

**Cherwell Council**  
**Planning Committee**

**23 November 2017**

<p style="text-align:center"><b>Urgent report re appeal by Cantay Estates and Midcounties Cooperative Society at 26 High Street, Kidlington (Application ref no 15/01872)</b></p>
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**Report of Head of Development Management**

This report is public

**Purpose of report**

To provide Officers and consultants acting for the Council with advice concerning the negotiation of a legal undertaking with relation to this appeal that is due to be heard at a hearing on 29<sup>th</sup> November 2017

**1.0 Recommendations**

The meeting is recommended:

- 1.1 To authorise the officers of the Council and those representing them in the hearing to seek to maximise the provision of affordable housing by the diversion of the potential contribution

**2.0 Introduction**

- 2.1 Members will recall that in February 2017 this Committee resolved to refuse planning permission for 52 flats. One of the two grounds of refusal related to the proposal being contrary to policy Kidlington 2 of the Cherwell Local Plan and the aspirations of the Kidlington Framework Masterplan supplementary planning document. The other reason for refusal concerned the absence of a satisfactory legal agreement concerning necessary on site and off site infrastructure. The applicants have appealed that decision, and the hearing on the appeal is due to be heard on 29th November.
- 2.2 In the light of very recent changes to the County Council's position with regards to the infrastructure contributions that they were seeking there is a need to reconsider the Council's position , and through this report your officers seek further instructions on the desired CDC position.

### **3.0 Report Details**

- 3.1 In the report presented to Planning Committee in February paragraphs 5.34-5.39 explained the position that the applicants had then adopted to the issues of affordable housing and planning contributions. The relevant extract from that report is attached as Appendix 1.
- 3.2 As noted above the applicants have appealed the refusal of planning permission. In the statement of case submitted by the appellants they now claim that the viability of the scheme has worsened and that no affordable housing can now be provided and that the scheme can otherwise only fund £150k towards other infrastructure contributions. The Council will contest this shift in the viability and will be presenting evidence that the original offer as set out in the Committee report can still be afforded
- 3.3 However, the Council also has to react to the appellants Unilateral Undertaking (UU) that has been offered last week that proposes the £150k be divided between a bus service contribution; the adult gym previously proposed, and a sum towards its maintenance. No money has been offered towards the primary school as the appellants considered that the County Council cannot justify that contribution under the CIL Regulations.
- 3.4 In their response to this criticism the County Council has now withdrawn all its requests for contributions (albeit that your officers believe that the criticism of the request for the school funding is ill-founded).
- 3.5 As a consequence of the above the Council now needs to consider how to react to the UU. This is an unfortunate and late complication in preparation for this appeal. Your officers and those who will appear on the Council's behalf at the hearing need guidance and authority to negotiate and provide opinions at the hearing on this changed circumstance. It should be remembered that this will all only come into play if the Inspector is minded to allow the appeal and grant planning permission.
- 3.6 If it can be adequately justified the options seem to be (i) seek to divert the contribution towards an element of affordable housing, or (ii) divert the money to the Parish Council's desired play provision, or (iii) some combination of options (i) and (ii).
- 3.7 With regards to (i) above the advice of both the Council's housing officers and our viability consultant has been sought. Based on our viability consultant's assessment it would appear that £150k could fund 3 units being provided as discount rent dwellings rather than being market housing. Obviously the Council will hope that the evidence that it presents at the hearing will convince the Inspector that the scheme can still afford to provide all 8 units of discount market rent properties previously offered and that the appeal is dismissed. Alternatively if the Inspector is otherwise likely to find favour with the scheme he/she may provide an opportunity to the appellant to provide after the hearing a variation upon their submitted UU to include affordable housing plus the infrastructure contribution. In that circumstance we would suggest that option (ii) above should be followed. However if the Inspector preferred the viability evidence of the appellants in all or part it is considered that the Council's side should be free to try to maximise the amount of affordable

housing by trying to divert the potential contribution of £150k instead towards the provision of affordable housing.

- 3.8 Kidlington PC have been contacted with regards to option (ii) and they have amended their request to seeking £50k towards the adult gym equipment and a further £50 k towards its maintenance, plus £25k towards a planned adventure playground nearby and £25k towards its maintenance. This revised request will be presented to the appellants before the hearing to elicit their reaction.

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 Given the Council's planning objective of requiring development to provide the maximum level of affordable housing that can reasonably be required it is considered that we should adopt the stance of seeking to divert the £150k to the provision of affordable housing if at all possible i.e. option (i) in paragraph 3.6 above.

## **5.0 Consultation**

Kidlington PC

## **6.0 Alternative Options and Reasons for Rejection**

- 5.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: As recommendation to try to utilise the potential contribution towards the provision of affordable housing

Option 2: Divert the potential contribution towards the provision of play equipment as requested by Kidlington PC

Option 3: Some combination of Options 1 and 2 above

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 There are no direct financial implications arising from this proposed variation to what is sought in the appellants Unilateral Undertaking

Comments checked by:

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## Legal Implications

- 7.2 The affordable housing and play space obligations being recommended in this report are policy and legally complaint. Whilst Officers can argue for them at the appeal, it is for the Inspector to determine whether they should be required as part of the Section 106 package.

