

The Committee resolved, at its meeting of 9th December 2014, to grant full planning permission for the erection of 22 affordable dwellings comprising a three storey block of 6 one bedroom flats; 10 two storey, two bedroom dwellings and 6 two bedroom bungalows subject to the applicant entering by the 20th January 2015, into Section 106 Obligations, to secure the following:

- i) A financial contribution of £22,062, index linked towards the provision of education facilities
- ii) A financial contribution of £64,746, index linked for open space enhancement/ improvements and maintenance

and subject to the Coal Authority withdrawing its objection by no later than 20th January.

Following the resolution of the Committee the applicant has informed the authority that such a level of contributions would make the scheme unviable. The District Valuer (DV) was instructed on 9th February to review a Development Viability Appraisal of the development prepared on behalf of the applicant. A draft report from the DV has been received (10th June 2015) and the matter was reported to the Planning Committee meeting of 23rd June, however the decision was deferred to enable the concerns of the applicant to the conclusions of the DV to be explored.

RECOMMENDATION

1) Provided the DV maintains the conclusions of his draft report (which members will be advised of), that subject to the applicant entering into a Section 106 obligation by 21st September 2015 securing a) an education contribution of £10,674 and a Public open space contribution of £31,326, and b) requiring the review, if there is no substantial commencement within a year of the grant of planning permission, of the financial viability of the scheme, and upward only alterations being then made to the contributions if the scheme is evaluated at that time to be able to support higher contributions,

the application be PERMITTED subject to the following conditions

- Standard Time limit condition
- Approved plans/drawings/documents
- Approval of all external facing and roofing materials
- Inclusion of windows in side elevation of plots 21 and 22
- Landscaping scheme
- Details of boundary treatments, including to the rear of the adjoining commercial properties to block the existing gap
- Construction Method Statement.
- Provision of access drives, parking and turning prior to occupation.
- Access to plots 4 to 11 to comply with submitted Cameron Rose Associates plan.
- Width of driveway to plots 1 to 3 to be 4.5m for first 6m rear of the highway boundary.
- Permanently closure of redundant access.
- Driveways to be surfaced in a bound material for 5m from the highway boundary.
- Surface water interceptors to be provided where driveways fall towards the public highway.
- Contaminated land conditions
- Site to be drained on a separate system with no surface water to be discharged into combined sewer network.
- Provision of 10m access strip to public sewer crossing site.
- Updating of ventilation system of adjoining fish and chip shop
- Those conditions requested by the Coal Authority including remedial measures to address the coal mining legacy issues on the application site to be undertaken prior to the commencement of the development
- Submission of a further noise assessment relating to noise from the adjoining industrial doors business and the details of the measures to be undertaken within the development to mitigate the impact of noise arising from that and other noise sources. Implementation of the approved details.
- Prior approval of a scheme for the provision of a scheme with the tenure indicated in the appraisal. The scheme shall include the timing of the construction for the affordable housing, arrangements to ensure that such provision is affordable for both initial and subsequent occupiers and the occupancy criteria to be used for determining the identity prospective and successive occupiers of such units and the means by which such occupancy will be enforce.

2) Should the matters referred to above not be secured by the 21st September 2015, that the Head of Planning be given delegated authority to refuse the application on the grounds that without such matters being secured the development would fail to secure sufficient provision for education, the provision of adequate public open space, and an appropriate mechanism to allow for changed financial circumstances; or, if he considers it appropriate, to extend the period of time within which such an obligation can be secured

Reason for Recommendation

This application has been undetermined for a period of approximately 40 weeks (at the time this report was prepared). The DV has not yet provided any further comment upon additional information

provided by the applicant in response to his draft report. Unless he alters his advice it is considered that the previous recommendation should be maintained – that contributions of a certain amount, albeit below those that a policy compliant scheme would require, be sought together with a reappraisal/ contribution adjustment mechanism. A further advance supplementary report will therefore be necessary to report the DV's further advice.

