

Outline planning permission for residential development of up to 78 units including provision of affordable housing, public open space and vehicular and pedestrian accesses was granted in September 2015 following the completion of an agreement under Section 106 securing various planning obligations (Ref. 15/00202/OUT). Reserved matters were subsequently approved for 73 dwellings on part of the site in August 2018 (Ref. 18/00315/REM) and full planning permission (18/00314/FUL) for 5 dwellings on the remainder of the site was granted in November 2018 following the entering into of a Deed of Variation of the original agreement (to ensure that its provisions were triggered should the 5 house development be commenced). The development has commenced on the main part of the site.

The developer, Elan Homes Limited, is in the process of entering into a contract with a Registered Provider, Sage Housing, in relation to the affordable housing units and Sage is seeking some variations to the Section 106 agreement. This is an informal request rather than an application.

A similar request has been made with respect to a Unilateral Undertaking relating to the development at Gateway Avenue and that request is the subject of a separate report elsewhere on this agenda

RECOMMENDATION

That the developer be advised that the Council as the Local Planning Authority is willing to agree to the requested variations to the Section 106 agreement to allow staircasing to 100% of the market value and to vary the wording of the Mortgagee Protection Clause.

Key Issues

The variations that are requested are as follows:

- to remove the staircasing restriction (currently 90%) so that it is permitted to 100% of the market value
- to vary the wording of the Mortgagee Protection Clause

Staircasing

With respect to the shared ownership units on the development, the Section 106 agreement refers to qualifying persons purchasing initially up to 50% of the equity of the dwelling and to paying proportional rent, with the option of staircasing (increasing their equity share) but only up to 90% of the market value. Sage Housing have requested the removal of the current restriction to allow staircasing up to 100%. When the clause in question was drafted it was envisaged that it would keep the units affordable in perpetuity by allowing registered providers to be able to buy back these units and recycle them as "affordable" housing. Sage assert that the current restriction reduces the value of the units, could put off potential buyers who may wish to eventually own the property in its entirety and that allowing staircasing up to 100% will give tenants improved borrowing opportunities, because the restriction would cause some lenders to decline mortgage applications.

The model Section 106 agreement in the Council's Affordable Housing Supplementary Planning Document does not include the staircasing restriction to be found in the Mucklestone Road agreement. Rather it gives the option of staircasing to 100% of the market value, albeit there are references within the SPD to seeking "affordable housing in perpetuity". The fundamental issue now for the Local Planning Authority is whether in practice such a restriction is affecting the delivery of these shared ownership units, because it is putting off Registered Providers. Facilitating the delivery of affordable housing should be a key objective for the Council. Sage's concerns that the restriction is potentially having an adverse impact upon both the number of households likely to buy such units and on the number of lenders likely to lend on such units are considered to be credible. Furthermore the content of the SPD (a document that was the result of consultation) should be accorded due weight.

For both of these reasons it is considered that the restriction should be removed and staircasing permitted to 100%.

Mortgagee Protection Clause

Sage Housing are also asking that the Borough Council agree to amendments to the Mortgagee Protection Clause within the Affordable Housing Schedule to the agreement. A number of amendments are requested including a change to the definition of "Mortgagee" and the deletion/amendment of various wording due to concerns that current wording will be considered too onerous by lenders. Due to the number of amendments, they request the replacement of the relevant Clause 5 in its entirety with standardised wording developed by the Securitisation Working Party which includes lawyers, borrowers and valuers.

Officers consider that the proposed amendments, which are minor in nature, are intended to bring clarity to Clause 5 and have no material bearing upon the obligation sought. On this basis, it is recommended that the request to vary the agreement is agreed.

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 CSS)

Policy CSP6: Affordable Housing

Policy CSP10: Planning Obligations

Other Material Considerations

National Planning Policy Framework (NPPF) (2018)

Planning Practice Guidance (PPG) (2014, as amended)

Supplementary Planning Documents/Guidance

Affordable housing SPD (2009)

Views of Consultees

None undertaken

Date report prepared

20th December 2018