

**ADVANCE SUPPLEMENTARY REPORT**

**TO THE PLANNING COMMITTEE**

**11<sup>th</sup> March 2014**

**Agenda item 4**

**Application ref 13/00525/OUT**

**Land South of Apedale Road and North of Palatine Drive Chesterton**

Since the preparation of the agenda report your officers have received further advice from the District Valuer in respect of what levels of affordable housing, taken with a policy compliant level of contributions (£2.038m) might, in his view, result in a viable scheme.

His conclusions are that for the proposal to be policy compliant in respect of financial contributions (i.e. £2.038 million) the proposal could provide approximately 20% affordable housing and still be viable.

This is some way from where the applicant considers the proposal to be viable (i.e. 10% affordable housing and approximately £1.8 million of financial contributions).

The applicant Lands Improvement advise that it appreciates the need in principle to mitigate the impacts of the development proposed, and in this context, is willing to increase its Section 106 financial contribution to provide a full policy compliant position – i.e. £2.038 million. They point out that this contribution will fully address the development impacts including education, transport and maintenance of open space.

Lands Improvement (LI) still has concerns that the viability of the scheme is not as positive as the District Valuer is maintaining and this is highlighted in the assessments submitted to date. It points out that a small difference (less than 1% in most cases) in a number of the variables in each model results in significant differences to the predicted viability of the scheme. It recognises that it is not possible to reach agreement on all the matters, and in this context it has put forward various proposals.

Before these proposals are considered members' attention is drawn to the fact that one of the financial contributions is a notional contribution (£672K), towards the costs the Council would have to bear if it were to end up maintaining the open space within the development. It is notional in the sense that it is not based upon any estimate of the actual costs of maintaining this particular open space, but rather relies upon a wider estimate, contained within the Green Space Strategy, of the cost of maintaining new open space over a 10 year period.

It may well transpire that an alternative arrangement is eventually reached whereby the land is maintained in the long term not by the Borough Council but by another party such as the Land Trust – an arrangement to which the Borough Council could not object, in which case it has to be accepted that it would be unreasonable to require that particular payment. Although that alternative arrangement may lower the sales values of the houses within the development that would be achievable, it is not possible given the stage the proposals have reached to model this impact now and neither the applicant's nor the District Valuer's appraisals have taken this possibility into account. Indeed no clear way of reliably estimating this impact appears to exist.

The first proposal LI make, is that in addition a fixed £2.038m contribution (subject to the above qualification) there should, with respect to the amount of affordable housing be a minimum 10% on site affordable housing (35 dwellings) plus an upward only review mechanism (with a 25% cap), or equivalent off site financial payment in lieu if deemed appropriate. The review mechanism would come into play **both** prior to the commencement of each of the three housebuilding phases **and** in the event of a failure to either achieve substantial commencement by a certain date or to then maintain reasonable progress (matters that would still need to be negotiated between the parties).

Your Officers have had further discussions/ negotiations with the applicants and their agent in respect of this revised offer and a further alternative offer has been received – maintaining the fully compliant financial contribution of £2.038m (again subject to the above qualification) and this time increasing the affordable housing to a minimum of 10% on site provision with a further 5% either on site provision or the equivalent financial contribution for off site provision – i.e. a 15% affordable housing contribution. In this scenario there would however be no review mechanism prior to the commencement of each of the building phases.

#### Your Officers' comments

The Council's adopted Developer Contributions SPD advises that viability assessments should be evidence based. In this particular case there is a difference between the conclusions on this evidence, this may be due to variable assumptions within the assessment and its appraisal. The SPD goes on to advise "*negotiation over the level of and nature of contributions will be assessed on a site-by-site basis, having regard to the financial appraisal. It will take account of the economics of the development and other national, regional and local planning objectives that may affect the economic viability of the proposal. Ultimately, the Elected Members of the Planning Committee will take the decision on the appropriate scale and nature of contributions.*"

Any consideration of the issue of the level of Section 106 contributions however has to be in the context of the National Planning Policy Framework (NPPF) which postdates the Developer Contributions SPD. The NPPF indicates that *“to ensure viability, the costs of any requirement likely to be applied to the development, such as requirements for affordable housing, standards, infrastructure, contributions or other requirements, should, when taking into account of the normal cost of development and mitigation, provide competitive returns to a willing landowner **and** willing developer to enable the development to be deliverable* (para 173)

The NPPF goes onto indicate that *“local authorities should take account of market conditions over time, and where appropriate, be sufficiently flexible to prevent planned development being stalled”* (para 205). Members will no doubt recall the Midland House, London Road appeal decision where an Inspector allowed a development without any contribution towards pff site public open space maintenance in part on this basis.

The applicant’s agent advises the applicant is very keen to work with the Council to deliver this important site which will assist in the regeneration of the local area and boost the supply of housing.