KEY ISSUES

The proposed residential development comprising 22 dwellings was considered acceptable by the Planning Committee in December 2014, however it was considered necessary to secure financial contributions through planning obligations to address certain impacts of the development. There has been no material change in planning policy relating to the issue of planning obligations since then, although Regulation 123 of the Community Infrastructure Levy Regulations has come into force since so it will need to be taken into account. In brief this indicates that a planning obligation may not constitute a reason for granting planning permission if it provides funding in respect of a specific infrastructure project or a type of infrastructure and, if five or more obligations providing funding for that project or type of infrastructure have already been entered into since 6 April 2010.

The development would result in additional pressure on limited primary school places of the school (St. Saviours) within whose catchment area it is located and a financial contribution to mitigate against such adverse impacts was considered necessary.

A planning obligation was also considered necessary to secure a contribution towards the development, improvement and maintenance of off-site public open space all in accordance with policy. It is proposed to spend the £64,746 contribution that is sought within Clough Hall Park, a neighbourhood park approximately 200m walking distance from the development where improvements have been identified as required.

Your Officer is satisfied that such obligations would comply with Regulation 122 of the CIL Regulations i.e. that they are necessary to make the development acceptable in planning terms; are directly related to the development and are fairly reasonably related in scale and kind to the development. There have only been since April 2010 3 obligations entered into that secure a contribution towards St Saviours Primary School and one obligation towards Clough Hall Park. As such you Officer is also satisfied that such obligations would comply with Regulation 123.

The NPPF states that pursuing sustainable development requires careful attention to viability and costs in both plan-making **and** decision-taking. In relation to viability the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking 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. The guidance goes on to state that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, where appropriate, be sufficiently flexible to prevent planning development being stalled.

It is acknowledged that in some circumstances an applicant may believe that what is being asked for by the Council will render a development unviable. The Developer Contributions SPD, adopted by the Borough Council in September 2007, has a section on the issue of "viability".

The Council's position is that in such circumstances, for the Council to be persuaded to reduce its requirements, the onus is upon the applicant to justify why and how special circumstances apply.

The DV was asked to report on the viability of this scheme taking into account financial obligations - the payment of contributions towards the provision of additional education facilities (£22,062) and the enhancement/improvement and maintenance of Clough Hall Park (£64,746). The Education Authority has clarified that the above Education contribution would be used to increase the number of general teaching rooms at St. Saviours Primary School.

The applicant in this case has submitted financial information to substantiate their claim that the Council's requirements as an LPA would render the scheme unviable. The information submitted has

been sent by your officers to the District Valuer (an independent third party who has the skills required to assess financial information in connection with development proposals) for further advice. There have been discussions between the District Valuer and the applicants' agents with a range of supporting material being provided. The applicant's own appraisal taking into account a policy-compliant level of contributions indicates that the proposed scheme generates an internal rate of return of 5.84% which they consider to be inadequate for such a development.

It should be noted that in the scheme by Aspire that has been assessed 7 of the 22 units are proposed to be of a shared ownership tenure and 15 of an 'affordable rent' tenure.

The DV has undertaken two appraisals – one to reflect the allowances which a 'Not for profit Registered Provider' would be expected to make (Aspire is such a Provider) and the other to reflect the allowances (profit) that a developer who is not a Registered Provider would be expected to make. The DV's approach is to identify the Residual Land Value (essentially the expected value of the scheme minus the expected costs) in each case and to then compare it with his assessment of the Site Value (which it should be noted he assesses, having regard to comparable development site sales evidence, to be, at £250,000, £100,000 more than the applicant's agent considers to be the case). The DV's conclusion is that the proposed residential development is not viable, to a marginal extent, and he has gone on to undertake what is termed 'sensitivity testing'. That has established, in his opinion, that the scheme is able to deliver contributions of approximately £42,000, although he does indicate that if the scheme were to be developed by a developer that is not a Registered Provider then it would be unable to provide any Section 106 contributions whatsoever.

The applicant has expressed concerns that the DV's conclusion - that a private developer would not be expected to pay contributions as that would render the scheme unviable however they, a 'not for profit' organisation would be expected to pay a contribution, albeit a reduced one – is unfair. They have also provided some additional information on their projected costings which it would appear was not previously available to the DV.

