

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: THURSDAY, 17 DECEMBER 2009
title: PROPOSED REGENERATION OF SITES AROUND AND INCLUDING
PRIMROSE MILL FOR RESIDENTIAL DEVELOPMENT – PROPOSED
SECTION 106 AGREEMENT
submitted by: DIRECTOR OF DEVELOPMENT SERVICES
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1 PURPOSE

1.1 To advise Committee of the ongoing negotiations regarding the Section 106 Agreement in relation to the Primrose Development.

1.2 Relevance to the Council's ambitions and priorities:

- Council Ambitions – To make people's lives safer and healthier by implementing established policy. Also in assisting the Council to protect and enhance existing environmental qualities.
- Community Objectives – The report relates to issues affecting the delivery of affordable housing in the borough.
- Corporate Priorities – To facilitate the building of additional affordable homes.
- Other Considerations – To ensure a consistency of approach in the determination of planning applications where a quota of affordable housing is required.

2 BACKGROUND

2.1 Planning and Development Committee considered an application for the regeneration of sites around and including Primrose Mill for residential development, including improved site access, highways improvements and provision of public open space under application 3/2008/0526/P on 18 June 2009.

2.2 The application was delegated to the Director of Development Services to negotiate the satisfactory completion of a Section 106 Agreement to achieve the terms outlined in the conclusions to that report but amended as follows:

- reference to the level of developer's contribution towards:
 - public open space: £250,000 with trigger mechanism to ensure this is given in proportion to actual housing units being delivered on site;
 - highway works: £60,000 with a trigger of when payment will be required;
- details of the phasing of the development in order to ensure that the delivery of affordable units is linked with the delivery of market units (and open space contribution – see above);

- reference to the number of affordable rental units being a minimum of 25 dwellings with an option for tenants to purchase;
- details of eligibility for occupancy of the affordable sites;
- measures to ensure that the affordable units whether for rental or sale remain affordable in perpetuity;
- a mechanism for review in the event that the development is not carried out for a number of years (in view of the difficulties/uncertainties caused by the current economic climate);
- identify a trigger point at which highway works and monies outlined elsewhere within the report will be necessary;
- identify that should more than 47 properties be occupied before the end of 2011 a financial contribution to secondary school places will be required and include details of how such a contribution would be calculated;
- an undertaking that the applicant shall pay reasonable costs to the Council for any independent financial viability report that might be necessary to assess the market viability.

2.3 There has been an ongoing dialogue between officers and the applicants and their representatives since the scheme was considered by Committee with meetings having taken place in July and November of this year.

2.4 Following the initial meeting the applicant submitted a first draft of the Section 106 Agreement for consideration and officers raised concerns falling into two distinct categories – fundamental issues arising from how the draft Section 106 met the clear instructions given by Committee as outlined at paragraph 2.2 above and more minor points of clarification in the drafting of the Agreement. It is the fundamental issues that formed the basis of discussion at the second meeting and have necessitated the matter being brought back before Members for further consideration as detailed below.

3 AFFORDABLE HOUSING

3.1 Notwithstanding the precise remit given to officers to seek to achieve a number of rental units being a minimum of 25 dwellings, the applicants are requesting that a fall back position be included in any legal agreement to cover them should insufficient or no social housing grant be secured. Information has been provided that should no grant funding be available this would mean a loss of £1,250,000 to the scheme which would render it unviable.

3.2 The applicant offered two fall back positions – 13 social rented units or 25 low cost discounted sale units at 30% below market value. These two options have been put to the Strategic Housing Working Group who have stated that the 13 social rented units would be the preferred option. The Group accepted that although the number of units delivered (if the social rented tenure offer is accepted) is significantly less and is not meeting the target of 30% or the agreed minimum of 20% affordable units on site (as required by the Affordable Housing Memorandum of Understanding), it is important to secure some social rented units in Clitheroe. Social rented units were accepted as the preferred tenure for Clitheroe and Longridge in the AHMU and there has been no social

rented units delivered for some time in the market towns and this was identified as a priority in the Strategic Housing Market Assessment. In the current economic climate social rented units are accepted as the only true form of affordable housing and the waiting list for Clitheroe clearly demonstrates high demand. The significant difference in number of units is due to the cost of delivering social rented units, which is so much more than any other tenure type as there is no capital return just the low rental income.

