

Report for Resolution

Report to Planning Applications Committee
Date 17 May 2012
Report of Head of Planning Services
Subject Land at Dowding Road Taylors Lane and Douglas Close
Norwich

Item
5(2)

SUMMARY

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| Description: | Variations to the S106 agreement completed under the original outline consent 07/01427/O to include changes to the tenure of affordable housing, the provision of children's play space and the delivery of footpaths adjacent to the site. |
| Reason for consideration at Committee: | Variation to former S106 agreement and the authorisation of enforcement action. |
| Recommendation: | 1) approve variations to the S106 agreement relating to the tenure of affordable housing and provision of footpath links at the site. 2) delegate authority to the head of planning services to take enforcement action to resolve breaches of conditions and/or the S106 agreement and the taking of legal proceedings, including prosecution if necessary. |
| Ward: | Catton Grove |
| Contact Officer: | Mark Brown Senior Planning Officer 01603 212505 |
| Valid Date: | 9th March 2012 |
| Applicant: | David Wilson Homes |
| Agent: | Boyer Planning Limited |

INTRODUCTION

The Site Location, Background & Proposal

1. The site is an area of former RAF officers' housing located approximately 4km north of Norwich city centre accessed via Dowding Road from Fifers Lane. The site gained outline planning permission for 51 dwellings in 2009 under consent number 07/01427/O. The committee report and minutes for this are attached at appendix A and B respectively. Reserved matters consent was granted in November 2011 under consent number 11/00766/RM, the committee report for this is attached at appendix C.
2. Works started on site to implement the consent towards the end of last year.
3. The proposed amendments to the S106 agreement are as follows:
 - 3.1. Amend the tenure of affordable housing from 12 social rented properties and 3 shared ownership dwellings to 12 social rented properties and 3 shared equity;
 - 3.2. Amendments to the clauses for the provision of five footpaths around the

- site;
- 3.3. Removal of the children's play space contribution and provision of an on-site play area.

4. The proposals are explained in further detail within the assessment sections below.

Representations Received

5. Advertised on site and in the press. Adjacent and neighbouring properties have been notified in writing. No letters of representation have been received.

Consultation Responses

6. **Old Catton Parish Council** – No objection and welcomes the inclusion of the play area.

ASSESSMENT OF PLANNING CONSIDERATIONS

Relevant Planning Policies

National Planning Policy Framework:

- 4 – Promoting sustainable transport;
- 6 – Delivering a wide choice of high quality homes
- 7 – Requiring good design;
- 8 – Promoting healthy communities.

Relevant policies of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk 2011

- Policy 2 – Promoting good design
- Policy 4 – Housing delivery
- Policy 6 – Access and transportation
- Policy 20 - Implementation

Relevant saved policies of the adopted City of Norwich Replacement Local Plan 2004

- HBE12 – Design
- SR3 – Criteria for development of Urban Greenspace and Recreational Open Space
- SR4 – Provision of open space to serve new development
- SR7 – Provision of children's equipped playspace to serve development
- TRA3 – Modal shift measures in support of NATS
- TRA15 - Cycle network and facilities

Supplementary Planning Documents and Guidance

- Open Space and Play Provision SPD June 2006

Other material considerations

- Ministerial statement March 2011 – Planning for Growth
- The Localism Act 2011 – local finance considerations

Affordable Housing

7. The developers had been unable to identify a registered provider for the provision of the affordable housing on the basis of the tenure within the original S106

agreement consisting of a total of 15 dwellings comprising 12 social rented dwellings and three 3 shared equity. Development was commenced on site in breach of the affordable housing clauses within the S106 agreement. The works on site remain in breach of the affordable housing clauses within the S106 agreement however following discussion with officers it has been proposed that the affordable housing be altered to a tenure of 12 social rented dwellings and 3 shared equity dwellings with an initial sale being limited to 75% of market value. This retains the level of affordable housing at 15 dwellings and the number of social rented dwellings at the policy levels in place at the time of the original consent. The change from shared ownership to shared equity is considered to be acceptable and subject to the completion of a deed of variation and compliance with the new clauses will resolve the current breach.


