

Agenda Item 9

**Development Services
Wiltshire Council
61 Wyndham Road
Salisbury, Wiltshire SP1 3AH**

direct line: 01722 434379

fax: 01722 434520

email: developmentmanagementsouth@salisbury.gov.uk

web: www.salisbury.gov.uk

Report

Report Subject: Archers Gate Amesbury – Request for Variation to provision of S106 Agreement

Report to: Southern Area planning committee

Date: 17 September 2009

Author: Judy Howles Area Development Manager

Request for Variation to provision of S106 Agreement

1. Report Summary:

The purpose of the report is to consider a variation to Part VI clause 1 of the S106 Agreement for the Archers Gate development to enable a start to be made on the final phase of the consented development prior to the construction of 375 sqm gross of retail floorspace.

2. Background:

The outline consent for the development (S/2002/1075) was subject to a S106 Agreement that covered *inter alia* the need to provide for retail facilities on the development within a local centre.

Part VI deals with the local centre covenants. Clause 1 states:

Not to commence development on the final parcel of land before retail units of not less than 375 sq metres gross have been built at ground floor level on the Local Centre Land such retail units to:

1.1 include not less than 300 sq metres to be used for class A1 of the Use Classes Order purposes only

Detailed planning permission has been granted for the last phase of the development (Area H - S/2008/478 refers) but a decision on the application for the local centre (S/2009/ 789) is still awaited, amendments having been necessary in order to overcome objections raised by consultees in relation to potential for antisocial behaviour .

By letter, the applicants agents requested that the S106 Agreement be varied to permit the construction of 24 affordable housing units on Area H (the final phase) without first having had to build 375-sqm gross ground floor retail space;The reason for this request being that there is a March 2010 deadline for receipt of the grant relating to the affordable housing , there was no detailed permission for the local centre and it looked unlikely that permission would be forthcoming for the scheme submitted under s//2009/789 ..

This request, following consultation with the Amesbury ward members and the Director of Development, was initially refused (letter attached as appendix 1).

However, since that date :

A Amesbury Town Council have expressed concern firstly about losing the affordable housing if commencement was held up pending a start on the local centre and secondly has concern about the shop premises standing vacant.

B A meeting has been held with the applicants and their agents to resolve the issues in relation to the layout of the retail units and associated car parking proposed for the local centre so that it now looks unlikely, subject to satisfactory completion of a S106 Agreement, that the application would be refused. The retail units shown on that application would meet the floor space requirements of the S106 Agreement. The applicants advised verbally that they have someone interested in the site. At that meeting the applicants advised that a variation to the S106 agreement which allowed work to commence on the final phase (H) but that the houses cannot be occupied until the retail floor space is provided would be acceptable to them in that it would:

- a. Give them a more realistic timescale for meeting the affordable housing deadline as they could start work (such as groundworks) on the final phase
- b. Be more attractive to a potential retail occupier if houses were going up adjacent to the site
- c. Give a larger mass of housing from which the shop could quickly draw custom.

3. Planning considerations

The agreement as currently worded does not guarantee a retail presence on the development, it merely provides for a building for such a purpose to be built. It should be noted that as a planning authority cannot compel someone to run a business, so the requirement is just the provision of floorspace . The town council's concerns about empty premises- and the effect that would have upon Archer's Gate have some validity in this context.

The applicants have found that the uncertainty arising from the decision awaited on the Tesco/Asda call in enquiry has led to retail operators being unwilling to commit to the local centre. The outcome of the appeal should be known by 25 September 2009. Should both appeals be dismissed, there is a possibility that the S106 may have to be reconsidered, since it also restricts the upper limit of retail floorspace. However, with the tight timescale

on the delivery of the affordable housing, it would be prudent to consider this request now and not delay the decision pending the outcome of the appeals.

To agree to the variation now, to allow work to start on the final phase of the development would facilitate delivery of affordable housing and would show goodwill. However, as set out under option 1 below, such an approach is not without risk of the area consented under the outline permission s/2002/1075 being devoid of shops for some years.

It should also be borne in mind that additional housing development is likely to come forward at Archers Gate which affords a further opportunity to secure retail floorspace via a S106 Agreement. An application on the 'white land', that is land at Archer's Gate included in the original allocation but in excess of the numbers of dwellings granted is anticipated shortly and further development adjacent to Archers Gate is envisaged in the Core Strategy. .

4. Options for consideration:

Option 1

Vary Part VI Clause 1 to read

Not to permit occupation of any residential units on the final parcel of land before retail units of not less than 375 sq metres gross have been built at ground floor level on the Local Centre Land such retail units to:

1.1 include not less than 300 sq metres to be used for class A1 of the Use Classes Order purposes only

The advantage would be that this would give the applicants the breathing space they need to be able to deliver the affordable housing within the required timescale, and make the site more attractive to retailers if they could see construction continuing on the development and a potential greater number of clients for the shop.

