

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

**PLANNING COMMITTEE – 7 JULY 2015**

Title of report	<b>PROPOSED ALTERATIONS TO SECTION 106 OBLIGATIONS REQUIRED IN ASSOCIATION WITH RESIDENTIAL DEVELOPMENT AT FORMER FOREST WAY SCHOOL.</b>
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Purpose of report	To consider a request from the developers of the above site to amend the Section 106 obligations required in respect of a proposed housing development
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	Leicestershire County Council Councillor M Specht (ward member) North West Leicestershire District Council Strategic Housing Team North West Leicestershire District Council Environmental Development Officer
Background papers	Application documents in respect of planning application ref. <a href="#">12/00258/OUTM</a>
Recommendations	<b>TO AGREE TO THE AMENDMENT OF THE PREVIOUSLY AGREED OBLIGATIONS SO AS TO SECURE ALL UNITS AS AFFORDABLE HOUSING AND WITH NO OBLIGATIONS IN RESPECT OF BUS PASSES, CHILDREN'S PLAY, CIVIC AMENITY, LIBRARIES, NATIONAL FOREST PLANTING, TRAVEL PACKS AND SECTION 106 MONITORING, 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 January 2013, the District Council's Planning Committee resolved to grant outline planning permission for residential development on the site of the former Forest Way School on Waterworks Road, Coalville (ref. 12/00258/OUTM). The applicants were Leicestershire County Council.
- 1.2 The Section 106 agreement was completed in November 2013, and the planning permission was subsequently issued.
- 1.3 A reserved matters approval for the development of the site for 28 dwellings (submitted by Williams Homes) was issued in April 2015 (ref. 15/00034/REMM).
- 1.4 The Section 106 agreement includes obligations in respect of, amongst others, the following:
- 20% of the proposed dwellings to be provided as affordable housing units
  - Provision of an on-site children's play area (or payment of £28,872 to the District Council as an off-site contribution)
  - Provision of National Forest planting area of 0.11 hectares (i.e. 20% of the site) (or payment of £11,000 to the District Council as an off-site contribution)
  - Provision of travel packs to first occupiers
  - Provision of bus passes to first occupiers
  - Payment of £1,470 to Leicestershire County Council in respect of library services

- Payment of £1,706 to Leicestershire County Council in respect of civic amenity
- Payment of District Council and County Council monitoring costs

1.5 The site is now however intended to be developed on behalf of Waterloo Housing Group, a Registered Provider (RP), and the RP has approached the Local Planning Authority with a view to entering into an amended scheme of obligations by way of a Deed of Variation or similar so as to secure the whole of the site as affordable housing, but excluding the other previously agreed contributions as listed above.

1.6 Section 106A of the Town and Country Planning Act 1990 (as amended) allows, in effect, a developer to apply formally to the Local Planning Authority to modify obligations and, together with Section 106B, for an appeal to be lodged in the event of a refusal. However, this process only applies to obligations entered into at least five years previously, so is not applicable in this case. Any modification of the obligation would therefore need to be entered into by way of agreement between the parties.

## **2.0 PROPOSED AMENDED OBLIGATIONS**

2.1 The developers contend that, given anticipated costs and receipts, were the site to be developed as a fully affordable scheme, the provision of the other contributions as set out under 1.4 above would not be viable. They therefore propose that amended obligations be entered into which would (i) secure all proposed dwellings as affordable housing and (ii) exclude all other contributions / obligations.

## **3.0 CONSULTATION RESPONSES**

3.1 The list of consultations undertaken are as set out in the table above.

3.2 The District Council's Strategic Housing Team supports the proposed alternative obligation for the reasons set out in Section 5.2 below.

3.3 At the time of preparing this report, no other comments had been received from consultees. Any received subsequently will be reported on the Update Sheet.

## **4.0 RELEVANT PLANNING POLICY**

### **4.1 National Policies**

#### *National Planning Policy Framework (NPPF)*

The following sections of the NPPF are considered relevant:

Paragraph 14 (Presumption in favour of sustainable development)

Paragraph 173 (Ensuring viability and delivery)

Paragraph 203 (Planning conditions and obligations)

Paragraph 204 (Planning conditions and obligations)

### **4.2 Adopted North West Leicestershire Local Plan (2002)**

The following policies of the adopted Local Plan are considered relevant:

Policy H8 – Affordable Housing

Policy F1 – National Forest General Policy

Policy F2 - National Forest Tree Planting

Policy L21 - Children's Play Areas

#### 4.3 **Other Local Policies**

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

Play Area Design Guidance Note Supplementary Planning Guidance - July 2001

### 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 proposed amended affordable housing proposals would be appropriate;
- (ii) Whether implementation of the developers' proposed affordable housing scheme would, when implemented in conjunction with the other previously agreed Section 106 obligations, be viable; and
- (iii) If not, whether the implementation of the developers' proposed alternative affordable housing scheme would be acceptable given the associated "loss" of other contributions.

