

Outline planning permission for residential development of up to 100 dwellings was granted in April 2015, following the completion of an agreement under Section 106 securing various planning obligations.

A request from the applicant has been received to vary the terms of the agreement.

RECOMMENDATION

That, the S106 Agreement be varied , by reducing the amount of affordable housing to 6% as requested by the applicant, and that the trigger for reappraisal be amended to 18 months from the date of the District Valuer's final report in the absence of substantial commencement being achieved by that date.

Reason for Recommendation

It has been demonstrated that the scheme is financially unviable with 15% affordable housing in addition to the other contributions secured. It has also been demonstrated that with 6% affordable housing (and the contributions) the scheme is unviable. The applicants' request has been that the Council (and the County Council as the other party to the agreement) agree to amend the agreement to require 6% affordable housing and the other contributions, on the basis that otherwise the development will not proceed. The scheme does provide benefits including a significant contribution to the supply of housing in the Borough, and more significantly the mitigation of the burning spoil heap which has been ongoing since 2006 and which is a risk to the safety of those that access the site. These benefits are considered to outweigh the harm arising from a reduction in the amount of affordable housing that is secured through this development.

Key Issues

When a Section 106 agreement was drawn up in April 2015 with respect to the development referred to in planning application 13/00970/OUT, the agreement secured the following;

1. A contribution towards school spaces of £364,627 and the sum being able to be adjusted should the development as built be for less than the full 100 units;
2. 15% Affordable Housing provision;
3. The entering into of a Management agreement to secure the long term maintenance of the public open space and any play equipment provided to meet the needs of the residential development, and the maintenance of any boundary treatment to prevent access to the landfill site;
4. A Travel Plan monitoring fee of £6,500;
5. A financial bond to be held by the council to be used to fund the works necessary to complete the process of extinguishing the fire and reinstating that part of the site affected by such works should the developer fail to do so following commencement of such works; and
6. A financial viability reappraisal if the development is not been substantially commenced within 18 months from the grant of this outline planning permission and appropriate adjustments be made, on the basis of such reappraisal(s) to the level of affordable housing with a cap of 25% and a floor of the level of affordable housing referred to in 2) above.

In all respects other than with regard to affordable housing provision the contributions secured were policy compliant. The level of affordable housing secured was less than policy requires as it was demonstrated that the development could only support 15% provision.

Subsequently an application was received under Section 106BA of the 1990 Town and Country Planning Act (15/00359/DOAHR) which sought, for a limited period, the revision of the affordable housing contribution requirement of a planning obligation. The outcome of that process, as determined by the Planning Committee, was a further reduction in the level of affordable housing provision within the development to 6% for a 4 year time limited period (from the date of the decision).

That period has not lapsed and the required level of provision therefore remains at 6% although it is likely to revert to 15% before the construction of the dwellings commence.

The developer, however, maintains that affordable housing provision above 6% would render the development unviable and has requested that the original Section 106 agreement is varied by the Council. This is not a formal application but a request, at this stage there being no formal application process available to the developer at present. The case advanced by the developer that seeks to demonstrate their claim has been independently assessed by the District Valuer (DV).

The evidence received for this assessment to substantiate the developer's claim that the Council's requirements render the scheme unviable, needs to be read in the context of the new National Planning Policy Framework and its related guidance on the consideration of viability.

In undertaking the review of viability of this development the DV has taken into consideration the development as approved under the reserved matters application 18/00262/REM and has, in his Draft report, concluded that the proposed scheme cannot support the provision of any affordable housing or the payment of any Section 106 contribution without being rendered unviable (the residual land value of such a scheme being less than the Existing Use Value + benchmark figure). Whilst the basis for that conclusion is not at present accepted by your Officer, what is accepted is the advice of the DV that the scheme cannot support any more than 6% affordable housing (and the Section 106 contributions). The developer is, only requesting the amount of affordable housing to be provided is reduced from 15% to 6% and is understood to be still prepared to pay all the contributions that were secured.

APPENDIX

Relevant Material Considerations include:

National Planning Policy Framework (NPPF) (2012)
Planning Practice Guidance (PPG) (2014)

Developer Contributions Supplementary Planning Document

Background papers

Planning file referred to
Planning Documents referred to

Date report prepared

23rd November 2018