

Planning Committee: 28 March 2017

Item Number: Urgent Item

Application No: W 14 / 1340

Town/Parish Council: Kenilworth

Case Officer: Sandip Sahota

01926 456554 sandip.sahota@warwickdc.gov.uk

Land at Common Lane, Kenilworth CV8

Variation of Section 106 Agreement for planning permission ref: W/14/1340 -
Erection of up to 93 dwellings together with open space, drainage infrastructure
and access from Common Lane (outline application including details of access)
FOR Bloor Homes Ltd and Bluemark Projects Ltd

INTRODUCTION

This report relates to the above outline planning permission which was granted by Planning Committee in December 2014. That permission was subject to a Section 106 Agreement which imposed a range of obligations on the developer. The applicant has requested that the provisions of the Section 106 agreement are varied.

RECOMMENDATION

Planning Committee is recommended to delegate authority to the Head of Development Services to resolve to vary the Section 106 agreement in accordance with the content of the table at the end of the report indicating which infrastructure costs may be reduced.

DETAILS OF THE VARIATION

The applicant has requested that the level of planning contributions set out in the Section 106 Agreement are reduced from £1,782,735 to £1,159,227 in order to ensure the scheme remains viable, in light of increases in infrastructure costs that the applicant now anticipates. On 31st January 2017, a report to planning committee explained the reason for the reduction and committee resolved to agree to this. The relevant section of the report regarding viability is repeated for Members information.

First, it should be noted that the applicant is not seeking to reduce the level of affordable housing from the policy compliant 40% provision, although the proposed housing mix and tenure has been amended and approved by committee in January.

PLANNING HISTORY

W/16/1724 - Application for Variation of Condition 7 to allow a 'fabric first' approach under planning application W/14/1340 - Granted 22/12/2016.

W/14/1340 - Application for outline planning permission with all matters reserved except for access, for erection of up to 93 dwellings together with open space, drainage infrastructure and access from Common Lane - Granted: 23/12/2014

W/14/0618 - Application for outline planning permission with all matters reserved except for access, for erection of up to 93 dwellings together with open space, drainage infrastructure and access from Common Lane - Refused: 22/08/2014.

A subsequent appeal (ref: APP/T3725/A/14/2224356) was received in October 2014 in relation to the requirements of the s.106 Agreement and viability. This appeal is currently held in abeyance pending the outcome of the current application and negotiations with the Local Authority on the s.106 agreement, which is the subject of a separate report to Planning Committee.

ASSESSMENT

The application is accompanied by a Viability Report. Due to the nature of the commercially sensitive material contained in the report it has been treated as confidential and for internal circulation only. However, in order to assess its validity, it has been referred to the Council's independent consultant for assessment. The Council has received the independent assessment report which has been treated as confidential for the same reasons.

This assessment focuses on the viability issues relating to the outline planning permission and how the Section 106 Agreement is to be varied.

Bloor Homes became involved in the scheme in early 2012. The promoter of the site had previously employed a consultant to assess the likely design and cost of the proposed bridge. Bloor Homes subsequently employed their own consultant to review the costs. Both consultants assessed the proposed bridge from a design and cost perspective and both concluded that based on the traffic flows on Common Lane and the likely impact of the additional units that the design was acceptable and both concluded a similar cost and Bloor Homes proceeded to enter into a conditional contract to acquire the land. The purchase price was based on an appraisal which factored in this cost and reflected a developer profit margin on gross development value which was at the lower end of what is generally considered a reasonable return.

Since that time the design of the bridge has gone through a substantial amount of refinement and Bloor Homes have arrived at a design which has recently been agreed with the County Council Highway Authority. The final design has seen the bridge / access way widened by approximately 4 metres which has both necessitated the requirement for the purchase of third party land and also a substantial uplift in build costs as more of the proposed road needs to be structurally retained. In total, the additional road and third party land access costs have significantly increased the overall cost of the road.

Part of the increase in cost for the road can be attributed to the general increase in build costs between 2012 and now. The BCIS index reflects an increase in build costs of 20%.

In addition to the road, build and infrastructure cost increases, the package required through the s.106 agreement is considerably higher than the amount which was anticipated at inception.

While costs have increased, so have sales values. However, due to the housing mix required by Condition 22 of the outline planning permission which seeks to development of more smaller units and increase in costs, the scheme was rendered unviable.

A reduction in the s.106 contributions, taken together with an amended housing mix allows the delivery of a viable scheme on the site. The applicant has stated that the profit margin produced by the development would still be well below a level which would normally be deemed to be viable but given the considerable time, resources and money which they have already expended on the project, the developer is prepared to lower their margin requirement in this particular case.

