

PLANNING COMMITTEE – 12 January 2021

REFERENCE NUMBER: 19/00907/OL Application Expiry Date: 15.01.21

Application Type: Outline Application (Section 73)

Proposal Description: Application to remove condition 4 (affordable housing) of planning application NED/14/01236/OL (Major Development)

At: Land adjacent the West Side of 40, Church Meadows, Calow

For: **Mr McDougall**

Third Party 10 **Parish:** Calow
Reps: **Ward Name:** Sutton

Author of Adrian Kirkham **Date** of 21/12/2020
Report: **Report:**

MAIN RECOMMENDATION: GRANT RM APPROVAL



Application Site edged red

1.0 Reason for Report

- 1.1 The application has been called in to the committee by the Ward Member, Councillor Kerry, due to the proposed departure from the Council's expected provision of affordable housing. Queries are also raised about the submission and agreement over a further condition attached to the grant of planning consent requiring parking to be provided.

2.0 Proposal and Background

- 2.1 The site is located outside the existing Settlement Development Limits for Calow and was granted outline planning consent in 2018 for its development for housing under reference NED/14/01236/OL. That application was submitted in 2014, considered by Committee in March 2016 and finally determined in 2018 following final agreement with the applicant over the relevant section 106 requirements. The permission granted was subject to a number of conditions including condition 32, which is referred to by Cllr Kerry, requiring on and off site parking.
- 2.2 The site has subsequently been allocated for housing development in the Publication Draft Local Plan (PDLP) and would be incorporated into Calow as the Plan is adopted.
- 2.3 The current application originally sought consent for the removal of a condition (condition 4) attached to the grant of the planning consent which required 40% (at least) of the new houses to be affordable units.
- 2.4 Subsequently, the applicant has determined that he no longer wants to remove the requirement for any affordable units and instead wishes the reduction to be to provide for 20% of the housing as affordable housing. There is no proposal to alter/amend any other of the conditions although it is an issue discussed further below.

Application Details

- 2.5 As set out above the application seeks to amend condition 4 of the originally granted consent to require 20% of the developed units to be affordable in nature rather than the originally required 40%.
- 2.6 This is an amendment to the originally submitted proposal, which sought the removal of any requirement for affordable units. It is not proposed by the applicant for any other conditions to be altered.

Applicant's Justification

- 2.6 The applicant stated that:

Since the granting of permission it has become apparent that the level of provision of affordable housing secured by this condition is not financially viable. The applicant seeks the removal of this requirement to enable the development to progress in a viable manner. This submission is accompanied by a viability appraisal report that corroborates this position. It determines that a scheme fulfilling 40% affordable housing provision would be unviable and would in fact generate a negative land value. Subsequent analysis demonstrates that only nil affordable housing provision generates a land value that represents a 'reasonable return'.

Alongside this evidence it is also the case that within the emerging Local Plan the primary policy dealing with affordable housing, Policy LC2, indicates lower levels of requirement than that which resulted in the 40% set out in condition 4. LC2 requires 'tiered' levels of provision in accordance with value areas – in this instance the site falls outside of the 'high value areas' as identified on the Policies Map accompanying the emerging Plan and therefore would require 20% provision.

However -as with current policy- LC2 also allows for lower provision/relief to be granted as a result of circumstances where the viability of the scheme is in question. While the emerging Plan is yet to be adopted, the same approach is set out in the current adopted Plan and is also allowed for within the NPPF.

The NPPF also establishes in paragraph 48 that when it comes to the consideration of emerging Plans, LPAs may give weight to relevant policies according to:

- a) The stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater weight that may be given); and
- c) The degree of consistency of the relevant policies in the emerging plan to the Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

In the current circumstances the emerging Plan is at a late stage of preparation – it has undergone the hearing sessions as part of its examination in public. There remain unresolved objections, however the Inspector has broadly outlined how these might be overcome and while the Council may retain more fundamental concerns none of these unresolved objections relate to the matter in hand.

Furthermore, as suggested above the principle under discussion is in line with the relevant policies of the Framework. As a result, it is asserted that

close to full weight should be given to policy LC2 of the emerging Plan as far as it relates to the consideration of affordable housing contributions for this site.

In line with the above and the accompanying viability evidence it is therefore asserted that relief must be granted and that condition 4 should be removed in order for the proposals to be delivered.

[N.B. Members should note that this submission was made prior to the applicant's decision to amend his application to require a reduction in affordable units to 20%.]

3.0 Relevant Planning History

- 3.1 NED/14/01236/OL: Outline application (with all matters reserved) for housing with access via Churchside. Approval granted in 2018 subject to section 106 requirements.
- 3.2 NED/11/00946/OL: Outline application (with all matters reserved) for housing with access via Churchside. Application refused and appeal dismissed.
- 3.3 NED/10/00823/OL: Outline application (with all matters reserved) for housing with access via Churchside. Application withdrawn.
- 3.4 NED/89/00111/OL: Outline Application for residential development. Refused.
- 3.5 NED/79/00097/OL: Outline Application for residential development. Refused.

