



DEVELOPMENT CONTROL COMMITTEE

Date: 17th February 2009

Report of Head of Planning and Building Control- Regeneration

Erection of 57 no. two, three, four and five bedroom dwellings, garages & access road on land at 39-67 Enterprise Drive, off Bridle Lane, Streetly, Walsall, B74 2DY Application No 07/1617/FL/E11

1.0 PURPOSE OF REPORT

To seek Committee's decision on whether to agree a variation of a Section 106 Agreement associated with permission 07/1617/FL/E11, by releasing the developer from obligations relating to provision of affordable housing, education, healthcare and urban open space provision.

2.0 RECOMMENDATIONS

Revise the S106 Agreement to insert a "claw-back" clause to enable the Council to recover contributions should there be any increase in the profit margin at any time up until the final property is sold by the developer.

3.0 FINANCIAL IMPLICATIONS

Lack of provision for affordable housing, education, healthcare and urban open space in the locality.

4.0 POLICY IMPLICATIONS

Policy GP3 of Walsall Unitary Development Plan states that Planning Obligations will be used, as appropriate, to secure the provision of any on or off-site infrastructure, facilities, services or mitigating measures made necessary by a development. Policy H4 seeks to provide affordable homes. Policies 8.8 and 8.9 state residential developments will only be permitted where adequate school capacity exists or can be provided and requires developers to make adequate provision for accessible community healthcare facilities. Policy LC1(d) requires new residential developments to make a contribution to enable provision of new, or improvement of existing urban open spaces. Supplementary Planning Documents explain these policy aims and set out the mechanisms for calculating the appropriate level of contributions.

5.0 LEGAL IMPLICATIONS

A Deed of Variation to the existing S106 Agreement would need to be prepared in regard to the revised proposals.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

The environmental impact of the development has already been considered in determining planning permission 07/1617/FL/E11.

8.0 **WARD(S) AFFECTED**

Streetly.

9.0 **CONSULTEES**

9.1 Housing Services

Affordable housing is needed in this area, however the shared ownership units previously negotiated would be an unviable option at the present time for any Housing Association, and ideally social rented should be provided instead. As long as there is financial justification, support could be offered to some development with no affordable housing, rather than no development because of affordable housing in the present financial climate.

9.2 Education

The initial request for a financial contribution of £125,573.21 was required in accordance with the Supplementary Planning Document for Education and was due to the lack of surplus places for secondary education in the Streetly area. The originally proposed S106 Agreement included an obligation to provide a contribution towards addressing this issue and is still required.

9.3 Greenspace Services

Unhappy to support a nil contribution for open space. There are a number of green space improvement proposals in this area and the S106 contribution is key to the achievement and delivery of these proposals.

9.4 Primary Care Trust

The requirement for a contribution to future infrastructure development for health care highlighted in the Supplementary Planning Document for Healthcare (January 2007) should be maintained. The SPD is a key policy document which the council and local health service have agreed and that will enable income from residential developments as a contribution to future infrastructure development. It would be a backward step to move to a nil contribution as residential developments do have a significant impact on health infrastructure and resources through the SPD are a vital contribution.

9.5 District Valuer

The development appraisals are in three parts.

- Scheme A is the original approved scheme as at October 2007 to include affordable housing and S106 contributions,
- Scheme B the original scheme as at December 2008 to include affordable housing and the S106 contributions and
- Scheme C the scheme as at December 2008 without affordable housing and with nil S106 contributions.

The projected profit for Scheme A is 2.84%. Significant losses are projected on Schemes B and C due to the fall in value of houses in the period October 2007 to December 2008. At the present time the downturn in the housing market continues and projected sales, which can be taken as reasonable forecasts for the location and type of housing as at the date of the appraisals, may not be

viable in the next 6 months. Although a detailed breakdown of any costs in the appraisals has not been provided they have been accepted as fair and accurate.

