

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of meeting: 14th August 2013
Report of: Steve Irvine – Development Management and Building Control Manager
Title: Proposed Alterations to the Section 106 Agreement relating to application 11/1879 for Land at Parkers Road, Crewe.

1.0 Purpose of Report

- 1.1 To consider proposed amendments to the resolution passed by Strategic Planning Board in respect of application 11/1879N.
- 1.2 The report has been presented to Strategic Planning Board because the original application was approved by the Board in October 2011.

2.0 Decision Required

- 2.1 To agree to the amendments to the previous resolutions as stated in this report.
- 2.2 The principle of the residential development has already been established by the previous resolution. Consequently, this report does not provide an opportunity to revisit that issue. This item relates solely to the proposed amendment to the requirements of the Section 106 Agreement.

3.0 Background

- 3.1 The site comprises 15.1ha of agricultural land (plus highway land – Parker's Road) located on the north western edge of Crewe. The site is defined by Parkers Road to the south, Moss Lane to the east, existing development to the west and a public footpath along part of its northern boundary. It is bisected by a network of existing hedgerows, some of which contain trees. In addition, there are a small number of free standing trees within fields.
- 3.2 Existing residential development lies to the east, south and south west of the site. Leighton Hospital lies to the west of the site. The wider site context includes Crewe Town Centre and railway station to the south west, Bentley Cars to the south on Pym's Lane and the village of Bradfield Green to the North West.
- 3.3 Members may recall that in October 2011, Strategic Planning Board resolved to grant planning permission for a "hybrid" application (i.e.

part outline and part full planning permission) for residential development on this site. Full planning permission was sought for 131 dwellings in Phase A to the south of the site close to Parkers Road and outline planning permission was sought for up to an additional 269 dwellings of the remainder of the site (Phase B). In total, planning permission for a maximum of 400 dwellings was applied for.

3.4 The resolution to approve was subject to completion of Section 106 Agreement making a number of provisions, including:

1. *Provision of education contribution of £398,990*
2. *Provision of £300,000 towards highway improvements to the Remer Street corridor and the provision of a drop-off lay-by at Leighton Primary School*
3. *Provision of public open space including amenity greenspace and an equipped children's play area conforming to NEAP Standard, to include:*
 - a. *A minimum of 8 pieces of equipment,*
 - b. *1.4 metre high bowtop railing surround with two pedestrian access gates and a double leaf vehicular access gate.*
 - c. *Railings to be painted green and pedestrian gates to be yellow.*
 - d. *Equipment to be predominantly metal, inclusive, and conforming to BS EN 1176.*
 - e. *Equipment to have wetpour safer surfacing underneath it, conforming to BS EN 1177.*
 - f. *Surfacing between the wetpour to be tarmacadam with precast concrete edging surround.*
 - g. *Access paths to gates to be tarmacadam*
4. *Provision for future management of children's play areas and amenity greenspace to include transfer to and future maintenance by a private management company.*
5. *Provision of 35% of the 400 units proposed across the whole site as affordable housing in perpetuity. Provision within Phase A shall be 26 units comprising 11 x 2 beds, 14 x 3 beds and 1 x 4 bed, with the remainder to be provided in Phase B The tenure split within Phase A to be on a 65% social rent, 35% intermediate tenure basis. The mix of house types and tenure for within Phase B (to include key worker housing) to be agreed as part of subsequent reserved matters applications.*
6. *Travel Plan Monitoring Fee £5000*
7. *Contribution of £25,000 for the provision of Green Infrastructure within Crewe and the environs of the site.*

3.5 The developer is seeking to amend this wording to make provision for:

- 1 Reducing the overall amount of affordable housing to 10%;
- 2 Amending the tenure split of the affordable housing to 25% Rented & 75% Intermediate

3.6 In addition, it seeks to make the following amendments to conditions:

- Amending the Code for Sustainable Homes provision to mandatory

- requirements of Level 3 from Level 4
- Deleting Condition 34, removing the requirement to deliver 10% renewable energy provision;

4 Officer Comment

- 4.1 Section 6 of the Interim Planning Statement (IPS): Affordable Housing relates to Viability of Affordable Housing Provision. Paragraph 6.6 states:

Where it is accepted by the Council that a development is not sufficiently viable to provide the requisite level of affordable housing, and where the development is in all other respects acceptable, it may consider requiring the applicant to enter into a legal agreement which effectively defers developer contributions during the period of development. More detail on this approach is contained in the Home and Communities Agency Good Practice Note on Investment and Planning Obligations (July 2009), however the broad principles are explained below.

