

Case Officer: Tom Webster

Applicant: Sweetcroft Homes

Proposal: Demolition of existing vehicle showroom and associated garages. Erection of 2 new housing blocks containing total of 15 flats including car parking and ancillary supporting uses with landscaping

Ward: Kidlington East

Councillors: Cllr Billington, Cllr Mawson and Cllr Middleton

Reason for Referral: Major development

Expiry Date: 9 September 2022

Committee Date: 9 March 2023

1. REASON FOR REVERSION TO PLANNING COMMITTEE

- 1.1. Previously, the application was presented at Planning Committee on the 14 July 2022 with a recommendation for approval. The Members of Planning Committee resolved to support the proposal subject to an appropriate S106 Agreement being completed and signed.
- 1.2. The S106 Agreement was to include an obligation that would secure an off-site affordable housing contribution that is the equivalent of 5 on-site affordable housing units (35% Affordable Housing).
- 1.3. However, subsequently, in November 2022, the applicant submitted a viability appraisal (prepared by Savills). This viability appraisal concluded that the off-site affordable housing contribution for 5 units would equate to £609k, and that the applicant could not afford to pay this amount, or even a smaller sum, without making the scheme unviable.
- 1.4. This Viability Appraisal was then (February 2023) independently assessed by Bidwells, who, whilst reaching a different opinion to Savills on the Residual Land Value, concluded that the scheme, at present, could not viably pay the full off-site affordable housing contribution, or even a smaller affordable housing sum.
- 1.5. In short, the level of off-site affordable housing contribution the Council anticipated receiving, in line with Policy BSC3 of the Cherwell Local Plan 2011-2031 Part 1, as it stands, has been reduced from £609k down to £0 (35% provision down to 0%). As this scenario represents a significant departure from what was discussed and agreed at Planning Committee, it is considered necessary for this application to be brought back for further consideration by Planning Committee.
- 1.6. It should be noted that the applicant, following a request from officers, has agreed for a viability review mechanism to be included in the S106 Agreement to establish if an off-site affordable housing contribution can be delivered at a later date.

- 1.7. The Planning Committee report presented on the 14 July 2022, appended to this report, sets out the site description, proposed development, consultation responses. It also contains the full assessment of the proposal against the relevant Development Plan policies.
- 1.8. One consultation comment has been received since the 14 July Planning Committee. This comment was from the Housing Officer who wanted to establish if any Registered Providers (RPs) would prefer for the affordable housing to be provided on-site instead of a commuted sum. This research was undertaken and the response from the RPs was that they would prefer a commuted sum.

2. APPRAISAL

- 2.1. The key issues for consideration in this report are:
 - Affordable Housing Provision and the use of a Viability Review Mechanism in the S106 Agreement
- 2.2. The Council is acutely aware that housing delivery is a top planning priority for England, and the Council shares the Government's objective of increasing housing delivery. House prices are arguably one of the most significant issues facing the South East and there is also a significant need for affordable housing in Kidlington: it experiences homelessness and a reliance on temporary accommodation, and the market and rental prices are high.
- 2.3. Therefore, it is of critical importance that affordable housing, where a scheme is viable, is delivered as part of all major residential developments in Kidlington, either on-site or through an off-site contribution.
- 2.4. This approach is in line with the Government guidance set out in paragraph 63 of the NPPF. This paragraph states that *"where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless:*
 - a) *off-site provision or an appropriate financial contribution in lieu can be robustly justified; and*
 - b) *the agreed approach contributes to the objective of creating mixed and balanced communities.*
- 2.5. Paragraph 65 of the NPPF also makes it clear that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.

- 2.6. In this instance, 10% affordable home ownership would not exceed the level of affordable housing in Kidlington and would, instead, contribute to reducing the shortfall in affordable housing provision.
- 2.7. This need for affordable housing in Kidlington is why Policy BSC3 of the Cherwell Local Plan 2011-2031 Part 1 requires residential development with 11 dwellings or more, in 'Kidlington', to deliver 35% affordable housing provision.
- 2.8. However, in line with Government guidance, there is policy provision in the Local Plan that allows for the applicants to submit an 'open-book' viability assessment, where the viability of the scheme is a concern.
- 2.9. Paragraph 6 of BSC3 also allows for reduced amount of affordable housing to be delivered if it is demonstrated that the viability of a scheme would be compromised through affordable housing provision. It states:

