
Report to: Planning Urgent Referrals Date of Meeting: 25th May 2016
Committee

Subject: DC/2016/00853
Land Adjacent To, Southport And Formby District Hospital, Town Lane Kew, Southport, PR8 6PN

Proposal: Application under Section 106BA of the Act to vary the requirement relating to the provision of affordable housing secured by a s.106 planning obligation attached to planning permission S/2012/0008.

Applicant: Keepmoat Homes (NW) Ltd Agent: Chris Kelly
Keepmoat Homes(NW) Ltd

Report of: Chief Planning Officer Wards Affected: Kew Ward

Is this a key decision? No Is it included in the Forward Plan? No

Exempt/Confidential No

Summary

This application seeks under Section 106BA of the Town and Country Planning Act, as amended, to vary the requirement relating to the provision of affordable housing secured by a s.106 planning obligation attached to planning permission S/2012/0008.

Having regard to the viability of affordable housing requirements only it is agreed that the Section 106 agreement be amended so as to require the provision of affordable rental units rather than social rent.

Recommendation

Approve

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity	✓		
3	Environmental Sustainability	✓		

4	Health and Well-Being	✓		
5	Children and Young People		✓	
6	Creating Safe Communities	✓		
7	Creating Inclusive Communities	✓		
8	Improving the Quality of Council Services and Strengthening Local Democracy		✓	

Reasons for the Recommendation

What will it cost and how will it be financed?

(A) Revenue Costs – N/A

(B) Capital Costs – N/A

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal	
Human Resources	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact on Service Delivery:

None.

What consultations have taken place on the proposals and when?

The Chief Finance Officer (FD 4170/16) and the Head of Regulation and Compliance (LD3453/16) have been consulted and have no comments on the report.

Are there any other options available for consideration?

No.

Implementation Date for the Decision

Immediately following the Committee meeting

Contact Officer: Steve Matthews

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(Option 4)

Case Officer: Mr Kevin Baker

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(Option 4)

Email planning.department@sefton.gov.uk

Background Papers

The full planning application including all supporting documents, plans and reports can be viewed at <http://pa.sefton.gov.uk/online-applications/>

The Site

A vacant site to the west of the District General Hospital, on Town Lane, Southport.

The site is bounded to the north by Fine Janes Brook with housing beyond; to the west by Newlands open space beyond Town Lane/Southbank Road and to the south, housing beyond Town Lane.

Proposal

Application under s.106BA of the Act to vary the requirement relating to the provision of affordable housing secured by a Section106 planning obligation attached to planning permission S/2012/0008.

History

Planning Applications

Ref: S/2012/0008, Proposal: Construction of 110 residential units comprising: 99 two / two-and-a-half storey houses for sale, 1 block containing 8 special care apartments, 2 wheelchair access bungalows and 1 five bedroom supported living house, including the layout of roadways, external works, landscaping, improvements to access and landscape of adjacent urban greenspace and the provision of additional hospital staff car parking, Decision: Approved with conditions, Decision Date: 07-MAR-13,

Ref: S/2013/0401, Proposal: Variation of Condition 14 (Protection of breeding birds) - to allow tree felling and shrub removal between March & August and to Remove Condition 33 (Sub-station details) - to remove this condition as the sub-station is no longer required - pursuant to planning application S/2012/0008 approved 07/03/2013, Decision: Approved with conditions, Decision Date: 31-MAY-13,

Ref: DOCS/2013/0022, Proposal: Approval of details reserved by Condition No's 2a, 5, 6, 7, 11a, 12a, 13a & 16a on planning approval S/2012/0008 granted 27/06/2012, Decision: Approved with conditions, Decision Date: 15-APR-13,

Consultations

Local Plan Team

What is being sought by Keepmoat protects the affordable housing numbers whilst seeking a modest shift from social rented provision to affordable rents. This is consistent with the emerging local plan policy HC1 Affordable and Special Needs Housing, which was considered and we understand was supported by the local plan Inspector, and which seeks to create an interchangeability between social rented and

affordable rented provision. This reflects in large part increasing preferences of housing association and the Homes and Communities Agency.

