

Planning Committee: 20th October 2014.



REQUESTED MODIFICATION OF THE AFFORDABLE HOUSING CONTRIBUTION TO BE PROVIDED FOR LAND AT INGFIELD LANE, SETTLE.

Report of the Development Control Manager.

Ward(s) affected: Settle and Ribblesbanks.

1. Purpose of Report –

1. To seek a resolution on an application (Planning Ref. 62/2014/15073) by Skipton Properties Ltd. to vary the terms of a Sn 106 Planning Obligation to reduce the amount of affordable housing to be provided on a residential development at Ingfield Lane, Settle granted under Planning Permission Ref: 62/2013/13590.

Officer note: A separate report is on this Agenda (to be considered first) that outlines the revised procedures relating to this application and seeks approval for an amendment to the Scheme of Delegation in relation to applications submitted under the new Sn106 Planning Obligation procedures.

2. To seek delegated authority to determine an associated application to vary a condition that specifies the affordable housing contribution to be provided (Planning Ref. 62/2014/14926).

3. Recommendations – Members are recommended to:

- 2.1 **With respect to Planning Ref. 62/2014/15073, to refuse the application to vary the terms of the Sn 106 Planning Obligation as a sound case has not been demonstrated that affordable housing provision in accordance with the existing Sn 106 Planning Obligation would make implementation of the development approved under Planning Ref. 62/2013/13590 unviable.**
- 2.2 **Delegate the final decision on application 62/2014/14926 to the Strategic Manager for Planning and Regeneration providing that decision is consistent with the decision taken by the Planning Committee for planning application Ref: 62/2014/15073.**

4. Explanation of the process and the recommendation

Planning Ref: 62/2014/15073. (Application to vary the terms of the Sn 106 that applies to affordable housing provision for the residential scheme permitted under Planning Ref. 62/2013/13590).

- 3.1 Planning application 62/2013/13590 is a full application for the construction of 37 dwellings which was determined by the Planning Committee on 28th August 2013. The decision of the Planning Committee was to grant planning permission subject to the applicant entering into a Section 106 legal agreement to provide 15 affordable units equating to 40% of the overall provision.

Officer note: A copy of the officer's report to Planning Committee is attached at Appendix A to this report.

- 3.2 This level of affordable housing provision is in line with the Council's policy requirements as set out in the policy document 'Interim Approach to Negotiating Affordable Housing Requirements' adopted on 29th May 2012. The Council policy is to require a 40% contribution to affordable housing on sites of 5 or more dwellings.
- 3.3 A subsequent Section 106 Agreement was entered into on 29th November 2013 in which the applicant's undertook to provide 15 affordable units on the site equating to 40% in line with the Council's policy requirements. Work has since commenced on site and it is understood that building of a number of the dwellings has commenced at the time of compiling this report.
- 3.4 Recent changes under the Growth and Infrastructure Act have introduced new sections to the 1990 Town and Country Planning Act that set out a new application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing.
- 3.5 Under Section 106BA of the Act an application may now be made to the Local Authority for a revised affordable housing obligation. Such an application should contain a revised affordable housing proposal, based on prevailing viability, and should be supported by relevant viability evidence. Essentially the requirement is for the developer to demonstrate to the planning authority that the affordable housing obligation as currently agreed would make the scheme unviable in current market conditions.
- 3.6 The test for viability set out in the DCLG guidance is that the evidence should indicate that the current cost of building out the entire site at today's prices is at a level that would enable the developer to sell all the market units on the site in today's market at a rate of build out evidenced by the developer and make a competitive return to a willing developer and a willing landowner.
- 3.7 There has always been provision for the terms of planning agreements to be reviewed either by a deed of variation agreed between the relevant parties or via an application under Section 73 of the Town and Country Planning Act 1990. The main

difference with the new provisions is that, unlike an application under Section 73 in which the time periods for a decision correlate with those of the original permission (either 8 or 13 weeks), the new provisions require the Local Planning Authority to issue a decision within 28 days from the date of application.

- 3.8 If the Local Authority fail to issue its decision within the prescribed period or does not agree with the developer's revised proposals Section 106BC of the revised procedures provides a right of appeal to the Secretary of State.
- 3.9 In the case of the current application that seeks to vary the terms of the existing planning agreement the Local Authority should reach a decision no later than 16th October 2014. This report will be considered by the Planning Committee shortly after that deadline and therefore a short extension has been requested from the applicant to allow time for this.
- 3.10 The planning application has been submitted with the following information which is attached as appendices to this report as indicated:
- i) A supporting letter and statement (Appendix B)
 - ii) A financial appraisal (Appendix C)
- Officer note:** The detailed financial appraisal is considered to be confidential information.
- 3.11 In summary the applicants argue that building costs have increased since the original viability appraisal for the site was undertaken. The basis of the applicant's request to reduce the affordable housing contribution is therefore based upon the following factors which they maintain have led to increased build costs across the development:
- i) It has become apparent that the drainage position as notified by United Utilities is fundamentally incorrect and that the site in consequence is subject to severe flooding.
 - ii) It has also come to light that the site has a significant layer of peat (which was unidentified by the site investigation) which has had to be extracted and refilled with boulders.
 - iii) A re-design of the drainage storage scheme was in consequence required due to the lack of drainage into the main system.
 - iv) Increased construction costs generally since the original viability appraisal.
 - v) As a consequence of i) and ii) above, traditional design has had to be replaced by raft construction.

The conclusion drawn from the above is that the affordable housing contribution set out in the existing Sn106 agreement is no longer viable. It is also stated that unless the agreement is varied the applicant would have no recourse other than to contract and sell the first 6 dwellings and then remove from the site.

