

Planning Committee

Request for a variation of the S106 Agreement relating to the proposed development at South West Bicester – Application 06/00967/OUT

28 January 2010

Report of Head of Development Control and Major Developments

PURPOSE OF REPORT

To enable Members to consider a request to vary the S106 Agreement in relation to the development at South West Bicester and determine whether or not to accept the variation of the Agreement.

This report is public

Recommendations

The Planning Committee is recommended:

- (1) To agree the variation of the S106 Agreement in accordance with the attached schedule of Heads of Terms.

Executive Summary

Introduction

- 1.1 The planning application for the development of South West Bicester for '*Outline - Up to 1585 no. dwellings; health village to include health and employment uses and elderly persons nursing home; B1 and B2 employment uses; local centre comprising of shops, a pub/restaurant, children's day nursery, offices and a community centre; 2 no. primary schools and 1 no. secondary school; a hotel; a sports pavilion; formal and informal open space; a link road between A41 and Middleton Stoney Road/Howes Lane junction; associated new roads, junctions, parking, infrastructure, earthworks and new accesses to agricultural land (as amended by plans and documents received 24.10.06)*' was granted planning permission in June 2008. The application was

accompanied by a S106 Agreement which was completed on the 27 June 2008.

- 1.2 The Agreement accompanying the application was entered into by the site owners, the District Council and the County Council and provided for the provision of infrastructure and facilities necessary to serve the development proposed. The provisions of the existing agreement, the subject of this report, come into effect on the commencement of the development.
- 1.3 In April 2009 a report and a proposal were received from Countryside Properties setting out issues with regard to the viability of the proposed development and seeking a variation of the S106 Agreement that had been entered into in June 2008. A revised proposal for the variation of the agreement was received in September 2009. These proposals are considered further below.

Proposals

- 1.4 The approach to the Council by Countryside Properties in April 2009 provided the following summary of the current position;
- 1.5 *'Countryside Properties (Bicester) Ltd's objective is to commence development of Whitelands Farm at Bicester at the earliest opportunity. Since obtaining planning permission in June 2008, there has been a dramatic change in the economic environment, triggered by recession. The fall in the housing market has had a significantly detrimental effect on the commercial viability of development schemes such as at Whitelands Farm.'*
- 1.6 The approach was accompanied by an open book financial appraisal of the development (which is confidential as it is commercially sensitive). The appraisal concluded that; *'The current scheme shows a significant deficit derived from the current appraisal rendering the scheme unviable. This has resulted in the scheme commencement being delayed from the anticipated start date of March 2009. It is unlikely that Countryside Properties (Bicester) will be willing to commence development until there has been a substantial market recovery or a relaxation of some planning obligations.'*
- 1.7 To make the scheme viable and enable an early start on site Countryside Properties proposed the modification of the S106 agreement by *'re-basing the indexation provisions, deferring the Sports Village and Education contribution triggers, adjusting the A41 roundabout trigger and bringing forward the Perimeter Road trigger, in addition to reducing the allocation of affordable housing to 2.5% across the whole site the scheme can be made viable to avoid further delays in the programmed commencement,'*