#### 5.2 **Proposed Amended Affordable Housing Obligations**

5.2.1 The existing obligations meet the minimum requirements for affordable housing in the Coalville area (i.e. 20%). The developers are however intending to undertake the scheme in association with a Registered Provider, and the proposed development would therefore be a 100% affordable housing scheme (comprising 28 units). The outline planning permission did not limit the total number of dwellings on the site but, were the reserved matters scheme approved in April 2015 implemented under the current Section 106 obligation, six of those 28 units would be required to be provided as affordable housing. In effect, therefore, assuming a development of 28 dwellings, an additional 22 affordable dwellings over and above that currently required would be secured by accepting the RP's proposals.

5.2.2 In supporting the proposed changes, the District Council's Strategic Housing Team advises that changes to District Council policy to prioritise necessary infrastructure improvements on all sites in Coalville providing 50 or more dwellings (i.e. the District Council's adopted "*Priorities for Developer Financial Contributions for infrastructure provision relating to Major Residential Development Proposals in and around Coalville*" policy) has, to date, resulted in the provision of 117 fewer affordable homes within Coalville and, therefore, the provision of 100% affordable housing sites in Coalville such as now proposed would help to redress the balance.

5.2.3 The District Council's Strategic Housing Team also advises that, as a result of its discussions with the RP, the property types proposed would meet the District Council's highest priorities in Coalville, housing a mix of applicants whilst also providing a design that conforms to the Council's "ourplace" design standards. The Strategic Housing Team also confirms that it has negotiated an appropriate, fully policy compliant, tenure mix, namely 82% affordable rented and 18% part rent part buy shared ownership properties.

The rented homes would, the Team advises, be allocated through the Leicestershire Sub Regional Choice Based Lettings Scheme and the shared ownership homes would be advertised locally. This would ensure that those households with a District connection would be given priority and the Strategic Housing Team advises that it would seek to ensure that the homes provided as part rent part buy shared ownership properties would similarly be offered initially to households that meet that District connection.

5.2.4 The District Council's Strategic Housing Team considers that the proposed scheme seeks to provide much needed affordable homes on a former brownfield site located on the outskirts of Coalville but within easy access of the centre of the town. It advises that Waterloo Housing Group has secured funding through the Homes & Communities Agency (HCA) National Affordable Housing Programme 2015-18 bid round which would ensure the properties were delivered within the delivery timetable agreed with the HCA. The Strategic Housing Team also notes that the District Council has supported Waterloo Housing Group's development programme with £166,000 of funding to secure the delivery of affordable homes in the District and that this funding would help to ensure the provision of the affordable homes on this site.

5.2.5 On the basis of the above advice, whilst it is noted that the provision of 100% affordable housing would exceed the normal 20% requirement for a development, and whilst it is also considered that it would generally be preferable, where possible, for different housing tenures to be integrated, it is accepted that the proposals would assist in providing much needed affordable housing within the District, and would assist in offsetting some of the effects of reduced affordable housing contributions secured within the Coalville area as a result of the need to prioritise transportation contributions over affordable housing on residential developments of more than 50 units where the need to make those transportation contributions would have otherwise rendered development unviable.

### 5.3 **Development Viability**

The RP considers that, as a result of the proposed provision of a 100% affordable housing scheme, there are implications on viability (when compared with the provision of a scheme only delivering 20% affordable housing). As a result, the RP considers, the scheme cannot support the other developer contributions secured under the Section 106 agreement (and as set out above). The RP has provided a viability appraisal in support of its position which has been assessed by the District Valuer on behalf of the District Council. The District Valuer is content that, with a 100% affordable housing scheme, and even when taking into account other subsidies etc, the scheme is not viable and, therefore, cannot support any other Section 106 contributions.

### 5.4 **Impacts of Non Provision of Other Contributions**

5.4.1 In the event that an amended Section 106 obligation was entered into which secured the provision of additional affordable housing in lieu of other developer contributions, the impacts of the non-provision of these contributions need to be considered. These are addressed in turn below, together with the associated impacts on sustainable development. In terms of the benefits to sustainable development of the proposed changes, it is accepted that, in terms of the social dimension, the provision of a 100% affordable housing scheme would be of a clear benefit given the significant need for affordable housing within Coalville and the District generally. Whilst the provision of such a scheme would not assist in terms of creating mixed and balanced communities (i.e. by way of the concentration of affordable tenure types separate from market housing), the overall

contribution to sustainable development resulting from a fully affordable scheme is nevertheless considered positive. There would, however, it is considered, be some adverse impacts of the proposals in NPPF sustainable development terms accruing in respect of both the social and environmental dimensions.

