Chair in consultation with the Chief Planning Officer considers that the application should be referred to this Plans Panel for determination because of the significance of the proposal to vary an existing S106. The existing s106 Agreement was completed on 01.07.2019 for planning application 18/01501/OT
- 2 This applicant seeks to vary the existing s106 Agreement by of Deed of Variation ("DoV") pursuant to s106A of the Town and Country Planning Act 1990 (as amended).

The variation sought seeks to include reference within the current agreement to provide 100% affordable housing **or** proceeding with the extant approval which would provide 15% affordable housing on the standard basis of a 40% and 60% split between intermediate and social rented provision. The Deed of Variation will include a clause which requires the developer to confirm to the Local Planning Authority, prior to commencement of a scheme, which provision will be provided.

- 3 This current application for a DoV seeks to remedy the reference within the current agreement to providing affordable housing provision restricted as private rented housing in the event changes are made and thus add flexibility to provide 100% affordable housing should the applicant or developer deliver such a scheme.

## **HISTORY OF NEGOTIATIONS AND PLANNING HISTORY**

- 4 The site has been the subject of a previous outline permission (18/01501/OT) which granted consent for the principle of the development including means of access with all matters reserved (09.07.2019). The development site was considered to lie within a sustainable location along with its allocation being considered via the adoption of the Site Allocations Plan. A full assessment of the proposed access, including replacement swing bridge, associated modelling data and transport assessment was considered by highways officers and found to be satisfactory.
- 5 Reserved Matters consent (21/09266/RM) was granted via Plans Panel resolution on 08.06.2023 considering layout, scale, appearance, and landscaping for the erection of 67 dwellings pursuant to outline permission 18/01501/OT.
- 6 A Section 106 Agreement pursuant to Reserved Matters consent 21/09266/RM was signed and completed on 25.09.2023 including provision for 15% affordable housing, as defined traditionally as rented housing owned and managed by a registered PRS operator. Additionally securing an off-site greenspace contribution of £50,000.

## **PUBLIC/LOCAL RESPONSE:**

- 7 Site Notice – posted 12.10.2023 (21-day publicity period)

The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992.

### Publicity for applications by local planning authority

(1) When a local planning authority receive an application for the modification or discharge of a planning obligation they shall publicise the application by–

(a)posting notice of the application on or near the land to which the planning obligation relates for not less than 21 days; or

(b)serving notice of the application on the owners and occupiers of land adjoining that land; or

(c)publishing notice of the application in a local newspaper circulating in the locality in which that land is situated.

(2) The notice posted, served, or published in accordance with paragraph (1) shall be in the form set out in Part 3 of the Schedule and shall invite representations on the application to be made to the local planning authority within 21 days of the date on which the notice is posted or served, or within 14 days of the date on which the notice is published, as the case may be.

(3) The local planning authority shall make a copy of the application and the relevant part of the instrument by which the planning obligation was entered into available for inspection during the period allowed for making representations pursuant to paragraph (2).

(4) In paragraph (1)(b) “owner” in relation to any land means any person who–

(a) is the estate owner in respect of the fee simple; or

(b) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired.

One letter of representation has been received from Rodley Nature Reserve (RNR) which outlines the following,

- It is important that the development is owned and operated by a single entity with adequate resources to guarantee, in perpetuity, bridge operation and therefore access.

## **CONSULTATION RESPONSES:**

### 8 Legal

The DoV has been reviewed by Legal officers and the wording contained therein is considered to be appropriate to achieve the aims of the proposed DoV. As outlined a clause shall be included to allow delivery of either 15% affordable housing as proposed by the extant permission or a 100% affordable housing scheme with a requirement notification is made by the applicant/landowner prior to commencement of development.

## **RELEVANT PLANNING POLICIES**

9 Policy H5 of the Core Strategy is relevant to the application in that this considers affordable housing provision. However, given the application is a Deed of Variation the limits to be considered focus solely on the acceptability of the proposed variation to the S106 agreement.

10 A DoV is a mechanism provided by s106A of the Town and Country Planning Act 1990, which states that a planning obligation may not be modified or discharged except *either* by agreement between the “appropriate authority”, meaning *inter alia* the LPA, and the person(s) against whom the obligation is enforceable.

11 Periods within which applications to modify an obligation can be made, are as follows:

- For obligations entered into on or before 6 April 2010 – an application can be made at any time.
- For obligations entered into after 6 April 2010 – an application can be made after 5 years beginning with the date the obligation has been entered into.

## **MAIN ISSUES**

### Deed of Variation

12 The proposals seek to remove the standard restrictions within the current S106 agreement, para 2 of the First Schedule of the Deed of Variation, as the applicant is seeking flexibility to provide standard affordable housing provision of 15%, inline with

the approved scheme or additional affordable housing via a scheme which would deliver 100% affordable housing. In essence the removal of such restrictions omits the Private Rented Sector (PRS) limitation period and definitions relating to PRS housing, PRS Operator(s) and PRS Units. Such references restrict the applicant from providing an alternative 100% affordable housing scheme due to the definitions.

