



PLANNING COMMITTEE

2nd December 2010

Report of Head of Planning and Building Control- Regeneration

Twenty-two Dwellings with associated parking at land at The Green, Castle Street, Darlaston, Application No 06/0635/FL/W2

1.0 PURPOSE OF REPORT

To seek Committee's decision on a variation of a Section 106 Agreement associated with permission no 06/0635/FL/W2. The obligation is the payment of £43,110.52p towards Education provision. The developer requests the removal of the obligation.

2.0 RECOMMENDATIONS

Vary the S106 Agreement.

3.0 FINANCIAL IMPLICATIONS

The Council will not receive the sum of £43,110.52p towards Education provision.

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. A Supplementary Planning Document was adopted for Education in February 2007, and set specific thresholds and requirements.

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 developments has already been considered in determining planning permission 06/0635/FL/W2

8.0 WARD(S) AFFECTED

Bentley and Darlaston North

9.0 **CONSULTEES**

9.1 Walsall Children's Services

10.0 **CONTACT OFFICER**

Marilyn Kowalski

Team Leader Development Management (West) 01922 652492

11.0 **BACKGROUND PAPERS**

Planning Application 06/0635/FL/W22 and District Valuer Services financial assessment.

David Elsworthy

Head of Planning and Building Control.

12.0 BACKGROUND AND REPORT DETAIL

- 12.1 Planning permission 06/0635/FL/W2 for residential development of 22 dwellings (seventeen houses, five apartments) at The Green, Castle Street, Darlaston, was granted in 2007 subject to a S106 Agreement. The Agreement was for the payment of £43,110.52p for Education contributions due upon commencement of development.
- 12.2 The developer Damar Homes Limited, have applied for the S106 agreement to be removed as an obligation to the planning permission.
- 12.3 A financial appraisal has been submitted in support of this proposal. This sets out a case which demonstrates a negative financial return on the development due to recent market conditions.
- 12.4 An assessment of the appraisal has been carried out by the District Valuer Service.
- 12.5 The land has been partly developed with foundations and brickwork constructed on some of the plots, to ground floor level. The S106 contribution should have been paid when the development commenced and the developer is in breach of the S106.
- 12.6 The appraisal has been carried out on the basis of two options:-

Scenario 1: An assumption that no development has taken place and accordingly allowances have been made as though it is a brand new development scheme with all the relevant construction costs to be taken into account

The scheme has been found **not to be viable**.

and

Scenario 2: As the site stands today with only the remaining construction costs to complete the scheme (on this scenario it has been argued by the District Valuer that the allowance for the developers profit should be reduced, as there is less risk, as part of the scheme is already completed).

It has also been assessed on a Payment up front basis or deferred payment.

With or without deferred payment the scheme would **be viable**.

- 12.10 Officers conclude that the scheme should be assessed on the basis of Scenario 1, as it is the same developer who commenced the development, and the money they have already spent cannot be ignored. In addition, the developer will not be able to recoup any financial investment until at least some of the properties are complete.
- 12.11 The District Valuer has advised that a claw back or overage provision should be applied. He has adopted a total development period of approximately 24 months/2 years based on the proposed development scheme, and the information provided by Damar Homes Ltd (the developer). This is seen by officers as a prudent arrangement, and it is recommended that a clause is included in the Deed of Variation to the S106 stating that the obligation to pay £43,110.52p towards Education be removed providing that the development is completed within a 24 month period from the date of the variation or such other time to be specified in the Deed. If the development is not completed within the agreed period, the obligation to pay the Education contribution shall be payable at the expiry of such period.
- 12.12 It is therefore recommended that Committee supports the proposals to vary the S106 Agreement as set out in this report.