It must be hoped this change will increase the viability of the site sufficient to enable it to come forward for development.

Neighbour Representations

N/A

Legislation and Policy

Legislation

The following legislation is relevant to the consideration of this application:

- Town and Country Planning Act 1990, as amended
- The Growth and Infrastructure Act 2013

Policy

The following national and local policy is relevant to the consideration of this application:

National

National Planning Policy Framework (NPPF)

Local

Unitary Development Plan:

- Policy H2 – Requirement for Affordable, Special Needs and Key worker Housing
- Policy H5 - Land to the West of Southport and Formby District General Hospital – 4.2 ha of land identified as a mixed-use area (including housing and urban greenspace)

Emerging Local Plan (Proposed Modifications) March 2016

- Policy HC3 – Residential Development and Development in Primary Residential Areas
- Policy HC1 Affordable and Special Needs Housing

The above draft policies were subject to discussion at the recent Local Plan Examination and have been given weight in forming this recommendation.

Whilst changes may subsequently be made to a number of these policies, particularly where there are remaining objections, or where the inspector has indicated he needs to give them further consideration, those with no objection or modifications may be regarded to carry full weight.

Assessment of the Proposal

Planning History and Proposal

Planning permission was granted in March 2013 for the erection of 110 residential units comprising 99 two/two-and-a-half storey houses for sale, a block of 8 special care apartments, 2 wheelchair access bungalows and 1 five bedroom supported living house. The development also included the layout of roadways, external works, landscaping, improvements to access and landscape of adjacent urban greenspace and the provision of additional hospital staff car parking. The original permission was later amended in May 2013 following an application to amend a small number of conditions attached to the previous permission.

The Planning Consent was subject to a Section 106 Agreement that provided for 23 affordable dwellings (15%) of which (unless otherwise agreed in writing with the Council) 12 are to be social rented units and 11 supported housing units.

Whilst the affordable housing policy required 30% affordable housing by bedspaces to be provided, a viability assessment submitted by the applicants argued for 15% affordable housing based on poor ground conditions/ heavy contamination. This was appraised by the Council's then retained economic viability consultants, Three Dragons. They concluded that 15% affordable housing by bedspaces was deliverable and the correct policy requirement to apply to this site. Furthermore to specifically meet Social Services requirement for special needs housing on the site, it was agreed that a proportion of the affordable housing provision should be provided as special needs bedspaces.

Since securing planning permission in 2013, the development of the site has stalled. Work has progressed to discharge a number of planning conditions attached to the permission, however, in terms of physical works, nothing has commenced on site. It is understood that the supported housing units were to be transferred to Cosmopolitan Housing Association who have now ceased to trade. In addition, various site investigations have highlighted extremely challenging ground conditions, significantly worse than previously anticipated. Due to such circumstances, the abnormal costs associated with developing the site have become a greater cost than originally anticipated and the scheme was deemed financially unviable by the developer to continue.

As a result Keepmoat Homes Limited (KHL) have now made an application under the Section 106BA procedure seeking the removal of the affordable housing requirements entirely on viability grounds.

As part of the application KHL have considered the viability of the development assuming the consented scheme and then assuming the social rented units are converted to affordable rent. They have also considered the viability of the development on the site on the basis of a scheme of entirely market housing, however this assumes a change in the layout and house types resulting in a reduced number of dwellings at 105.

In relation to the consented scheme KHL note that charging social rent is economically unviable for any affordable housing provider and hence these units would effectively not be able to be valued in the current market or purchased by a housing association.

Section 106 and Section 106BA Procedure

Section 106 (S106) of the Town and Country Planning Act 1990 allows the Council (as local planning authority) to enter into a planning obligation (otherwise known as a s106 legal agreement) with a landowner in association with the granting of planning permission. These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms. They can cover a number of matters including Affordable Housing.

The National Planning Policy Framework (NPPF) states that planning obligations should only be sort in the following circumstances:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

The NPPF also provides guidance that obligations should take into account any changes in market conditions over time and in appropriate circumstances be sufficiently flexible to prevent development from becoming stalled.