Jones Lang LaSalle (JLL), on behalf of Warwick District Council, has undertaken a critical review of the viability information submitted with the application and the further information they have subsequently requested. They have focussed on the financial assessment of development viability to examine the viability of the scheme, highlighting areas where they believe that further interrogation or information is required or where assumptions or the approach should be revised. They have also undertaken a sensitivity test of the sales values that the applicant has applied, to assess the impact on the viability of the scheme if higher sales values can be achieved.

After incorporating JLL's revised assumptions in the development viability appraisal analysis, a land value range has been deduced, based upon the level of Section 106 contributions that are assumed to be provided and whether the policy compliant housing mix is assumed or the applicant's proposed revised mix. In all scenarios, the Residual Land Value does not exceed the revised Site Value Benchmark that JLL have proposed. This remains the case after sensitivity testing the results to factor in possible higher sales values.

Reduction in contribution

Whilst it has been accepted in principle by the Planning Committee (at its meeting on 31st January 2017) that the overall burden of the Section 106 obligations on this development should be reduced, it is necessary to determine which contributions can be reduced, and by how much.

Planning obligations may be varied with the agreement of all parties against whom they are enforceable. The test to be applied when deciding whether to modify a planning obligation is whether the purpose served by the obligation can be served equally as well with the modified obligation. In this respect, the parties who are due to receive contributions under the Section 106 Agreement have all been consulted in relation to the impact of the proposed modifications.

South Warwickshire Foundation Trust has stated that the full contribution is still required and it is considered that the Health contribution should not be modified. Similarly, it has been determined that full contributions are required for infrastructure relating to Highways and the Police Service.

However, the applicant has advised that they that the Public Open Space can now be implemented via a management company set up by the Developer, and can be provided equally well without a financial contribution. Similarly, given the nature of the obligations relating to this site, it is considered that a monitoring fee of £4,000 is sufficient to effectively monitor compliance with the Section 106 Agreement. The reduction of the Parks and Gardens contribution has been agreed and the Biodiversity off-setting sum can be reduced through some on-site provision. The applicant is liaising with the County Council on this.

Further, the County Council has indicated that may be able to consider a reduction in the secondary school and sixth form provision*. Unlike primary school provision, there are no limitations on classroom sizes in relation to the provision of secondary and sixth form education, which provides some flexibility. However, the County Council have also said that the scope for increasing class sizes without causing a material detrimental impact to the quality of education is extremely limited and, if this course is taken in relation to this application, it is most unlikely that a similar approach could be adopted in relation to any other application in the locality. In view of this, the County Council have also asked that a review clause be included which would allow contributions to be raised again if sale proceeds exceed expectations. The County Council have consequently indicated that they will give consideration to a reduction in the contribution towards secondary and sixth form education in accordance with the sums shown in the table below. Whilst this is to be confirmed by the County Council on 30th March 2017, due to contractual arrangements due to expire in the next few weeks and the Planning Inspectorate requiring a decision on whether to progress the appeal, Members are requested to agree the table below. If the County Council decide not to reduce the education contribution to bridge the gap, then the applicant will need to make a commercial decision whether to go ahead with the scheme.

In light of the consultation responses from the relevant infrastructure providers, it is the view of officers that the Section 106 Agreement can be modified in accordance with the table below, whilst continuing to achieve the planning purposes for which it was required.

Obligation	Signed S106	Proposed S106 Sum	Reduction
Education Contribution	£618,033	£356,154 * see above commentary	£261,879*
Off-Site Highways	£336,000	£336,000	£0
Indoor Sports Facilities Contribution	£72,968	£72,968	£0
Library Contribution	£2,242	£2,242	£0
Monitoring Contribution	£30,000	£4,000	£26,000
NHS Contribution	£100,921	£100,921	£0
Offsite Parks and Gardens Contribution	£157,258	£78,629	£78,629
Open Space and Play Area Maintenance Sum	£257,000	£0 (Maintenance to be passed to Management Company)	£257,000
Outdoor Sports Facilities Contribution	£5,275	£5,275	£0
Police Contribution	£34,587	£34,387	£0
Sustainability Travel Pack	£6,975	£0	£6,975
Biodiversity Offsetting	£74,539	£37,269	£37,269
TOTAL:			£623,508*

Summary/Conclusion

Officers and the applicant has explored numerous options to resolve the problems identified with this scheme over the last 2+ years and have arrived at the conclusion that if the level of contributions required is not reduced, it is highly likely that the site will not be able to move forward to provide housing.