

Report to Development Control Committee

Agenda
Item:
A.2

Meeting Date: 8 January 2021
Portfolio: Economy, Enterprise and Housing
Key Decision:
Policy and Budget
Framework
Public / Private Public

Title: AFFORDABLE HOUSING CONTRIBUTION – LAND AT
CARLISLE ROAD, BRAMPTON
Report of: CORPORATE DIRECTOR OF ECONOMIC DEVELOPMENT
Report Number: ED.02/21

Purpose / Summary:

This report sets out the position regarding S106 contributions relating to affordable housing following an independent viability assessment of the site and provides an update to Members on issues raised during consideration of the original report (ED.46/20).

Recommendations:

That the S106 Agreements be modified in accordance with paragraph 3.3 of this report.

Tracking

Executive:	
Scrutiny:	
Council:	

1. BACKGROUND

- 1.1 Planning application 17/0869 – land at Carlisle Road, Brampton for the erection of 91 dwellings was granted on 25th April 2018 following the signing of a S106 Legal Agreement as authorised by the Development Control Committee at its meeting on the 5th January 2018.
- 1.2 Members of the Committee resolved: That authority be given to the Director (Economic Development) to issue approval for the proposal subject to the completion of a satisfactory S106 legal agreement.
- 1.3 The S106 Agreement included:
 1. the provision of affordable housing (13 affordable rent and 14 low cost home ownership);
 2. the payment of £150,668 towards off-site play space;
 3. the management/maintenance of open space;
 4. the payment of £272,820 towards secondary education;
 5. the payment of £6,600 for monitoring of the Travel Plan.
- 1.4 Following this, an application for a non-material amendment of the previously approved 17/0869 was granted in 2019 (19/0340) which broadly granted consent for
 1. revisions to the layout of the site;
 2. substitution of house types;
 3. alterations to the landscaping scheme and boundary treatment layout;
 4. revision to the parking arrangements.
- 1.5 Planning permission was also later granted in 2019 for erection of 78 dwellings (part revision of previously approved permission 17/0869 to increase the number of dwellings from 63 to 78) under 19/0380. As a consequence of this application together with the non-material amendment, the total number of dwellings increased on the site to 106.
- 1.6 A subsequent Deed of Variation as a result of the revised application, amended the following sections of the original S106 Agreement:
 1. the provision of affordable housing (15 affordable rent and 16 intermediate dwellings);
 2. the payment of £165,569 towards off-site play space;
 3. the payment of £441,972 towards secondary education.

- 1.7 Following the resolution by Development Control Committee and subsequent applications, the applicant has held extensive discussions with officers and the independent viability consultant regarding the viability of the site's development and the ability to provide the affordable housing contribution. Story's advised in a supporting letter to their viability appraisal, dated 17 July 2020, that they were struggling to meet the 30% affordable housing requirement for sites in Affordable Housing Zone C on the application site for the following reasons:
- a reduced demand for larger 4 & 5-bedroom houses since construction of the site in September 2019, which had been further exacerbated since COVID-19, with many of these larger homes falling within the first sales release.
 - Economic uncertainty surrounding COVID-19.
 - Forecast increased construction BCIS construction costs, partly linked to supply chain challenges linked to COVID-19.
- 1.8 Having considered the report (ED.46/20 appended), Members resolved to defer consideration in order to allow further consideration of the level of developer profit.

2. UPDATE

- 2.1 During the consideration of the previous report, Members expressed concern at the reduction of affordable housing when, given the impact of the pandemic, they considered such provision was particularly needed. Consideration was given as to whether the level of profit afforded to the developer by the proposal of 17% was appropriate as many businesses had been required to absorb financial impacts related to the pandemic restrictions.
- 2.2 Central government is clear that affordable housing is a key factor in the stalling of developments nationally due to viability issues. As such it allowed for planning obligations to be challenged in order for developments to remain viable.
- 2.3 Developer profit was appropriate and necessary as it supported the industry. The 17% proposed in the report had been arrived at following an assessment of the market in the district and other factors such as Appeal Decisions (which had permitted proportionally higher levels) and consideration of what amounted to a reasonable return.