- 4.2 The NPPF stresses the importance of housing delivery and viability as a material planning consideration. Paragraph 173 states:

Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable

- 4.3 The applicant has commissioned consultants DTZ to assess the viability of the proposed scheme. DTZ have provided a viability appraisal (FVA) for the policy compliant scheme which provides 35% affordable housing, however the appraisal excludes the costs relating to the requirement to build new homes to Code level 4 and the tenure split of 75% social rent/25% intermediate. The applicant concludes that the policy compliant scheme is not financially viable.

- 4.4 DTZ have also provided a viability appraisal for the scheme on the basis of:

- a reduction in the level of on-site affordable housing provision to 10%,

- an adjusted tenure split of 25% social rent and 75% intermediate,
- a reduced requirement to build new homes to Code Level 3
- removal of the requirement to provide 10% renewable energy on site.
- the same level of Section 106 contribution as discussed with the Council.

4.5 The Council has commissioned Gerald Eve to assess the appraisal which has been submitted. They have concluded that the Proposed Scheme, as detailed above, is viable. The applicant's FVA has been independently scrutinised by Gerald Eve, an independent consultant acting on behalf of the Council. They are unable at this stage to conclude that the Section 106 contributions represent the maximum the scheme can afford and further viability testing should be undertaken to establish the appropriate level of contributions. Further clarity is also needed on the following issues:

- The applicant has applied an average sales value of £107 per sq.ft to the affordable housing element and an average sales value of £169 per sq.ft to the market housing element. Further information regarding calculation of both values is required;
- Gerald Eve require further input from Cheshire East Council's Affordable Housing Team regarding the acceptability of the proposed tenure split provided by the applicant;
- A profit target of 18% profit on Gross Development Value has been used by the applicant. Further clarification is sought from the applicant to justify this figure;
- Clarity is needed regarding the costs to be attributed to the scheme, to be explicitly apportioned as abnormal costs and Section 106 Contributions. Within the RICS Royal Institution of Chartered Surveyors Professional Guidance entitled 'Financial Viability in Planning' which represents best practice it concludes that 'a full QS cost report' is recommended to be provided;
- 3% professional fees have been used and Gerald Eve considers that 7.5% would be appropriate;
- Full phasing details are required to accurately assess the implications of finance costs on the viability of the scheme.
- Gerald Eve's analysis has demonstrated that it may be appropriate to consider a re-appraisal mechanism which would ensure the scheme provides an appropriate level of contribution

4.6 A further updated in respect of these matters will be provided to Members prior to their meeting.

- 4.7 The NPPF also stresses the importance of housing delivery. One of the 12 Core Planning Principles at paragraph 17 states that planning should:

proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth.

- 4.8 Subject to the above points being clarified, it is considered that the applicant has demonstrated that the viability issues would delay delivery of the scheme and that this would have a negative impact on housing land supply within Cheshire East.
- 4.9 Whilst the reduction in the overall percentage of affordable housing, and deletion of Code Level 4 and renewable energy requirements are regrettable, it has to be recognised that the Parkers Road scheme forms part of Cheshire East's 5 year Housing Land supply and in order to defend forthcoming Appeals on other sites within the Borough, it is necessary to demonstrate that sites such as this are viable and deliverable.
- 4.10 Members may recall that at its meeting on 22nd August 2012, Strategic Planning Board resolved to approve an application for residential development at the neighbouring Maw Green site, with an overall affordable housing provision of 10%. This case is not dissimilar.
- 4.11 At its meeting on 5th December 2012, the Board also resolved to make the same amendments in respect of the resolution to approve the scheme at the Coppenhall East site. Again, this case has some similarities with this scheme.
- 4.12 Furthermore, the development site is in a part of Crewe where property prices are relatively low compared to other parts of the town and the Borough as a whole. It is also where there is already an abundance of affordable housing, as set out in the Housing Market Assessment which accompanied the application. Consequently, it could be argued that increasing the market housing element would help to provide a mixed community in this part of Crewe. This was the view taken by the Inspector at the Appeal relating to the Bath Vale Works site in Congleton where, due to the Bromley Farm Council Estate near to the site, he agreed to omit the social rented tenure in order to achieve a mixed community.
- 4.13 In summary it is considered, that in the light of the NPPF, the viability and housing delivery case which has been advanced by the developer is an important and material consideration, which would outweigh the policy requirement in respect of affordable housing provision.