Footpaths

8. There is a proposal to vary the wording of clauses requiring the provision of footpaths on and adjacent to the site. Five footpaths are secured via the S106 agreement as follows:
 - 8.1. Along Dowding Road from Fifers Lane to Taylors Lane;
 - 8.2. From Taylors Lane to Dowding Road;
 - 8.3. From the site onto Evans Way;
 - 8.4. From the site onto Hurricane Way;
 - 8.5. From the site onto the pathway to the rear of Beaufort Close.
9. The current wording has an awkward arrangement based on the payment of estimated and actual costs to the Council and for the Council to undertake the work prior to certain occupation points in the development. This wording is impractical and it is suggested to re-word the clauses so that all footpaths are provided by the developer where they have access to all relevant land to enable them to provide the path. This should be the case for all paths with the exception of 8.5 above. In the case of 8.5 part of the land is currently in the ownership of Bloor Homes; however the land in question is due to be adopted by the City Council. In this case, if the adoption has not taken place to enable the developers to construct the path by a certain occupancy point, it is proposed that the estimated construction costs of the path will be paid to the Council.
10. These amendments are considered to be acceptable subject to appropriate design details and costing details for footpath 8.5 being received.

Children's Play Space

11. The proposal is to remove the child play space contribution requirement and provide a play space on site to the north of the site.
12. Currently the S106 requires the following:
 - 12.1. Children's Playspace Contribution of £1104 multiplied by the number of child bed spaces, which in this case is 135 child bed spaces which equates to £149,040.00.
 - 12.2. Public Open Space. This is either a commuted sum to be paid to the Council and to be spent on open space provision within Norwich or on site provision of 24sqm per dwelling to be provided in accordance with the a 'public open space provision scheme' which is to include but not be limited to the location of the public open space, proposals for its landscaping,

drainage, location of the Children's Playspace details of play equipment, specification of play equipment and its provision as well as a timetable for provision of the Public Open Space.

13. The applicants proposed amendments are currently to remove the child play space contribution and identify the location of an area of equipped play space on site – this merely has the affect of compliance with the public open space requirements (which require children's play space on site in any case) and removal of the children's play space contribution.
14. At this point it is relevant to consider the original permission 07/01427/O and the logic behind granting the consent in the first place. The site is an allocated urban green space and the committee report for the original consent made clear it was a finely balanced decision, but approval was granted on the basis that there would be improvements in terms of public access (albeit it would remain in private ownership) to the remainder of the site and improved pedestrian and cycle links across the site. The report made clear that the proposals would include a series of linked green spaces which would be publically accessible. This was also detailed clearly in the submitted design and access statement submitted with the 2007 application. The resolution included a requirement under the S106 agreement for the provision, and management of this public open space. In practice the S106 failed to secure this and the decision is arguably not in line with the committee resolution. The S106 used standard clauses for provision of 24sqm of open space per dwelling (1,224sqm) or a commuted sum; this area amounts to a minute part of the areas identified for public open space in the original application (which amounted to circa 20,000sqm). 
15. The situation is further complicated by the developers David Wilson Homes (also trading as Barratt Homes) not having bought the whole of the application site and the areas of green space in question remaining in separate ownership (under ownership of the original applicant).
16. In the circumstances officers have advised that a reasonable way forward would be to amend the S106 agreement to secure public access to all the remaining green space within the site and provide a children's play area with the removal of the commuted sum clauses. The owners of the green space (the original applicants) have refused to enter into such a variation.
17. It is considered that the changes to the child playspace and public open space clauses need to come together or not at all. In the current circumstances it is considered that the existing wording of the S106 agreement is retained as far as it relates to children's play space and open space. This will mean:
 - 17.1. payment of the children's playspace contribution a total of £149,040; and either:
 - 17.2. provision of the public open space a total of 1,224sqm in accordance with a provision scheme and management scheme and, in accordance with the provision scheme, this shall include the provision of children's playspace; or
 - 17.3. payment of the public open space contribution which would amount to £60,741 (on the basis that the council cannot apply the money to land within its control).
18. Negotiations are ongoing with the developers and owners of the site. The matters in question are complex and technical in their nature and given the advanced

progress with development on the site there is a need to be able to act quickly to resolve these matters and come to a reasonable solution. There are also other minor amendments to the S106 agreement which may be considered necessary following further negotiation. In the circumstances it is recommended that delegated authority be given to the Head of Planning to negotiate and resolve these matters without further reference to Planning Committee.

19. In addition it is relevant to note that based on the current wording of the S106 agreement individual home owners are not exempt from liability under the agreement and therefore resolving these issues and ensuring compliance by the developers at this stage is in the interests of future home owners on the site.