2.4 This is consistent with the council's "Affordable and Specialist Housing Supplementary Planning Document". Further clarification regarding this matter can be found in a section on page 45 in Appendix 3 outlines the issue and states:

“Developer Return (Profit) (Competitive return to a willing developer)

There has been much debate at appeal and through assessment of Local Authority policy and guidance documents of what might be considered a competitive and appropriate developer return. The following points are useful to refer to in this regard:-

- *The Planning Advisory Service ‘Viability Handbook and Exercises’ (para 4.80) (January 2011) advises that:-*

Where a positive residual land value is achieved... Typical required margins, depending on the developer and the risks of the development, are a 20% margin on cost and 17.5% margin on GDV.

- *The accompanying guidance to the HCA’s (now Homes England) Development Appraisal tool comments as follows on Developer’s Return for Risk and Profit (including developer’s overheads):-*

Open Market Housing *The developer ‘profit’ (before taxation) on the open market housing as a percentage of the value of the open market housing. A typical figure currently may be in the region of 17.5-20% and overheads being deducted, but this is only a guide as it will depend on the state of the market and the size and complexity of the scheme.*

Affordable Housing *The developer ‘profit’ (before taxation) on the affordable housing as a percentage of the value of the affordable housing (excluding SHG). A typical figure may be in the region of 6% (the profit is less than that for the open market element of the scheme, as risks are reduced), but this is only a guide.”*

2.5 As stated in the “Open Market Section”, whilst this might be a typical profit region in terms of viability, in real terms the net profit would actually be lower for the business once overheads are taken account of. Furthermore, if a business cannot demonstrate a level of profit, it may be that financial lending might not be likely for the scheme from financial institutions or investors.

- 2.6 It is noted that the original PAS guidance on viability is dated 2011 and Members were concerned that the profits referred to were out-of-date and historic. The Council's SPD referred to above was prepared since the adoption of the Carlisle District Local Plan 2015-2030. It was produced during 2017 taking into account the local market position and viability assessments up to and including that year. It used advice from local consultants who operate across Cumbria and are part of a national company to ensure its relevance. The SPD was adopted by the City Council on 12 February 2018.
- 2.7 Since adoption of the SPD we have had only four applications to challenge planning obligations on viability grounds. One application was refused on the basis that it generated sufficient funds to mean that the development was viable and therefore no reduction should be made to the planning obligations. One was withdrawn prior to a decision being made and one is still under consideration. The remainder is the subject of this report.

3. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 3.1 Since planning permission has been granted on the site, viability information has been assessed which concludes that the site is not sufficiently viable to be able to provide all the contributions requested by the local planning authority.
- 3.2 Whilst the level of affordable housing that would be provided on the site would be reduced from that of the extant permission, this report demonstrates that the profit level outlined by the applicant is constant with the council's SPD. The proposal before the council allows the greatest attainable level of affordable housing whilst still continuing with a viable development.
- 3.3 In accordance with the previous report, it is recommended that the S106 legal agreements for applications 17/0869 and 19/0340 should be revised for the following contribution:
- for delivery of 22 affordable units (20.75% of the overall scheme):
 - a tenure mix of 12 discounted sale units – 6 no. 2 bed Bailey houses (plots 26-29 & 43-44) and 6 no. 3 bed Fraser houses (plots 24-25; 41-42 & 53-54) and 10 no. affordable rent units - 6 no. 2 bed Bailey houses (plots 49-52 & 68-69) and 4 no. 3 bed Fraser houses (plots 45-48). Discounted sale units will be sold at 70% of market value to customers on the Council's Low-Cost Home Ownership register. Affordable/ social rent units will transfer to a Registered Provider/ Social Landlord based on 50% of market value.

4. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

4.1 The site will still contribute towards future housing needs.

Contact Officer: Richard Maunsell Ext: 7174

**Appendices Agenda Report A2 for 4th December 2020 meeting.
attached to report:**

Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:

- None

CORPORATE IMPLICATIONS: See original report



Report to Development Control Committee

Agenda
Item:
A.2

Meeting Date:	4 December 2020
Portfolio:	Economy, Enterprise and Housing
Key Decision:	No
Policy and Budget Framework	No
Public / Private	Public
Title:	MODIFICATION OF S106 PLANNING OBLIGATION – AFFORDABLE HOUSING CONTRIBUTION – LAND AT CARLISLE ROAD, BRAMPTON
Report of:	Corporate Director of Economic Development
Report Number:	ED 46/20

Purpose / Summary:

This report sets out the position regarding S106 contributions relating to affordable housing following an independent viability assessment of the site.

Recommendations:

It is recommended that the S106 Agreements be modified for delivery of 22 affordable units (20.75% of the overall scheme) incorporating:
a tenure mix of 12 discounted sale units – 6 no. 2 bed Bailey houses (plots 26-29 & 43-44) and 6 no. 3 bed Fraser houses (plots 24-25; 41-42 & 53-54) and 10 no. affordable rent units - 6 no. 2 bed Bailey houses (plots 49-52 & 68-69) and 4 no. 3 bed Fraser houses (plots 45-48). Discounted sale units will be sold at 70% of market value to customers on the Council's Low-Cost Home Ownership register. Affordable/ social rent units will transfer to a Registered Provider/ Social Landlord based on 50% of market value

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2. UPDATE

- 2.1 Following the resolution by Development Control Committee and subsequent applications, the applicant has held extensive discussions with officers and the

independent viability consultant regarding the viability of the site's development and the ability to provide the affordable housing contribution. Story's advised in a supporting letter to their viability appraisal, dated 17 July 2020, that they were struggling to meet the 30% affordable housing requirement for sites in Affordable Housing Zone C on the application site for the following reasons:

- a reduced demand for larger 4 & 5-bedroom houses since construction of the site in September 2019, which had been further exacerbated since COVID-19, with many of these larger homes falling within the first sales release.
- Economic uncertainty surrounding COVID-19.
- Forecast increased construction BCIS construction costs, partly linked to supply chain challenges linked to COVID-19.

- 2.2 Members will be aware that if sites are struggling due to financial viability the Government has indicated that contributions can be revisited to ensure sites are delivered and address barriers to any site's development. This primarily relates to affordable housing contributions and the site's financial viability will be the main factor in determining any reconsideration of the legal agreement.
- 2.3 On raising the matter of viability the Council's Development Manager, Planning Officer and Housing Development Officer have taken independent advice from an experienced Chartered Surveyor, who specialises in site-based viability work on the development costs of the site and any specific abnormal costs relating to this development which need to be taken into account. Those detailed costs remain confidential and are not set out in this report. Members are referred to the Part B report for this confidential information and are advised to move into private session at the meeting if this information is to be discussed.
- 2.4 Lengthy negotiations have taken place that would result in some affordable housing being provided on the site however the contribution is less than the Development Control Committee had given authority for under their decisions set out in Section 1 of this report.
- 2.5 The applicant has therefore requested that both legal agreements are revised, and a new agreement is put in place covering the contribution for both parts of this site.
- 2.6 The independent assessment concluded that:
- whilst it could be argued the above should lead to a slight reduction in land value, the previous 'without prejudice' concession on land value (proposed minimum acceptable landowner receipt / actual purchase price increased to £1.1M - £350k per net acre) has been retained. It is recommended that there should be some resultant degree of 'flex' on developer profit of up to 0.25% below the target rate of 17% (equating to circa £25k);