This site will take some considerable length of time to deliver actual housing development (i.e. any completions) – because of the nature of the works of ground preparation which are involved and which the applicant expects to take 3 years. However that in no way diminishes the critical importance of this development to the Borough Council’s housing land supply in the light of other recent Committee decisions – particularly in that account has already been taken of this site in the housing land supply calculations. The NPPF has a very strong focus and emphasis on the importance of the planning system delivering both land for development and the development itself

The applicant has also pointed out whilst the housing would not be delivered immediately given the long, capital intensive, infrastructure phase of this development, this initial infrastructure phase would still have benefits to the employment prospects of the area.

Members need to be aware financial appraisals are not an exact science and are subject to a number of variables, in the body of the appraisal together with assumptions made which can have major implication to the figures which are produced. This position is recognised and acceptable by both parties including their advisors.

Whilst it relatively easy to predict the construction of a dwelling itself, certain assumptions have to be made to other elements of this development including the moving and changing of

ground levels across the site. Whilst some of these elements are reasonably predictable (on the basis of 'standard' costs, other are not so predictable until tenders are invited, etc.

Furthermore there is understood to be a particular consideration which the District Valuer's appraisal has not put a figure upon – the provision of a competitive return providing a sufficient incentive to the landowner to ensure that the site is brought forward for development. This is a matter essentially of subjective judgement, but it still needs to be considered by the Local Planning Authority.

As already indicated in the agenda report the development in addition to making potentially a very important contribution towards housing land supply, brings with it important benefits for Chesterton, namely a much needed development in a part of the district where there continues to be a need to pursue its regeneration and where residential development is likely to bring benefits in terms of increased trade to the local district centre.

The Council's SPD on affordable housing sets out a requirement (of 25%), but viability is well recognised to be a significant material consideration which must be taken into account in planning decisions. In this context, and taking into account both the NPPF guidance, the RICS Guidance Note on Financial Viability in Planning and an appeal decision that is generally recognised as having set an important benchmark for these types of cases, your Officer has reflected upon the two offers that have been made, and has explored other alternatives with the developer (including a hybrid proposal that would ensure 15% in the first phase but the level achieved in subsequent phases and over the whole site would be determined by a review which would have both a cap and floor of 20% and 10% respectively).

It appears to your officer that any offer to be acceptable must include provision for a financial appraisal review that could be triggered by a failure to achieve a substantive commencement of the development within a certain period. It is understood that the applicant accepts this, although details of this trigger have not yet been agreed.

Your Officer notes that the first offer includes an upward only review mechanism reflecting the size of the development, the outline nature of the proposals, and the nature of the assumptions that have had to be made by both parties in the prediction of viability.

The second offer has a distinct disadvantage in that it fails to provide a review mechanism, however upon reflection it does have significant merit in that it provides a degree of certainty which the first offer simply cannot do. That is highly likely to encourage the delivery of the site and its development. Negotiations over the terms of such the review mechanism would doubtless expose the inherent tension between the objective of pursuing the delivery of new

development (to which the NPPF gives such importance) with that of appropriate scrutiny and rigour.

With either option the Council has secured the appropriate developer contributions. The issue is solely about the level of affordable housing, but the Council's primary concerns it is considered must be with **delivery**. To this end in addition to setting an appropriate trigger for review in the event of "substantial commencement" not being secured, it is suggested that any agreement should require a continued delivery of housing completions failing which a review would be triggered.

Provided the latter is also secured whilst the 10% upward review only offer is not unacceptable, your Officer's firm view in this case is that the option more closely aligned to the position of the Council is the second offer and this is reflected in the recommendation below.

**Whilst the recommendation to permit the application subject to conditions as set out in the main report, in light of the advice received and other information outlined above, your Officer now recommends that the section 106 obligations contained within Recommendation A be as follows:-**

- 1) A contribution of phased payments towards the Newcastle (urban) Transport and Development Strategy (NTADS) in a total sum of £193,313;**
- 2) A contribution of phased payments towards an extended bus service in a total sum of £350,000;**
- 3) A contribution of phased payments towards school spaces in a total sum of £816,294;**
- 4) Affordable Housing provision at a minimum level of 10% on site provision together with a further 5% on site provision or the equivalent (5%) financial contribution for off site affordable housing provision.**
- 5) EITHER a contribution of £672,000 towards Open space maintenance provision OR the entering into of a Management agreement to secure the long term maintenance of the public open space;**
- 6) A Travel Plan monitoring fee in the sum of £6,200;**

- 7) That a financial viability reappraisal be undertaken EITHER if phase 1 of the development has not been substantially commenced within 28 months of the grant of this outline planning permission (substantial development being defined in this case by completion of all earthworks and remediation as identified in an already received development programme) OR if a continual delivery of housing development is not thereafter maintained, and appropriate adjustments be made, on the basis of such reappraisal(s) to the level of affordable housing referred to in 4) above with a floor of 10% and a cap of 25%;**

**Recommendation B remains unchanged**