

West Wiltshire District Council

Planning Committee

26 February 2009

**Land south of Paxcroft Mead, Trowbridge
Allocated Housing site H11
04/02105/OUTES**

**Report on Open Book Appraisal and Section 106
Legal Agreements**

1. Purpose

For the Committee to consider the following matters:

The contents of the legal agreements relating to the above development before the agreements are signed and sealed and planning permission issued.

A report following an 'open book' appraisal prepared by a specialist consultant appointed by the Council.

2. Background

The outline proposals previously considered by the Planning Committee were for a residential development of 550 dwellings, a distributor road to connect West Ashton Road and Leap Gate, a primary school, local shop, open space with sports pitches and linear park, watercourse and surface water management, enhancement to Green Lane for pedestrians and cyclists, pavilion and changing rooms, car parking facilities and foul water pumping station.

The site of approximately 50.5 hectares of agricultural land with a dwelling, farmyard and scrap yard is situated immediately to the east of Trowbridge and is located between Green Lane at the North and West Ashton Road to the south.

The application was submitted in outline form for the principle of the development. However, detailed approval was sought for the means of access to the site and provision of the distributor road link. All other matters are reserved for detailed permission as part of a subsequent submission of applications for Approval of Reserved Matters at a later date.

The application was considered by the Planning Committee at its meeting of 13 July 2005. The Committee resolved:

- a) that it was minded to grant outline planning permission subject to conditions following the completion of (a) section 106 agreement(s), and
- b) that the Planning Committee should agree the content of the agreement(s) before signing and sealing and planning permission being issued.

3. Legal Agreements

There are two agreements which seek to secure the provision of the following in accordance with the Development Brief and Master Plan.

The agreement with West Wiltshire District Council:-

The provision of 30% Affordable Housing
Public Open Space and maintenance contribution
Provision of recreation facilities
Provision of sports pitches
Wildlife management and monitoring plan for Green Lane Wood and adjacent open spaces including the country park
A financial contribution for Public Art
Provision of a local shop
A contribution to flood defences
Community recycling facility

The agreement with Wiltshire County Council:-

Provision of a primary school
Dual use of school hall and multiple use games area for community use
Provision and timing of the Hilperton Relief Road
Provision and timing of the East Trowbridge Distributor Road
Provision of off-site highway works and access to West Ashton Road
Provision of bus shelters
Routing of construction traffic
A Green Travel Plan
Traffic Regulation Orders and Traffic Management Plan

There were also 39 conditions attached to the resolution and a copy is attached as Appendix 1.

Condition 5 states that:

‘The number of dwellings to be constructed pursuant to this permission shall be in the range of 545 to 555 units
REASON: In order to comply with the Development Plan
POLICY: West Wiltshire District Plan policy H11.’

Both agreements have been the subject of lengthy negotiations between the different parties to the agreements and these have now been concluded and a final draft prepared.

Executive summaries of the two agreements are appended as separate documents at the end of this report together with a draft decision notice containing the planning conditions and informatives.

The East of Trowbridge site is one of the most significant strategic housing allocations in West Wiltshire. It is nearly four years since the outline application was considered and supported in principle. All parties are anxious that the S106 agreement should be completed and permission granted at the earliest opportunity to enable the development to proceed.

4. The Open Book Appraisal

Following the decision to grant permission subject to the prior completion of the S106 agreement, considerable negotiations have taken place between the developers and your officers, including the formation of an interdepartmental working group to progress these matters to a fair and reasonable solution.

This is an unusual site in that there are numerous major infrastructure planning obligations. These include the need for a significant financial contribution towards the construction costs of the Hilperton Relief Road together with off site infrastructure (£7.9 million), the need for affordable housing, provision of a primary school together with all the remaining obligations outlined in Section 3 above of this report.

During the process of negotiations to secure the legal agreements the developer raised the issue of the overall viability of the site in the light of the range of planning obligations.

They presented costings showing that the site would not be capable of development in the context of the overall construction costs and the S106 contributions. In other words if all the obligations were adhered to, the site would be undevelopable.

In response to this position, the Council commissioned an independent 'open book' appraisal. The aim of this was to verify the developer's costings and, if necessary, to advise on options for achieving an economically viable scheme. The Council appointed King Sturge Ltd, a national firm of consultants who are highly regarded in this field, to undertake the appraisal.

King Sturge were asked to consider the economic viability of the site and look at various options that might ensure its viability. The methodology, using the Housing Corporation Economic Appraisal Tool, was agreed in advance between the Council and the developer.

The approach undertaken by your officers is directed by both National and Local Planning Policy.

It is a crucial requirement of PPS3 and consequently our own Affordable Housing Policy that an informed assessment of the viability is undertaken to ensure a scheme can be brought forward in an economic manner.

The appraisal is required to take in to account likely levels of public subsidy, the level of reasonable developer contribution or the consideration of Local Authorities undertaking infrastructure delivery itself.

The findings of the appraisal

The developer's construction costs were tested and found to be reasonable. It was noted that should the scheme be delayed, this could increase the costs further.

The appraisal demonstrated that the development as proposed was not viable. At the time the report was prepared, in August 2008, the development costs exceeded the gross value of the development by £3.6 million, leaving aside the cost of the land. Since that time, house prices have fallen substantially, eroding the viability even further.

The executive summary of the viability report is appended and full copies of the report on costs and the viability report have been placed in the Members' room.

Your officers have explored a variety of different options that would enable the site to go forward for development.

