

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

2 March 2011

**AUTHOR/S:** Executive Director (Operational Services) / Corporate Manager (Planning and New Communities)

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**S/1669/05 - TEVERSHAM**  
**Proposed Deed of Variation to S106 Agreement to Allow Commuted Sum for Off-Site Provision of Affordable Housing in Lieu of On-Site Provision at Redwings Development (18 flats), 750-754 Newmarket Road for Gibson Developments**

**Recommendation: Delegated Approval**

**Date for Determination: N/A**

**Notes:**

**This Application has been reported to the Planning Committee for determination because it proposes a material change to the Section 106 Agreement from the Heads of Terms previously reported to Members.**

**Site and Proposal**

1. The application site is a residential development completed during 2009, comprising 18 flats, of which 7 are affordable.
2. The applicant is seeking a Deed of Variation to the S106 Agreement to accept a commuted sum in lieu of on-site provision of affordable housing, so that all the units may be let or sold on the open market.

**Planning History**

3. Planning permission was granted for this development on 30<sup>th</sup> November 2005, subject to a S106 Agreement (by way of Unilateral Undertaking). This required the applicant to enter in an agreement with a Registered Social Landlord (RSL) to deliver 7 of the units as affordable housing prior to the occupation of any of the private units. The affordable housing would all be shared ownership.
4. At their meeting in February 2009, Members agreed to a Variation of the S106 Agreement, to allow the private units to be occupied on an assured shorthold tenancy basis for 12 months, but still not to be sold pending the occupation of the affordable units.
5. Following problems in securing an RSL to deliver the affordable housing, the matter was reported back to Planning Committee again on 13<sup>th</sup> January 2010. The developer had requested that either a contribution in lieu of on-site provision be agreed, or that the affordable flats could be rented on the open market until 30<sup>th</sup> June 2011, by which time it was hoped an RSL could be found. Members agreed the following:

- (a) **Approved** a Variation of the S106 Agreement to allow the renting of the affordable units on the open market on an Assured Shorthold Tenancy basis until 30<sup>th</sup> June 2011; and to detach the occupation of the market dwellings from the occupation of the affordable units, replacing it with a suitably worded alternative safeguarding clause; and
- (b) **Deferred** making a decision as to whether or not to accept a commuted sum in lieu of on-site affordable housing until officers had agreed a valuation with the developers and received satisfactory evidence from an independent valuer that the viability of the scheme would otherwise be at risk.

### **Background to the Proposal**

6. Following the Committee decisions, the applicant has still found it difficult to secure an RSL to take on the 7 affordable flats. In the agent's covering letter the following reasons are cited as to why the scheme is unviable:
  - (a) The development comprises flats, which incur a service charge. This is inconsistent with the delivery of low cost accommodation, and off-putting to potential RSLs. Added to this is that one of the affordable flats is located within a block of market units, which makes management of the affordable elements of the overall site difficult for an RSL, and again off-putting.
  - (b) There is a lack of public funding for intermediate (shared ownership) provision.
  - (c) There was a verbal offer from Luminus Group, a Registered Provider (RP) of affordable housing, but this never translated into a firm offer. No other RPs were interested in the site.
7. Consequently the agent has written to request that the Council accept a commuted sum and has provided information which the Council's valuer has included in his consideration (see consultation response below). The agent has also submitted details of the attempts at further marketing of the affordable units to RSLs, which have been significant but fruitless.
8. It is proposed that the agreed commuted sum for each unit (£33,286) be paid upon the sale of each of the 7 identified units that would otherwise be affordable (sales due to start later in 2011), but with any remainder being paid within 12 months from the date of the Deed of Variation.

### **Planning Policy**

9. South Cambridgeshire Local Development Framework Development Control Policies DPD 2007:
 

**HG/3 Affordable Housing** requires 40% of dwellings on sites of 2 or more dwellings to be provided as affordable housing, but in exceptional circumstances, on smaller sites, financial contributions may be accepted towards off-site provision.

**HG/4 Affordable Housing Subsidy** states that where there is a considerable time-lag between the grant of permission and implementation, and where it can be demonstrated that there are insurmountable subsidy issues or demonstrable changes to the viability of the development, the Council may consider a lower proportion of affordable housing to be provided on site.
10. LDF Affordable Housing SPD clarifies policy HG/4. Paragraph 5.13 states that the unavailability of social housing grant is one scenario is one example of exceptional circumstances. Paragraph 5.16 makes it clear that off-site provision is a last resort, the acceptance of which is purely at the Council's discretion. Paragraph 5.17 notes that the sort of circumstances that might justify commuted sums are where there may

be difficulties over delivery, design or on-going management of small numbers of units. Paragraph 5.21 clarifies that in terms of size, it will not be appropriate for major developments (10 or more dwellings) to provide financial contributions in lieu of on-site provision.