- 1.8 This approach raised a number of issues for the Council including; the reliability of the financial appraisal, the importance of South West Bicester to housing delivery and affordable housing delivery, the importance of the delivery of the proposed infrastructure and facilities and the timing of them, alternatives to enable development to commence on the site. These are considered further as part of the background information to the report below.
- 1.9 The initial proposed modification was not considered acceptable due to the very limited amount of affordable housing that would be provided and the absence of any mechanism to make up the shortfall in affordable housing should the market improve over the life of the development.
- 1.10 Revised Proposal
- 1.11 In September 2009 a revised proposal was received from Countryside Properties for the variation of the S106 Agreement. This suggested the following;
- 1.12 *On an initial phase of 212 units 10% would be affordable. This 10% (21 units) would be provided on land transferred to the Council or its nominated RSL for £1 plus vat. The remaining 20% affordable housing (42 units) would be carried over to the rest of the development which would have 33% affordable housing to deliver a total of 30% across the scheme as a whole.*
- 1.13 *The perimeter road to be brought forward to a trigger point of 500 occupations as opposed to the current 650 trigger point.*
- 1.14 *All other S106 financial contribution triggers delayed by 150 units (excludes monitoring fees and payment of commuted sums)*
- 1.15 *The indexation date for the payments changed to January 2010.*
- 1.16 *A minor variation to the drafting of the agreement to enable the location and mix of affordable housing to be dealt with on a parcel by parcel basis rather than on a phase basis as at present.*
- 1.17 A schedule of the Heads of Terms of the original agreement and proposed changes is attached at Appendix A.
- 1.18 This proposal has been the subject of consultation with the County Council, Head of Housing and the Recreation and Health Improvement Manager and their views are considered below.
- 1.19 The County Council have indicated that generally they accept the deferral of the payment of financial contributions by 150 units although towards the end of the development (when it is anticipated viability will have improved) payments to return to the original schedule, that indexation re-basing as proposed is acceptable, that the deferral of the provision of the A41 roundabout and the first part of the perimeter road

to 150 occupations and the bringing forward of the completion of the perimeter road (from 650 dwellings to 500) are acceptable. Agreement has also been reached to be able to make contributions across the breadth of infrastructure required for the site, a longstop date being provided for the completion of the perimeter road (completion within 12 months of the construction of the 425 dwelling or 500 dwellings whichever is the sooner) and the ability to accept an offer of the transfer of the Park & Ride site within 3 months of the completion of the A41 roundabout (rather than 3 months of completion of the peripheral road as in existing agreement).

- 1.20 The Head of Housing has considered the proposal. The land offered for 100% affordable housing is considered constrained and a bit remote from the rest of the development but this is off set by being close to existing amenities in the town itself. However it is considered that the site would be very good for extra care housing but this would delay the provision of general needs housing for Bicester. There are a number of other sites that could deliver general needs affordable housing in the same time scale.
- 1.21 There is a need for housing delivery which the development at South West Bicester could make a valuable contribution towards. However it is highly likely that unless there is a dramatic improvement in the housing market in 2010/11 that the site will not come forward without some assistance through the modification of the S106 Agreement. If the S106 is modified as outlined above Countryside will undertake to commence work on site within 6 months of the first reserved matters approval. The Council has currently received 7 reserved matter applications for the site for highway infrastructure and first phase of residential development on the site.
- 1.22 The provision of affordable housing and the delivery of mixed tenure communities are key aims of the planning system. However the current proposal would maintain the over all number of affordable dwellings, all be it that there would be slower delivery of the affordable dwellings than originally planned, and two parcels would not be mixed tenure. Whilst this is not the Council's preferred approach it is considered preferable to the overall reduction in the number of affordable units or the potential continuing delay in bringing the site forward.
- 1.23 The impact of the proposed delay in the payment of financial contributions and re indexation are considered to be manageable although this may have some impact on the timing of delivery of facilities and infrastructure.
- 1.24 The bringing forward of the delivery of the perimeter road is welcomed. The completion of the peripheral road at the earliest opportunity would benefit not only this development but also other development and proposals in the town.
- 1.25 The variation in the agreement to enable affordable housing

requirements to be dealt with on a parcel basis are considered an amendment to the agreement that will assist in the practical delivery of the affordable housing throughout the site.

Conclusion

- 1.26 Whilst it is regrettable to have to consider the amendment of a recently completed agreement the housing market has been hit hard by the recent recession. The proposed scheme at South West Bicester has been shown not to be viable in the current market under the existing agreement. Despite the current economic climate there remains a need for housing to be delivered and the development at South West Bicester could make a valuable contribution to this.
- 1.27 The proposed changes to the S106 agreement maintain the overall level of affordable housing, infrastructure and facilities previously agreed. The main impact is on the timing of delivery of the financial contributions which is likely to have knock on impacts on the timing of some infrastructure. The other impact is on the absence of mixed tenure development in two early parcels of development (the first 212 market and 21 affordable dwellings) but this could through the transfer of land to CDC enable an extra care scheme to be considered that would not otherwise be accommodated on site.
- 1.28 On balance it is therefore considered that the proposal to vary the S106 agreement is acceptable and is therefore recommended for approval as outlined above.