- 3.12 It is proposed that a reduction in the number of affordable units from 15 to 7 would make the development viable and that the Sn106 legal agreement should be changed to accommodate this revision.
- 3.13 The Council has commissioned an independent valuation surveyor to undertake an assessment of the applicant's submitted financial appraisal. The full report of the valuation surveyor is attached as Appendix D. Comment on the financial information within the scheme is considered to be confidential, but the conclusions reached by the independent valuation surveyor are summarised as follows:
- i) There is a lack of evidence supplied by the applicants to substantiate their claim that increased building costs have resulted in the scheme becoming unviable.
 - ii) The claim that the need to use raft foundations has led to increased costs is refuted as the site engineer has informed the valuation surveyor that the applicant's always use that particular foundation design. Consequently, this would not be an extra cost and should have been reflected in the original appraisal.
 - iii) The removal of peat is unlikely to have been an unexpected cost as it is a localised problem that has affected nearby development and the likelihood of encountering peat was high and should have been factored into the price paid for the land. In any case the peat, which is being stored on site, is likely to be used on the gardens of the proposed development and may well reduce in part the amount to be spent on imported topsoil.
 - iv) The house values cited in the applicant's appraisal appear to have been suppressed and therefore do not provide an accurate picture of the profit levels that the development would be likely to achieve.
 - v) The applicant's case is being made on cost assumptions based upon estimated costs rather than actual quotes for work and fails to establish a solid case for the requested reduction in the number of affordable units on site.
 - vi) The valuation surveyor's site visit (9/10/2014) confirmed that four plots have been pre-sold and a further one reserved. It was also observed that 28 of the 37 properties were under construction, 24 of them above ground level.
 - vii) It is also noted that Yorkshire Housing who are to take over the affordable units has confirmed that they are being pressed by the developer to complete the paperwork with a promise of them being delivered before Christmas 2014.
- 3.14 In view of points vi) and vii) above the valuation surveyor has concluded that it seems unlikely that a lack of funds is causing a hiatus in development. The overall conclusion taking all of the above points into consideration is that there is insufficient justification to support the applicants request to reduce the affordable housing contribution on this development.
- 3.15 The assessment of the application is a highly specialised and technical exercise that can realistically only be undertaken by someone with the relevant expertise. It

is therefore recommended to the Planning Committee that the conclusions of the valuation Surveyor are accepted and that this application is refused.

Planning Ref. 62/2014/14926. (Associated application to vary condition 24 of Planning Ref. 62/2013/13590).

- 3.15 Shortly before the application to vary the Sn 106 was received (Planning Ref. 62/2014/15073), a further application (Planning Ref. 62/2014/14926) was made to vary condition 24 that is attached to planning ref. 62/2013/13590. Condition 24 requires 40% of the dwellings to be provided on an affordable housing basis and as a result of this condition the applicants entered into the Sn 106 Planning Obligation. If a reduced affordable housing contribution were to be accepted by the Council and the Sn 106 modified, it would also be appropriate to agree to amend condition 24 of Planning Ref. 62/2013/13590. Members should be made aware that Settle Town Council has commented that they object to this application as affordable housing is still very much needed.
- 3.16 The application to vary the condition is subject to similar assessment criteria that apply to the application for the variation of the Sn 106 Planning Agreement set out above. As Planning ref. 62/2014/14926 seeks to amend a condition of an application that was previously presented to Planning Committee it would ordinarily be necessary to refer that application to planning committee for a decision. However, to avoid what is essentially the same matter being considered for a second time by the Planning Committee it is recommended that Members grant authority for the final decision on application 62/2014/14926 to be delegated to the Strategic Manager for Planning and Regeneration providing that decision is consistent with the decision taken by the Planning Committee for planning application Ref: 62/2014/15073.

5. Implications

- 4.1 **Financial Implications** – None directly.
- 4.2 **Legal Implications** – None other than as set out by this report.
- 4.3 **Contribution to Corporate Priorities** – The provision of affordable housing is a corporate priority; however this priority is not relevant to this decision that has to be made purely on the viability of the development proposal.
- 4.4 **Risk Management** – None, although a decision to refuse consent has to be fully justified otherwise there is a risk of an award of costs against the Council.
- 4.5 **Equality Impact Assessment:** -

The Council's Equality Impact Assessment Procedure **has not been** followed. Therefore neither an Initial Screening or an Equality Impact Assessment has been

undertaken on the proposed policy, strategy, procedure or function to identify whether it has/does not have the potential to cause negative impact or discriminate against different groups in the community based on •age • disability •gender • race/ethnicity • religion or religious belief (faith) •sexual orientation, or • rural isolation.

6. **Consultations with Others** –

5.1 Advice to the Planning Authority on the acceptability of the application has been requested from a RICS Registered Valuer.

7. **Access to Information : Background Documents** –

- The relevant planning application files.
- The Department for Communities and Local Government document 'Section 106 affordable housing requirements – Review and appeal'.

7. **Author of the Report** –

Mark Moore – Principal Planning Officer 01756 706370

Note : Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

8. **Appendices** –

Appendix A – Copy of officer report to Planning Committee for Application No: 62/2013/13590.

Appendix B – The applicant's covering letter and supporting information for Planning Ref. 62/2014/15073.

Appendix C – The applicants development viability appraisal (Exempt Information).

Appendix D – Copy of the independent financial appraisal undertaken on behalf of the Council by Jenny Jacobs MRICS, Valuation Surveyor (Housing Development) Harrogate Borough Council (Exempt Information).