

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

PLANNING COMMITTEE – 9 MAY 2017

Title of report	PROPOSED ALTERATIONS TO SECTION 106 OBLIGATIONS IN RESPECT OF AFFORDABLE HOUSING OBLIGATIONS REQUIRED IN ASSOCIATION WITH RESIDENTIAL DEVELOPMENT AT LAND AT MEASHAM ROAD, APPLEBY MAGNA
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Purpose of report	To consider a request from the developer of the above site to amend its affordable housing obligations
Council Priorities	Homes and Communities
<p>Implications:</p> <p>Financial/Staff</p> <p>Link to relevant CAT</p> <p>Risk Management</p> <p>Equalities Impact Screening</p> <p>Human Rights</p> <p>Transformational Government</p>	<p>As set out in the report below</p> <p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p>
Comments of Head of Paid Service	Report is satisfactory.
Comments of Deputy Section 151 Officer	Report is satisfactory.

Comments of Monitoring Officer	Report is satisfactory.
Consultees	Appleby Magna Parish Council North West Leicestershire District Council Appleby Magna Ward Member North West Leicestershire District Council Strategic Housing Team
Background papers	Application documents in respect of planning application refs. 13/00797/FULM and 15/00778/VCIM
Recommendations	TO AGREE TO THE SUBSTITUTION OF THE EXISTING AFFORDABLE HOUSING OBLIGATIONS BY THE PROVISION OF 7 UNITS IN ACCORDANCE WITH THE HOUSE TYPE AND TENURE MIX AS SET OUT IN THIS REPORT

1.0 INTRODUCTION AND BACKGROUND

- 1.1 On 8 April 2014, the District Council's Planning Committee resolved to grant planning permission subject to Section 106 obligations (the S106 Agreement") for residential development of 39 dwellings and associated works on a site at Measham Road, Appleby Magna (planning permission ref. 13/00797/FULM).
- 1.2 The Section 106 Agreement was completed on 29 September 2014, and the planning permission subsequently issued on 13 November 2014. A subsequent permission for an amended scheme relating to an amended layout and amended house types was granted on 3 February 2016 (ref. 15/00778/VCIM), and was the subject of a supplemental agreement under Section 106 of the Town and County Planning Act 1990 ("the Supplemental Agreement")
- 1.3 The Section 106 Agreement as varied by the Supplemental Agreement includes obligations in respect of, amongst others, affordable housing. The affordable housing obligations are as follows:
- Twelve of the proposed dwellings (i.e. 33%) to be provided as affordable housing units, comprising eight affordable rented dwellings and four intermediate dwellings;
 - Transfer of 50% of the affordable housing units to a registered provider prior to occupation of 50% of the open market dwellings, with the remaining affordable housing units being transferred before occupation of 80% of the open market dwellings.
- The house types forming the affordable housing contribution comprise 4 no. 1 bed units, 3 no. 2 bed units and 5 no. 3 bed units.
- 1.4 The developer has now approached the Local Planning Authority with a view to further amending the affordable housing provision on the site, and has undertaken a viability appraisal in order to demonstrate the need to enter into alternative obligations. The developer has also submitted background information setting out the reasons for

amending the affordable housing. The Local Planning Authority commissioned the District Valuer to assess the developer's calculations on its behalf.

1.5 The residential development is currently under construction.

2.0 PROPOSED AMENDED AFFORDABLE HOUSING OBLIGATIONS

2.1 The developer is of the view that, given anticipated rising costs and receipts, the provision of the on-site affordable housing provision set out under Section 1.3 above will not be viable having regard to the offer received from the only interested registered provider; no other registered providers chose to bid. This single offer has been substantially reduced by the imposition of the 1% rent decrease and the fact that the registered provider's programme being virtually full resulting in them having limited financial capacity to take on further affordable housing. The developer has advised that this reduced offer would not cover build costs.

2.2 Initially the developer requested that the affordable housing provision be amended so that all twelve affordable dwellings would be provided as shared ownership dwellings, using HEYLO Housing Ltd. Following discussions with the District Council's Strategic Housing Team and Development Management team, the affordable housing provision is proposed to be amended to seven affordable rented dwellings. Two offers have been received from registered providers for these seven dwellings.

2.3 Given the wording of the Section 106 Agreement as amended, the number, type and tenure of affordable dwellings can be changed if agreed in writing with the Local Planning Authority by way of a deed of variation being entered into by all parties to the Section 106 Agreement as amended.

3.0 CONSULTATION

3.1 Following consultation on the original proposed amendment, Appleby Magna Parish Council had no comments to make. The Parish Council has been consulted on the further proposed amendments, and any comments will be reported on the Update Sheet.

3.2 The District Council's Strategic Housing Team raised concerns regarding the original proposed amendments, and supports the further proposed amendments, for the reasons set out in Section 5.0 below.

4.0 RELEVANT PLANNING POLICY

4.1 National Policies

National Planning Policy Framework (NPPF)
Planning Practice Guidance

4.2 Adopted North West Leicestershire Local Plan

Policy H8 of the adopted North West Leicestershire Local Plan provides that, where there is a demonstrable need for affordable housing, the District Council will seek the provision of an element of affordable housing as part of any development proposal.

4.3 **Submitted North West Leicestershire Local Plan**

Policy H4 of the submitted North West Leicestershire Local Plan provides that a minimum affordable housing contribution of 30% should be provided on developments of eleven or more dwellings or 1000 square metres gross floorspace in the smaller settlements such as Appleby Magna, and that the Council's preference is for on-site provision.

