

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

6 April 2016

**AUTHOR/S:** Planning and New Communities Director

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<b>Application Number:</b>	S/2396/15/PO
<b>Parish(es):</b>	Willingham
<b>Proposal:</b>	Modification of the planning obligation attached to planning permission S/0733/11 to allow an additional property within the affordable housing provision to be available for affordable rent (application under Section 106A of the Town and Country Planning Act 1990.)
<b>Site address:</b>	Land to the South of Brickhills, Willingham
<b>Applicant(s):</b>	Hundred Housing Society Ltd
<b>Recommendation:</b>	Approval
<b>Key material considerations:</b>	Affordable housing mix
<b>Committee Site Visit:</b>	No
<b>Departure Application:</b>	No
<b>Presenting Officer:</b>	David Thompson, Principal Planning Officer
<b>Application brought to Committee because:</b>	The original application for the 19 dwellings on the site was refused by planning committee (appeal allowed) and therefore it is considered to be in the public interest that this modification application is determined by Members.
<b>Date by which decision due:</b>	11 November 2015

### Executive Summary

1. The revision to the tenure mix within the affordable housing element of the scheme is considered to be acceptable on the basis of national and local planning policy in cases where viability appraisals justify a variation. The modification would not reduce the amount of affordable units below the number approved in the original application and there are no other changes to the extant permission. The proposed modification is considered to accord with policy HG/3 of the LDF, policy H/9 of the emerging Local Plan and the NPPF.

### Planning History

2. S/0733/11 – erection of 19 dwellings – approved on appeal following refusal at planning committee

S/0014/10/F – erection of 19 dwellings – refused and appeal dismissed

S/2196/06/F – erection of 9 dwellings following demolition of existing dwelling and outbuilding at 37 Rockmill End – approved

### **National Guidance**

3. National Planning Policy Framework 2012 (NPPF)  
Planning Practice Guidance (PPG)  
Letter from Secretary of State for Communities and Local Government entitled 'Impact of social rent changes on the delivery of affordable housing.'

### **Development Plan Policies**

4. **South Cambridgeshire LDF Development Control Policies DPD, 2007:**  
DP/1 Sustainable Development  
HG/3 Affordable Housing
5. **South Cambridgeshire LDF Supplementary Planning Documents (SPD):**  
Affordable Housing SPD - Adopted March 2010
6. **South Cambridgeshire Local Plan Submission - March 2014**  
S/1 Vision  
S/2 Objectives of the Local Plan  
S/3 Presumption in favour of sustainable development  
H/9 Affordable Housing

### **Consultation**

7. For clarification, as the application is for the modification of the section 106 agreement only and does not affect the principle of the development or alter the number of units (either in total or the number of affordable units), Willingham Parish Council were sent details of the application for information purposes only.
8. **District Council Head of Housing Strategy** – supports the application on the basis of the viability information submitted and recommends that the tenure mix be revised so that the affordable units are provided on site.
9. **District Council Housing Development Officer** – the 1% reduction in rents required of Registered Providers as a result of the 2015 Budget announcement will worsen the viability of the tenure mix approved in the original Section 106 Agreement. As such, this modification application and the revised tenure mix should be supported.
10. **District Council Section 106 Officer** – no objection to the application following the submission of additional information with regard to viability, which has been verified by the Head of Housing Strategy.

### **Representations**

11. No representations received.

## **Site and Surroundings**

12. The application site is located within the Willingham development framework. The existing residential area on Brickhills is located to the north, Rockmill End to the east and Church Street is located to the south. The southern boundary of the site is adjacent to the Willingham conservation area.

## **Background to this request to modify the legal agreement**

13. Planning permission for 19 dwellings was approved at appeal on 16 January 2012.
14. The planning permission was subject to a section 106 agreement completed on 18 November 2011 which required the provision of 6 affordable dwellings (i.e. 32%) on the grounds of limited viability for the scheme. The requisite number of affordable dwellings was 4 x 2 bed affordable rent and 2 x 2 bed shared ownership.
15. The section 106 agreement does not include a local connection criteria.
16. Development commenced in the autumn of 2014 but stopped for a time during 2015 as the original housebuilder went into liquidation. It is understood that the affordable housing properties are due to be occupied in May 2016.
17. An application made by Hundred Houses Society Ltd under section 106A of the Town and Country Planning Act 1990 was validated on 17 September 2015. The application seeks to vary the section 106 agreement such that the requisite number of affordable units will be amended to reflect one unit changing tenure from affordable rent to shared ownership.
18. It was announced by national government in the summer of 2015 that housing associations will have to cut social housing rents by 1 per cent each year for the next four years from April 2016 in a move the government says will help reduce the country's housing benefit bill.

## **Planning Assessment**

19. The key issue to consider in the determination of this application is whether the proposed revision in the tenure mix within the affordable housing element would remain policy compliant and whether sufficient information has been submitted by the applicant to demonstrate that the existing requirement is no longer viable.

## **Planning policy**

20. At paragraph 173, the NPPF states that 'to ensure viability, the costs of any requirements for affordable housing.....when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable.'
21. In relation to viability PPG states that 'When an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations....' Specifically in relation to affordable housing, the PPG states that 'These contributions should not be sought without regard to the individual scheme viability.'
22. The Council received a letter from Brandon Lewis MP on 9 November 2015 (see

appendix A) in which the Minister urges planning authorities to take a pragmatic and proportionate approach to viability. Furthermore the Minister says that where the overall affordable housing contribution remains the same, it is his view that this is unlikely to justify reopening viability by either side. This letter is a material planning consideration and should be given weight in the decision making process.