- 3.3 In order to assist Members in assessing the viability of the scheme the District Valuer has been contacted in light of the most recent offer by the applicant. The District Valuer has commented that the viability of the scheme has changed in the years since their last report both in terms of the financial market and the fact that the developer is being asked to contribute £60,000 towards highway improvement works necessitated by the number of dwellings proposed as part of this application.
- 3.4 In summary, the scheme would not be a viable project if grant funding is not forthcoming for the affordable rental units. The applicants are in discussions with a Housing Association and it is understood that they have applied for kick-start funding but the outcome of that will not be known for some time. Thus the advice from the District Valuer is that on the basis of the information available at this point in time it would be reasonable to accept a fall back position within any legal agreement. However, he strongly advises that a review mechanism is included within the Agreement to ensure that should market conditions change the scheme is flexible enough to react. It would be the responsibility of the Council's Solicitor to provide an appropriate wording for a phasing mechanism but this clearly relates back to the instructions of Committee as outlined in Paragraph 2.2 above that require *a mechanism for review in the event that the development is not carried out for a number of years.*
- 3.5 At the time this report was drafted the applicants had not submitted a revised legal agreement, but it is understood from email correspondence that it has been done so on the basis of a fall back of 13 rental units of the following mix:

| PROPERTY TYPE: | NUMBER: |
|-----------------|---------|
| 2 bedroom flat | 2 |
| 2 bedroom house | 7 |
| 3 bedroom house | 4 |
| TOTAL | 13 |

- 3.6 It is understood from the Council's Housing Strategy Officer that with regard to affordable housing the revised draft Section 106 will provide the following three scenarios:

First Option – delivery of affordable housing with kick-start funding providing 31 affordable units (25 social rented and 6 home buy direct).

Second Option – delivery of affordable housing with grant from the Affordable Homes Programme delivering 25 affordable units (25 social rented units).

Third Option – delivery of affordable housing with no grant aid.

- 3.7 The applicant is also asking that in terms of the phasing of the affordable units they would prefer the obligation on the developer to have exchanged contracts rather than having physically completed affordable dwellings at the relevant milestone. For

Committee's information the first agreement was drafted on the basis of before the occupation of the 40th market housing unit contracts should have been exchanged for not less than 8 units, 80th market and additional 8 affordable units and the remainder before occupation of the 120th market unit. It is understood a similar phasing would be in the revised agreement.

