

Planning Committee: 27 April 2021

Urgent Item

Application No: W/17/2371 & W/20/0502

Town/Parish Council: Cubbington

Case Officer: Dan Charles

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Land off Rugby Road and Coventry Road, Cubbington, CV32 7JN

W/17/2371: Development of 120 dwellings (including 48 affordable units), formation of single access point from Coventry Road and single access point from Rugby Road, highway works, landscaping, public open space and ancillary works

W/20/0502: Provision of 13 additional dwellings on existing application site (approved for 120 under W/17/2371) through removal of larger units and provision of additional smaller dwellings within the existing site layout.

FOR: Bellway Homes (South Midlands) Ltd

Proposed Deed of Variation to the signed Section 106 Agreement

INTRODUCTION

This report relates to planning permission W/17/2371 which was previously presented to Members of the Planning Committee on September 11th 2018. The recommendation to committee was to grant planning permission, subject to the various conditions listed in the report as well as a Section 106 Agreement to secure a range of obligations from the Owner. The Section 106 was thereafter signed and the decision issued on 29 March 2019.

The application site is now well advanced and the applicants are in the process of negotiating for the provision of the affordable housing with a registered social landlord.

In addition to the above, planning permission was further granted for an additional 13 units through the sub-division of some of the larger 4 and 5 bedroom properties into 2 and 3 bed units.

This application was recommended for grant subject to the signing of a Section 106 Agreement on 23 July 2020 and this is currently pending the outcome of this Deed of Variation.

During the negotiations into the transfer of the affordable housing to a registered provider, it has become apparent that the standard Mortgagee in Possession (MIP) Clause used within the standard Section 106 template does not conform with the

requirements of affordable housing operators. This is causing difficulty obtaining an agreement.

The revision proposed also seeks to provide the additional affordable housing units approved under W/20/0502 across the wider site approved under W/17/2371.

The requirement under this application sought an additional 5 affordable housing units to be provided. In order to facilitate this, it is proposed to amalgamate the units across the site. 2 units will remain within the application red line area associated with W/20/0502 with the additional 3 units being dispersed into the wider site area as approved by W/17/2371.

The Deed of Variation to W/17/2371 will ensure that these units are secured as affordable housing units so that the relevant number is achieved across the site.

"This report is being brought forward as an urgent item and cannot wait until the next meeting of the Planning Committee because it is time critical in respect of finalising the Affordable Housing handover. It is possible that any delay could impact upon that.

RELEVANT POLICIES

- National Planning Policy Framework
- H2 – Affordable Housing

ASSESSMENT

Mortgagee in Possession Clause

To overcome the issue set out above, the applicants have been in discussion with the Housing Services Team of the District Council to agree revised wording to satisfy the requirements of the lenders for the affordable housing. This change is required in order for the developer to be able to sell on the affordable homes to a registered social landlord.

The companies that finance housing associations now require different (and varying) terms for the finance – The issue is the Mortgagee in Possession clauses which set out what would happen if a housing association went bust and the finance company took possession. These clauses set out what they would need to do to discharge their duty under this agreement.

The key changes are;

- Mortgagee will serve notice on the Council of its intention to dispose of the AH units
- Mortgagee will then use its "reasonable endeavours" to the reasonable satisfaction of the Council's Head of Housing Services over a period of 12 weeks to dispose to a RP or the Council for a sum not less than the amount due including interest, costs and expenses. Progress reports and further detail of attempts to dispose to RP's should be provided to the Council

- If the Mortgagee is unable to dispose of the AH units within 12 weeks, then they can be disposed of freely on the open market

Moving forwards, there are now plans to amend the policy in this area that will allow consistency in the future as the new standard for MIP Clauses. The current position is that the Council is having to negotiate these matters with individual developers and housing associations on a case by case basis until the Policy/SPD is updated to be in line with the new requirements.

In the meantime, the Council are having to balance risks of impeding the delivery of affordable housing on key strategic sites and this is considered an urgent and pressing requirement. It is for this reason that Housing Officers are satisfied with the amendments proposed by the affordable housing provider in this case and request that the Deed of Variation be agreed.

Affordable Housing Unit Distribution

As set out in the section above, the proposal to increase the number of units on site by 13 also required an increase in overall affordable housing units by 5.

In order to create a balanced and integrated spread of affordable units, it is proposed to incorporate 3 units into the wider site approved under reference W/17/2371. Therefore, this requires the Deed of Variation to secure these units as affordable housing to ensure that the appropriate 40% units is secured across the whole site.

The distribution of the units will require an updated plan to be submitted so that officers can ensure the units are appropriately distributed.

CONCLUSION

The agreement of a standard clause is not affected by the CIL regulations and is purely the mechanism to secure appropriate delivery of affordable housing by a registered social landlord.

The update to the affordable housing numbers in the existing Section 106 Agreement will ensure that the appropriate 40% affordable housing is secured across the site.

RECOMMENDATION

That Committee approve the revisions of the MIP Clause and affordable housing numbers through a Deed of Variation to the Section 106 Agreement.