

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

**PLANNING COMMITTEE – 8 APRIL 2014**

Title of report	<b>PROPOSED ALTERATIONS TO SECTION 106 OBLIGATIONS IN RESPECT OF AFFORDABLE HOUSING OBLIGATIONS REQUIRED IN ASSOCIATION WITH RESIDENTIAL DEVELOPMENT AT FORMER PICKERING'S NURSERIES, BOSWORTH ROAD, MEASHAM</b>
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Purpose of report	To consider a request from the developers of the above site to amend their affordable housing obligations
Council Priorities	This report links to the following Council priorities:  Homes and Communities
Implications:	
Financial/Staff	As set out in the report below
Link to relevant CAT	Fairer CAT
Risk Management	Not applicable
Equalities Impact Assessment	Not applicable
Human Rights	Not applicable
Transformational Government	Not applicable
Comments of Head of Paid Service	The report is satisfactory

Comments of Section 151 Officer	The report is satisfactory
Comments of Monitoring Officer	The report is satisfactory
Consultees	Measham Parish Council North West Leicestershire District Council Measham Ward Members North West Leicestershire District Council Strategic Housing Team
Background papers	Application documents in respect of planning application ref. 12/00646/FULM
Recommendations	<b>TO AGREE TO THE SUBSTITUTION OF THE EXISTING AFFORDABLE HOUSING OBLIGATIONS BY THE PAYMENT OF A COMMUTED SUM, THE PRECISE WORDING OF WHICH BE DELEGATED TO THE HEAD OF LEGAL AND SUPPORT SERVICES, AND LIMITED TO A PERIOD OF THREE YEARS</b>

## 1.0 INTRODUCTION AND BACKGROUND

- 1.1 In November 2012, the District Council's Planning Committee resolved to grant planning permission for residential development of 61 dwellings and associated works on the site of the former Pickerings Nurseries on Bosworth Road, Measham (planning permission ref. 12/00646/FULM).
- 1.2 The Section 106 agreement was completed in March 2013, and the planning permission subsequently issued in April 2013.
- 1.3 The Section 106 agreement includes obligations in respect of, amongst others, education, transportation, public open space, healthcare and River Mease impact mitigation. The Section 106 agreement also contains obligations in respect of affordable housing, as follows:
- 18 of the proposed dwellings (i.e. 29.5%) to be provided as affordable housing units, comprising 13 no. 3 bed houses and 5 no. 2 bed flats / apartments
  - Tenure to be agreed in writing by the District Council
  - Transfer of the affordable units to Registered Provider prior to occupation of 75% of the open market dwellings
- 1.4 The developers have however now approached the Local Planning Authority with a view to entering into an amended scheme of obligations in respect of affordable housing by way of a Deed of Variation or similar, and have undertaken a viability appraisal in order to demonstrate the need to enter into alternative obligations. The request has not been made as a formal application under Section 106BA of the Town and Country Planning Act 1990 (as amended), but its effect is, in practice, analogous to such an application.
- 1.5 The residential development is currently under construction.

## **2.0 PROPOSED AMENDED AFFORDABLE HOUSING OBLIGATIONS**

- 2.1 The developers contend that, given anticipated costs and receipts, the provision of the on-site contribution set out under 1.3 above would not be viable. They also are of the view that, having regard to low levels of demand from Registered Providers, an off-site rather than a reduced on-site contribution would be more appropriate, in the form of a commuted sum payable to the District Council with a view to the Council using the sum to contribute to an affordable scheme elsewhere. The sum offered initially, and based on the developers' calculations, was £200,000.
- 2.2 The Local Planning Authority has commissioned the District Valuer to assess the developers' calculations on its behalf. In response, the District Valuer advises that, having undertaken an assessment it is of the view that the scheme is in fact able to contribute an affordable housing commuted sum of £368,456. The developers have considered the District Valuer's findings in this regard, and a commuted sum of £368,456 is now proposed.

