

**ADVANCE SUPPLEMENTARY REPORT**  
**TO THE PLANNING COMMITTEE**  
**11<sup>th</sup> March 2014**

**Agenda item 6**

**Application ref 13/00625/OUT**

**Linley Trading Estate, Linley Road**

As indicated in the agenda report a supplementary report is provide with advice for members following consideration of the position put forward by the applicant which has been reproduced in almost its entirety

Since the agenda report was prepared a formal agreement to extend until the 5<sup>th</sup> May 2014 the statutory period (within which no appeal can be lodged) has been received from the agent

Whilst the agent's submission covers a range of matters your officer can now confirm as follows:-

- That there is substantive evidence in the form of a detailed procurement and construction programme which has been examined by your officer and it supports the contention that it is simply impractical to expect the developer to have completed any substantial works to the houses themselves within 18 months.
- That given that market conditions can changes significantly and thus the viability of schemes can change significantly the scale of the development, which at up to 139 dwellings is not small scale, it would be appropriate to require the developer to enter into an agreement that secures a trigger for a reappraisal of the scheme's viability both on the failure to achieve "substantial commencement" within 18 months and should the development be built in phases. The proposals set out in the LPAs position within the report represent an appropriate means of doing this with both aspects being covered.
- Whilst the applicant refers to the RICS Guidance Note on Financial viability in planning, and that GN does advise that reappraisal mechanisms should only be considered in exceptional circumstances it is important to note that the Council is only seeking a reappraisal in the event of these particular triggers being met. Your Officer is not seeking a post development appraisal or overage arrangement which the RICS GN expressly advises against – as development risk at time of implementation cannot be accounted for in respect of the inevitable uncertainty of undertaking a development. In short your Officer's position is that the RICS GN has been taken into account.
- One of the key principles of the developers contributions SPD is that payments should be received so that the needs and impacts of new development are addressed before they arise, but in that context the Education Authority have confirmed that they would have no objection to 50% of the education contribution being received prior to the commencement of the development and 50% prior to the commencement (rather than the occupation of the 31<sup>st</sup> dwelling
- That the committee report on the application gave no consideration to the possibility that there be a contribution towards offsite provision with respect to affordable housing, as opposed to on site provision. However given the very low rate of affordable housing provision that is being considered in this case, and the broad policy position set out in the affordable housing SPD (that on site provision should normally be sought) it is considered that it would be inappropriate to seek a financial contribution towards off site provision, and the affordable housing provision should all be on site

- That the agreement still needs to include some form of trigger that would require a reappraisal should completions per annum fall below a level
- That there is no in principle objection to the use of an indices based approach to an appraisal if triggered although the details will need careful consideration
- That any reappraisal should be on an upward only basis

As members will appreciate Section 106 agreements are a matter of negotiation between the parties, and given their complexity officers inevitably are required upon occasion to interpret the broad spirit of the resolutions made by the Planning Committee. Your officer is seeking authority to deal with these matters on the basis of the broad principles set out above

The second and third recommendations within the report indicate that your officer will advise members as to how long it is appropriate to allow for the agreement to be entered into, failing which he would have a delegated authority to refuse the application, unless he considered it appropriate to allow more time.

The period of time to be given should it is suggested be that which will provide time within which the agreement can be drafted, completed by the various parties (which in this case include not only the applicant, but also a mortgagee, the County Council and the Borough Council), have regard to the possibility (although considered most unlikely in this case) that planning circumstances may change, and that setting a long date would not enable any such change in the interim to be considered.

Whilst the applicant has suggested 5<sup>th</sup> May as an appropriate date, it is recommended that having regard to date when the application was received (10<sup>th</sup> October), the period of time which has elapsed since the original resolution (7<sup>th</sup> January) (but also the promptness with which the agent raised concerns and the time it has taken to bring this matter to committee) that a further six week period be permitted i.e. up until 22<sup>nd</sup> April 2014. Recommendations 2) and 3) are accordingly amended to reflect this.