4.0 Consultation Responses

- 4.1 **NEDDC Housing** – Objects to the removal of the condition. The Strategic Housing Market Assessment – OAN Update 2017 estimated that to meet the affordable housing need for the district there is a need to bring forward 172 units per year over the period to 2035 (or 236 per year over the next five years). Calow is an area with a low turnover of properties and a high need and demand, particularly for two and three bedroom houses to rent.

Affordable housing was seen to be a significant benefit to the application 14/01236/OL and 40% was always accepted as a requirement.

Understands that viability issues have to be considered, but objects to the removal of affordable housing in its entirety from the development.

- 4.2 **Derbyshire Wildlife Trust** – Confirms that all ecological requirements should be transferred to any new permission.
- 4.3 **Councilor Kerry** – Formally calls in the application to be heard by the Planning Committee. He is not in favour of the removal of the affordable housing requirement. Notes that a further condition requires an improvement to Church Side to mitigate parking problems.
- 4.4 **Councilor Birkin** – Objects to the application.
- 4.5 **Calow Parish Council** – The Parish Council strenuously objects to this application to remove the affordable housing from this proposed development. The applicant was well aware when he made his application that the level of affordable housing was 40% and the permission was granted on the basis that would be delivered on site.

As we have seen from many recent planning enquiries recently across the district, the emerging local plan holds little weight and it is the adopted plan that holds sway. The applicants' reference to a 20% provision for social housing is therefore superfluous to the matter at hand. The applicant states that a provision of 40% would make the scheme unviable. The answer is clear – if the scheme is unviable, don't develop it.

- 4.6 **DCC Infrastructure** – Contribution to secondary school provision required.
- 4.7 **Health** – Contribution required. Chesterfield Hospital also asked of the process for the hospital to follow. (N.B. Officer note: The formal consultation process has been followed with the local NHS Trust. No direct consultation has been undertaken with the hospital itself).
- 4.8 **NEDDC Streetscene** – Contribution required for off-site play provision.

5.0 Representations

- 5.1 Site notices were posted on 23.09.19 and an advert published on 10.10.2019. In addition, 39 neighbours were consulted by post on 09.09.19 and re-consulted on 09.09.20.
- 5.2 9 comments have been received (from 7 contributors) making the following points:
- If development goes ahead all conditions should be abided by. Nothing has changed. This is just another application that gets passed and then an application comes back seeking its (affordable housing) removal.

- There is demand for bungalows and the country needs affordable housing. If the site is developed a large proportion of housing should be affordable ideal for hospital staff especially as the site is adjacent a good bus route and within easy walking distance of the local school.
- Reference is also made to the parking that will be made available for residents of Church Side
- Permission was only granted because of the proposed affordable housing and now the applicant wishes to remove it.
- If the development is unviable then it is unviable.

5 Relevant Policy and Strategic Context

6.1 The Development Plan comprises the **North East Derbyshire Local Plan**.

6.2 In respect of the **North East Derbyshire Local Plan** the most relevant policies to this application are considered to be as follows:

- GS1 Sustainable Development
- GS6 New Development in the Countryside
- GS9 Planning Obligations
- H3 Housing Development outside the Settlement Development Limits
- H12 Design and Layout of new Houses
- NE1 Landscape Character
- BE1 General Design Principles
- T2 Highway Access and the Impact of New Development
- T9 Parking Provision for Development

6.3 Other relevant **policy documents** include the Successful Places Design Guide and Affordable Housing SPD.

6.4 The **North East Derbyshire Publication Draft Local Plan 2014-2034 (PDLP)**, whilst not forming part of the adopted Development Plan, was submitted for examination in May 2018, with public hearings taking place in November/December 2018 and March 2019. The Inspector issued her interim findings in letters dated 18 February and 21 March 2019. In May 2019, the Council paused the Plan, pending consideration of its options around housing numbers and Green Belt release. On 27 February 2020 the Council announced the un-pausing of the Plan to allow it to proceed to the next stage of consultation on the Main Modifications. Consultation on main modifications has now begun. It is anticipated that the Plan will achieve adoption in spring 2021

6.5 In respect of the **PDLP** the most relevant policies to this application are considered to be as follows:

- SS1 Sustainable Development

SS2 Spatial Strategy and the Distribution of Development
LC1 Housing Allocations
LC2 Affordable Housing
SDC3 Landscape Character
SDC12 High quality Design and Place-Making
ID1 Infrastructure Delivery and Developer Contributions

The weight to be attached to the policies of the Publication Draft Local Plan is a matter for the decision maker and is discussed below.

Other Material Considerations

National Planning Policy Framework (2019)

- 6.6 The revised National Planning Policy Framework (NPPF) was published on 19th February 2019 and sets out the government's planning policies for England and how these are expected to be applied. This revised Framework replaces the previous NPPF published in July 2012 and 2018. The NPPF promotes affordable housing as per its paragraph 64.