#### 5.4.2 *Children's Play*

Under the provisions of the District Council's Play Area Design Guidance Note SPG, children's play areas are required at a rate of 20sqm per dwelling, and all proposed dwellings should be within 400m walking distance of a facility. The Section 106 agreement entered into at the outline stage allowed for either on-site provision or an off-site contribution so as to increase capacity elsewhere. In terms of the non-provision of children's play contributions, there could, it is considered, be an adverse impact on the social dimension insofar as, whilst there are alternative play areas within 400m of the site, no contributions would be made to these facilities so as to increase their capacity, with the resulting implications of that in terms of amenity and child development

#### 5.4.3 *National Forest Planting*

In accordance with the relevant National Forest Company requirements, the existing Section 106 agreement requires an on-site contribution of 20% of the site or payment of £11,000 to the District Council as an off-site contribution. As a result of the non-provision of this contribution, there would be an environmental impact on the wider National Forest in terms of the Forest's development and the provision of enhanced green infrastructure within the Forest but, having regard to the relatively small contribution involved, an unacceptable impact would not be considered to result when balanced against the other benefits of the scheme.

#### 5.4.4 *Travel Packs and Bus Passes*

The measures secured in this regard are intended to reduce reliance on the private car, and some impacts in terms of congestion etc could result, with the resulting implications on the environmental dimension of sustainable development, and the overall environmental credentials of the development would, overall, be reduced with fewer residents being encouraged to make full use of local public transport alternatives to the private car. However, consideration also needs to be given to the extent of the impacts in view of the number of properties involved and, in this case, it is not considered that this non-provision would be so unacceptable as to outweigh the benefits of enhanced affordable housing contributions.

#### 5.4.5 *Library Services*

The non-provision of this contribution would result in increased use of the existing facilities at Coalville Library without an associated increase in stock and other materials. This would, it is considered, have resulting implications on the social dimension. Again, however, when bearing in mind the number of properties involved, it is not considered, in this instance, that these adverse impacts would be so unacceptable as to outweigh the benefits of enhanced affordable housing contributions.

#### 5.4.6 *Civic Amenity*

The non-provision of this contribution would result in increased demand on waste processing facilities (i.e. through additional refuse generation); in the absence of increased capacity at the civic amenity site, this could have environmental implications. However, it would seem more likely that the impacts would need to be absorbed by the waste authority and, therefore, implications on the social dimension would seem likely. On the basis of the

extent of the increased demand on services, however, it is not considered that the adverse impacts would be so severe as to outweigh the benefits of enhanced affordable housing contributions.

#### 5.4.7 *Monitoring Fees*

In the event that the obligations were amended in the manner proposed, there would be no remaining obligations in respect of Leicestershire County Council functions, and no County Council monitoring fee would therefore be required. Insofar as the remaining obligations (i.e. relating to affordable housing) are concerned, it is considered that, given the findings of the District Valuer, the District Council monitoring fee would also need to be excluded. This would also therefore have some financial implications on the District Council (the relevant fee in the event that only affordable housing obligations remained would be £250).

## 6.0 **CONCLUSIONS**

- 6.1 Having regard to the advice of the District Council's Strategic Housing Team and the existing need for more affordable housing in the District, it is considered that, notwithstanding issues relating to integration of housing tenure, the proposed increased provision of affordable housing within the development (i.e. to 100%) would be positive in terms of the approach to sustainable development. On the basis of the independent advice provided to the Local Planning Authority by the District Valuer, it is also accepted that the RP has demonstrated that, when applying this 100% affordable housing contribution, the development would be unviable, and other obligations would need to be relaxed to enable the affordable housing scheme to proceed.
- 6.2 Whilst it is acknowledged that the resulting loss of other contributions currently secured would have a negative impact on the overall assessment of sustainable development, it is accepted that, in the round, the adverse impacts (and including cumulatively) would not be so severe as to outweigh the benefits of the proposals, and it is therefore recommended that the RP's proposed amendments to the Section 106 obligations be agreed by the District Council. It is noted that the original obligation was entered into by both the District and County Councils; whether or not Leicestershire County Council would also be agreeable to entering into a revised obligation would be a matter for that authority.
- 6.3 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.