- the updated conclusion would be that that the proposed scheme is viably capable of making an affordable housing contribution of 14% of total units (six affordable dwellings) which accords with the Applicant's headline offer.
- viability appraisals illustrating the following options:
 - OPTION 1 - adopting a developer profit of 17% of Gross Development Value (GDV) as the residual 'target' to constitute a viable scheme, the appraisal at *Appendix 2 – v2* shows that a developer profit of 17.00% of GDV can be achieved with an on-site contribution of 20.75% affordable housing (22 affordable units – 12 discounted sale and 10 affordable rent) and a full S106 contribution of £661,538.
 - OPTION 2 - Planning Committee Members may decide to proportionally reduce both the s106 contribution and the on-site affordable housing. I have therefore produced an appraisal to model this scenario (see *Appendix 3 – v2*). The *Appendix 3 – v2* appraisal shows that a developer profit of 16.89% of GDV (considered to be close enough to 17% for a developer to proceed with the scheme) can be achieved with an on-site contribution of 23.58% affordable housing (25 affordable units – 12 discounted sale and 13 affordable rent) and a pro-rata reduction to 77.42% of the full s106 contribution, equating to £512,163.

2.7 In terms of the impact were other contribution requirements reduced, the views of stakeholders were sought. Brampton Parish Council has confirmed that the off-site open space contribution has been allocated in the form of a new play area at Elmfield Drying Green, a new play area at St. Martin's Estate and improvements to Irthing Park play area.

2.8 Cumbria County Council has provided a response which reads:

“As a general point in relation to secondary provision in Carlisle, as with primary, the county council has sought contributions to mitigate the cumulative impact of a number of long-term developments. Three schools - Morton Academy, Caldew, in Dalston, and William Howard in Brampton – have been identified as having the potential for expansion. To date, no further discussion has taken place as to the detail of what that expansion might entail but, as yet, the issue is not pressing. Pressure on places will result as housing developments progress and grow, but the county council expects to be able to accommodate admissions for at least the next two intakes (in September 2021 and 2022) within the existing capacity. It should however be noted that by the time the development is built out it is projected there will be no capacity. Further work will be undertaken in the meantime to ensure that firm plans are in place to provide additional accommodation at the appropriate time to meet new demand. The approach taken in relation to seeking contributions for secondary provision has been accepted by a Planning Inspector as part of an appeal decision for a development in North Carlisle – Land at Harker Industrial Estate, Low Harker Carlisle (15/0812) & (App/E0915/W/3179674).

The contribution from this development will be used towards adding capacity at William Howard and is considered essential to mitigate the impact of the scheme, any reduction in the secondary education contribution would result in an objection from the County Council.”

- 2.9 It is clear from the applicant’s submissions and the council’s independent consultant, that there are viability issues with the development scheme. There appears to be little concession to reduce the financial contributions required for open space and secondary education provision. In discussions with the Council’s Housing Development Officer the provision of Option 1 to provide 22 units has been accepted as the most pragmatic solution for the affordable housing need.
- 2.10 In arriving at this assessment of viability the appraisal has had to take into account all the contributions required and under the previous applications.

3. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 3.1 Since planning permission has been granted on the site, viability information has been assessed which concludes that the site is not sufficiently viable to be able to provide all the contributions requested by the local planning authority.
- 3.2 It is recommended that the S106 legal agreements for applications 17/0869 and 19/0340 should be revised for the following contribution:
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- 4.1 The site will still contribute towards future housing needs

Contact Officer: Richard Maunsell

Ext: 7174

**Appendices
attached to report:**

Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:

- **None**

CORPORATE IMPLICATIONS:

LEGAL – Applications to modify developer obligations under s106 Agreements are a part of the planning process and regard must be had to viability of a development. The report outlines the viability issues and provides Members with a solution which is considered by officers to best meet local needs.

PROPERTY SERVICES – n/a

FINANCE – n/a

EQUALITY – n/a

INFORMATION GOVERNANCE – n/a