If the Committee are prepared to accept the DV's conclusions, should they be confirmed, and agree to the principle of a reduction in the overall level of contributions there are two ways of proceeding, either to 'top-slice' both the education and public open space contributions that are required (i.e. reduce both by the same amount) or alternatively to seek in full one of the contributions (i.e. to 'ringfence' it) and allow the other contribution to be more substantially reduced or indeed deleted altogether. In several cases the Committee have agreed to ringfence education contributions, on the basis of the view that the provision of education facilities where new housing development is proposed is of overriding importance

Your officer would suggest that given the substantial amounts already secured by Section 106 obligations with respect to the same school a top- slicing approach is now more appropriate.

If however upon further consideration of the applicant's case the DV revises his conclusion and indicates that the scheme could not deliver any contributions at all, or if the Committee agree with the applicant (that it would be unreasonable to require contributions from the applicant on the basis they are a 'not for profit' business whereas a private developer would not be expected to pay contributions) then no contributions should be sought. Alternatively the DV might upon reflection still maintain that a contribution can be provided but one that is less than the £42,000 referred to in his draft report.

Market conditions and thus viability, can change, however. On this basis it would be quite reasonable and necessary for the LPA, when securing less than policy compliant contributions, to require the independent financial assessment of the scheme to be reviewed if the development has not substantially commenced within one year of the grant of the planning permission and upward only alterations then made to the contributions if the scheme is then evaluated to be able to support higher contributions. This would apply whether a reduced level of contribution or no contributions are to be sought and would need to be secured via a Section 106 agreement.

When the Planning Committee considered the scheme in December 2014 it considered that it would be appropriate, in the event of an approval, to condition the prior approval of a scheme for the provision, in perpetuity, of 6 affordable housing units within the development. Aspire have asked that the proposal be assessed on the basis that it provides 7 shared ownership tenure units and 15 of an

'affordable rent' tenure and this mix should it is considered be reflected in a condition of any planning permission granted.

The Coal Authority has withdrawn their objection to the application upon consideration of additional information provided following site investigation works undertaken on the site.

Policies and Proposals in the approved development plan relevant to this decision:-

Newcastle- under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (CSS)

Policy SP1: Spatial Principles of Targeted Regeneration
Policy SP3: Spatial Principles of Movement and Access
Policy ASP5: Newcastle and Kidsgrove Urban Neighbourhoods Area Spatial Policy
Policy CSP1: Design Quality
Policy CSP3: Sustainability and Climate Change
Policy CSP5: Open Space/Sport/Recreation
Policy CSP6: Affordable Housing
Policy CSP10: Planning Obligations

Newcastle-under-Lyme Local Plan 2011 (NLP)

Policy H1: Residential development: Sustainable location and protection of the countryside
Policy H4: Housing Development and Retention of Parking Facilities.
Policy T16: Development – General Parking Requirements
Policy C4: Open Space in New Housing Areas

Other material considerations include:

National Planning Policy and guidance

National Planning Policy Framework (March 2012)

Planning Practice Guidance (March 2014)

Supplementary Planning Guidance/Documents (SPGs/SPDs)

Developer Contributions SPD (September 2007)
Affordable Housing SPD (2009)
Space Around Dwellings SPG (July 2004)
Newcastle-under-Lyme and Stoke-on-Trent Urban Design SPD (2010)

Waste Management and Recycling Planning Practice Guidance Note (January 2011)

Relevant Planning History

None

Views of Consultees

The Coal Authority have withdrawn their objection and recommend a condition that ensures that remedial work is undertaken.

Representations

No further publicity has been undertaken and no representations were received when the application was publicised when initially received.

Applicant/agent's submission

A Development Viability Appraisal undertaken. Details of the application but not of the appraisal, which contains confidential information, are available to view on the Council's webs site

Background Papers

Planning Policy documents referred to
Planning files referred to

Date report prepared

3rd July 2015