

CHESHIRE EAST COUNCIL

SOUTHERN PLANNING COMMITTEE REPORT

Date:	22 nd April 2015
Report of:	Daniel Evans – Principal Planning Officer
Title:	Request to vary the committee resolution for application 14/5837N
Site:	Land to the North of Cheerbrook Road, Willaston

1.0 Purpose of Report

- 1.1 Southern Planning Committee resolved to approve planning application 14/5837N on 25th February 2015 subject to conditions and the following:

That, for the reasons set out in the report and the update, the application be APPROVED subject to completion of Section 106 Deed of Variation securing the same obligations as 13/3762N:

- 1. A commuted payment of £9,000 towards habitat creation within the Meres and Mosses Natural Improvement Area to the south of Nantwich*
- 2. A commuted payment of £40,999 towards secondary school education*
- 3. A commuted payment of £20,000 towards cycleways, footways, street lighting and bus shelters*
- 4. A commuted payment of £18,000 should be made towards providing a skate park facility on the Parish Council owned open space on Wybunbury Road, Willaston*
- 5. 30% affordable housing – 65% to be provided as social rent/affordable rent (4 units) with 35% intermediate tenure (2 units).*

- 1.2 However it has been identified that the original agreement does not contain a mortgagee in possession (MIP) liability exclusion clause and would not be acceptable to a Registered Provider. A RP would need to ensure that none of the social housing obligations pass to lenders if they were to ever exercise a power of sale by possession.

2.0 Decision Required

- 2.1 To agree to add the mortgagee in possession (MIP) liability exclusion clause.

3.0 Background

- 3.1 The site of the proposed development extends to 0.98 ha and is an L shaped site located to the northern side of Cheerbrook Road, Willaston. The site is within open countryside and Green Gap. To the south and east of the site is residential development (fronting Cheerbrook Road and the Fields). To the north and west is agricultural land.
- 3.2 The land is currently in agricultural use and there are a number of trees and hedgerow to the boundaries of the site.

4 Proposed Development

- 4.1 14/5837N gave approval for the erection of 21 two-storey dwellings. The site would be accessed via a single access point which would be located between 32 and 26a Cheerbrook Road.

5 Officer Comment

- 5.1 As part of the negotiations for the deed of variation it has been identified that the agreement does not contain a mortgagee in possession (MIP) liability exclusion clause and this would not be acceptable for a RP. An RP would need to ensure that none of the social housing obligations pass to lenders if they were to ever exercise a power of sale by possession.
- 5.2 A mortgagee in possession (MIP) clause is a technical part of a s106 agreement which protects the bank or building society that provides a mortgage for an affordable home. If the occupant of the dwelling defaults on payment, and the bank or building society has to repossess the home, they will need to be able to get back their loan. To recoup the money which they have lent, they must be able to sell the home without complying with the same restrictions that apply to the Registered Provider. A 'Mortgagee in Possession' clause allows them to do that. All modern s106 agreements have this included, but some older s106 agreements do not, and so it is possible that a future lender will ask to have an older s106 changed to include this.

6 Conclusion

- 6.1 On the basis of the above, it is considered that the amendment to the resolution is acceptable and to deliver the affordable housing on this site.

7 Recommendation

- 7.1 To add the mortgagee in possession (MIP) liability exclusion clause to the deed of variation.

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 For the purpose of delivering affordable housing on this site to assist the Councils 5 year housing land supply.

For further information:

Portfolio Holder: Councillor Don Stockton
Officer: Daniel Evans – Principal Planning Officer
Tel No: 01270 686751
Email: daniel.evans@cheshireeast.gov.uk

Background Documents:

- *Application 14/5837N*