

# CHESHIRE EAST COUNCIL

## SOUTHERN PLANNING COMMITTEE REPORT

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**Date:** 21<sup>st</sup> December 2016

**Report of:** David Malcolm - Head of Planning (Regulation)

**Title:** Variation of Condition 27 on application 13/1305N

**Site:** Land to the west of Close Lane, Alsager

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### 1.0 Purpose of Report

- 1.1 To agree Heads of Terms for the legal agreement at the forthcoming appeal.

### 2.0 Decision Required

- 1.2 To agree Heads of Terms for the legal agreement at the forthcoming appeal at the Stewart Milne housing development at Close Lane Alsager.

### 3.0 Background

- 3.1 On 3<sup>rd</sup> August 2016 Southern Planning Committee resolved to refuse application 15/5654N against the recommendation for the following reason;

*'The proposal will, by virtue of the loss of dwellings for the over 55's, from the 56 units within a mixed residential scheme granted permission under 13/1305n to 6 units would comprise a unsustainable form of development without reasonable justification to the change in the housing mix, contrary to policy SC4 of the Cheshire East Local Plan Strategy Proposed changes (consultation draft) March 2016 and policies contained within the NPPF'*

- 3.2 As part of that report, reference was made to the proposed heads of terms for the legal agreement which stated:

*Should the application be subject to an appeal, the following Heads of Terms should be secured as part of any S106 Agreement:*

- 30% of the dwellings to be affordable.

- 6 x bungalows for over 55's 4 x 1 bed; 2 x 2 bed (65:35 split affordable rent: intermediate)
- Commuted sum of £ 32,539 in lieu of primary education
- Commuted sum of £ 49,028 in lieu of secondary education

3.3 The above Heads of Terms were not carried over onto the committee resolution/minutes to refuse the application and the S106 for this appeal needs to be completed by 7<sup>th</sup> February 2017.

## **5 Officer Comment**

5.1 In order to comply with the Community Infrastructure Regulations 2010 it is necessary for planning applications with planning obligations 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 As explained within the main report, condition 27 attached to 13/1305N requires 56 units to be provided for the over 55's. This would allow changes in house types and plans submitted informally during the consideration of the application indicated that the applicant intending to introduce 6 no bungalows for the over 55's and 20 family sized dwellings was submitted. This would have a knock on effect for education locally.

5.3 This is directly related to the development and is fair and reasonable. As the appeal scheme is capable of being a stand alone planning permission, it is also necessary to append the appeal proposal to the original S106 attached to 13/1305N by way of a Deed of Variation. The resolution therefore needs to be amended to refer to the fact that the S106 for the appeal needs to be a Deed of Variation to the S106 attached to 13/1305N

5.4 The development would result in increased demand for school places in the area and there is very limited spare capacity. In order to increase capacity of the both primary and secondary schools which would support the proposed development, a contribution towards primary and secondary education is required. This is considered to be necessary and fair and reasonable in relation to the development.

5.5 On this basis the S106 recommendation is compliant with the CIL Regulations 2010.

## **6 Conclusion**

- 6.1 On the basis of the above, it is considered that the Southern Planning Committee should accept the Head of Terms on the basis that they are comply with the CIL Regulations.

## **7 Recommendation**

- 7.1 To agree to the Heads of Terms for the legal agreement at the forthcoming appeal at Land to the west of Close Lane, Alsager as follows;

*RESOLVE to enter into a Deed of Variation of the S106 attached to application 13/1305N to secure the following:*

- 30% of the dwellings to be affordable.
- 6 x bungalows for over 55's 4 x 1 bed; 2 x 2 bed (65:35 split affordable rent: intermediate)
- Commuted sum of £32,539 in lieu of primary education
- Commuted sum of £49,028 in lieu of secondary education

## **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**

- 1.3 To agree Heads of Terms for the legal agreement at the forthcoming appeal at Land at Close Lane Alsager.

### ***For further information:***

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### ***Background Documents:***

- Application 15/5654N