

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 6</b>
<b>DATE OF MEETING:</b>	<b>25<sup>th</sup> AUGUST 2020</b>	<b>CATEGORY: Delegated</b>
<b>REPORT FROM:</b>	<b>HEAD OF PLANNING AND STRATEGIC HOUSING</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>ELEANOR OVERTON EXT. 5748 <a href="mailto:ELEANOR.OVERTON@SOUTHDERBYSHIRE.GOV.UK">ELEANOR.OVERTON@SOUTHDERBYSHIRE.GOV.UK</a></b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>VIABILITY OF RESIDENTIAL DEVELOPMENT ON LAND AT SK2529 8189 (ADJACENT TO THE MANDARIN CHINESE RESTAURANT), EGGINGTON ROAD, HILTON, DERBY</b>	<b>REF: 9/2016/0162</b>
<b>WARD(S) AFFECTED:</b>	<b>HILTON</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

- 1.1 That the Committee approves an amendment to the Section 106 agreement (S106) by means of a Deed of Variation (DoV) to accept total financial contributions of £224,118 along with the provision of 6 affordable houses on site, 3 being for social rent and 3 for shared ownership (option C in paragraph 4.7 below).
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured under the DoV.

## **2.0 Purpose of Report**

- 2.1 An approach has been made to the Council under the 'mutual agreement' allowances of section 106A of the 1990 Act, it being less than 5 years since the agreement was signed. This report considers the reasons why the approach has been made and the recommendations above are proposed.

## **3.0 Background**

- 3.1 Members may recall that the site was granted outline planning permission on appeal in February 2017 (following refusal of application ref. 9/2016/0162). The scheme was proposed as a Local Plan complaint scheme providing 30% affordable housing and developer contributions totalling £303,981, to be directed towards education and play and open space provision.
- 3.2 A reserved matters application was subsequently approved in September 2019. Since September 2019, particulars associated with all pre-commencement conditions have been approved.

- 3.3 The original S106 agreement contained six schedules, three of which required the undertaking of works, the payment of financial contributions or the provision of infrastructure. These are summarised thus:

Second Schedule – Open Space

This schedule required the provision of onsite open space in accordance with the submitted details and triggers. (also identified within this schedule)

Third Schedule – Financial Contributions

This schedule identified that financial contributions would be sought towards education, built facilities, open space and outdoor sports facilities and set out the specific triggers.

Fourth Schedule - Affordable Housing

This schedule sets out the affordable housing requirements along with triggers for its provision. The development required 30% affordable housing which equated to 10 dwellings, 8 being for social rent and 2 for shared ownership.

**4.0 Discussion**

- 4.1 During the reserved matters application, a viability case was submitted. However, this was not pursued to resolution.
- 4.2 A further viability assessment has now been submitted which has been independently assessed by the District Valuer. This identifies that on the basis of the agreed design, build and abnormal costs, the development would not be able to withstand the full requirement of S106 contributions or affordable housing provision from the values that could be reasonably achieved from the site.
- 4.3 Since the S106 was originally agreed in 2017, the County Education Authority has confirmed that due to Primary School demand being met by the newly constructed school in Hilton, there would no longer remain the justification to request this element of the education contribution.
- 4.4 More specifically the (revised) education contribution of £158,940.72 would go towards secondary and post-16 requirements at John Port Spencer Academy. The analysis of the current and future projected number of pupils on roll, together with the impact of approved planning applications show that the normal area secondary school would not have sufficient capacity to accommodate the 6 secondary and 3 post-16 pupils arising from the proposed development.
- 4.5 The built facilities contribution of £122 per bedroom would go towards either an extension to the scout hut at Peacroft Lane or phase 2 extension works at Hilton Village Hall. The open space contribution of £373 per bedroom would go towards play facilities at Hilton Village Recreation Ground and the outdoor sports facilities contribution of £220 per bedroom would go towards either the Mease Playing Fields or the bike pump track at Hilton Village Hall.

