

Report to Development Control Committee

Agenda
Item:
A.3

Meeting Date: 11th October 2013
Portfolio: Economy and Enterprise
Key Decision:
Within Policy and
Budget Framework NO
Public / Private Public

Title: APPLICATION UNDER S106A OF THE 1990 TOWN AND
COUNTRY PLANNING ACT – DISCHARGE OF A PLANNING
OBLIGATION
Report of: Director of Economic Development
Report Number: ED.30/13

Purpose / Summary:

This report sets out consideration of an application to remove the S106 obligation for a property to remain as an affordable housing unit in perpetuity.

Recommendations:

That the application for discharge of the S106 obligation relating to affordable housing is refused and that the planning obligation shall continue to have effect without modification.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

1. BACKGROUND

- 1.1 Where a five-year period has elapsed, and (currently) in relation to planning obligations entered into on or before April 6, 2010, then s.106A(3) of the 1990 Act provides that a person against whom the planning obligation is enforceable may apply to the appropriate authority for the obligation:
- to have effect subject to such modifications as may be specified in the application; or
 - to be discharged.
- 1.2 The formal procedure to be followed to determine a modification application is set out in the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992. It is not necessary for all of the parties against whom the obligation is enforceable to join in such an application.
- 1.3 Section 106A(6) provides that the appropriate authority may determine an application in one of three ways:
- that the planning obligation shall continue to have effect without modification—i.e. the application is refused;
 - if the planning obligation no longer serves a useful purpose, that it is discharged—i.e. it ceases to have effect; or
 - if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- 1.4 In consideration of any application it is therefore pertinent to consider whether the original planning obligation still serves any useful planning purpose.

2. PROPOSALS

- 2.1 The applicant has requested the discharge of the Section 106 Planning Obligation relating to affordable housing in perpetuity as it applies to 55 Helvellyn Rise, Carlisle. The property is on the Beeches estate which is a larger development undertaken by Merewood/Crowther Homes (now taken over by Persimmon Homes) and the S106 was put on planning permission 97/0604 granted in 20/01/99. At the time this was one of 13 properties to which the S106 applies although this is the only one requesting removal of the legal agreement.
- 2.2 The applicant has provided a number of reasons why the property should no longer be considered as an affordable house as follows:
- The Council could not refer a new buyer for this property nor this one and the neighbouring property when they were put on the market in 2009.
 - Estate agents suggest that the property would be more suited to a couple downsizing rather than the younger generation who would be seeking a S106 affordable property
 - This property is no longer affordable as the full market value is £165-

£175,000 (evidence provided). Estate agents do not class it as affordable due to the higher valuation

- The property is valued at least £30,000 above any other affordable property on the council's web site and is in the same cul-de-sac as a property on the web site for £96,000
- New incentives and properties on the adjacent Persimmon Homes development (Brackenleigh) are offering a 3-bed house for £105,696
- Potential buyers are deterred by the S106 agreement and high market value
- The property is undergoing investigations with NHBC due to recent issues not resolved and may discourage potential buyers
- The property will soon no longer be suited to the applicant's family needs and in recent months issues have caused stress
- It is not intended to directly sell the property however the removal of the S106 would assist towards longer term family needs or decline of health

2.3 The provision of affordable housing is frequently an issue raised for Members of Development Control Committee to consider. This however is the first application to discharge an obligation on a property in Carlisle. The Council undertakes housing needs surveys to establish the level of need which cannot be met by the open market. Affordable housing is then delivered whereby measures are put in place to restrict the full market value either through renting a property or a discount on open market sale prices. In this instance the S106 obligation restricts the price of the property to 20% below open market value in perpetuity.

2.4 Section 3 of this report includes the response of the Council's housing officers who deal with not only the Council's Housing Strategy but also the day-to-day operation of the low cost housing policy and affordable housing. Whilst they appreciate some of the difficulties which have arisen with this particular property, from an affordable housing point of view they would resist the request to discharge the planning obligation.

2.5 From a planning perspective it is important to consider whether the reasons for introducing the S106 in the first place are still relevant today and therefore serve a useful purpose.

2.6 At the time of consideration of the original planning application the Carlisle District Local Plan policy H8 had a requirement for affordable housing on larger housing developments. This site is part of the larger Morton urban extension development which at the time was envisaged to contribute 90 affordable houses over the whole development. The affordable housing need was reappraised in preparation of the Local Plan and this was set out in paragraph 4.61 of the 1997 adopted Local Plan. This site was the first part of that comprehensive development to be constructed as part of what is now known as the Morton Masterplan area.

- 2.7 As the first phase of a larger development there was clearly a case for affordable housing provision at the time.
- 2.8 Affordable housing need is regularly reviewed when Local Plans are updated to provide the evidence to support new policies. Members will be aware of the continuing work on the Council's new Local Plan. As part of that work the 2011 Housing Need and Demand Study examined the requirement for affordable housing (see paragraph 3.6 of this report). This was supported by an examination of the economic viability of affordable housing on allocated sites (the larger housing sites promoted through the Local Plan). Both these studies confirm that there is still a great requirement for affordable housing and that larger housing sites will play a vital role in its delivery.
- 2.9 In the context of this development, the second phase of the larger Morton Development is still under construction by Persimmon Homes and is providing much needed affordable housing as part of the overall development.
- 2.10 It is therefore apparent that the need for affordable housing which required the S106 agreement in the first place is still as relevant today as it was when first placed on this development.
- 2.11 The next section of this report considers the other issues raised by the applicant in relation to price and the operation of the Council's approach to affordable housing

