

Outline planning permission for residential development of 172 dwellings, an area of community woodland, public open space and the formation of new accesses was granted in December 2013, following the completion of an agreement under Section 106 securing various planning obligations.

A request from the County Council has been received to vary the terms of the agreement, as has one from the developer Taylor Wimpey.

RECOMMENDATIONS

- a) That the decision of the Chairman to agree to the variation of the existing Section 106 agreement to extend the period within which the Public Rights of Way Contribution can be spent be noted**
- b) That the Head of Planning be given delegated authority to give appropriate instructions to the Council's solicitor so that the spirit of the Affordable housing Supplementary Planning Document is maintained in any revision to the Agreement.**

Reason for Recommendation

- a) the matter was urgent and an immediate decision was required to avoid putting the public right of way works at risk
- b) Whilst the matter falls within the remit of the Committee, the matter is complex and an authority is sought to negotiate the exact terms of any revised agreement

KEY ISSUES

When a Section 106 agreement was drawn up in December 2013 with respect to the development referred to in planning application 12/00127/OUT, the agreement secured the payment of a "public right of way" contribution (some £48,000). The agreement includes various obligations by the County Council (as the recipient of this sum and as the public rights of way authority) including that they should use this contribution solely on improvement works and maintenance measures on public rights of way in the vicinity, that if the contribution has not been expended within 12 months of its receipt by them it has to be returned by them to the party who had made the contribution (with interest).

Following the completion of the agreement the planning permission was then issued, and subsequently its reserved matters have been approved and the development is well underway.

The County have had difficulty arranging for the public right of works to be done for various reasons, and they have, the Borough Council have been advised by Taylor Wimpey, requested a variation of the Section 106 agreement to extend the period when the contribution for the public rights of way improvement can be spent. Taylor Wimpey have written to the Borough Council indicating that they are happy to extend the period for the contribution to be spent for a further 6 months.

The public right of way improvements referred to are to a public right of way that connects this development (and an earlier phase of development by the same developer) almost directly to St Saviour's Primary School, and are considered by your officer as an important part of making this a "sustainable" development.

The agreement of the Borough Council to such a variation of the existing Section 106 is required. In the circumstances there is no apparent reason why the Borough Council should not agree to such a variation. The matter does fall to the Planning Committee to determine but the view was reached that if the decision was left to the 4th January meeting there was a risk that it would in practical terms be too late by then for the County Council to formally arrange for such a Deed of Variation.

Accordingly this has been treated a Matter of Urgency (as set out in Appendix 4 to the Constitution) and the Chair having been consulted, on the 20th December agreed to this proposed

variation. In accordance with the Constitution this decision is reported to the Committee for information.

Taylor Wimpey have also approached the Council about another matter. They are asking that the Borough Council (and the other signatories to the agreement which includes the County Council), to agree an amendment that concerns what they term the Mortgagee exclusion clause within the Affordable housing Schedule to the agreement. A mortgagee is the lender in a mortgage. In short the agreement as existing contains various covenants that the Owners of the site have made in relation to the shared ownership unit, but the agreement in its clause 4.6 indicates that these covenants are not binding upon a mortgagee in possession of the whole or any part of the shared ownership units. The term 'mortgagee in possession' refers to the situation in which a lender takes possession and control of a mortgaged property upon foreclosure of the loan secured by the mortgage. Aspire, who are actively considering becoming involved on this site, have detailing the changes that they would wish to see made to this particular clause. The starting point of your officers is that if an RSL indicates that they consider that the terms of an agreement may prevent them from becoming involved in a site (and thus providing affordable homes) then serious consideration is always given to such requests. As Aspire have pointed out the Council has previously agreed, in another agreement, (on the basis that it is no longer acceptable to lenders) to delete the reference to 'mortgagee in possession' in this clause and replace it simply with the term 'mortgagee'.

A series of other detailed issues are also raised. It is considered that officers may need to negotiate with the other parties to ensure that the agreement if amended is in the spirit of the Affordable Housing SPD and delegated authority to do this is sought from the Committee.

APPENDIX

Policies and Proposals in the approved Development Plan relevant to this decision:-

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (adopted 2009) (CSS)

Policy SP3: Spatial principles of Movement and Access
Policy CSP6: Affordable Housing
Policy CSP10: Planning Obligations

Newcastle-under-Lyme Local Plan 2011 (NLP)

Policy IM1: Planning obligations

Other material considerations include:

Supplementary Planning Guidance/Documents

Developer Contributions SPD (September 2007)

Affordable Housing SPD (2009)

Relevant Planning History of the application site

11/00645/OUT Residential development of 176 dwellings, area of community woodland, public open space and formation of new accesses Refused 1 March 2012

12/00127/OUT Residential development of 172 dwellings, area of community woodland, public open space and formation of new accesses – Approved December 2013 following completion of Legal agreement

14/00562/REM Reserved matters approval for 171 dwellings October 2014

15/00441/DOAHR- application under Section 106BA to revise the affordable housing contribution secured within the planning obligation entered into – approved March 2016

Background Papers

Planning file
Planning documents referred to

Date report prepared

22nd December 2016