

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Development Manager

To: Planning Committee - 10 March 2021

(Author: Lucy Buttery - Principal Planning Officer)

Purpose: To consider Planning Application H13-0479-20

Application Number: H13-0479-20

Date Received: 17 June 2020

Application Type: MODIFIED AGREEMENT

Description: Modification of Section 106 Agreement to reduce affordable housing provision - planning approval H13-0844-17.

Location: Land South: Roman Road Moulton Chapel Spalding

Applicant: Postland Developments Ltd.

Agent: Postland Developments Ltd.

Ward: Cowbit, Weston and Moulton

Ward Councillors: Cllr R Grocock
Cllr A Casson
Cllr A R Woolf

You can view this application on the Council's web site at

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H13-0479-20>

1.0 REASON FOR COMMITTEE CONSIDERATION

- 1.1 Objections received and a modification proposed to the Section 106 Agreement which merits Committee consideration.

2.0 PROPOSAL

- 2.1 Outline planning permission was granted for the development of 58 dwellings under application ref. H13-0844-17 in October 2018. This was subject to a legal agreement which requires 25% of the dwellings on the site to be affordable units (15 in total, rounded up), as well as the developer to pay a £25,752 healthcare contribution. Reserved matters approval was subsequently granted in February 2020 (H13-1096-19) with an affordable housing mix (15 dwellings) being confirmed at that stage.
- 2.2 However, the applicant is now seeking to reduce the number of affordable units they are required to deliver on viability grounds.

3.0 SITE DESCRIPTION

- 3.1 The site is approximately 2.9 hectares in size and comprises of agricultural land to the rear of properties/businesses on Roman Road and Cekhira Avenue. The part of the site adjoining Roman Road formerly accommodated a commercial vehicle repair business, which has now been demolished. The former village playing field is to the east, there are fields to the south and a Grade II Listed Mill is to the north-west.
- 3.2 The site is allocated for residential development in the South East Lincolnshire Local Plan

(2019) and is identified as Mou029.

4.0 RELEVANT PLANNING POLICIES

4.1 The Development Plan

South East Lincolnshire Local Plan, March 2019

If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, Section 38 (6) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Policy 6 - Developer Contributions
Policy 18 - Affordable Housing

National Guidance

National Planning Policy Framework (NPPF), 2019

Section 5 - Delivering a sufficient supply of homes

Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

- 5.1 H13-1148-20 - Reserved matters application for details of reserved matters for schedule of materials and landscaping and tree planting - outline approval H13-0844-17 (undecided)
- 5.2 H13-1107-20 - Details of boundary treatment, public open space & landscape management (Conditions 9, 10 & 11 of H13-0844-17) (undecided)
- 5.3 H13-0858-20 - Details relating to contamination (Condition 13 of H13-0844-17) (undecided)
- 5.4 H13-0496-20 - Details of Conditions 3 (iii & v), 15, 17, 18, 19, 20 and 22 of H13-0844-17 (undecided)
- 5.5 H13-0370-19 - Details Relating to Archaeology (Condition 5 of H13-0844-17) (approved April 2020)
- 5.6 H13-1096-19 - Reserved matters application for residential development - comprising 58 dwellings and associated works - outline approval H13-0844-17 (approved February 2020)
- 5.7 H13-0844-17 - Outline application for proposed development of up to 58 houses with vehicular access (garages to be removed) (resubmission of H13-1280-16) (approved October 2018)

6.0 REPRESENTATIONS

6.1 Cllr A Casson

Objects. Requests application goes to Planning Committee.

6.2 Cllr A R Woolf

Objects. Reading through the reasons the applicant has stated, it appears that many areas that should have been checked were not. This is therefore a matter between the applicant and the landowner to resolve and should not mean the application be amended to the detriment of the local community and those attempting to get onto the property ladder. Request this to be determined at Planning Committee

6.3 Moulton Parish Council

Objects on the basis of local residents losing the benefit of affordable housing. Queries why the cost of demolishing the existing garage is only being factored in now and why previous land owner did not absorb the cost of potential problems with pipes underlying the site. Developer should consider delaying commencement until the economy looks to improve or sell the site. Asks the Planning Committee to consider the effect on the village and to consider that all developers will want to improve their profitability in these difficult times.