- 4.6 On this basis, the total S106 contributions have been reduced from £303,981 by £79,793 to £224,188. The District Valuer has undertaken the assessment on account of this revised amount and it remains the case that the development would not be viable on the basis of the whole package of contributions.
- 4.7 Notwithstanding this, there are four alternative scenarios whereby the development could support a certain level of developer contributions and/or affordable housing, and these merit serious consideration:
- A. delivery of 10 affordable houses on site, on the basis of 5 being for social rent and 5 being for shared ownership, but on the basis the development could not support any other S106 contributions;
  - B. provision of a financial contribution of £435,964 to enable delivery of affordable housing elsewhere within the administrative area of the Council, but on the basis the development could not support any other S106 contributions;
  - C. provision of the full requirement of S106 contributions (£224,118) along with the provision of 6 affordable houses on site, 3 being for social rent and 3 for shared ownership; or
  - D. provision of the full requirement of S106 contributions (£224,118) along with a financial contribution of £214,001 to enable delivery of affordable housing elsewhere within the administrative area of the Council.
- 4.8 Policy INF1 of the Local Plan identifies that for development that is otherwise in conformity with the plan, but generates a requirement for infrastructure will normally be permitted if the necessary on and off-site infrastructure required to support and mitigate the impact of a development is either (i) already in place or (ii) secured.
- 4.9 Policy H21 of the Local Plan (part 1) states that the Council will secure up to 30% of new housing development as affordable housing on sites of over 15 dwellings. In terms of the tenure split, this should be in the region of 67% social rental housing and 33% affordable rented accommodation (as set out within the Strategic Housing Market Assessment (January 2020)).
- 4.10 Consideration of the required developer contributions and affordable housing was undertaken by the Inspector as part of the 2017 appeal decision. The Inspector concluded that the contributions sought met the identified legal tests and so were necessary to mitigate the impacts of the development. In relation to affordable housing, the proposal for 30% on-site provision weighed heavily as a positive material consideration within the overall planning balance.
- 4.11 In relation to development viability, the Planning Practice Guidance (PPG) sets out that the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. As the application site was unallocated, there is no previous viability information relating to it. The costs associated with the development have only been realised as a result of more detailed work undertaken as part, and following approval, of the reserved matters submission.

- 4.12 The viability information provided by the developer has been independently assessed and it has been confirmed that it would not be viable for the development to provide the full package of contributions and affordable housing, but that it could support a revised package. Whilst it is acknowledged that the associated benefits of the development would therefore be reduced in this regard; overall the disadvantages on housing delivery associated with non-delivery of the site are considered to be greater. On balance, therefore, a development which delivers a reduced level of contributions is considered preferable.
- 4.13 On accepting the above, it therefore falls to be considered which of the identified scenarios would be most suitable taking into account the applicable planning policy and local circumstances.
- 4.14 The Strategic Housing Officer has provided comments on the alternative options and provided useful background information to substantiate their recommendation. They have advised that, historically, affordable housing delivery in the Ward of Hilton has been significantly compromised by viability constraints, with the most recent example of this being at the former Hilton Depot development (off The Mease), which on average delivered only 7% affordable housing across the three phases, down from a target of 30%.
- 4.15 It has also been advised that the Ward of Hilton already has a lower than District average percentage of affordable homes (5% of the homes in Hilton are affordable in comparison to 10% across the District), and while the proportion of privately rented homes are slightly higher in the Ward than the District average (16% compared to 13%), the rents charged are often significantly in excess of the local housing allowance. As such, people on lower incomes who cannot afford to purchase a home would also struggle to afford to rent within the area putting greater demand on the existing affordable housing provision.
- 4.16 Considering housing need for rented accommodation from the Council's housing register, there are between 50 and 70 households looking to live in the Ward of Hilton. The development of the housing mix on this site was negotiated between the Developer and Planning and Strategic Housing Officers with this need in mind. The development at a full affordable housing contribution of 30% would have delivered a range of property types from one-bedroom flats, the ground floor having a level access shower to suit someone with a disability or mobility issues, two and three-bedroom homes, through to a four-bedroom house in order to house larger families in need of accommodation in the area (given the scarcity of provision of the latter, waiting times for these types of homes in this area can be excessive). It was also negotiated that the affordable homes would meet Nationally Described Space Standards, meaning their occupancy can be maximised to best meet housing need.
- 4.17 Accepting less than 30% delivery on this site would only seek to increase the disparity between the different tenure types in the Ward, it is therefore the recommendation of the Strategic Housing Officer that the maximum amount of affordable housing should be sought (option A) to deliver as close as possible to the required amount of affordable housing provision.

