

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee 1 July 2009
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DEVELOPMENT AT ASHWELL ROAD, STEEPLE MORDEN (S/0209/04/F) PROVISION OF AFFORDABLE HOUSING REQUEST TO VARY PLANNING OBLIGATION TO COMMUTE ON-SITE PROVISION INTO FINANCIAL CONTRIBUTION

Purpose

1. To report a difficulty in delivering the affordable housing envisaged by the planning obligations relating to the development by Marchfield Developments Limited at Ashwell Road, Steeple Morden, and to consider a request for this to be addressed by means of varying the obligation requiring on-site provision to one requiring payment of a financial contribution.

Information

2. The Marchfield Developments scheme at Ashwell Road is substantially complete and comprises four large detached open market dwellings (of which one remains unsold and unoccupied), and a pair of smaller semi-detached units intended to serve as affordable housing. The entire scheme is accessed from Ashwell Road via a shared private driveway in the order of 120m length and up to 5m width that is hard surfaced feature with services within (copy layout plan appended).
3. Planning permission for the development, under reference S/0209/04/F, was secured at appeal (disposed of by public inquiry), following a refusal at first instance by the Council for reasons of being out of character with the village and inadequacies in access arrangements, impacting on highway safety. A copy of the appeal decision is appended to this report.
4. At the inquiry, and relied upon by the Inspector in allowing the appeal, a unilateral undertaking under section 106 Town and Country Planning Act 1990 was submitted, which created planning obligations to make an education contribution for the benefit of Bassingbourn Village College, and the on-site provision of two semi-detached affordable dwellings to be transferred to a Registered Social Landlord at market value for such use (copy appended).
5. The obligation requiring the education contribution has been discharged. That requiring the affordable housing provision was stated

in terms including that no more than 75% of the market dwellings shall be occupied before the transfer to the Registered Social Landlord is completed, and that six months be allowed for such transfer to occur following the market value having been settled. This obligation is expressly qualified to the extent that, unless due to the default of the developer, failure of the transfer to complete within this window will extinguish the obligation (i.e. the affordable units will then be open for disposal as market units).

6. In early March 2008, an approach was made by solicitors acting for the developer, asserting that as a then interested RSL, Wherry Housing Association Limited, had not completed a transfer to it despite having agreed a value prior to August 2007 when a draft contract was provided to its solicitors, the affordable housing obligation should be regarded as having expired.
7. As resulting investigation by officers revealed that there had been significant delays on the part of the developer in dealing with reasonable conveyancing enquiries raised by the Association's solicitor and that the developer had also sought to increase the sale consideration as late as at the end of February 2008, this approach was rejected. The developer was informed that the Council was content the planning obligation remained extant and capable of enforcement.
8. Notwithstanding that detailed legal exchanges continued around this stance being disputed, the developer then advised in November 2008 that a sale to an alternative RSL, Cambridge Housing Society, had been agreed subject to Council approval. Such approval was duly given.
9. However, by January 2009, it became clear that this disposal was also to prove abortive. Solicitors for the Society had identified that the access arrangements for the two affordable units were perceived as being deficient in terms of providing a legal mechanism for the owner/occupiers of those units to require the shared driveway to be put back into repair if/when deterioration occurred. Although the affordable unit proprietors would be obliged to contribute to the cost of any repairs undertaken, there was no corresponding covenant on the part of the driveway owners to carry out necessary repairs. Given the length and nature of the driveway as a significant engineered feature, the Society took the view that it could not properly proceed in view of this risk and the developer, despite the issue being explored, was apparently unwilling to try and legally rectify the problem with the driveway owners (the proprietors of the two market units that had by then been sold).
10. Once again, it was asserted that time was of the essence for the purposes of the six month transfer window provided by the planning obligation. The developer promoting a view that the Society was overstating the risks associated with accepting these arrangements;

the Society preferring a position that there should be certainty for itself and occupiers that the lengthy driveway could always be required to be kept in repair.

11. Similarly, as a result of this assertion, the Council again adopted a stance that the obligation was not defeated and that the restriction upon the remaining market unit being occupied remained effective.
12. Recognising that something of a legal impasse now existed, negotiations commenced between the developer and Council with a view to exploring alternative ways forward other than an application to the Court either for a declaration on the continuing validity of the planning obligation and/or for an injunction restraining sales in breach as the Council would perceive. In the circumstances of the matter, litigation is likely to be lengthy, costly and with no certain outcome given the complexity of the issues and the construction of the Unilateral Undertaking.
13. As a result of this dialogue, the developer, through its agent Bidwell Faulkner, made an offer to pay a commuted sum of £50,000 for alternative affordable housing provision in return for the existing obligation (requiring on-site provision) to be extinguished. The agent's letter of 6 April setting this offer out is now appended.
14. After consideration of this and the cited justification for it, and after informal consultation with the Chair, Deputy Chair, portfolio holder and local member, a counter offer was issued that indicated any consideration for the release sought should not be less than £120,000. As will be discerned from the copy of the Senior Lawyer's letter of 12 June now also appended that sets this out, the stated amount is believed to be that which currently equates to the amount necessary to make equivalent affordable housing provision as part of an alternative scheme elsewhere.
15. In the event, subject to provisos as to timing and payment being by instalments linked to the sales of the plots released upon the obligation being varied that are thought to be reasonable, this counter offer has been confirmed as being acceptable. Again, the agent's letter in this respect is appended.

Options

16. Instead of approving the actions recommended by this report, members could seek a higher commuted payment although it is not considered that valuation justification exists to support this and officers are satisfied £120,000 represents an appropriate payment so as to realise an equivalent off-site benefit in policy terms.
17. Alternatively, committee could resolve not to vary the obligation; effectively sterilising three units (including those intended as the

affordable units) until either another RSL is persuaded to take a transfer or until the matter is litigated as previously described (as is more likely).

Consultations

18. In addition to the informal consultations described at paragraph 14. above, a copy of this report has been provided to Steeple Morden Parish Council and the Chairman of that Council has been briefed as to the matters under consideration. Any observations received will be reported to Committee at the meeting on 1 July.

Recommendation

19. That the committee:
- a. notes the events described in this report and endorses the actions taken by officers, and;
 - b. authorises officers to execute a deed of variation releasing the planning obligation as to affordable housing as is contained in the Unilateral Undertaking dated 14 July 2006, and to secure a commuted payment of £120,000 to be used for the alternative provision of off-site affordable housing.

Background Papers: the following background papers were used in the preparation of this report:

- Planning application file S/0209/04/F
- Appeal decision W0530/A/05/1181688
- Unilateral Undertaking dated 14 July 2006
- Legal case file PLASEC.2876 (may be exempt from disclosure)

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