- 11 The applicant will identify an affordable housing provider whom would take the development forward (in the event such a scheme is delivered) and thus seek to implement a scheme providing 100% affordable housing. The LPA shall be notified of such intentions, or the applicant shall implement the extant permission.
- 12 It is proposed that the current S106 is also amended to incorporate an alternative restriction on the affordable housing remaining as affordable units in perpetuity and thus protecting the units, subject to a list of relevant exclusions including exercising the right to buy, staircasing, acquiring the whole lease through a buy basis and mortgagee exclusion clauses. Should a 100% affordable housing scheme be delivered this is considered appropriate to ensure the affordable units are retained as such.

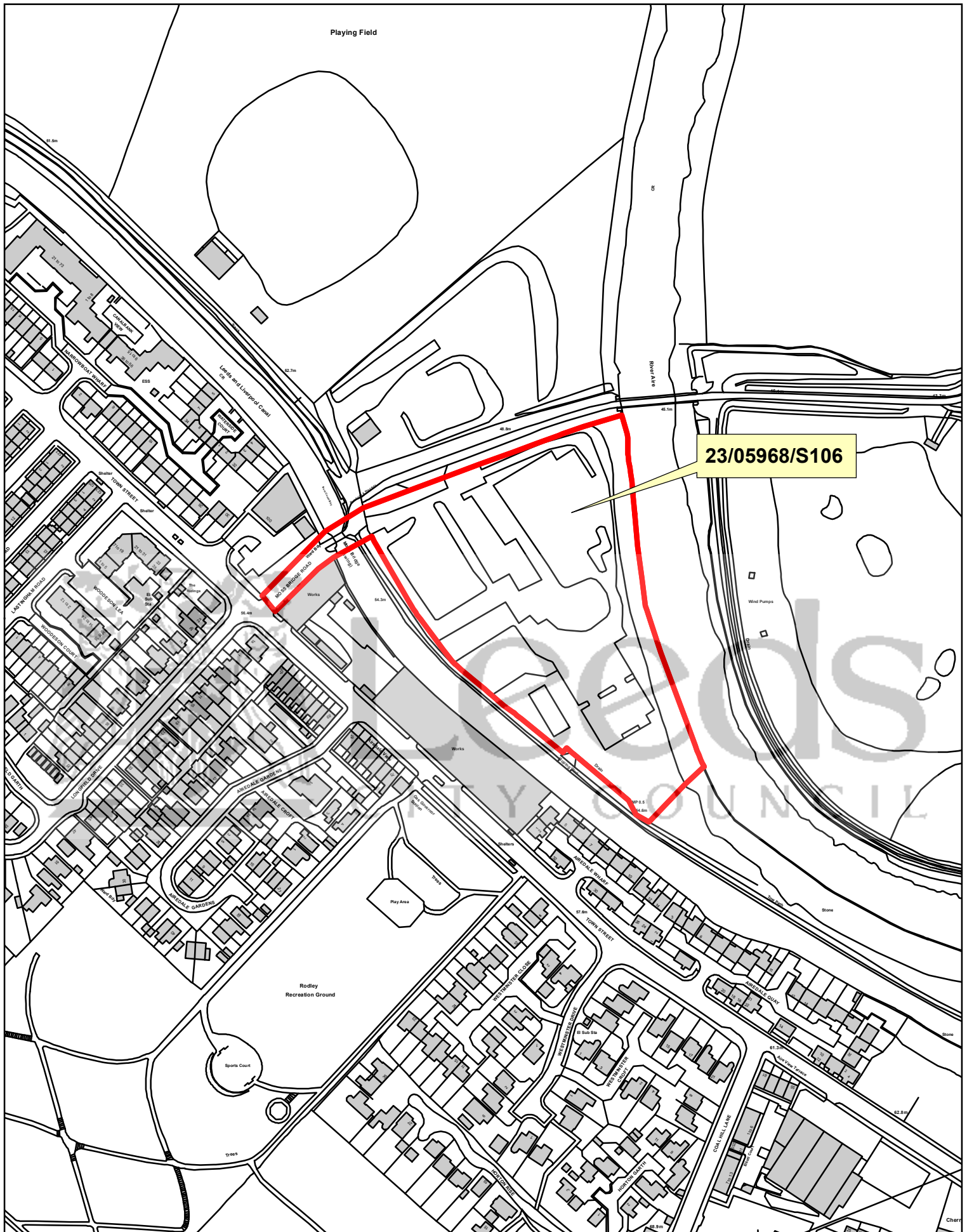
## **CONCLUSION**

- 13 The proposed DoV is considered to be acceptable given the wider benefits proposed through the potential creation of a development incorporating 100% affordable housing and thus adding a significant number of units within the city. It is considered allowing such flexibility for an affordable housing provider is acceptable and the proposed changes do not undermine the aims of the original S106.

### **Background Papers:**

Application files                    23/05968/S106

Certificate of ownership: Certificate B signed by the agent



**23/05968/S106**

# SOUTH AND WEST PLANS PANEL

© Crown copyright and database rights 2022 Ordnance Survey 100019567

PRODUCED BY CITY DEVELOPMENT, GIS MAPPING & DATA TEAM, LEEDS CITY COUNCIL

SCALE : 1 / 2500





# PLANS PANEL PRESENTATION

SCALE 1:2500





©Bluesky International Ltd and Getmapping Plc [2022]

# PLANS PANEL PRESENTATION

SCALE 1:2500