3. CONSULTATION

- 3.1 Housing officers of the City Council have been consulted on the proposal and have the following observations to make on the application in light of overall affordable housing provision.
- 3.2 The City Council's Low Cost Housing Register makes properties at 70-90% of the market value available to qualifying people. A qualifying person must have both a local connection and be in affordable housing need; these criteria are set out in a s106 agreement, which also secures the affordable unit in perpetuity.
- 3.3 The applicant is looking to discharge/remove the s106 attached to their property at 55 Helvellyn Rise (which has 20% discount attached to it). It is important to differentiate between the applicant's wish to remove the s106 on his property, and the temporary removal of s106 restrictions that occur when a qualifying person cannot be identified on a Low Cost property. Removing the s106 from the property means it is lost to the affordable housing sector permanently; temporarily removing

the restrictions from a Low Cost property, to enable a non-qualifying person to purchase it, means that although it may be lost to the affordable sector temporarily, upon resale it reverts back to being an affordable housing property and can, in the first instance, only be purchased by qualifying people.

- 3.4 Affordable housing is a fundamental part of a sustainable community, and the securing of affordable housing in perpetuity (through a s106 agreement) recognises the fact that there must always be housing options for those people in housing need in the long-term, regardless of circumstances in the short-term. This approach demands that the longer-term view should be taken when considering the request of the applicant.
- 3.5 Even in a buoyant housing market, affordable housing is difficult to deliver, and thus any proposal to remove any home from Carlisle's affordable housing sector should be treated with caution. Homes on the City Council's Low Cost Housing Register remain entirely within the private sector, meaning that, unlike in the affordable rented sector (which has Right to Acquire and Right to Buy), receipts from disposals cannot be recycled and reused for the delivery of other affordable homes.
- 3.6 There is a very high level of affordable housing need in the district of Carlisle, both in the short-term and the long-term, which highlights the importance of retaining homes in the affordable sector. Our Housing Need and Demand Study in 2011, carried out by GL Hearn and JG Consulting, found that 708 affordable homes need providing in the district of Carlisle per year up to 2015; the study also found that 9,998 affordable homes need delivering in Carlisle over the next 20 years. The Study also identified that 40% of new affordable housing should be two-bedroom homes. This combined with the ageing population, means that we consider that two-bed bungalows will play an increasingly important role in meeting local housing need.
- 3.7 Although Low Cost properties are evidently harder to sell than those on the open market due to the restrictions on occupancy, all s106 agreements contain clauses which, if there is no short-term demand for the Low Cost property after a set period of time, allow it to be sold free of restrictions (though always at the discounted price and providing that any re-sale is subject to the original restrictions). The set period of time for the property at 55 Helvellyn Rise is two months, which compares very favourably to other Low Cost properties (which can be up to six months for older s106s). This means that after two months anybody can purchase the property. The critical part here is that, due to the legal agreement in place, we know that the property will return to the affordable housing sector in the long-term.

- 3.8 With the above in mind, it would be inadvisable to entirely remove the s106 agreement on this property. With explicit reference to the applicant's reason for removal of the S106, it is very possible that the City Council would be unable to refer a new buyer from the City Council's waiting list at this point in time for the property. However, many purchasers of Low Cost properties are signposted to the City Council by estate agents or developers, rather than being on our waiting list. As set out above, if a qualifying person cannot be identified within two months of the property being placed on the market, then the applicant is free to sell to whoever he chooses. It should be noted that the applicant has not attempted to sell the property since 2009.
- 3.9 We do have a number of older people in Low Cost bungalows, highlighting that they are a valid option for people in affordable housing need. A person does not need to be young to be in affordable housing need.
- 3.10 The applicant is correct in saying that the property is expensive compared to other properties on the Low Cost Housing Register. Importantly, the calculation of affordability on the Low Cost Housing Register is relative, and is property-specific. Those applying for low cost housing will therefore qualify for some properties and not others. Those people looking to downsize may qualify for this property (for example if they do not have much equity in their existing accommodation). Furthermore, as set out above, if a qualifying person cannot be identified after two months, then the property effectively reverts to the open market. It is undeniable that, even on the open market, Low Cost housing units are not as attractive to those not in housing need. However, the majority of the properties on the Low Cost Housing Register that are put on the open market are sold quite quickly. If the applicant is willing, we can look to revise the existing s106 to make it more attractive to mortgage lenders (and therefore prospective purchasers), by, for example, inserting a mortgagee in possession clause, or enabling it to be rented out for a set period. As set out above, the two month period of time is favourable to the applicant and this should not be altered.
- 3.11 In conclusion, affordable housing is secured in perpetuity in order to meet the long-term affordable housing needs of local people and to contribute to a sustainable community. Any request to remove an affordable home from the affordable sector due to short-term circumstances should therefore be treated carefully and with caution.

4. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 4.1 Following consideration of the original intention of the Section 106 and the current housing needs the existing S106 still has a useful planning purpose. Given the

nature of the S106 obligation there is no realistic way that it can be modified to achieve the same aim and therefore the recommendation is that the application to discharge the S106 should be refused and the S106 obligation remain in place.

5. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

- 5.1 The refusal of this application will ensure that the Council continues to address existing and future housing needs.

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**Appendices
attached to report:**

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- None

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's -

Community Engagement – The implications with regard to affordable housing provision and the Council's Housing Strategy area contained in this report.

Economic Development – As set out in the report

Governance – The test for whether or not the obligation should be discharged or modified is contained within the body of the report and it is for members to determine whether or not the affordable housing requirement continues to serve a useful purpose.

Local Environment –

Resources -