4.4 **Other Local Policies**

North West Leicestershire District Council Affordable Housing Supplementary Planning Document – January 2011

5.0 **ASSESSMENT**

5.1 **Introduction**

5.1.1 Having regard to the requirements of the NPPF and the Community Infrastructure Levy Regulations 2010, the view is taken that the current obligations are appropriate, and meet the legislative and policy tests. However, in view of the request to amend the terms of the existing Section 106 Agreement as amended, it is considered appropriate to assess:

- (i) Whether the current affordable housing requirements are unduly onerous when having regard to the viability / deliverability of the scheme, or are otherwise unachievable;
- (ii) If so, whether the alternative affordable housing obligations proposed by the developer are appropriate to the level of development viability (i.e. they are the maximum achievable whilst ensuring the development remains viable); and
- (iii) Whether the alternative proposals under (ii) above are appropriate in terms of helping to meet the affordable housing needs of the area.

5.1.2 The developer's rationale for seeking the proposed changes is as set out under Section 2.1 above.

5.2 **Deliverability of Existing Affordable Housing Obligations**

5.2.1 Having reviewed the developer's viability assessment on behalf of the District Council, the District Valuer concluded that, financially, the existing obligation to deliver the policy compliant affordable housing would not be viable, as the developer profit would be approximately 8% (compared with 15%-20% which is considered a reasonable profit level).

5.2.2 This also needs to be considered in the context of the ability of the developer to comply with the existing affordable housing obligations having regard to other factors. The District Council's Strategic Housing Team advises that the developer had indicated, to the Strategic Housing Team, its willingness to provide the originally agreed affordable dwellings and approached nine registered providers to gauge interest with a view to entering into a contract to secure delivery. From these, one offer was received, which was subsequently substantially reduced. The only offer was, the Strategic Housing Team advises, significantly below the figure factored in for these properties.

5.2.3 The proposed change to the affordable housing contribution has been considered by the Strategic Housing Team which advises that it has been in regular contact with the developer in order to find ways to secure the delivery of affordable homes on this

development. The Strategic Housing Team confirms that the changes sought are in reaction to changing economic conditions affecting the activity of registered providers and their ability to offer on Section 106 negotiated developments. It notes that older sites where the affordable mix was negotiated prior to 2015 are particularly vulnerable as developer expectations were higher, having been based on a stronger registered provider bidding platform. The Strategic Housing Team also confirms that the applicant's assertion that registered provider offer levels are lower, with fewer registered providers being in a position to offer, is correct (as set out under Section 2.1 above).

- 5.2.4 On this basis, therefore, it is accepted that, in practice, the developer is unable to deliver the on-site affordable housing in accordance with its existing obligations.

5.3 Appropriateness of Proposed Alternative Affordable Housing Obligations

- 5.3.1 The cascade mechanism in the Section 106 Agreement sets out that if no registered provider takes delivery of some or all of the affordable units, the affordable units can be provided as discounted open market housing (at 60% of open market value), then further cascading to a commuted sum.

- 5.3.2 In respect of the original amendment to provide all twelve dwellings as shared ownership properties, using HEYLO Housing Ltd, the developer advised that shared ownership properties have a lower minimum required household income compared to discounted open market dwellings required under the cascade, therefore providing a wider pool of potential purchasers.

- 5.3.3 The Strategic Housing Team raised concerns regarding the loss of the affordable rented units, in particular, as the two most recent Strategic Housing Market Assessments (SHMA) have indicated that the District Council's affordable housing priority should be the provision of rented housing. The Strategic Housing Team also had concerns in respect of using HEYLO Housing Ltd to provide shared ownership properties, in particular whether HEYLO Housing Ltd offered the same options to purchasers as traditional registered provider led schemes, whether the properties were restricted to eligible households as per the Section 106 Agreement as amended and whether any profits received from shared ownership units would be reinvested in other affordable housing in the local or wider area.

- 5.3.4 Following discussions with the District Council's Strategic Housing Team, the developer has approached two Registered providers that had previously shown an interest in the site in respect of providing a reduced number of affordable units on the site, with all units being affordable rented, to meet the district's greatest identified need for affordable housing (for rented accommodation), as outlined above at Section 5.3.3 above. An offer on this basis was received from both registered providers to provide seven affordable rented units and one registered provider has been selected. This is a reduction of one affordable rented unit compared to the current Section 106 Agreement requirement, with no intermediate affordable housing being provided.

- 5.3.5 It is noted that whilst the number of affordable units would be reduced, the Strategic Housing Team advises that the provision of all units as affordable rented would meet the district's greatest identified need for affordable housing. Furthermore a range of affordable housing would still be available within the village, due to the types and tenures of affordable housing provided on other new housing developments, along with commuted sums also to be paid. The Strategic Housing Team advises that whilst its preferred

position would be to secure the policy compliant on-site provision, it nevertheless accepts the reasons why this level of provision could not be achieved. In addition, the revised number of affordable units to be provided reflects the number of affordable units the District Valuer advises would be viable.

- 5.3.6 With no guarantee that the limitations on registered provider capacity will improve in the foreseeable future, and with the introduction of Starter Homes as an affordable tenure, the Strategic Housing Team considers that the proposed changes present the best opportunity to secure affordable housing (as well as maintaining market homes delivery) on this development.
- 5.3.7 Having regard to the advice of the Strategic Housing Team, it is considered that on balance the reduction in the number of affordable dwellings on the site, all of which would be affordable rented properties, is acceptable for the reasons outlined above. As such, it is recommended that the proposed amended affordable housing provision be accepted.