Background Information

- 2.1 S106A of the Town & Country Planning Act 1990 (as amended) allows for S106 Agreements to be modified by agreement between the authority by whom they are enforceable and the persons against whom the obligation is enforceable. S106B allows for applications to be made for modification and allows for a right of appeal but such requests can not be made within 5 years of a S106 agreement being entered into. The modification of the current agreement can therefore only be done by agreement between the parties at the present time.
- 2.2 The proposed variation to the S106 Agreement at South West Bicester raises a number of issues which are considered further below;
- 2.3 Housing Delivery
- 2.4 If the modification of the S106 Agreement is not accepted it is likely to delay the implementation of development at South West Bicester and therefore it is necessary to consider what if any impact this would have

on housing delivery.

2.5 The delivery of housing within the District is monitored against requirements in the South East Plan and for the maintenance of a five year supply of deliverable housing sites required by PPS3. The Annual Monitoring Report (AMR) for housing delivery in 2009 was considered by the Council's Executive in November 2009 and concluded;

- Housing completions for 08/09 were 426 and are expected to remain low in 09/10 and 10/11 as economic recovery occurs and before completions are recorded on new strategic, and other major, housing sites;
- The district has 4.0 years supply of deliverable housing land over the period 2009-2014 rising to 4.5 years from 2010 to 2015;
- Net affordable housing completions in 08/09 were 87, compared to the minimum average annual target of 100 dwellings set by the Housing Strategy. Gross completions (i.e. including acquisitions and not allowing for losses) were 122. The total net supply since 2001 is now 816, an average of 102 per annum;

2.6 The AMR assumes housing delivery from the South West Bicester site commencing 2010/11. The AMR has highlighted the potential difficulties that the District is facing with regard to housing delivery. The delay in strategic sites coming forward, such as South West Bicester, will cause further difficulties with housing delivery. The delay in housing delivery also impacts on the delivery of affordable housing as a significant number of new affordable homes have been delivered through S106 agreements in connection with new housing development. Although affordable housing delivery has to date been maintained on target it is likely to become increasingly difficult if overall housing delivery does not improve.

2.7 If the delivery of the development at South West Bicester does not commence in 2010 it may be necessary to consider the release of other sites to maintain housing delivery.

2.8 Delivery of Infrastructure and Facilities

2.9 This Council has always sought to negotiate S106 Agreements in accordance with the advice in Circular 05/05 that states that agreements must be; relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development and reasonable in all other respects. Therefore there are no items secured within the current agreement that could be removed without having a serious consequence on the future development and in many cases the town as well.

2.10 Reliability of the financial appraisal

2.11 Development finance is a specialist area and given the importance of ensuring that the appraisal provided was accurate and reflected the

true picture regarding the viability of the development, consultants (Divers Jonas) were appointed to review the appraisal. They concluded that although there were some discrepancies within the appraisal that *'viability is likely to be an issue in the current market'*.