- 9.6 Scheme A has not been assessed as this is purely historic; however, the following conclusions are drawn on Scheme B & C:
- Scheme B (including provision of affordable housing and S106 contributions) is a loss on projected sales receipts of 4.73% and on the build cost of 4.85%.
 - Scheme C (no provision for affordable housing and no S106 contributions) is a profit on projected sales receipts of 2.22% and on the build cost of 2.44%.
- 9.7 At these rates Scheme C may be considered to be at best marginal and Scheme B unviable. In the current market conditions, the profit/loss levels could well reduce/increase further. Funders/developers will be wary at these levels and usually require a profit level of 15-20% on development costs. Given the current state of the lending and housing markets neither scheme would be regarded as viable despite the thin profit that Scheme C could produce as the small positive return does not reflect the risks involved.
- 9.8 The key issue facing the developer is the high purchase price for the site already incurred but this is not something that can be altered.
- 9.9 The Council may wish to consider inserting a clause in any revised agreement with the developer to the effect that if market conditions improve and house prices rise above current levels before the development is completed and all the units sold, the Council can review any decision to forego affordable housing/S106 contributions made at this date.
- 10.0 **CONTACT OFFICER**
Alison Deakin
Principal Planning Officer 01922 652487
- 11.0 **BACKGROUND PAPERS**
Planning Application 07/1617/FL/E11.

David Elsworthy
Head of Planning and Building Control.

Development Control Committee
17th February 2009

12.0 BACKGROUND AND REPORT DETAIL

- 12.1 Planning permission 07/1617/FL/E11 for demolition of existing buildings and erection of 57 no. two, three, four and five bedroom dwellings, garages and access road on land at 39-67 Enterprise Drive, off Bridle Lane was granted subjected to conditions following completion of a S106 Agreement on 18th October 2007.
- 12.2 Schedule 1 of the agreement requires provision of 11 affordable housing units for shared ownership.
- 12.3 Schedule 2 of the agreement requires the owner/developer to pay contributions towards the provision of Education, Healthcare and Urban Open Space on commencement. These contributions are specified as £125,573.20 for Education, £75,707.10 for Healthcare and £60,658.00 for Urban Open Space; a total of £261,938.30.
- 12.4 The current proposal is a request by the developer, Taylor Wimpey to vary the completed S106 agreement to provide no affordable housing and provide nil contributions towards provision of Education, Healthcare and Urban Open Space. They have provided a supporting statement and financial appraisal as economic justification. This highlights the impact the current financial crisis in the UK is having which has led to a need to review developments and seek cost reductions.
- 12.5 The developers have provided a supporting statement and financial appraisal for the scheme making their case for nil contributions and provision of no affordable housing.
- 12.6 This has been reviewed by the District Valuer and his findings are reported under section 9.0 above. Overall the District Valuer concludes that a development scheme including provision of affordable housing and S106 contributions is unviable at this point in time, and that even a development scheme excluding these obligations is considered to be at best marginal. He recommends that the Council consider inserting a clause in any revised agreement with the developer to the effect that if the market conditions improve and house prices rise above current levels before the development is completed and all the units sold, the Council can review any decision to forgo affordable housing/S106 contributions made at this date. Officers are concerned at how this could be defined / measured in a revised agreement.
- 12.7 The applicant advises that the site is already owned by George Wimpey who purchased the site on 4th December 2007 at which point the land value was far greater and the development was a viable enterprise. They state that although the District Valuer has assumed a theoretical land value of some 35% below that which was actually paid to reflect the current land value he nevertheless acknowledges that even applying the reduced land value it demonstrates the negative financial status of the scheme with a marginal profit of just £273,875 (2.2%). This profit would only be available if the reduced land value were

applicable but as the actual purchase price paid was greater, ***in reality the scheme generates no profit even with the affordable housing and S106 contributions omitted.***

- 12.8 The developer acknowledges that the scheme would be a financial loss but there is a need to reduce the debt already incurred in purchasing the land.
- 12.09 It is relevant to your decision that in a recent appeal decision (for a mixed use development, not in the Borough) the Secretary of State was satisfied that *“the scheme should be determined on the basis of the present market values”* and that *“in this particular case, market conditions dictate that the provision of affordable housing on site, even at some reduced quantum, would not be viable”*. Clearly, variations of the nature sought by the present developer are relevant and material to your decision.
- 12.9 In light of the advice given by the District Valuer in section 9.0 of this report and to allow the developer to progress towards commencement of development of the site it is recommended that Committee supports proposals to revise the S106 Agreement. However, the District Valuer’s suggested variation is not seen as practical. An alternative approach, preferred by officers, is to insert a claw-back clause. This would be a formula relating the sale price of any particular plot to the terms of the original agreement, such that as the economy recovers and house sale prices improve, the Council can expect a share in that improvement related to the legitimate S106 expectations at that time. The formula would need to encompass changes in costs, as well as revenue for the developer, so that the level of contribution expected remains fair and reasonable.