

CHESHIRE EAST COUNCIL

SOUTHERN PLANNING COMMITTEE REPORT

Date: 3rd August 2016

Report of: Adrian Crowther – Major Applications Team Leader

Title: Update following the resolution to approve application 15/3979N – Outline Planning Application For The Demolition Of Existing House And The Construction Of An Access Road With Residential Development On Existing Garden Area And Paddock Land.

Site: Heathcote, Sandy Lane, Aston, CW5 8DG

1.0 Purpose of Report

- 1.1 Planning application 15/3979N was referred to Southern Planning Committee on 27th April 2016. This report is to consider a recent Court of Appeal has ruled that a 2014 ministerial statement introducing the 'vacant building credit' and exempting small sites from affordable housing contributions was not unlawful.
- 1.2 The minutes from the meeting are as follows:

RESOLVED

(a) That, for the reasons set out in the report, the application be APPROVED subject to the signing of a Section 106 Agreement with the following Heads of Terms:

1. A scheme for the provision of 30% affordable housing – split 2 rented and 1 for intermediate sale based on 10 units. The scheme shall include:

- The numbers, type, tenure and location on the site 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. An education contribution of £32,685 towards secondary education in Nantwich.

and the following conditions:

1. Commencement of development (3 years) or 2 from the date of approval of reserved matters.
2. Reserved matters to be approved.
3. Approved plans (to include the revised access but NOT the illustrative layout)
4. Tree retention/protection in accordance with agreed scheme
5. Further ecological surveys to be submitted as part of the reserved matters application
6. Surface water drainage
7. Separate systems for drainage
8. Contaminated land verification report
9. Construction management plan including dust control
10. Noise mitigation
11. Reserved matters to comprise no more than 8 dwellings

(b) That, in order to give proper effect to the Committee's intentions and

without changing the substance of the decision, authority be delegated to the Head of Planning (Regulation) in consultation with the Chairman (or in her absence, the Vice Chairman) of the Southern Planning Committee, to correct any technical slip or omission in the wording of the resolution, between approval of the minutes and issue of the decision notice.

(c) That, should this application be the subject of an appeal, the following

Heads of Terms be secured as part of any S106 Agreement:

1. A scheme for the provision of 30% affordable housing – split 2 rented

and 1 for intermediate sale based on 10 units. The scheme shall include:

- The numbers, type, tenure and location on the site 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. An education contribution of £32,685 towards secondary education in Nantwich.

2.0 Decision Required

- 2.1 Since the resolution above the Court of Appeal has ruled that a 2014 ministerial statement introducing the 'vacant building credit' and exempting small sites from affordable housing contributions was not unlawful (*Secretary of State for Communities and Local Government v*

West Berkshire District Council and Another [2016] EWCA Civ 441 (11 May 2016)).

3.0 Background

- 3.1 The application site is a garden and paddock area in Aston near Wrenbury. The site lies within the open countryside.
- 3.2 An application under 15/3979N was granted planning permission on 27th April 2016 subject to the signing of a Section 106 Agreement.
- 3.3 Dwellings lie to either side and to the north east, and there is a large mill complex to the north. The site does in part abut some open land.

4 Proposed Development

The proposal seeks outline planning application for the demolition of existing house and the construction of an access road with residential development on existing garden area and paddock land.

5. Officer Comment

- 5.1 This committee resolution includes the requirement that the developer enters into a S106 Agreement to secure a contribution for off-site affordable housing provision.
- 5.2 Following the Court of Appeal judgement referred to above the Planning Practice Guidance has been amended and this states that the in the following circumstances contributions for affordable housing and tariff style planning obligations should not be sought from small scale and self-build development;
 - *Contributions should not be sought from developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1000sqm*
 - *in designated rural areas, local planning authorities may choose to apply a lower threshold of 5-units or less. No affordable housing or tariff-style contributions should then be sought from these developments. In addition, in a rural area where the lower 5-unit or less threshold is applied, affordable housing and tariff style contributions should be sought from developments of between 6 and 10-units in the form of cash payments which are commuted until after completion of units within the development.*
- 5.3 In this case it is clear that the development is of 10 units or less and a condition could be attached to ensure that the reserved matters is limited to a maximum combined gross floorspace of no more than 1000sqm. On this basis the Council is unable to require affordable provision on this site.

6 Conclusion

- 6.1 On the basis of the above, the Council is unable to require the developer to enter into a S106 Agreement to secure affordable housing on this development and this should be removed from the committee resolution. An additional condition will be required to state that the reserved matters application should have a maximum combined gross floorspace of no more than 1000sqm.

7 Recommendation

- 7.1 The Heads of Terms for the S106 Agreement be amended to only secure an educational contribution and an additional condition is attached to the resolution.

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 reflect the recent Court of Appeal judgement.

For further information:

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Background Documents:

- *Application 15/3979N*