- 4.14 However, the IPS states at paragraph 7.7 that, in circumstances where are reduced affordable housing provision is accepted on viability grounds:

“subject to the developer agreeing to initially provide the proportion (if any) of the affordable housing that the development appraisal indicated was viable, a further payment in lieu of the remaining affordable housing would become payable if and when there was an increase in the achieved sale values of the dwellings compared to the values assumed in the development appraisal. The calculation of further payments would be at agreed periods during the life of the development. This mechanism would only apply once development had commenced.”

- 4.15 As this is a large development, which is likely to come forward in phases over a development period of 5 – 10 years, it is considered that an overage agreement should be required in case there is an increase in sales values of the dwellings compared to the values assumed by the applicant. Any overage payments should be invested back into affordable housing in Cheshire East. Such clauses have been used on recent permissions issued elsewhere within the Borough, (including Coppenhall East). Therefore, this would seem to be a reasonable request.
- 4.16 With regard to the amendments to the proposed tenure split, the 75/25 split between intermediate and rent, would also reflect the previous decision of the Strategic Planning board in respect of the Coppenhall East scheme. This would go towards meeting some of the identified affordable housing need for Crewe.
- 4.17 The first phase of c 130 homes has always included 26 affordable units. The developer will maintain this level of provision and so the scheme is " front end loaded" as the effective rate of provision in the first phase will be 20% (26 affordable out of 130). This is considered to be a major benefit of the scheme.
- 4.18 Condition 9 which related to the obligation to assess the feasibility of achieving Code for Sustainable Homes Level 4 across the site, is an aspirational requirement which does not have any support in adopted planning policy. It is referred to in the Council's Interim Policy on the Release of Housing land. However, recent Appeal decisions have determined that this can be afforded only limited weight as a material consideration in decision taking. It is acknowledged that the Code Level 4 requirements would increase the sustainability of the scheme, which must be considered in the light of the presumption in favour of sustainable development under the NPPF. However, this must be balanced against the advice contained within the NPPF in respect of viability and housing delivery as set out above.

- 4.19 Furthermore, the condition only required a feasibility study into the viability of meeting Code Level 4, across the site. Therefore, even if the condition were retained, a viability case could be presented to negate the requirement to comply with this condition. It is considered that such a case has already been presented as part of the developer's request to amend the committee's previous resolution in respect of the Section 106 Agreement. Consequently, there is no objection to the removal of this condition.
- 4.20 Similarly Condition 10, which was imposed to comply with the requirements of Policy EM18 of the RSS, required the provision of 10% of predicted energy requirements to be sourced from decentralised and renewable or low carbon sources only if it could be demonstrated that it was "feasible or viable" to do so. It should also be noted that since the resolution to grant planning permission was passed, the RSS has been revoked. Therefore, Policy EM18 no longer forms part of the development plan.

5 Conclusion

- 5.1 On the basis of the above, subject to the points raised by Gerald Eve being clarified, the proposed amendment to the wording of the resolution is considered to be acceptable. A further update in respect of the outstanding matters will be provided to Members prior to their meeting.