- 3.8 In respect of affordable housing, Committee have two important decisions to make on the basis of the above information – fallback position and phasing.
- 3.9 The District Valuer has supported the case made by the applicants that the scheme would not represent a viable project without grant funding should the Council pursue the request for 25 affordable rental units. Members are reminded that 25 units represents 15% of the site being available for affordable housing.
- 3.10 Planning Committee have recently considered the Affordable Housing Memorandum of Understanding which outlines that in Clitheroe on developments of ten or more dwellings the Council will seek affordable housing provision at 30% of the units on site. A reduction in this level of provision to a minimum of 20% will only be considered where supporting evidence, including a viability appraisal fully justifies a lower level of provision.
- 3.11 The planning application was submitted and initially brought before Committee prior to the Memorandum of Understanding and thus the 25 units have been previously agreed a level of affordable provision on site. However, a reduction to 13 units equates to only 8% of the site being made available as affordable. Clearly this is below the threshold of the most recent guidance offered by the Council's Strategic Housing Working Group and they have endorsed the lower fall back position of 13 units for the reasons given above.
- 3.12 Planning Committee need to be aware that to follow the advice of the Strategic Housing Working Group would set a precedent for disregarding the explicit content of the Memorandum of Understanding regarding thresholds for affordable provision. This is clearly a scheme that has been under consideration for some time (originally submitted in June 2008) and planning policies and other documents to be treated as material considerations have changed over that time. Should Committee be minded to agree to the fall back position it should be done so with explicit reference made in the Section 106 Agreement to an appropriate phasing so that if the economic climate changes there is the opportunity to seek to achieve a greater percentage of affordable housing units on site to a maximum of 30% of the overall site provision. This is considered to be reasonable having regard to the history of negotiations on this scheme whilst at the same time recognising more up to date requirements in respect of affordable housing provision. It also follows the advice of the District Valuer.
- 3.13 With regard to phasing of affordable units in line with market dwellings the consideration is whether exchanging contracts rather than having physically completed affordable dwellings at the relevant milestone is judged to adequately meet the Council priority in terms of facilitating the building of affordable homes. If contracts are exchanged and no physical units provided on site there is no guaranteed time frame as to when the affordable provision will be available for occupation. I am of the opinion that the affordable units should be physically available for occupation at the relevant milestones or a mechanism to ensure that additional market units are not available for occupation prior to the affordable elements being completed. These are the only ways to ensure genuine delivery of affordable units.

4 HIGHWAYS

- 4.1 The initial draft Section 106 Agreement presented for consideration to officers in June 2009 by the applicants included reference to the trigger mechanism required ie £40,000 for the priority working arrangements and £20,000 relating to the widening of the footpath on Primrose Road.
- 4.2 The applicants are now suggesting that there is a formal obligation on the developer to enter into a Section 278 Agreement with the County Council and to carry out the priority traffic scheme before occupation of the 41st dwelling. The Highway Engineer at LCC has no objection to this and provided an appropriate wording can be incorporated into the Section 106 Agreement to ensure this, I consider it would be unreasonable to object to this request. However, at this stage Committee are asked to agree to this method of ensuring the provision of the £40,000 and subsequent roadworks with the precise wording to be further negotiated with the applicants by the Council's Solicitors.
- 4.3 The £20,000 relates to a contribution for footpath widening between the site and Whalley Road and this is on land that is not in the applicants ownership or indeed red edge of the current planning application. The Section 106 needs to make clear when this money will be payable and the applicants have suggested that it be fixed to a specific time in future – eg 80th occupation on the application site and that if the money has not been spent within say 2 years of payment, the contribution can be refunded to the developer.
- 4.4 This has been discussed with the County Surveyor at Lancashire County Council with a number of issues being raised. Firstly given that the land in question is not within the ownership of the applicant, the works can only be completed at such time as a planning application is approved for that land when the works necessary can be subject of a planning condition. There is no certainty as to when this would happen and it may be that such an application is submitted well in advance of the 80th unit being occupied. To agree a condition which would in effect withhold monies for an indefinite period of time when they could otherwise be utilized would not appear to be an appropriate position to take. It is considered a more realistic approach would be to request payment of the £20,000 at such time as the first reserved matters planning application is approved. The precise wording would need to be finalised by Solicitors but given members have previously agreed to a five year period for the submission of a reserved matters application on this site, and it may then take another 2 – 3 years for 80 dwellings to be constructed; this could delay payment for a significant number of years. Some mechanism needs to be found whereby the money is payable at an earlier date.
- 4.5 The request that the £20,000 be repaid within 2 years if it had not been spent is also questioned. If the money is to be paid with no planning application made for adjacent sites, then 2 years would be an unrealistic timeframe in which it would be spent. Much is dependent on the timing of when the £20,000 is paid in the first place as to the request for a payback clause and it is considered that this should be negotiated further with the applicant and highway engineer. The key aim is to ensure that the money is available at the appropriate time having regard to surrounding potential development sites.