“Where development is demonstrated to be unviable with the affordable housing requirements, further negotiations will take place. These negotiations will include consideration of: the mix and type of housing, the split between social rented and intermediate housing, the availability of social housing grant/funding and the percentage of affordable housing to be provided.”
- 2.10. Since the resolution to grant planning permission at Planning Committee on the 14 July 2022, the applicant has raised concerns over their ability to provide an off-site affordable housing contribution and submitted a viability appraisal (written and prepared by Savills). The Council sought an independent review of this viability appraisal and instructed Bidwells to undertake this work. Bidwells reached the same conclusion as Savills which is that the proposal is currently not in a position to provide an off-site affordable housing contribution.
- 2.11. It should be noted, however, that property market has experienced significant changes (in house prices and build costs) in recent years. Therefore, the viability of a scheme may be notably different by the time it is implemented, due to uncertainties in relation to aspects of a viability assessment at the application stage, and the potential for changes to market conditions.
- 2.12. In view of the changeable nature of the property market, the practice of reviewing development viability to ensure that proposals are based on an accurate assessment of viability (at the point of delivery) has become well established across the country.
- 2.13. Moreover, given the pressing need for affordable housing in Kidlington, it is vital that the Council tries to ensure that the appropriate amount of affordable housing is provided in line with Policy BSC3. It is on this basis that Officers informed the applicant that a viability review mechanism should be included in the Section 106 Agreement. The applicant has agreed to having a viability review mechanism in the S106 Agreement.

- 2.14. Officers note in the two viability appraisals (Savills and Bidwells) that the build programme for the 15 units, is 18 months, post site clearance. Therefore, a reasonable trigger point for the viability review mechanism would be 9 months after implementation of the scheme.
- 2.15. According to Bidwells' viability appraisal (paragraph 3.2.3), due to the location of the site, they would expect a modest number of pre-sales to take place. If that is the case, then those sales would give the best comparable data for new build flat prices, in the viability review. As the construction work would also be under away, the actual build costs would be known as well.
- 2.16. The applicant has agreed to this 9-month post implementation trigger point. The viability review will relate to affordable housing only and, as such, would be an upwards only viability review. The S106 developer contributions have been agreed by the applicant and the scheme is considered to be viable with those contributions, but not with the off-site affordable housing contribution.

3. PLANNING BALANCE AND CONCLUSION

- 3.1. This assessment aims to provide an overview of the material change in position regarding affordable housing provision, and the need for a viability review mechanism.
- 3.2. It sets out why officers consider the viability review mechanism to be necessary for the application to be granted planning permission.
- 3.3. Therefore, Members are respectfully asked to support the Officer recommendations, for the reasons given, and to resolve to grant permission for the development subject to the recommendation below.

RECOMMENDATION

DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT, OR AN OFFICER NOMINATED BY THEM, TO GRANT PERMISSION, SUBJECT TO

- 1. THE CONDITIONS SET OUT BELOW (FULL WORDING IS SET OUT IN THE ORIGINAL COMMITTEE REPORT AND WRITTEN UPDATE) (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY) AND**
- 2. THE COMPLETION OF A PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS SUBSTITUTED BY THE PLANNING AND COMPENSATION ACT 1991, TO SECURE THE HEADS OF TERMS SET OUT AT APPENDIX 1 OF THE ORIGINAL COMMITTEE REPORT (EXCEPT FOR AFFORDABLE HOUSING CONTRIBUTION) AND INCLUDING VIABILITY REVIEW MECHANISM SET OUT AT PARAGRAPH 2.14 ABOVE.**

FURTHER RECOMMENDATION:

IF THE APPLICANT DOES NOT AGREE TO SIGN A S106 AGREEMENT TO CONTAIN THE MATTERS SET OUT AT PARAGRAPH 2.14 OR IF THE SECTION 106 AGREEMENT/UNDERTAKING IS NOT COMPLETED AND THE PERMISSION IS NOT ABLE TO BE ISSUED BY THE STATUTORY DETERMINATION DATE

WHICH IS CURRENTLY 9 SEPTEMBER 2022 AND NO EXTENSION OF TIME HAS BEEN AGREED BETWEEN THE PARTIES, IT IS FURTHER RECOMMENDED THAT THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT, OR AN OFFICER NOMINATED BY THEM, IS GIVEN DELEGATED AUTHORITY TO REFUSE THE APPLICATION BASED UPON THE LACK OF A COMPLETED S106 AGREEMENT REQUIRED TO SECURE THE NECESSARY INFRASTRUCTURE TO MITIGATE THE IMPACTS OF THE DEVELOPMENT WITH REFERENCE TO POLICY THAT REQUIRES MITIGATION TO BE SECURED, AND FAILURE TO SATISFY THE AFFORDABLE HOUSING POLICY)

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