11. In terms of calculating commuted payments, the SPD states that the amount of contribution will reflect the amount of free serviced land that would have been provided consistent with the number, type and size of properties that would have been provided on site. The amount will reflect the differential land values that can be achieved between affordable housing plots and open market plots, to be assessed by an independent Valuer appointed by the Council but paid for by the applicant.

### **Consultations**

12. The **Housing Development and Enabling Manager** has been involved in the process leading up to this recommendation, including meetings and the appointment of the Valuer. She is satisfied that RSLs would not consider the development on offer a good proposition because it is unviable, partly through being flats with management issues including that one would be in a block of otherwise market flats, and partly through the lack of government grant funding. The commuted sum would provide the funding for the purchase of around 20 exception site plots which would be passed to an RSL to deliver affordable housing in the District.
13. The Council-appointed independent Valuer calculates that a commuted sum of £33,286 per unit would be an appropriate difference between market and affordable value, a total of £233,000.
14. The **Section 106 Officer** is happy with the approach provided the plots which were to be affordable are clearly identified in the S106 Variation so that occupations can be monitored for the purpose of invoicing on time, subject to indexation and a suggested backstop date of 12 months from the date of the Deed of Variation. He notes the following:
15. Members deferred making a decision as to whether or not to accept a commuted sum in lieu of on-site affordable housing until officers had agreed a valuation with the developers and received satisfactory evidence from an independent valuer that the viability of the scheme would otherwise be at risk.
16. District Council officers have therefore undertaken to understand whether the scheme is viable to provide for 7 affordable units.
17. The applicant has provided open book appraisals demonstrating the residual land value based on a scheme providing 7 affordable units, in accordance with the offer from Luminus Group, and one with full open market units. Whilst this is not in the format of the standard HCA economic appraisal tool, the information has been scrutinised by District Council officers and is found to be acceptable. The information submitted is also based on actual costs incurred by the applicant rather than assumptions. The residual land value is shown to be circa £502,000 for a scheme including 7 affordable units and £700,000 for a full open market scheme.
18. The Luminus offer is considered to be reasonable given the current availability of Government grant and despite the applicant's best endeavours, there was little interest from other registered providers in terms of considering making an offer for the units.

19. In terms of development viability, national and local planning policy requires the planning authority to look at the scheme in terms of the residual land value against the existing or alternative use value. In this instance the application was for the erection of 18 flats following the demolition of 2 houses. The District Council therefore has to take a view as to the 2005 value of the 2 houses that were demolished to allow the scheme to come forward. If the residual land value of £502,000 is greater than the existing use value then the scheme would be considered viable.
20. It is the view of District Officers that the market value of the 2 dwellings in question far exceeds today's residual land value and therefore a commuted sum is acceptable in accordance with the deferral request. This view is based on having undertaken desk top research as well as confirmation that the price paid for the land was in the region of £1.1m.

## **Representations**

21. The Local Member for Teversham, Cllr Mrs Amrani, has been consulted on this proposal and any comments will be reported in an update.

### **Planning Comments – Key Issues**

22. The key issue to consider is whether the provision of affordable housing off-site is acceptable, bearing in mind the viability and deliverability issues and compliance with the Council's policies.
23. Unusually the applicant has already built the properties, taking an element of risk in finding a Registered Provider (RP) to purchase the affordable units. It has become apparent that the 7 affordable units are not appropriate for an RP to take on, particularly due to the management issues associated with one of the flats being in a block shared with market units. Over time, the proposition has become even less viable for an RP because of changes to Government funding that have resulted in there now being no grant available to an RP to subsidise the purchase. Officers are satisfied that this is the reality of the situation and that the applicant has made sufficient attempt to attract an RP. In the interests of actually delivering affordable housing on the ground, it is therefore considered that on-site provision cannot be secured in this instance, such that a financial contribution may now be considered appropriate.
24. The financial viability of the scheme has been assessed by officers and agreed not to be viable, such that a contribution in lieu of on-site provision is acceptable in principal.
25. Whilst acknowledging that the site is a major development (more than 10 units overall), it would not be appropriate to require that the commuted sum is ring fenced for affordable housing in Teversham, although this would of course be desirable if a need is to be met. It is preferred by Housing colleagues that the sum is available for the purchase land throughout the District as required on an as-needed basis, so that affordable housing can be delivered as quickly as possible.
26. Therefore, in terms of the Committee's reason for deferring the decision whether to accept a commuted sum, the scheme has been demonstrated to be unviable, the amount for a commuted sum has been agreed between all parties, and officers are satisfied that the affordable housing that has been provided on the site is no longer a viable proposition for an RP such that it would be unlikely to be deliverable for that purpose.

## **Recommendation**

27. That delegated powers be granted to officers to accept a commuted sum of £233,000 in lieu of on-site provision, to be secured through a Deed of Variation to the S106 Agreement, subject to clauses discussed in paragraphs 11 and 14 above.

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

- South Cambridgeshire Local Development Framework Development Control Policies DPD 2007
- Affordable Housing Supplementary Planning Document 2010
- Planning File reference S/1669/05/F

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