

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of meeting: 30th January 2012

Report of: Steve Irvine – Development Management and Building Control Manager

Title: Proposed alteration to the minutes for application 12/3564N

Site: Land off Vicarage Road, Haslington, CW1 5RR

1.0 Purpose of Report

1.1 This report has been presented to Strategic Planning Board because planning application 12/3564N was discussed by the Board on 14th November 2012. The minutes from this date are as per the officer recommendation and are as follows:

‘That for the reasons set out in the report, the application be APPROVED, subject to the completion of a Section 106 to secure the following:

1. *A scheme for the provision of 30% affordable housing – 65% to be provided as social/affordable rent with 35% intermediate tenure. The scheme shall include:*

- the numbers, type, tenure and location of the affordable housing provision*
- the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing*
- the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved*
- the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and*
- the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.*

2. *The provision of Public Open Space to be maintained by a private management company in perpetuity.*

3. *A commuted payment of £75,924 towards primary school education*

4. *A commuted payment of £35,000 towards the upgrade of Haslington Skate Park’*

- 1.2 The minutes from the meeting of 5th December 2012 alter the recorded minutes of the previous meeting as follows:

'That the minutes of the meeting held on 14 November 2012 be approved as a correct record and signed by the Chairman subject to the declaration made by Councillor J Hammond in relation to application number 12/1157N under Minute No.86 Declarations of Interest/Pre determination being amended to include reference to the fact that whilst he had attended briefings with the applicant, their agents, Officers and other Ward Members regarding the overall Basford East/ Basford West development sites he had given no opinion whatsoever on the merits of this specific application.

In addition there was a further amendment to the fourth bullet point of the Section 106 Agreement under Minute No.90 application number 12/3564N to include the following wording:-

'The Section 106 Agreement a footpath be installed along Maw Lane from its junction with Clay Lane and the Skate Park Facility'.

2.0 Decision Required

- 2.1 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.
- 2.2 The issue in question is the inclusion of the requirement for the S106 Agreement to include the requirement for a footpath to be installed along Maw Lane from its junction with Clay Lane and the Skate Park Facility.

3.0 Background

- 3.1 The application site is located to the east of Vicarage Road within the open countryside as defined by the Borough of Crewe and Nantwich Replacement Local Plan. The site is undeveloped land which is bound by native hedgerows and trees and appears to be used for the keeping of horses. To the south and east of the site are residential properties of varying sizes and styles which front onto Crewe Road, Cartwright Road and Vicarage Road. The land level drops to the north towards Fowle Brook which runs along the northern boundary of the site. A small portion of the site along the northern boundary as defined as an area of flood risk.

4 Proposed Development

- 4.1 12/3564N is an outline planning application for 44 dwellings (25 dwellings per hectare). Access is to be determined at this stage with all other matters reserved.

- 4.2 The access point to serve the site would be taken off Vicarage Road. The site would include the provision of 30% affordable housing, and 1,800sq.m of public open space. The indicative layout plan shows that the majority of the POS would be located to the north of the site.

5 Officer Comment

- 5.1 In order to comply with the Community Infrastructure Levy (CIL) Regulations 2010 it is now necessary for planning applications with legal agreements to consider the issue of whether the requirements within the S106 satisfy the following:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- 5.2 In this case the requirement for the S106 Agreement to include a footpath to be installed along Maw Lane from its junction with Clay Lane and the Skate Park Facility does not meet these tests.
- 5.3 Firstly the proposed contribution of £35,000 would be towards the upgrade of the existing skate park facility. There is an existing skate park in this location which appears to be well used. The proposed contribution would not result in the creation of a new facility just the upgrade of an existing facility. As there is no net increase in facilities it is not considered to be necessary or reasonable for the additional S106 requirement.
- 5.4 The main reason why the footpath installation would not meet the requirements of the CIL Regulations is that it would involve the use of third party land. This is unreasonable as there is no guarantee that the land owner would enter into the S106 Agreement or want the footpath to be delivered. This would in effect prevent the development coming forwards to assist with the Councils 5 year housing land supply. It should also be noted that the requirement of the S106 for the developer to install the footpath would also create a 'ransom strip' that could prevent the site being brought forward viably or within a reasonable time period.
- 5.5 In this case, the development is relatively small and provides contributions including a full provision of affordable housing, public open space provision and financial contributions towards primary school education and the skate park. Further requirements, such as the provision of a footpath on third party land, are likely to affect the viability of the scheme.
- 5.6 There is also support for this view within the NPPF it states that where S106 safeguards are necessary to make a development acceptable in planning terms, it should be *'clearly justified through discussions with the applicant, and the options for keeping such costs to a minimum fully explored, so that development is not inhibited unnecessarily'*.

5.7 The officer recommendation is therefore that the S106 Heads of Terms are altered to delete the requirement for the *'The Section 106 Agreement a footpath be installed along Maw Lane from its junction with Clay Lane and the Skate Park Facility'*.

5.8 However it should also be noted that there is a second alternative option for Members to consider. That would be the removal of the requirement for the £35,000 skate park improvement and the provision of a LEAP on the application site. This would also meet the requirements of Policy RT.3 (Provision of Recreational Open Space and Children's Playspace in New Housing Developments) and the heads of terms would need to be altered to ensure that the LEAP is secured and that it is maintained by a private management company as per the Public Open Space.

6 Conclusion

6.1 On the basis of the above, the S106 requirement for a *'footpath be installed along Maw Lane from its junction with Clay Lane and the Skate Park Facility'* should be removed from the Heads of Terms.

7 Recommendation

7.1 That the Board resolve to amend the S106 Heads of Terms to the following:

1. *A scheme for the provision of 30% affordable housing – 65% to be provided as social/affordable rent with 35% intermediate tenure. The scheme shall include:*

- *the numbers, type, tenure and location of the affordable housing provision*
- *the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing*
- *the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved*
- *the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and*
- *the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.*

2. *The provision of Public Open Space to be maintained by a private management company in perpetuity.*

3. *A commuted payment of £75,924 towards primary school education*

4. *A commuted payment of £35,000 towards the upgrade of Haslington Skate Park'*

8 Financial Implications

8.1 There are no financial implications.

9 Legal Implications

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

10 Risk Assessment

- 10.1 There are no risks associated with this decision.

11 Reasons for Recommendation

- 11.1 To allow the variation of the S106 Heads of Terms so that they comply with the CIL Regulations, and to enable the development of this site to be brought forward to assist in delivering the 5 year housing land supply for the Borough.

For further information:

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Background Documents:

- *Application 12/3564N*