## **3.0 CONSULTATION**

- 3.1 Consultation with Measham Parish Council has been undertaken. Following the initial consultation the Parish Council commented that, given that the planning application was presented to the Parish Council (and granted) with the benefit of the proposed affordable housing, Parish Council members felt that the developer was now renegeing on this benefit for Measham for its own profit. Whilst Parish Council members appreciated the position of the District Council's Strategic Housing Team insofar as using the contributions on a District-wide basis is concerned (see 5.3.3 below), the Parish Council would wish to see the commuted sum ring-fenced and used in Measham and that, once the District Council is in possession of the commuted sum, it should negotiate with housing associations to bring a scheme to the village. Further to the amended contribution offer (and subsequent consultation with Measham Parish Council), the Parish Council has not made any specific comments in respect of the increased sum, but has confirmed that it would still wish the contribution to ring-fenced for use in Measham only.
- 3.2 Councillor Sheahan objects and states that "developers should not be allowed to back out of a commitment like this; it makes a nonsense of the whole effort to secure affordable housing through planning agreements".
- 3.3 The District Council's Strategic Housing Team supports the proposed alternative obligations for the reasons set out in Section 5.0 below.

## **4.0 RELEVANT PLANNING POLICY**

### **4.1 National Policies**

National Planning Policy Framework (NPPF)

Section 106 affordable housing requirements – Review and appeal (DCLG April 2013)

Note: In March 2014 the Government published National Planning Practice Guidance (NPPG) to supplement the NPPF. The NPPG does not change National Policy but provides practical guidance as to how such policies should be applied.

#### 4.2 **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 **Other Local Policies**

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

### 5.0 **ASSESSMENT**

5.1 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 obligations, 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;
- (ii) If so, whether the alternative affordable housing obligations proposed by the developers are appropriate to the level of development viability (i.e. 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.

#### 5.2 **Deliverability of Existing Affordable Housing Obligations**

5.2.1 Further to the Section 106 obligations set out under 1.3 above, the District Council's Strategic Housing Team had originally negotiated the on-site delivery of 18 affordable units with the developers in accordance with the range of house types listed above, of which 12 would have been rented, and 6 shared ownership in terms of tenure.

5.2.2 The District Council's Strategic Housing Team had anticipated that the developers would enter into a contract with a Registered Provider to purchase the negotiated affordable properties. However, the Strategic Housing Team advises that a number of factors have impacted upon Registered Providers' ability to do this:

- The Registered Providers needed all the affordable properties to be delivered over a short timescale, either during this current Homes and Communities Agency (HCA) programme with delivery before April 2015, or all during the next programme period (2015-18) - the positioning of the properties on the site meant that this would not be possible;
- The properties were negotiated prior to the introduction of the affordable rented tenure which, the District Council's Strategic Housing Team advises, Registered Providers prefer as they can be used as part of their HCA delivery programme (unlike social rented properties). To qualify as affordable rented the properties have to be built to the HCA Space Standards (Housing Quality Indicators - HQI) and be Code for Sustainable Homes Level 3 (CSH 3) compliant; the affordable properties on this site were negotiated as social rented with corresponding lower standards required.

5.2.3 In May 2013, the developers provided the District Council's Strategic Housing Team with evidence that they had contacted more than 15 Registered Providers, both locally and regionally. Of the local Registered Providers, two made offers, but subsequently withdrew

due to changes in priority areas; four had no capacity within their business plans to make offers on Section 106 properties with planned delivery dates prior to 2015; one declined to bid as it wasn't a preferred area and another would have been interested if all of the affordable homes were provided as affordable rented (i.e. if they would meet the required CSH 3 and HQI criteria) which they would not. None of the remaining regional Registered Providers were interested as the site lies outside their usual operating areas.

- 5.2.4 The District Council's Strategic Housing Team advises that, whilst, technically, the Council could purchase the properties, acquisitions of this nature do not currently form part of the Housing Revenue Account Business Plan, and that any available headroom is currently retained to provide financial capacity to deal with any unforeseen costs arising from the Decent Homes Improvement Programme.
- 5.2.5 Whilst the District Council's preferred approach (as set out in its Affordable Housing SPD) is for the agreed affordable provision to be made on site, the SPD does, in exceptional circumstances, allow for off site provision. Given the lack of demand from a significant number of Registered Providers associated with the delivery timetable and the applicable build standards, the District Council's Strategic Housing Team is satisfied that the developers have demonstrated that delivery on this site is not possible in this instance, and that the provision of a commuted sum offered in lieu of on-site provision is currently the only suitable option available to secure future delivery of a similar number of affordable homes.