Comments checked by:

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## 8.0 Decision Information

### Wards Affected

Kidlington wards

### Links to Corporate Plan and Policy Framework

None

### Lead Councillor

Councillor Colin Clarke

## Document Information

Appendix No	Title
1	Extract from Planning Committee report 16.2.7
<b>Background Papers</b>	
Planning Committee report 16.2.17	
<b>Report Author</b>	Bob Duxbury Major Projects Manager
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## Appendix 1

### Affordable housing and Planning Contributions

5.34 Section 3.10 above sets out the initial and final advice from the Strategic Housing Officer on the position with regards to affordable housing. From a point early in the assessment of the application it became obvious that the applicant was claiming that the development would not be viable if asked to provide 35% affordable housing as required by Policy BSC3 of the adopted Local Plan. As noted in Policy BSC3 in such circumstances an open book financial assessment of the proposal is required that the Council can then interrogate. The Council employed an outside independent expert (Bruton Knowles) to critique the applicants' submission and assist in subsequent negotiations.

5.35 The outcome of this assessment was that Bruton Knowles advised that the development was indeed unable to fund the normal requirement for affordable housing. Negotiations between the applicants and your planning and housing officers have concluded with an offer of 8 discount rented units – those over the retained shop. These are offered at 75% of market rent with full nomination rights to the Council. This arrangement would endure for 25 years. They will be offered for lease to the Council, or to a registered provider, or could be retained by the developer and managed by them but with the Council nominating tenants. In the circumstances of this case this is considered acceptable, and furthermore is the best arrangement that can be reached. In these circumstances the proposal is considered to be in compliance with Policy BSC3 of the Local Plan. This position and offer was accepted by the Committee when they considered the application in August 2016. Members will note that at the end of the applicant's correspondence reported at paragraph 5.12 it is noted that if the application was refused and an appeal lodged that they may have to reconsider the viability appraisal and may reconsider the above offer at that time. As the Section 106 matters, including affordable housing provisions are not secured at this time, should the recommendation of refusal be accepted there would need to be a second reason relating to these matters.

5.36 The above arrangement for affordable housing, which was seen by officers as the highest priority in seeking a Section 106 agreement, was predicated on the basis that a maximum of £200k could also be provided for all other off-site contributions. Other requests for contributions set out elsewhere in the report can be summarised as

From OCC	
- Primary school contribution of	£106,323
- Bus subsidy aimed at improving the service to Langford Lane	£52,000
- Library stock	£2,000
From CDC	
- Outdoor gym facility	£69,371
- Maintenance for above(commuted sum)	£106,776
- Community development	£22,988
- Community facility improvement	£7,700
- Public Art	can be sought by condition

5.37 Clearly this comes to in excess of the £200k on offer. Again your officers are content, with Bruton Knowles concurrence, to advise that this overall figure is the maximum that the viability of the scheme allows and can only be improved upon at the cost of reducing the affordable housing offer. The applicant does not seek to influence how that £200k is allocated.

5.38 In July 2011 the Council produced a draft supplementary document (SPD) on Planning Obligations, which is still in use (pending the outcome of consultation upon the recently

published new document) for the starting point for negotiations by your officers. That document has the following advice for matters of this type

*As a result of viability issues the LPA may, in some cases, need to prioritise obligations so as to manage the most significant impacts of development.*

**3.17** *The relative priority to be given to competing requirements will be always be specifically assessed with regard to the Development Plan policies, the needs of the locality and the particular characteristics of the site and its setting. The order of priority may change depending upon local identified needs in relation to the development of a particular site.*

**3.18** *However, the LPA's general approach to priorities is set out in Table 2 'Planning Requirement Priorities' below. In the first instance, the LPA expects to address and secure requirements with a high priority. These are generally the items relating to the provision of facilities on the development site. They will be needed as a direct result of the impact which a development scheme places on its site and surroundings.*

**3.19** *The medium priority items are generally those required to deal with the wider transport, accessibility, social, and recreation impacts arising from development within the area.*

**3.20** *The low priority items are those where the development will place new demands on general public services and capital projects. In these instances the providing bodies may, as a result of development viability issues, need to consider securing funding from sources other than developer contributions.*

And a table of priorities was attached

## **Table 2 Planning Requirement Priorities**

### **High Priority**

Affordable Housing  
Local Open Space, Play Space and  
Landscaping  
Sustainable Urban Drainage  
Systems  
Sustainable Transport and Travel  
Plans, Footpath/Cycleway Provision  
and Access Improvements

### **Medium Priority**

Transport and Accessibility  
Education – Nursery, Primary and Secondary  
Strategic Open Space/ Sport and Recreation  
Strategic and Local Community Facilities  
Strategic Flood Defence  
Nature Conservation and  
Biodiversity

### **Low Priority**

Health  
Police  
Public art  
Community development funding  
Libraries  
Children's Centres and Nursery  
Provision

- 5.39 Using this prioritisation the Head of Development Services considers that the primary school contribution and the outdoor gym provision should be fully funded as requested, and that the remaining £24,300 should be offered to Kidlington PC for the future maintenance of the facility. This allocation of the restricted available funds was accepted by Planning Committee at their meeting in August. The Parish Council's view on this less than full

commuted payment contribution was sought after the August Committee and they have indicated that they were dissatisfied with this. This may mean that we have to give further consideration at a later time about apportionment of any sum that is offered in the future. Clearly if the above apportionment had been accepted then no money would have been forthcoming for the bus subsidy, library stock, community development or improved community facilities. Members may decide that the available money should be re-allocated in some other way. However if the recommendation is accepted then the issue of Section 106 contributions will be the subject of a second reason for refusal as the heads of terms will have not been agreed or a mechanism for their payment will not have been secured.