The disadvantage is that it is much less enforceable than as currently written. Moreover, it must be considered whether, if it came to the crunch, it would be reasonable to require that affordable (and open market) houses stand unoccupied just because a retail shop unit had not been built.

Members may recall the delay in provision of any retail facilities on Butterfield Down owing to the unattractiveness of the retail offer originally proposed (several small units) which has resulted in an estate with no currently functioning retail shops (Although it could be considered that the reopened ex NAAFI shop on Beaulieu Road/ Boscombe Road opposite the development - now a coop-performs this function.)

Option 2

Refuse the request.

This runs the risk of losing the grant for 24 affordable housing units, contrary to the Wiltshire council priority of securing affordable housing. It also runs the risk of work halting on the Archer's Gate development with the consequent impact upon housing delivery.

Option 3

Amend the S106 but in respect of the affordable housing only rather than the whole phase so that it reads;

*Not to commence development of any open market residential units and not more than 24 affordable residential units on the final parcel of land before retail units of not less than 375 sq metres gross have been built at ground floor level on the Local Centre Land such retail units to:
include not less than 300 sq metres to be used for class A1 of the Use Classes Order purposes only*

This is what the applicants agents originally requested. It would run contrary to the objective of providing balanced communities but would enable work to start on the affordable dwellings (and indeed, permit them to be occupied) but not allow any work to commence on the market dwellings. It would, however, provide a more enforceable trigger than option 1.

5. Consultation Undertaken

The issue has been discussed informally with the two Amesbury Ward members. Consultation has been undertaken with Ann Beard, Legal Officer who has advised that option 3 provides for more enforceable triggers than option 1.

6. Recommendation(s):

That option 1 be followed and the agreement be varied accordingly.

7 Background Papers:

The letter to the applicants' agent refusing the initial request is attached as an appendix .

APPENDIX 1
Letter to applicants' agent.

Date :24 July 2009

Terence O Rourke
Everdene House
Deansleigh Road
Bournemouth
BH7 7DU

Development Services
Wiltshire Council,
61 Wyndham Road, Salisbury,
Wiltshire SP1 3AH

Our Ref:S/2002/1075

Dear Mr Miller,

Archers Gate Development Amesbury
Request to vary S106 agreement

I am writing in response to your letter addressed to Mr. Milton, who as a spatial planning officer, is no longer within Development Services.

As I understand it, you are requesting that the agreement be varied so as to permit the construction of 24 affordable housing units on Area H without first having had to build 375-sqm gross ground floor retail space.

Having discussed the matter with both the service director and the local division member, such a variation would be unacceptable to the council.

This is for the following reasons:

1. A substantial amount of housing at Archer's Gate has been built but it is devoid of retail facilities. The nearest shop, on Boscombe Road/Beaulieu Road, is more than 5 minutes walking distance from many of the houses. There has been an ongoing concern at the lack of retail shops in eastern Amesbury and to relax this requirement will perpetuate this. It is therefore important that these retail facilities are built as soon as possible.

The letters of support for the local centre application bear witness to this.

2. You express concern about the timing of any possible consent for the local centre. This is due on September 4 2009. Should it be delayed, you are concerned that you will not be able to construct the affordable housing by the grant deadline of March 2010.

Outline planning permission was granted in March 2005, so you have had four years in which to submit the details of the local centre. However, you have waited until the end of April 2009 to submit an application, despite pre application discussions taking place in 2007 (according to the case officer) and then the application was unable to be made valid until 5 June 2009. You submitted applications for Area H a year ahead of applications for the

Local Centre despite knowing that you were under an obligation to construct an amount of retail floorspace first.

3. In the interests of a balanced community, it would be preferable if the open market housing and affordable housing were built concurrently rather than the affordable housing be provided in isolation. Furthermore, in considering the amenities desirable for the occupiers of those affordable units, who may not have access to a car, the lack of retail facilities close by is most unsatisfactory.

I would therefore suggest you take steps to ensure that you are in a position to be able to build the amount of ground floor retail floorspace required by the S106 within the timescale. I understand you will be contacting Steve Llewellyn, the case officer shortly, to discuss the way forward with application S/2009/0789 for the local centre.

The construction of retail facilities on this development should be a priority.

Yours sincerely

Judy Howles (Mrs)
Area Development Manager (S)

Phone 01722 434379

fax: 01722 434520

dx: 58026,

email: developmentmanagementsouth@wiltshire.gov.uk

web: www.wiltshire.gov.uk

cc. Ann Beard Legal Services

Brad Fleet Director of Development Services