

Planning Committee: 2 February 2021

Item Number: 5

Application No: W/17/02371

Town/Parish Council: Cubbington

Case Officer: Dan Charles

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

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.

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 Provider of Social Housing ("the Registered Provider").

During these negotiations, it has become apparent that the Council's standard Mortgagee in Possession (MIP) Clause used within the Council's Section 106 precedent and the Council's SPD relating to affordable housing is likely to cause the Registered Provider difficulty when seeking to secure funding for future affordable housing. Such funding would usually be secured against the Registered Provider's current stock of affordable housing including the affordable housing units to be transferred to the Registered Provider in this matter.

RELEVANT POLICIES

- National Planning Policy Framework
- H2 – Affordable Housing

ASSESSMENT

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 to enable the developer to sell on the affordable homes to a Registered Provider.

The companies which provide loans to Registered Providers to fund affordable housing ("the Mortgagee") now require less restrictive mortgagee in possession clauses relating to the affordable housing before they will consider providing finance for future affordable housing schemes. The Mortgagee in Possession clauses set out what would happen if a Registered Provider became insolvent and the Mortgagee took possession. The message that the Council has received from several Registered Providers is that Mortgagees will not provide loans to fund future affordable housing schemes where the loans are to be secured against existing affordable housing which is subject to restrictive mortgagee in possession clauses. Further that the Council's current standard mortgagee in possession clauses are considered to be too restrictive. The Council has also taken independent advice from an expert in the field of affordable housing who has echoed this message..

The risk is that if Registered Providers are unable to secure loans against its existing stock of affordable housing which would include the affordable housing units to be transferred under the agreement in this matter that this could significantly adversely effect the future provision of affordable housing in the District.

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.

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.

RECOMMENDATION

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