5 Recommendation

Subject to receipt of additional viability information and no objection being received from Gerald Eve in respect of that information, that the Board resolve to amend the previous resolution in respect of application 11/1879N to read:

That the application be approved subject to completion of Section 106 legal agreement securing

- 1. Provision of education contribution of £398,990***
- 2. Provision of £300,000 towards highway improvements to the Remer Street corridor and the provision of a drop-off lay-by at Leighton Primary School***
- 3. Provision of public open space including amenity greenspace and an equipped children's play area conforming to NEAP Standard, to include:***
 - a. A minimum of 8 pieces of equipment,***
 - b. 1.4 metre high bowtop railing surround with two pedestrian access gates and a double leaf vehicular access gate.***
 - c. Railings to be painted green and pedestrian gates to be yellow.***
 - d. Equipment to be predominantly metal, inclusive, and conforming to BS EN 1176.***

- e. *Equipment to have wetpour safer surfacing underneath it, conforming to BS EN 1177.*
- f. *Surfacing between the wetpour to be tarmacadam with precast concrete edging surround.*
- g. *Access paths to gates to be tarmacadam*
- 4. *Provision for future management of children's play areas and amenity greenspace to include transfer to and future maintenance by a private management company.*
- 5. *Provision of 10% of the 400 units proposed across the whole site as affordable housing in perpetuity. The tenure split to be on a 25% social/affordable rent, 75% intermediate tenure basis. Phase B to include key worker housing to be agreed as part of subsequent reserved matters applications.*
- 6. *Overage clause*
- 7. *Travel Plan Monitoring Fee £5000*
- 8. *Contribution of £25,000 for the provision of Green Infrastructure within Crewe and the environs of the site.*

And subject to the following conditions:-

- 1. *Standard 3 year time limit (Phase A)*
- 2. *Standard outline time limit (Phase B)*
- 3. *Submission of reserved matters (Phase B)*
- 4. *Plans*
- 5. *Materials*
- 6. *Boundary Treatment*
- 7. *Landscaping submission*
- 8. *Landscaping implementation*
- 9. *Breeding bird survey to be carried out prior to commencement of any works during nesting season*
- 10. *Features for use by birds and bats*
- 11. *Habitat creation and management plan*
- 12. *Design of proposed pond*
- 13. *Design and layout of the proposed newt mitigation area including proposals to ensure no public access.*
- 14. *Submission of details of bin storage.*
- 15. *Archaeology investigation / report*
- 16. *Compliance with flood Risk Assessment*
- 17. *Restrict surface water run-off*
- 18. *Surface water attenuation*
- 19. *Minimum Floor Levels*
- 20. *Surface Water Regulation Scheme*
- 21. *Site to be drained on a separate system*
- 22. *Phase II contaminated land investigation and remediation*
- 23. *Travel Plan*
- 24. *Updated Air Quality Impact Assessment*
- 25. *Limit hours of construction to 08:00 – 1800 Monday to Friday and*
 - a. *0900 – 1400 on Saturday with no working on Sunday or Bank Holiday*
- 26. *Details of external lighting to be submitted and approved*

- 27. Submission of details of phasing / triggers for construction of access and highway improvements. Works to be carried out in accordance with the approved details.**
- 28. Provision of Parking**
- 29. Highway Construction details to be submitted**
- 30. Replacement hedge and tree planting**
- 31. Tree / hedge protection measures**
- 32. Implementation of Tree / hedge Protection**
- 33. Arboricultural Method Statement**
- 34. Code for Sustainable Homes Level 3**
- 35. Noise Impact Assessment**
- 36. Details of proposed apprenticeship scheme**
- 37. Provision of Bin Stores**
- 38. Provision of Bungalows in Phase B**
- 39. A Highway assessment of Moss Lane and if necessary submission of a scheme of measures for improvement and a timetable for their implementation**

6 Financial Implications

- 6.1 There are no financial implications.

7 Legal Implications

- 7.1 The Borough Solicitor has been consulted on the proposals and raised no objections

8 Risk Assessment

- 8.1 There are no risks associated with this decision.

9 Reasons for Recommendation

- 9.1 To allow negotiations in respect of the Section 106 to progress to signing, to enable the development works to commence in a timely fashion to assist in delivering the 5 year housing land supply for the Borough.

For further information:

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Background Documents:

- Application 11/1879N.