

CHESHIRE EAST COUNCIL

SOUTHERN PLANNING COMMITTEE REPORT

Date:	22 nd April 2015
Report of:	Daniel Evans – Principal Planning Officer
Title:	Request to vary the Unilateral Undertaking dated 17 th September 2012 following the allowed appeal as part of application 11/4549N
Site:	Land on Rope Lane, Shavington

1.0 Purpose of Report

- 1.1 Planning application 11/4549N was refused by the Strategic Planning Board on 21st March 2012. An appeal was lodged and outline planning permission was allowed on 28th November 2012. At the Inquiry the appellant submitted a signed Unilateral Undertaking (UU) to secure education and highways contributions, affordable housing and the provision and subsequent maintenance of the proposed amenity area. A deed of variation was signed on 18th November 2014 to remove the low cost element to the affordable housing and this was agreed by the Strategic Planning Board.
- 1.2 A Reserved Matters application 13/1021N was subject to an appeal for non-determination and the appeal was allowed on 22nd January 2014. The development is now under construction.
- 1.3 As part of the negotiations with Aspire Housing (a registered provider) it has been identified that the agreement does not contain a mortgagee in possession (MIP) liability exclusion clause and it is not acceptable for Aspire's lender. Aspire 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 comprises 3.679ha of gently undulating undeveloped agricultural land located on the north western edge of Shavington. The site is defined by Vine Tree Avenue and Northfield Place to the south

and Rope Lane to the west. Open Countryside lies to the north and east and a public footpath traverses the site close to its southern boundary. It is bounded by existing hedgerows, some of which contain trees. In addition, there is one hedge which bisects the site which also contains a small number of trees.

- 3.2 Existing residential development lies to the south and west of the site. The wider site context includes the A500, beyond the field to the north, with further agricultural land on the opposite side. Further west lies Shavington high school and leisure centre and Rope Green Medical Centre.

4 Proposed Development

- 4.1 11/4549N is an outline application for 80 dwellings and a single point of access onto Rope Lane. Reserved Matters approval was granted at appeal under application 13/1021N.

5 Officer Comment

- 5.1 As part of the negotiations with Aspire Housing it has been identified that the agreement does not contain a mortgagee in possession (MIP) liability exclusion clause and it is not acceptable for Aspire's lender. Aspire 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 UU 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.

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:

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Background Documents:

- *Application 13/1021N*
- *Application 11/4549N*