7.0 **CONSIDERATIONS**

7.1 **Planning Considerations**

7.2 Policy 18 of the South East Lincolnshire Local Plan (2019) (SELLP) requires that 'about 25%' affordable housing is provided on market housing sites of 10 or more dwellings. In light of this, the legal agreement tied to outline planning approval ref. H13-0844-17 requires 25% of the total number of dwellings within the development to be provided as affordable housing. This amounts to 15 units (rounded up).

7.3 However, the applicant is now seeking to reduce the number of affordable units they are required to deliver on viability grounds.

7.4 Viability

7.5 Paragraph 3.7.11 of the supporting text to Policy 6 (Developer Contributions) states that:
The policy implications of this Local Plan, including those matters to be sought by developer contributions, have been subject to a Whole Plan Viability Assessment to ensure that the cost would not adversely impact upon the viability of development in South East Lincolnshire. As such, it is expected that the costs of developer contributions are factored in when land is purchased. In exceptional circumstances, where applicants state that financial viability prevents the delivery of some or all developer contributions, a financial appraisal should be submitted... Each Local Planning Authority's independent valuer will consider the assessment.

7.6 Furthermore, Policy 18 of the Local Plan states that:
The proportion of affordable housing that can be provided on market housing sites may vary according to the site specific considerations such as viability.

7.7 In the context of this, the applicant has submitted viability information (included as Appendix B), which the Council has had independently tested. The response of the independent assessment, prepared by CP Viability, is included as Appendix C. This has concluded that a reduction in the number of affordable dwellings from 15 to 3 would be justified. This is based on a mix of 2 x affordable rent (2 bed) and 1 x shared ownership (2 bed) dwellings, which has been agreed with the Council's Housing Strategy and Enabling Officer.

7.8 The independent report advises that the key differences which are having a negative impact on the viability of the scheme are:
- The reduced density of the scheme compared to the assumptions of the 2017 Local Plan viability study (24.79/ha compared to 30/ha). This amounts to a difference of 12 dwellings, which would significantly increase the ability of the scheme to deliver affordable housing; and
- The applicant's construction costs are equivalent to around 55% of the sales values, whereas the Local Plan viability study assumed construction costs would total around 48% of sales values.

7.9 Ordinarily, alternative scenarios in terms of the mix of developer contributions would be provided for Members to consider. However, given that there is no education contribution required by the existing s106 agreement and the NHS contribution is far less than the cost of a dwelling, there are not sufficient monies available to divert to achieve the delivery of further affordable dwellings.

7.10 **Planning Balance**

7.11 The applicant has submitted viability information, which the Council has had independently tested, and it has been concluded that a reduction in the number of affordable dwellings from 15 to 3 would be justified. This is clearly a considerable reduction in the number of affordable units that would be delivered, however there is no scope with this particular scheme to divert other financial contributions to the delivery of additional affordable units. Furthermore, it is necessary to be mindful of the need for the provision of housing in the District and refusal of the application would be a difficult position to defend given that the site is allocated for residential development (Mou029) within Policy 11 (Distribution of New Housing) of the SELLP, and the supporting text to Policy 6 (Developer Contributions) and Policy 18 itself provides scope for developer contributions to be varied on viability grounds.

7.12 **Additional Considerations**

7.13 Public Sector Equality Duty

7.14 In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.15 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.16 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

7.17 It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

7.18 Human Rights

7.19 In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

7.20 It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

7.21 **Conclusion**

7.22 The planning balance lies in favour of the proposal for the reasons outlined above.

8.0 **RECOMMENDATIONS**

8.1 That subject to the applicant entering into a Deed of Variation the modifications to the original Section 106 agreement be approved.

9.0 CONDITIONS

1. South Holland District Council hereby approve the Modification of the Agreement in accordance with the application and details submitted under s.106A of the Town and Country Planning Act 1990.
2. The determined plans are:
Application Form

Background papers:- Planning Application Working File

Lead Contact Officer

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Appendices attached to this report:

Appendix A Plan A

Appendix B Viability Assessment

Appendix C Independent Viability Report