Breaches of Planning Consent & S106 Agreement

20. There are currently a number of breaches of planning consent on site as detailed below:

- 20.1. Non compliance with the S106 agreement for a scheme for the provision and long term management of the affordable housing units (this matter should hopefully be resolved following the completion of the deed referred to above);
- 20.2. Non compliance with the S106 agreement to agree a public open space provision and management scheme prior to implementation;
- 20.3. Non compliance with the S106 agreement for the payments of the public open space contribution;
- 20.4. Failure to agree landscaping details under condition 4 of consent 07/01427/O prior to commencement;
- 20.5. Failure to agree details for foul water drainage and disposal under condition 7 of consent 07/01427/O prior to commencement;
- 20.6. Failure to agree details for the provision of fire hydrants under condition 15 of consent 07/01427/O prior to commencement;
- 20.7. Failure to agree details for the provision of footpaths under condition 21 of consent 07/01427/O prior to commencement (this should hopefully be resolved in part via the amendments to the S106 agreement discussed above);
- 20.8. Numerous failures to comply with condition 2 of 11/00766/RM to carry out the development in accordance with the arboricultural implications assessment and method statements. (These breaches have been picked up and attempted to be resolved as they have occurred, however they have continued to occur.)
- 20.9. Failure to agree details for replacement tree planting under condition 3 of consent 11/00766/RM prior to commencement;
- 20.10. Failure to agree details for the provision of solar thermal panels under condition 9 of consent 11/00766/RM prior to commencement;

21. Whilst officers have been attempting to resolve these issues outside of formal enforcement action little progress has been made in resolving a number of these matters. Meanwhile development has been pressing forward quickly on site and a number of dwellings are nearing completion. The developer is aware of these breaches and has been advised not to complete on any sales until the matters are resolved. It has also been suggested to the developer that there is a duty to advise potential purchases of the current planning issues on the site. In the circumstances, it is recommended that delegated authority be given to the Head of

Planning Services to take enforcement action including action under S172 of the Town and Country Planning Act 1990. Enforcement action could also include breach of condition notices, stop notices, prosecution if necessary and/or the seeking of an injunction against non-compliance with the S106 agreement. In the circumstances it is necessary for officers to be able to act quickly should it be necessary to do so and this will allow formal enforcement action to be taken quickly should further breaches occur or existing breaches remain unresolved.

Equality and Diversity Issues

22. The Human Rights Act 1998 came into effect on 2nd October 2000. In so far as its provisions are relevant: -

Article 1 of the First Protocol (the peaceful enjoyment of ones possessions), is relevant in this case. Parliament has delegated to the Council the responsibility to take enforcement action when it is seen to be expedient and in the public interest. The requirement to secure the removal of the unauthorised building in the interests of amenity is proportionate to the breach in question.

Article 6: the right to a fair hearing is relevant to the extent that the recipient of the enforcement notice and any other interested party ought to be allowed to address the Committee as necessary. This could be in person, through a representative or in writing.

Conclusions

23. The proposed amendments to clauses relating to affordable housing tenure and provision of footpaths are considered to be acceptable. Matters relating to open space and play space provision are complex in their nature and in the circumstances the applicants amendments are not considered to be acceptable. In addition there are a number of breaches of conditions and the S106 agreement associated with consents on the site. It is important that all outstanding matters are resolved and it would be inappropriate to only deal with some aspects of the S106 in isolation. It is in the interests of future house purchasers to have these matters resolved in a comprehensive manner to avoid potentially significant costs falling on their shoulders.
24. Negotiations are ongoing with the developers and owners of the site to resolve the outstanding matters with the S106 agreement and the various breaches of planning consent. The matters in question are complex and technical in their nature and given the progress with development on the site there is a need to be able to act quickly to resolve these matters and come to a reasonable solution. In the circumstances it is recommended that delegated authority be given to the Head of Planning to negotiate and resolve remaining issues with the S106 agreement. It is also recommended that delegated authority be given to the Head of Planning Services to take enforcement action. This will allow formal enforcement action to be taken quickly should further breaches occur or existing breaches remain unresolved.

RECOMMENDATIONS

To:-

- (1) approve variations to the S106 agreement relating to the tenure of affordable housing and provision of footpath links at the site; and
- (2) delegate authority to the head of planning services to negotiate, resolve and make other amendments to the S106 agreement; and
- (3) delegate authority to the head of planning services to take enforcement action to resolve breaches of conditions and/or the S106 agreement and the taking of legal proceedings, including prosecution and the seeking of an injunction if necessary.