### **5.3 Development Viability and Commuted Sum**

- 5.3.1 Having regard to the conclusion under 5.2.5 above that on-site delivery cannot reasonably be achieved in this case given the lack of Registered Provider interest, it is necessary to consider the developers' alternative proposals in this case. The developers have undertaken viability appraisals in respect of three commuted sum scenarios, assessing viability against three hypothetical commuted sum levels (£250,000, £500,000 and £750,000). On the basis of the developers' viability appraisals, none of these scenarios would deliver an appropriate level of developer profit, and would not therefore be viable. The developers had therefore offered a commuted sum below these tested scenarios (£200,000) in lieu of the on-site contribution.
- 5.3.2 The District Valuer has been requested to assess the developers' viability appraisals on the District Council's behalf. Having undertaken an assessment based on a scheme comprising all private housing units, based on a developer's profit of 17.5% and what it considers to be a reasonable benchmark land value, together with the other Section 106 contributions associated with the development (which would be unchanged), the District Valuer calculates that the scheme would be able to contribute an Affordable Housing commuted sum of £368,456. In response to this finding, the developers have increased their commuted sum offer to this figure. In view of the conclusions that on-site contributions are not in any event achievable in this case, it is not considered necessary to undertake further assessment work in order to consider what level of on-site contribution (as opposed to the payment of a commuted sum) could be viable financially.
- 5.3.3 The District Council's Strategic Housing Team advises that, in keeping with previously received off site commuted sum payments, the commuted sum would be used to support the delivery of affordable housing within the District (and anywhere in the District where a housing need has been identified). Whilst Measham Parish Council expresses concern

that any commuted sum secured ought to be ring-fenced for projects within Measham (and this concern is fully appreciated given that the commuted sum is proposed in lieu of on-site provision within this Measham site), the District Council's Strategic Housing Team advises that the Council needs to be flexible in its use of such commuted sums in order to enable schemes that meet the Council's identified housing needs to be brought forward. Commuted sums secured by way of Section 106 obligations are usually time limited and, if not spent within the relevant timescale, are refunded to the developer; there is no guarantee that any sites will be brought forward in Measham during a reasonable timescale. On this basis, the Strategic Housing Team requests that any commuted sums received in lieu of on site provision are made available to support the delivery of new affordable housing anywhere in the District where a need has been identified, so as to ensure that homes are built where they are needed and where there are opportunities to develop. It is also considered that ring-fencing commuted sums to a specific Parish could, in some cases, result in the collection of a number of relatively small sums which could be spent more effectively if able to be combined as a contribution to a larger project. In addition, save for properties developed on Rural Exception Sites, the District Council does not operate a local lettings policy at settlement level with all applicants free to apply for homes anywhere in the District. As such it is considered applicable to enable the use of the offered funds to support affordable housing wherever a need and suitable opportunities to deliver, have been identified. Notwithstanding this preference for the District Council to retain flexibility on how to apply any commuted sums, the Strategic Housing Team also draws attention to the fact that affordable housing contributions requested from all developments are based on housing needs identified from the local area and the wider Council Housing Register (and are not, therefore, based on a need directly identified for an individual Parish). The Strategic Housing Team also advises that commuted sums collected from developments in other areas have been earmarked, subject to planning approval, to support a wholly affordable housing scheme situated within Measham.

## **6.0 CONCLUSIONS**

- 6.1 Having regard to the advice of the District Council's Strategic Housing Team in respect of the difficulties in providing an on-site contribution, it is accepted that the payment of an off-site commuted sum in lieu of the on-site provision would be appropriate. In accordance with the findings of the District Valuer in respect of the amount of commuted sum achievable whilst ensuring the development remains viable, it is concluded that a commuted sum of £368,456 would be the maximum achievable whilst ensuring the provision of a reasonable profit to the developers.
- 6.2 It is therefore recommended that the proposed amended affordable housing obligations be accepted and that, in order to enable the District Council to support affordable schemes anywhere in the District where a need has been identified, the amended obligations entered into not be framed so as to limit the contributions to being spent only in Measham. In accordance with the advice within the DCLG document "Section 106 affordable housing requirements – Review and appeal", it is also recommended that, given the potential for economic circumstances to improve during the build period, the amended obligations should apply for a limited period of three years only, beyond which the original obligations should once again apply, unless the development has been completed, or updated evidence of a continuing need to make a reduced contribution has been provided and assessed.