5 EDUCATION CONTRIBUTION

- 5.1 To update Members on this matter, LCC have been contacted with a view to including a trigger mechanism within the Section 106 for a financial contribution to secondary school places. However, based on their latest figures they have stated they will no longer be

seeking any contribution and thus reference to this will no longer form part of any agreement.

6 CONCLUSION

6.1 The revised offer from the applicant of a fallback position of 13 rental units is fundamentally different from the instruction given to officers at 18 June Committee in terms of securing a minimum level of affordable housing provision. The report outlines the reasons for this and identifies that this would not comply with the Affordable Housing Memorandum of Understanding. Should Committee agree to the principle of a fallback position appropriate safeguards will need to be incorporated into the Section 106 on the advice of the District Valuer.

6.2 There are matters relating to the actual delivery of affordable units and how this is secured in line with the provision of market dwellings. In order to secure a meaningful contribution it is considered that physically completed affordable dwellings should be available at the relevant milestones and not the exchange of contracts.

6.3 The matters relating to highways monies and phasing/trigger mechanisms need further negotiation to ensure that they are delivered at the most appropriate time via the most appropriate route – Section 106 or Section 278 Agreement.

7 RISK ASSESSMENT

7.1 The resolutions made on the basis of this report may have the following implications:

- Resources – If a decision is taken that renders the current Affordable Housing Memorandum of Understanding in need of alteration then this will require significant officer input.
- Technical, Environmental and Legal – The work now needed to be carried out will be undertaken by the Council's legal staff in negotiation with the relevant development control officers.
- Political – There are no direct political implications, however the Council needs to ensure that Members of the Strategic Housing Working Group and Planning and Development Committee interpret the relevant affordable housing guidelines in the same way.
- Reputation – The Council has a duty to ensure that policies are not compromised but applied on a consistent basis throughout the borough.

8 RECOMMENDED THAT COMMITTEE

8.1 Discuss and decide on the appropriateness of including a fallback position in the Section 106 in respect of affordable housing provision having regard to the comments of the District Valuer about a mechanism for review; the potential implications to the development if they do not ie it may not proceed and the fact that to allow an 8% affordable housing contribution would be well below the thresholds of the Affordable Housing Memorandum of Understanding. Should Committee be minded to include a fallback position within the Section 106 it is recommended that Committee authorise the Director of Development Services and Chair of Planning and Development Committee to

negotiate appropriate phasing/review mechanisms in order to achieve a maximum of 30% contribution towards affordable housing across the whole development, should market conditions change in future years.

- 8.2 Advise the applicant that in respect of the actual delivery of affordable housing and its phasing with the market housing, this should relate to physically completed dwellings and not exchange of contracts. Should a Housing Association receive funding then it is likely that they would build all the units at the same time but Committee need to cover the eventuality that no funding is forthcoming. This is considered to be the only way to ensure that properties come on stream within reasonable timescales should funding not be secured.
- 8.3 Agree for the Council's Solicitors to investigate the most appropriate way of securing the £40,000 for priority working arrangements – Section 106 or Section 278 Agreement.
- 8.4 Agree for the Council's Solicitors to investigate in conjunction with Planning Officers and the Highway Officer at LCC the timescale for payment of the £20,000 for footpath widening works to ensure this would be available for use at such time as neighbouring sites are developed and able to implement the necessary works.

DIRECTOR OF DEVELOPMENT SERVICES

BACKGROUND PAPERS

- 1 3/2008/0526/P – Proposed regeneration of site around and including Primrose Mill for residential development including improved site access, highways improvements and provision of public open space at Primrose Mill, Woone Lane, Clitheroe. Report to Planning and Development Committee – 18 June 2009.
- 2 Minutes of Strategic Housing Working Group – 25 November 2009.
- 3 Draft Section 106 Agreement – Primrose Lodge (first version received June 2009).

For further information please ask for Sarah Westwood, extension 4516.

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