- 4.18 Whilst the affordable housing need within the area is significant, so too are the pressures on education and good quality and sufficient recreational facilities, and in the appeal decision the Inspector considered all of the identified contributions as necessary to make the development acceptable.
- 4.19 On this basis a more balanced approach to the split of contributions is recommended. Option C is therefore considered a more reasonable and preferable option. Whilst noting that this would result in 4 affordable units less than option A and that the tenure split would be 50/50, the full education and recreation contributions would be secured. On balance this is considered an acceptable compromise and is reflective of Corporate Plan aims to secure necessary infrastructure requirements to support development.
- 4.20 In respect of options B and D, whilst these vary in their suitability, both options propose a commuted sum towards affordable housing elsewhere within the District, which is not considered suitable. As set out within the supporting text to Policy H21, off-site financial contributions are the least preferable option for the delivery of affordable housing and should not be encouraged. Whilst such contributions can be combined with other similar contributions, there is no guarantee in terms of the location of the provision, which would be governed by land availability. There is also no certainty that either affordable dwellings or land would become available for purchase. Furthermore, if used towards site development, a large proportion of the contribution would be attributed towards architectural and professional fees, meaning that when taking into account the volatile nature of the property market, in reality the sums suggested would likely equate to between 2 and 4 affordable housing units - potentially far less.

## **5.0 Conclusions**

- 5.1 The obligations set out above are proposed so as to ensure the impacts of the development are appropriately mitigated, and whilst the percentage of affordable housing would be reduced in this case, some benefits for the local community in this regard would remain. On balance, whilst there would be some conflict with Policy H21 this is considered marginal and the material considerations in favour of the development are considered to override this harm.

## **6.0 Financial Implications**

- 6.1 The endorsement of the above recommendation would ensure that Corporate projects relating to sport and recreation and affordable housing delivery would be supported.
- 6.2 The Council's legal fees associated with pursuing a DoV would be covered by the developer.

## **7.0 Corporate Implications**

- 7.1 Approval of the recommendation set out above would support the delivery of an approved housing site which has been included within the Council's calculations relating to housing land supply. If the variation to the S106 is not agreed, it may compromise the delivery of the whole site, reducing the available housing supply.

7.2 The proposal would contribute towards the key aims of the Corporate Plan including the measure to enable the delivery of housing across all tenures to meet Local Plan targets. Furthermore, it would ensure the improvement of infrastructure to meet the demands of growth, again in line with a Corporate Plan measure.

## **8.0 Community Implications**

8.1 The principle of development has been established through approval of the outline and reserved matters applications and the required public consultation has been undertaken. Delivery of the scheme would contribute positively towards the social dimension of sustainable development through the provision of market housing, and more specifically would help address an identified local need in regard to the provision of affordable housing.

8.2 By securing the financial obligations set out, the communities created and impacted upon would be able to access suitable education and recreation facilities.

## **9.0 Background Information**

9.1 The following background documents are available to view at the following link:

<https://planning.southderbyshire.gov.uk/ApplicationDetail.aspx?Ref=9/2016/0162>

- a. Existing section 106 Agreement:
- b. Developer's viability appraisal
- c. District valuer's viability appraisal report