23. In relation to this proposal, Hundred Houses as the provider of the affordable housing have indicated that if the viability of that element of the scheme reduces further, the scheme would not be deliverable and that is the motivation behind the proposed revision to the tenure mix. From the above, it is clear that national policy is guiding planning authorities to take a supportive approach to requests to modify affordable housing provision where it can be demonstrated that a scheme would no longer be viable.
24. Policy HG/3 of the LDF was the policy against which the original application was assessed. The policy states that the amount of affordable housing sought should be a minimum of 40%. The policy does however include a caveat at criteria 3 which states that 'within individual developments the proportion and type of affordable housing will be the subject of negotiation with applicants. Account will be taken of any particular costs associated with the development.....(including) viability considerations.' The level of affordable housing was negotiated down below the 40% threshold on the basis of the viability of the development as a whole, as is possible under the this provision.
25. In relation to the mix of tenure types within the affordable housing element of a scheme, the Affordable housing SPD sets a District wide target for tenure mix in new affordable housing of 70% social rent and 30% intermediate housing. As approved, 4 of the 6 units of affordable housing in this scheme would be affordable rent, 2 would be shared ownership, a mix which complies with the SPD. The amended tenure mix proposed is 3 units in each category, which is contrary to guidance within the SPD.
26. However, policy HG/3 also states at criteria 4 that 'the appropriate mix in terms of housing tenures and house sizes of affordable housing within a development will be determined by local circumstances at the time of planning permission, including....development costs (and) the availability of subsidy.'
27. It is considered that, subject to the provision of a robust viability assessment, there is flexibility within the policy to allow for the housing tenure to be revised, in line with the applicant's proposal, should it be demonstrated that the approved tenure mix is no longer feasible.
28. Policy H/9 of the emerging Local Plan is being given weight in the determination of applications, in accordance with the guidance contained within paragraph 216 of the NPPF, due to the fact that none of the objections received to the emerging policy are seeking to retain the lower threshold at which the requirement for affordable provision is sought contained within policy HG/3 (schemes of 2 or more as opposed to 3 or more in H/9).
29. This policy states that the provision of affordable units on developments of this scale should be 40% of the total number but includes a number of exceptions. One of these exceptions is criteria d which states that where '...the level of affordable housing sought would make a development unviable in light of changing market conditions, individual site circumstances and development costs. In which case a revised mix of affordable house types and tenures and then a lower level of affordable housing provision may be negotiated.'

30. In this case, the variation would not reduce the overall number of affordable units to be provided on the site and therefore, subject to a robust viability appraisal, the applicant would be following the principle of this policy by seeking a revision to the tenure mix first.

#### **Assessment of supporting information on viability of the affordable provision**

31. In accordance with Section 106A of the Town and Country Planning Act 1990, the Local Planning Authority must make an assessment as to whether (criteria relevant to this application):
- (a) the planning obligation shall continue to have effect without modification; or
  - (b) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
32. The element of the planning obligation that is the subject of this application is the tenure mix within the affordable housing element of the scheme. The tenure mix is required to be specified in the obligation to ensure that it complies with relevant national and local planning policies and therefore would continue to have effect whether modified or not. It is considered that, subject to sufficiently robust evidence being provided, the proposed revision to the tenure mix would allow the affordable housing element of the development to remain policy compliant, ensuring that the modified obligation would continue to serve the original purpose of the obligation equally well.
33. Previously the housing association would be assumed rental increase based on CPI inflation plus 1%. In real terms this Government policy has the effect of reducing rents by 12% by 2020/21. Members will be aware that the impact of this policy has effectively resulted in a rethink of the Council's own affordable housing programme.
34. The applicant has informed the Housing Development Officer verbally that prior to the rent reduction policy the scheme worked with nil subsidy.
35. As part of this application the housing association has provided viability appraisals for:
- (i) the scheme comprising 4 x 2 bed affordable rent and 2 x 2 bed shared ownership (as per the section 106 agreement) and,
  - (ii) the scheme comprising 3 x 2 bed affordable rent and 3 x 2 bed shared ownership (as per the amendment being sought)
36. Both appraisals show a negative value due to the impact of the rent reduction.
37. The Council has enquired with the applicant as to whether recycled capital grant funds could be used to subsidise the development. The applicant has advised that as the scheme is already on site, and the HCA regulations do not allow retrospective grant claims, there is no other form of subsidy available to assist with viability other than the RP's own reserves.
38. The District Council's Head of Housing Strategy has indicated that the Housing section is satisfied that the numbers upon which the viability appraisal is based are sound. The figures indicated that the original scheme was not actually viable but that the extent of the deficit would have been offset in part had the 1% rent reduction policy not been introduced at the national level. As the Head of Housing Strategy points out, as one would reasonably expect rent levels to rise in real terms year on year and therefore the level of loss without the revision to the tenure mix would in

reality be far greater than the 1%, making the scheme even less viable.

### **Conclusion**

39. It is considered that the proposed modification to the affordable housing tenure mix has been justified through the submission of robust evidence indicating that the originally approved mix is no longer viable. The modification is considered to comply with the relevant national and local planning policies and therefore meets the tests in Section 106A of the Town and Country Planning Act, ensuring that it would still serve a useful planning purpose if modified.

### **Recommendation**

40. Officers recommend that the Committee grants the modification to the legal agreement so approved tenure mix in the affordable element of the scheme (6 units) is divided as that the follows:

3 x affordable rent (50% of the affordable units)  
3 x shared ownership (50% of the affordable units)

### **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 Development Control Policies DPD 2007
- South Cambridgeshire Local Development Framework Supplementary Planning Documents (SPD's)
- South Cambridgeshire Local Plan Submission 2014
- Planning File References: S/2396/15/PO

### **Report Author:**

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