The Growth and Infrastructure Act 2013 introduced into the Town and Country Planning Act an application and appeal procedure to review affordable housing obligations agreed under the s.106 procedure where they are claimed to make the scheme unviable. This process requires a decision to be made within 28 days and allowed a developer to submit an application up until 30th April 2016; this application was received on 29th April.

Under the procedure, developers can apply to modify or even remove affordable housing contributions under a new section, s.106BA, of the Town and Country Planning Act 1990. Obligations which include a "requirement relating to the provision of housing

that is or is to be made available for people whose needs are not adequately served by the commercial housing market" are within scope of this new procedure

If the Council does not modify the s106 obligation to the satisfaction of the applicant, or does not determine it within 28 days of receipt, the applicant can appeal to the Planning Inspectorate under s106BC. To date we understand that at least 40 appeal decisions have been made under the affordable housing appeal mechanism (at 8th April) of which 24 were allowed and 16 dismissed.

The application only allows an assessment of the viability of affordable housing requirements. It is not intended to re-open any other planning policy considerations or review the merits of the permitted scheme.

If the Council decides the revised proposals for affordable housing, or does not determine the application, there is the right of appeal.

In determining such applications, the NPPF encourages a positive approach to enable appropriate, sustainable development to come forward wherever possible. The NPPF establishes that the planning system should proactively drive and support sustainable economic development to secure developments that improve the social, economic and environmental conditions of the area.

It is important to note that the Government has removed this appeal mechanism with effect from 30th April 2016 onwards. This Application to review the affordable housing requirement was submitted the day before this deadline, on 29th April.

Consideration of the current proposal

The application as submitted proposes to remove all affordable housing provision in order to move the scheme closer to deliverability. This is proposed entirely on viability grounds.

The application is accompanied with the following documents:

- a copy of the original S106 Agreement
- An amended viability assessment

As part of the consideration of the application, the Council's retained economic viability consultants, Keppie Massie have been appointed to assess whether the scheme would be viable under current market conditions if it was to maintain the current agreed affordable housing contributions. If not, they were asked to assess whether a revised affordable housing contribution could be provided.

Keppie Massie have given careful consideration to the viability case submitted by the applicant. In this instance, further discussions and negotiations have taken place between Keppie Massie and Keepmoat Homes Limited following the submission of their application for the removal of the affordable housing requirement. As a result of this the

developer has indicated that rather than seek the removal of the affordable housing requirement entirely they would now be willing to agree a position with the Council that the requirement for social rent is replaced with affordable rent. This would then enable the site to be brought forward for development with the number of affordable units remaining unaltered.

The financial appraisal that has been prepared by the developer on the basis of affordable rather than social rent shows an improved viability position. This reflects the fact that affordable units provided on the basis of affordable rent tenure are more attractive to housing associations who are better placed to fund their purchase and hence they are more readily marketable to affordable housing providers. The developer's viability assessment on this basis shows a small profit including overhead at £172,145 which is equivalent to just over 1% of gross development value. The level of profit return including overhead in the viability assessments prepared at the time that planning permission was granted was in the region of £2.8m or 18.5% of GDV. The level of profit in the current assessment at only 1% of GDV is clearly well below this; however it does mean that on this basis the developer could undertake the development and re-cover their costs whilst making a very limited return.

Conclusions

The proposal to convert the social rented units to affordable rent is a pragmatic solution in this case. It ensures that the level of affordable housing provision in the scheme is preserved. If the application was to proceed to an appeal there is a risk, given the abnormal costs associated with undertaking the development of this site, an Inspector would waive the requirement for affordable housing on this site entirely. The current proposal will allow the developer to recover sunk costs incurred in relation to this site and generate a very small profit whilst still delivering 15% affordable provision, the amount which was approved originally.

In the circumstances the proposal to amend the tenure to affordable rent is a reasonable solution that will sufficiently improve the viability position to enable the site to come forward for development.

Recommendation

To agree to amend the Section 106 agreement so as to require the provision of affordable rental units rather than social rent.