

This full planning application for the demolition of a former community centre and construction of 30 dwellings came before the Planning Committee at its meeting on the 4<sup>th</sup> December 2018. Members resolved to permit the application subject to the completion of a Section 106 agreement and a number of conditions.

The applicant, however, has requested that before a decision is issued the words 'in perpetuity' should not be included in the affordable housing provision condition because this would affect grant funding from Homes England.

The statutory 13 week determination period for this application expired on the 28th August but the applicant has agreed an extension of time to the statutory determination period to the 28<sup>th</sup> February 2019.

### **RECOMMENDATION**

That the condition requiring affordable housing provision should omit reference to such provision being "in perpetuity" and the condition should be worded in the following manner:

No development shall commence until a scheme for the provision of affordable housing as part of the development has been secured. The affordable housing shall be provided in accordance with the approved scheme, the scheme shall include:

- The provision of at least 8 of the dwellings as affordable rent tenure units.
- The arrangements to ensure that initial provision is affordable; and
- The occupancy criteria to be used for determining the identity of prospective and successive occupiers of the affordable housing, and the means by which such occupancy will be enforced.

### **Reason for recommendation**

As the developer, Aspire Housing, is not able to guarantee that the affordable housing permitted on this site will be retained in perpetuity, due to the Right to Acquire that exists and how this affects the delivery of the site with grant funding being obtained from Homes England, the condition should not include reference to such provision being "in perpetuity". In addition it is considered that the requirement for the timing of the construction of the affordable housing is not required given the development is only for affordable housing.

### **Key Issues**

The applicant, Aspire Housing, indicate that they are unable to guarantee compliance with a condition which secures affordable housing (AH) in perpetuity.

A condition to secure affordable housing is would normally be worded in the following manner in a case such as this

*No development shall commence until a scheme for the provision of affordable housing, in perpetuity, as part of the development has been secured. The affordable housing shall be provided in accordance with the approved scheme, the scheme shall include:*

- *The provision of 3 of the dwellings as shared ownership tenure residential units and 5 of the dwellings as affordable rent tenure residential units.*

- *The timing of the construction of the affordable housing.*
- *The arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing; and*
- *The occupancy criteria to be used for determining the identity of prospective and successive occupiers of the affordable housing, and the means by which such occupancy will be enforced.*

Reason: *To ensure adequate provision is made for affordable housing within the development in accordance with policy “*

Aspire Housing indicate that the proposed development will be grant funded by Homes England and a funding condition of that grant is that the plots must be eligible for Right To Acquire. The result of a condition, which secures AH in perpetuity, would mean that they could not adhere to the funding requirements, which would be unacceptable to Homes England.

Your officers have sought confirmation of the matter from Homes England who have confirmed that the legislation gives tenants the Right To Acquire their home if the home has been built or purchased using Homes England Affordable Housing grant.

Housing (Right to Acquire) Regulations 1997 indicate that a tenant who satisfies the conditions of section 16(1)(a) and (b) of the Housing Act 1996 has the right to acquire property if the registered social landlord owns the freehold title of the house. Such a right to acquire arises when the tenant has occupied the property for 2 years under an assured tenancy (other than an assured shorthold tenancy or a long tenancy, or under a secure tenancy) and if the house was provided with public money since March 1997 and has remained in the social rented sector.

It is also important to note the circumstances of this case – that the affordable housing has not been secured by a planning obligation, and accordingly no precedent is set for the consideration of this issue where affordable housing is being secured by means of a planning obligation.

Based on the above it is accepted by your officers that in this instance the condition should omit reference to in perpetuity.

The Section 106 agreement, to secure a review mechanism of the scheme’s ability to make a policy compliant financial contribution of £167,370 (index linked) towards public open space at Crackley Recreation Ground (Hazel Road), if the development is not substantially commenced within 12 months from the date of the the grant of the planning permission, was completed on the 11<sup>th</sup> February 2019.

## **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**

12<sup>th</sup> February 2019