The original scheme of 550 houses included an affordable housing provision of 132 units. It has been established that this scheme was not viable. However, if the number of residential units is revised to 650 houses, including the provision of 162 affordable housing units, it was demonstrated that the scheme would be economically viable. Such a scheme would better reflect up-to-date housing demand and housing need information.

The report concluded that the revised housing scheme should be as follows:-

- An increase in the total number of houses from 550 to 650 units.
- A development footprint no greater than that proposed by the original scheme.
- A revised housing mix, in order to achieve this, with fewer large detached houses and a higher proportion of smaller units.

- This would result in an increased density from 30.7 dwellings per hectare to 36.3 dwellings per hectare which is still well within policy guidance of 30 to 50 dwellings per hectare.
- No change to the fixed cost obligations previously agreed.
- An assumption that the Social Housing Grant would be available to support the affordable housing is based on the Housing Corporation stated support in principle of the development.
- Provision of 25% affordable housing, equating to 162 affordable units, all for social rent.
- Provision of a commuted sum in lieu of 5% shared ownership housing.

5. Key Issues

This report is to enable Councillors to:-

- (i) consider the conclusions of the open book exercise and the increase proposed in the overall number of houses and density together with the change to the affordable housing contribution;
- (ii) view the provisions of the draft legal agreements before they are signed and sealed.

The planning merits of the case were fully considered at the meeting on 13 July 2005 and are not matters for further consideration as part of this report.

Revised Housing Scheme

The development of the site is a key part of our strategic housing commitments and to the economic needs of Trowbridge.

It is therefore important that this site is developed in order to meet the strategic housing commitments of West Wiltshire as well as assisting in the essential funding of the Hilperton Relief Road and improving other highways in the surrounding network, providing much need housing including affordable housing, a new school and other essential planning obligations.

Density

The Regional Spatial Strategy seeks to concentrate new housing development at the major settlements and further seeks to enhance the strategic role of Trowbridge in this respect. There is a need, as such, to provide sufficient new housing to ensure that the economic strength and viability of the county town is maintained and strengthened.

Government guidance requires that all new residential development should not be below a minimum average density of 30 dwellings per hectare with higher densities encouraged in appropriate locations.

The increase in housing units will result in an increase in the overall housing density of the site. However, it is well within the accepted density limits of residential developments of a similar size. The overall footprint/site area as indicated on the Masterplan for the housing development will remain the same. It is likely, therefore, that when any applications for approval of reserved matters are submitted, the layouts can be designed without detriment to the residential amenity of future occupants.

Furthermore, it will be possible to reduce the size of the dwellings and provide more 2/3 bedroomed semi-detached, terraced houses and flats rather than large 4/5 bedroomed detached dwellings. This will further assist in meeting the strategic targets for new housing development.

The higher density of this site as currently proposed from approximately 30 to 36 dwellings per hectare is comparable with most of the recent developments within the district and some areas have higher densities. It may be higher than most residential development from the late 20th century, but this is in response to a specific and deliberate change in Government policy to move away from low density, land-hungry developments.

Equally, it is in response to the findings of the open book appraisal and requirement to balance the provision of affordable housing against the economic viability of the site.

Affordable Housing

The Council's policy on affordable housing seeks to provide up to 30% affordable housing on urban sites.

The proposal will provide 25% affordable housing. This represents 163 houses, an increase of 30 on the original scheme. In addition, a commuted sum equivalent to 5% shared equity housing will be provided to the Council, off-site funding being the preferred option in this case and following the Affordable Housing provision on the development at east of Melksham.

Officers are content that the current proposals represent the optimal balance between maximising the delivery of planning obligations and ensuring that the development remains viable. On this basis, the proposed increase in density and the changes to the affordable housing contributions are considered acceptable.

Legal Agreement

The Planning Act enables local authorities and developers to enter into legal agreements to secure the delivery of matters that are necessary to make a development acceptable in planning terms. This includes the

requirement for financial contributions for public services, such as to highway infrastructure and education needs.

When considering the need for a planning obligation it must meet the following tests:

- relevant to planning;
- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development;
- fairly and reasonably related in scale and character to the proposed development; and
- reasonable in all other respects.

In this case officers are satisfied that the draft agreements meet the necessary tests and are consistent with the provisions of the approved Heads of Terms.

6. Recommendation(s)

That the Planning Committee gives its approval to:-

- (i) increasing the number of residential units from 550 to 650 in accordance with the recommendations of the Report on Economic Viability
- (ii) that Condition 5 of the resolution taken by the Planning Committee on 13 July 2005 is amended to read '650 units' in lieu of '545 to 555 units'
- (iii) the resolution taken by the Planning Committee on 13 July 2005 is amended to delete the requirement for 30% affordable housing provision and replace it with a requirement for 25% affordable housing plus a commuted sum in lieu of 5% shared equity housing.
- (iv) the completion of the Legal Agreements to enable the formal grant of outline planning permission together with justification reason and all conditions as identified on the original resolution numbered 1 to 39 as amended at Condition 5 to reflect the increase in housing numbers and informatives numbered 1 to 6.

7. List of Background Papers

Report to Committee, reference 04/02105/OUTES dated 13 July 2005
Item 1 on that Agenda.

Minutes of the Committee of 13 July 2005.

Appendices:

Executive Summaries of S106 reports and report on costs and economic viability

Draft Permission with Conditions and Informatives.

Copies of the Draft Legal Agreements and copies of the King Sturge reports, containing the full text, can be found in the Members Room.

Rosie MacGregor

Principal Planning Officer

RMG/February '09