

Southern Planning Committee

Date of Meeting 13th July 2011
Report on 08/0492/OUT Fine Art, Victoria Mills, Holmes Chapel.

1.0 Purpose of the Report

- 1.1 Following the decision of Members at the 27th April 2011 committee meeting to defer the consideration of whether to refuse the application, to consider minor alterations to the proposed S106 Heads of Terms and a new recommendation.

2.0 Decision Required

- 2.1 To agree to the proposed amendments to the Heads of Terms in order that the S106 Agreement can be finalised and completed.
- 2.2 To approve the scheme subject to the conditions previously agreed by Congleton Borough Council Planning Committee and subject to the prior signing of the S106 Agreement.
- 2.3 That if the S106 Agreement is not signed within three months from the date of committee that the application is refused for the reasons specified within the previous update report.

3.0 Background

- 3.1 On the 27th April 2011, Members of the Southern Planning Committee considered an update report recommending refusal of the application because the applicants had failed to sign the S106 Agreement.
- 3.2 After considering the report, and the representations of the land owner, Members resolved to defer consideration over whether to refuse the application for two consecutive committees in order to allow the applicants a further opportunity to sign the S106 Agreement.
- 3.3 In the intervening period, extensive dialogue has taken place with the applicant's solicitor and substantial progress has been made. As part of the on going discussions, it has become apparent that a number of very minor modifications to the resolution and the proposed S106 Agreement need to be agreed by Members before it can be signed and the decision issues.
- 3.4 These issues are now discussed in more detail below.

4.0 S106 Heads of Terms

Relocation of Fine Art

- 4.1 No changes are proposed in respect of this clause. The agreement will require the Fine Décor business to relocate to alternative premises within the Cheshire East borough prior to the commencement of development.

Affordable Housing

- 4.2 Members will note from the background reports that the S106 Agreement originally sought to secure 'Intermediate Housing' by way of 'Shared Ownership' and 'Discount for Sale' housing. Whilst this approach would still remain, following discussions with the applicants and the Housing section, it is now proposed to also include the provision of 'Rent-to-Home-Buy' units within the scope of 'Intermediate Housing'.
- 4.3 This approach will provide both the applicant and any prospective Registered Social Landlord (RSL), as well as the Council to some extent, with greater flexibility at the point at which the intermediate units are available to purchase by an RSL and will help to tackle a common problem associated with shared ownership housing whereby an eligible person has an insufficient deposit to secure a mortgage to purchase the property. In this respect, the 'Rent-to-Home-Buy' model allows an eligible person to first rent the property from the RSL with rental money being set aside as deposit which can then eventually be used to secure a mortgage to purchase the property.
- 4.4 In summary therefore, the S106 Agreement will secure intermediate housing by way of Shared Ownership and Rent to Home Buy with a clause that allows the units to be transferred to Discount for Sale if they cannot be sold to an RSL. The Housing section is satisfied with this approach because it provides sufficient flexibility for all parties and, more importantly, would help to address the current levels of housing need within Holmes Chapel.

Travel Plan and Off-Site Highway Works

- 4.5 Minor adjustments are sought to the original resolution to ensure that the words "and implementation" in respect of Travel Plan are included.
- 4.6 Similarly, for the avoidance of any doubt, the agreed financial sum of £25,000 will be used to fund off-site highway improvements and to upgrade bus services or stops in accordance with recommendations within the Travel Plan.

Children and Young Persons Provision (CYPS)

- 4.7 Due to the outline nature of the application and presence of a culvert within the site, the provisions relating to CYPS within the S106 are extremely complicated and need to cover the range of scenarios that could occur at reserved matters stage both in terms of the number of units that come forward and whether the culvert within the site remains closed or is opened up as a water feature within the new development (which dictates whether the Council adopts the on-site provision or not).
- 4.8 To address the complex range of scenarios, the S106 Agreement will include a number of provisions in order to meet the requirements of SPG1 "Provision of Public Open Space in New Residential Developments" and the Interim Policy Note "Public Open Space Provision for New Residential Development".
- 4.9 On the basis of the above, the main points that would be covered by the proposed S106 in respect of POS can be summarised as follows:

- Secure provision of a minimum of 0.35ha Amenity Greenspace and Locally Equipped Area of Play on the application site.
- Include provision for the management and maintenance of the on-site Amenity Greenspace and the ability to secure a financial sum for maintenance if adopted by the Council.
- Include provision for management and maintenance of the on-site Locally Equipped Area of Play and the ability to secure a financial sum for maintenance if adopted if adopted by the Council.
- Includes a clause to cover the possibility that a financial contribution towards enhancement and maintenance of off-site provision would be required to compensate for any shortfall in on site Amenity Greenspace provision. Any financial contribution arising would be used towards enhancement of the existing Elm Drive play area within Holmes Chapel.
- Include provisions in respect of the future management and maintenance of the on-site LEAP and Amenity Greenspace by a private management company where the culvert within the site is open.

Community Infrastructure Levy Considerations

- 4.10 As certain elements of the S106 fall to be considered as infrastructure, it is necessary to consider the requirements of the Community Infrastructure Regulations 2010. This would extend to include the financial contribution towards off-site highway works and bus service provisions, the requirement to provide Amenity Greenspace and an on -site LEAP as well as the associated financial contributions. In this respect, it is considered that the requirements of the CIL Regs are satisfied for the following reasons.
- 4.11 Firstly, the requirements of the S106 are 'Necessary to make the development acceptable'. Without the provision, the scheme would fail to adequately cater for the needs of the development in terms of public open space provision or secure the necessary off-site highway works in terms of public transport provision and footpath enhancements.
- 4.12 Secondly, the requirements are 'Directly related to the development' because the need for enhancements and new provision only arises as a direct consequence of the proposed development.
- 4.13 Thirdly they are 'Fairly and reasonably related in scale and kind' because the costs associated with the provision of play equipment and its subsequent management and maintenance are calculated based on the number of new dwellings within the proposed development. Similarly, the £25,000 financial contribution towards off-site highway works and bus service enhancements will fund small scale infrastructure enhancements having regard to the overall size of the scheme and the number of dwellings proposed.

5.0 Conclusion and Recommendation

- 6.1 a) That Members agree to the revised Heads of Terms for the S106.
- b) The application is approved subject to conditions specified within the

original committee report dated 3rd February 2009 and subject to the prior signing of a S106 Agreement to cover the following matters:

- Secure provision of 15% Affordable Housing / not less than 24 units for Intermediate housing. Intermediate housing to include provision of 'Shared Ownership' and 'Rent to Home Buy' but with an option for 'Discount for Sale' where agreed if the units cannot be sold to a registered social landlord.
 - Development not to commence until such time as Fine Art has relocated to alternative premises with the borough of Cheshire East.
 - Requires the applicants to submit a Travel Plan and implement the approved Travel Plan in accordance with the agreed triggers and mechanisms.
 - Secure a financial contribution of £25,000 to fund off-site highway improvements and works to upgrade bus services and bus stops as required by the Travel Plan.
 - To cover the range of scenarios in respect of Children and Young Persons Provision identified in summary within this update report.
- 6.2 A resolution from Members is also sought that if the S106 Agreement is not signed within three-months of this decision by the Southern Planning Committee, that delegated power is given to the Head of Planning and Housing to refuse the application for the reasons specified within the update report of the 27th April 2011.