7.0 Planning Issues

Introduction

- 7.1 The application is seeking, under section 73 of the relevant act, to amend a condition attached to the original grant of planning consent. Section 73 requires the Local Planning Authority to consider only the question of the conditions subject to which planning consent was granted. Specifically, the time allowed to implement a permission cannot be altered.
- 7.2 In this case, permission was granted in 2018 subject to conditions, albeit the application had been originally submitted in 2014. It was granted subject to a number of conditions, including condition 4, which requires at least 40% of the new housing to be affordable housing.
- 7.3 The applicant is now seeking consent to amend that condition to require a reduced level of affordable housing. Originally, it was proposed that no affordable housing would be provided, however, following an Officer request to test the submitted viability independently, the proposal has now been amended such that if it was now approved, 20% affordable housing would be required.

Principle of Development

- 7.4 The site originally received outline planning permission in 2018, following a resolution to grant permission by Planning Committee in 2016. That permission is extant.

- 7.5 Whilst the site currently falls outside the settlement development limits in the Local Plan, where new housing is generally resisted, the permission granted, which is still extant, and the intention to allocate the site for housing in the Publication Draft Local Plan, and to which Officers attach significant weight, leads Officers to conclude and re-affirm that the principle of residential development on the site is acceptable.

Affordable Housing.

- 7.6 The outline permission granted included a requirement, which was conditioned, that 40% of the proposed units would be for affordable housing units.
- 7.7 The current application originally sought to remove all requirements for any affordable units due to alleged viability concerns. Following an Officer request to independently assess that intention the applicant has subsequently sought to amend the scheme to remove the need for 40% affordable units and instead seeks consent to require 20% affordable units to be delivered as per the most up to date information and requirements..
- 7.8 The PDLP includes a requirement, based on the Strategic Housing Market Area (SHMA) Update of 2017, and so following the resolution of Planning Committee in 2016 to grant planning permission, for the level of affordable housing to be delivered in approved residential developments in Calow to be 20%. Officers consider that this is a realistic requirement, it is based on the most up to date information and would conform to the policy requirements set out in the PDLP to which Officers attach significant weight.
- 7.9 As such, Officers consider that the provision of 20% affordable housing is appropriate in these circumstances.

Other conditions

- 7.10 There is no intention to amend/alter any other of the conditions imposed on the original permission. These include a number of issues including connectivity, the provision of open space and the proper development of the site.
- 7.11 Most notably the conditions requiring parking provision both on and off site would be retained such that the concerns raised in representations about parking and access are addressed.

Section 106 issues

- 7.12 The grant of planning permission in 2018 was given subject to a legal agreement that contributions would be made towards recreation provision and wildlife mitigation.
- 7.13 These requirements were current at the time but have been reviewed at this stage due to the intervening period between the submission of the application in 2014 and now. Requests have been received from the County Council, as education authority, the health authority, as health provider, and the Council's own Streetscene team in respect of play provision for updated and/or section106 contributions. These would be added to the continuing requirement for wildlife mitigation following the removal from the site of the ecological interest that previously existed.
- 7.14 These requests have all been acknowledged by the applicant and so it is recommended that if consent is granted a revised and updated section 106 agreement to require the following is concluded:
- A. £17,000 wildlife mitigation contribution.
 - B. A recreation contribution of either £40,060.76 (plus a maintenance contribution of £12,307.39) (this is based on an estimate given the application is made in outline) or a figure based on the most up to date iteration of the Council's Recreation and Open Space SPD at the time when any reserved matters application is submitted.
 - C. £177,330.23 as an education contribution towards provision at Hasland Hall Community School.
 - D. £22,560 as a health contribution towards facilities in Brimington, Barrow Hill and/or Calow.
- 7.15 In addition, whereas previously the requirement for affordable housing was required by condition, Officers consider that the affordable housing provision is better included now, in accord with current practice, within the section 106 agreement in this case, although the option to require this provision through a revised condition is still left open in the Officer recommendation.

Conclusion

- 7.16 Officers conclude that an affordable housing requirement of 20% is consistent with the Council's current policy and requirements and is in line with the PDLP. These considerations are considered in this case to override the requirements of the Development Plan itself.
- 7.17 Therefore, subject to either the revision of the relevant condition or the requirement for affordable housing to be incorporated into a revised and updated section 106 agreement Officers conclude the proposal to require 20% of the constructed housing to be affordable units is acceptable.

8.0 Recommendation

8.1 **GRANT** planning permission subject to the re-imposition of all the conditions imposed on application NED/14/01236/OL, subject to any minor alterations to the precise wording delegated to the Planning Manager, except condition 4 which is either amended to require 20% affordable housing or that provision is included in a section 106 agreement which also requires the following:

- A. £17,000 wildlife mitigation contribution.
- B. A recreation contribution of either £40,060.76 (plus a maintenance contribution of £12,307.39) (this is based on an estimate given the application is made in outline) or a figure based on the most up to date iteration of the Council's Recreation and Open Space SPD at the time when any reserved matters application is submitted.
- C. £177,330.23 as an education contribution towards provision at Hasland Hall Community School.
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