

Full Planning permission was granted on 7th December 2010 for residential development on the above site for 16 dwellings. Prior to the granting of planning permission an agreement under section 106 of the Act was concluded between the Authority and the owner, in which the owner covenanted to pay upon commencement of the development £47,088 (index linked) to the Council to be used towards the cost of "providing open space and to enhance or improve the quality of, accessibility and value of existing open space within the area". The Agreement also requires the applicant to provide 4 of the 16 residential units as affordable housing.

The applicant has now asked the Council to agree to amendments to the agreement relating to the payment of the open space contribution and this report concerns that request.

RECOMMENDATION

That the applicant be advised that the Council would be prepared to vary the existing agreement so that the payment of public open space contribution be deferred to prior to the commencement of the eighth dwelling on the site.

Reason for Recommendation

It is considered that the variation indicated above would still ensure that whatever improvements are to be obtained, by the expenditure by the Council of the monies obtained, will be likely to be in place by the time any significant number of the dwellings are occupied.

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

Staffordshire and Stoke on Trent Structure Plan 1996 – 2011 (SSSP)

Policy D8: Providing Infrastructure Services, Facilities and /or Mitigation Measures associated with development

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

Policy CSP5 Open Space/ Sport/Recreation
Policy CSP10 Planning Obligations

Newcastle under Lyme Local Plan 2011 (LP)

Policy C4 Open Space in New Housing Areas
Policy IM1 Provision of essential supporting infrastructure and community facilities

Other material considerations include:

National Planning Policy Framework (March 2012)

CIL Regulations, particularly Section 122

Supplementary Planning Guidance

Developer Contributions SPD (September 2007)

Affordable Housing SPD (2009)

North Staffordshire Green Space Strategy – adopted December 2009

Relevant Planning History

There is an extensive planning history on the site relating to its previous industrial use, however, it is considered the relevant planning history relating to this current proposal is as follows:-

- 05/00659/OUT Refused - Residential Development
- 09/00634/OUT Withdrawn – Residential development (outline) and change of use of existing building to retail and training purposes
- 10/00174/OUT Withdrawn - Residential development (outline) and change of use of existing building to retail and training purposes

Views of Consultees

Landscape Development Section would prefer payment prior to development commencing however, they would consider a single payment is still required as a phased payment would be difficult to administer and also difficult in terms of the capital spend and associated s106 deadlines for the spending of monies. In this instance a single payment prior to the commencement of the 8th /9th dwelling would be acceptable.

Representations

None – no publicity has been given to the developer's request, as this is not an application for planning permission.

Applicant/agent's submission

The applicant's agent requests that the payments are paid on a phased basis suggesting that a payment is made when each individual property is sold. The request is made based on the slow market and the availability of funds.

KEY ISSUES

The Planning Committee at its meeting on the 26th October 2010 resolved to grant planning permission for this residential development subject to the applicant first entering into a section 106 agreement securing open space contribution of £47,088 (index linked) to be paid prior to commencement of the development. The agreement also secured 4 of the 16 units as affordable housing – the current request does not affect this part of the agreement.

The basis for the POS contribution came from LP Policy C4 which states that appropriate amounts of publicly accessible open space must be provided in areas of new housing and the Urban North Staffordshire Green Space Strategy which sets out an approved methodology whereby such contributions are calculated. CSS Policy CSP5 also refers to the need for such developer contributions "to meet the needs of new residents".

Members will note that rather than pursuing a case for a reduction of the sum based upon an assessment of the current financial viability of the scheme, which would require the developer to provide both information and finance for an independent assessment to be undertaken, the agent has asked that the Council give consideration to agreeing to reschedule when the payment is required to be made.

This is not a formal application under Section 106A which provides a right of appeal by the applicant (in the event of a refusal of such a request) (such an application cannot yet be made), but rather a request by the applicant that the Council be prepared to agree to amend the terms of the existing agreement.

The request suggests that the timing when payments are required can have significant impact upon the financial viability of the scheme. However, as indicated in the Council's Developer Contribution SPD allowance or flexibility for financial reasons will only be considered when substantive evidence has been submitted and appraised. This has not happened in this case.

The reason why commencement is normally used as the trigger point at which public open space contributions are sought is simply to ensure that the actual provision – or enhancement - of open space – is undertaken prior to the coming into existence of the additional demands arising from the occupation of the new dwellings – this being the reason such a contribution is required. The Developer Contributions SPD for this reason does indicate that payments would normally be expected to be paid on the commencement of development (or as otherwise stated in the relevant Guidance or Policy Documents). There is no further adopted guidance by the Council on this matter, although Local Plan policy C4 indicates that where a developer themselves plan to carry out and complete necessary works of public open space provision that should happen not later than the completion of 75% of the approved development or the expiration of 24 months from the date of the agreement, whichever is the sooner.

That commencement of development is a legal defined status or point which can be easily monitored is also a factor in the use of it either as a trigger point or as the base for one.

It is the issue of the provision being made in time so as to enable the additional demand (upon open space) to be met which should be critical to the decision.

This is a relatively modest sized development and phasing of payments would not normally be considered for such a development.

Members should be aware commencement of development has taken place on 4 of the units on the site and as such is technically in breach of the requirements of the Section 106 agreement given the financial contribution should have been made prior to commencement. Your officers are aware of this position and have made the applicant and his agent aware of the need to make this payment. This has resulted in this current request to defer payment of the contribution being received by the Council.

The Council has the option to enforce against this breach of the terms of the agreement, and whilst your officers consider this route to be currently not to be appropriate at this stage given the applicants cash flow concerns outlined in this request, enforcement remains an option open to the Council both now and in the future.

The applicant agent has suggested that individual payments are deferred to a time when each individual property is sold. Your officers do not consider this approach to be acceptable given this would not meet the adopted advice in either the SPD or LP policy C4 and it raises potential issues of enforcement and places an unreasonable burden on the Council to monitor the development to ensure compliance with the amended agreement, together with the piecemeal manner of collecting the contribution resulting in difficulties in terms of the capital spend on projects.

That said Members will be aware the Council has received similar requests in the past where the Council has been generally sympathetic to the financial plight of developers and applicants in such cases. The approach taken in those cases has been to allow a limited gap of either 6 or 9 months between the commencement of any part of the development and the requirement to pay the contribution. In this case, rather than the suggested individual phasing as set out by the applicant's agent a deferral of the payment to be paid prior to the commencement of the eighth dwelling on the site is suggested. Members should note that there is a risk in such a proposal - that up to 7 out of the 16 houses might be commenced, those 7 houses are then completed and occupied and the remainder of the development does not take place for a long time if at all. In practical terms given the investment required for the common infrastructure of the development this is not considered a significant risk. The proposal will provide the applicant with an opportunity to improve his cash flow position and will provide the Council with a further clear and defined legal point which is relatively easy to monitor as well as providing the full contribution which will enable identified capital projects to be carried out with confidence.

Background Papers

Application file and policy documents referred to above

Date report prepared

3rd April 2013