- 2.12 A number of the discrepancies identified within the appraisal have been resolved but on the treatment of some issues within the appraisal such as land value it has not been possible to reach an agreed position. However your officers are satisfied that the appraisal does demonstrate the difficulty with the viability of the scheme and the work on reviewing the appraisal has led to a revised offer by Countryside Properties which is set out above. The Council's consultants concluded that the revised proposal *'appears to be a considerable concession on Countryside's part and we believe Countryside have put forward a reasonable proposal'* subject to the number of units and revision to the S106 triggers being acceptable to the Councils.
- 2.13 Alternative Approaches to Enable Development to Commence
- 2.14 A number of approaches have been explored to assist the viability of the proposed development. Given the current difficult conditions for house building the government announced the availability of Kick Start funding to assist stalled housing schemes. Two rounds of funding have been available to date and each time Countryside Properties have bid for funding, with support of the RSL's, District and County Council. Regrettably neither bid has been successful.
- 2.15 Potential alterations to the scheme have also been considered including increasing density, the use of a second primary school site (not required for educational purposes) for housing and the impact of a future LDF allocation of adjacent land. All these alterations would require a new planning application to be made. The consideration of a larger site could be premature prior to the LDF core strategy progressing to adoption. An increase in density would require a substantially revised application and design code for the site which would take considerable time to put together and deal with. It has been indicated that Countryside Properties will pursue an application for housing on the second primary school site and that this will accommodate approximately 46 additional dwellings. Countryside Properties advise that including the school site in the value will not on its own generate sufficient value to avoid the need to consider the variation of the S106 agreement.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 The importance of facilitating the site at South West Bicester coming forward for development in 2010.
- 3.2 The acceptability of the proposed modification of the S106 Agreement, particularly for Cherwell with regard to the redistribution of affordable housing on the site.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

Option One	Refuse the modification of the S106 which is likely to delay the start of development and could lead to a further application being submitted to enable an appeal with regard to planning obligation requirements.
Option Two	Approve the modification of the S106 Agreement to enable work to commence of the development.
Option Three	Seek to negotiate different modifications to the S106 Agreement to enable development to commence.

Consultations

Oxfordshire County Council	Generally the County Council can accept the deferral of the payment of financial contributions by 150 units although towards the end of the development (when it is anticipated viability will have improved) payments to return to the original schedule, that indexation re-dating as proposed is acceptable, that the deferral of the A41 roundabout and the first part of the perimeter road to 150 occupations. The above are subject to agreement to be able to vire contributions across the breadth of infrastructure required for the site and a longstop date being provided for the earlier completion of the perimeter road.
Head of Housing	The land offered for 100% affordable housing is considered constrained and a bit remote from the rest of the development but this is off set by being close to existing amenities. However it is considered that the site would be very good for extra care housing but this would delay the provision of general needs housing for Bicester. There are a number of other sites that could deliver general needs affordable housing in the same time scale.

Recreation & Health Improvement Manager	In light of the revised proposals the SW Bicester Sports Village Project Board will have to re-consider the timetable for the construction of the sports facilities. Access to the area designated for the sports village will be dependant on the construction of the road network for the development which gives some uncertainty to when work can commence on the sports pitches. Therefore, a longstop date for the provision of access and services to the sports village area would allow the Project Board to programme the procurement of a contractor and secure the additional external funding required.
Head of Building Control & Engineering Services	No objection
Arts and Visitor Services Manager	No objection
Landscape Services Manager	No comments received.

Implications

Financial:	<p>There will be some reduction in commuted sum figures through re indexation from January 2010 and some financial contribution payments will be made later than previously agreed. However neither of these implications are considered to have a significant impact on the delivery of infrastructure or facilities.</p> <p>Comments checked by Eric Meadows, Service Accountant 01295 221552</p>
Legal:	<p>Formal modification of the S106 Agreement will be necessary to give effect to the variations proposed which in turn will enable the development to go ahead. The legal costs of such a modification would be met by the developer.</p> <p>Comments checked by Pam Wilkinson, Principal Solicitor 01295 221688</p>
Risk Management:	<p>There are no risks arising from this report other than those in relation to the development taking place outlined in the report.</p> <p>Comments checked by Rosemary Watts, Risk Management & Insurance Officer 01295 221566</p>

Wards Affected

Ambrosden & Chesterton

Document Information

Appendix No	Title
Appendix 1	Schedule of Heads of Terms and proposed modification
Background Papers	
Planning Application 06/00967/OUT Planning Obligation dated 27 June 2008	
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