

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

2 December 2015

AUTHOR/S: Planning and New Communities Director

Application Number: S/1344/14/FL

Parish(es): Great Eversden

Proposal: Proposed development of 10 affordable dwellings

Site address: Site known as OSP148, Church Street, Great Eversden

Applicant(s): Accent Nene Ltd

Recommendation: Members alter the resolution to give officers delegated authority to approve the application incorporating Mortgagee in Possession exemptions within the planning obligation to secure affordable housing and subject to no further material planning considerations being raised which have not already been addressed by the committee.

Key material considerations: Mortgagee in Possession

Committee Site Visit: No

Departure Application: Yes

Presenting Officer: Andrew Fillmore, Principal Planner

Application brought to Committee because: The application site is owned by South Cambridgeshire District Council, and to review considerations relating to planning obligations.

Date by which decision due: 9 October 2015

Update to report

Representations

1. A single representation has been received from the occupiers of 2 Chapel Road, Great Eversden reiterating their opposition to the development on the following grounds:
 1. The size and scale of the development is out of character with the location and it is detrimental to the views and setting of several listed buildings in the close proximity.

2. The lack of facilities i.e. there is no shop, no school and a very limited bus service in The Eversdens. Therefore it would seem inappropriate to locate residents of affordable housing in such a position.

Mortgagee in Possession Clause

Purpose

Members are now being asked to consider the inclusion of 'Mortgagee in Possession' (MiP) exemptions to the proposed S106 obligations to enable the Registered Provider to borrow against the development and so fund future schemes in its programme. This planning decision is brought to Members' attention, as it is a departure from national and local policy that affordable housing should be provided on rural exception sites in perpetuity, and so must be made as an exception to policy, with details only being delegated to officers to resolve.

Recommendation

It is recommended that Planning Committee approves the request to incorporate the MiP exemptions into the deed creating the S106 obligations and delegates to officers agreement on the detailed wording, subject to in the event of mortgage default, the Council is offered first option to purchase at no less favourable terms and valuation than is sufficient to defray the funder's exposure.

The reason for the recommendation is to enable the benefits of the MiP clause to the Registered Provider (RP) to fund its social housing programme, but also to allow the Council to intervene to support its policy of affordable housing in perpetuity, should the RP default on its mortgage.

Considerations

Should the Council accord to this request, then it would be as an exception to development plan policy, which currently requires the provision of affordable housing 'in perpetuity', whereas a MiP clause allows for a third-party funder to take possession and sell a property, should the RP default or fail to meet its obligations on its mortgage loan facility. The reason given for the requested modification is that it enables the loan facility against a development to assist in forward funding future schemes by the RP and indeed to bring forward viable development on the current site.

The site is promoted as a rural exception site, where the NPPF states that there is a presumption in favour of sustainable development including the delivery of affordable housing. As an exception to the normal policy of restraint to development in the countryside, by policy HG/5, schemes of 100% affordable housing designed to meet identified local housing needs on small sites within or adjoining villages may be supported as an exception to policy providing it meets a series of criteria, including that 'the development proposal includes secure arrangements for ensuring that all the dwellings within the scheme provide affordable housing in perpetuity for those in housing need'.

If the Council now agrees to a MiP clause, it can only do so as exception to policy, as it would conflict with policy HG/5 (and indeed a departure from the NPPF and the Council's emerging policy concerning rural exception sites). The requirements of the development plan policy HG/5 (and any departure from it) should be given considerable weight. Planning permission without provision for affordable homes to

be retained in perpetuity should only be granted on a rural exception site if there are material considerations which justify a departure from policy.

Balance of Material Considerations

The financial circumstances of the RP developer, in the context of a rural exception site being part of funding a wider programme social housing, is considered capable of being a material consideration, as it affects the viability and the delivery of the scheme. The present planning policy position without a MiP clause, is stated to be inhibiting the borrowing capacity of the RP and therefore affects the ability of the RP to deliver a wider programme of affordable housing in the District and elsewhere to the detriment of the Council's strategy and expectations to deliver more affordable homes to meet a substantial need. Grant funding for registered providers has significantly reduced over the last few years and there is an expectation by Government that registered providers should maximise their borrowing power by using their housing assets as security for additional borrowing through private finance to deliver new affordable homes. A MiP clause allows registered providers to secure funding in this way. Other RPs have made similar comments to the Council in respect of other rural exception sites.

Officers are satisfied that these are valid and weighty material considerations which justify modification of the planning obligation here to include a MiP clause. Members may wish to note that, in law, personal and individual financial circumstances are capable of being material planning considerations and therefore also relevant to the merits of a modification to a planning obligation.

It should be recognised that, in practical terms, the risk of mortgage default by an RP is small, as the regulatory regime under which an RP operates contains many checks and balances, with the sanction of merger of an RP in financial difficulties with a larger, more financially sound one, most commonly used in the past. As a result, there are no occasions known to officers whereby an RP has been forced to cede possession of properties to a finance company, following default on its mortgage.

Even so, the Council could insist on its own power to intervene with provision within the MiP clause for it to have first refusal to purchase on no less favourable terms than that of the funder. This would ensure that the funder's terms may be met, but that the Council's policy of affordable housing in perpetuity may also be supported, in the unlikely event of a mortgage default. Officers consider that a provision to give the Council first refusal in the event of default is proportionate and reasonable and officers advise that the planning obligation should include provision to this effect.

Members may also be aware of the changing national policy situation, with the Government's expressed intentions to extend definitions of affordable housing to include starter homes, at discounted market value for five years only. While the policy context is more fluid, this should be set aside as a consideration, as it can be given no weight until it becomes enacted as regulation or policy.

Conclusion

On the balance of the above considerations, Members are recommended to approve the request for inclusion of an MiP clause in the Section 106 obligation, as an individual exception to planning policy, but with the proviso that the Council has first option to purchase on terms no less favourable than the funder, in the event of default on a mortgage, or loan facility.

The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires planning applications for major developments which do not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated to be advertised by display of a site notice or serving notice on adjoining owners and by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated. This 21 day consultation period is currently being undertaken, and therefore it is recommended the planning committee give officers delegated authority to approve the development subject to no further material planning considerations being raised (which have not already been considered by the committee) before the expiration of the consultation period.

Background Papers:

The following list contains links to the documents on the Council's website and / or an indication as to where hard copies can be inspected.

- South Cambridgeshire Local Development Framework Core Strategy (adopted January 2007)
- South Cambridgeshire Local Plan 2004 (Delete as appropriate)
- Cambridgeshire and Peterborough Structure Plan 2003 (Delete as appropriate)
- Planning File Ref: (These documents need to be available for public inspection.)
- Documents referred to in the report including appendices on the website only and reports to previous meetings

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