

Wiltshire Council

Southern Area Planning Committee

16 June 2011

Planning application no. S/2006/1599 for: The erection of 26 Dwellings and formation of Vehicular and Pedestrian access thereto, at Downside Close, Mere.

1. Report Summary

- 1.1 To seek Members' consent to vary the affordable housing elements of the S106 agreement enabling prospective purchasers to obtain mortgages to purchase the low cost market dwellings provided on this development, and to provide the developer with a fallback option if no qualifying purchasers are able to proceed.

2. Background

- 2.1 The report to the former Western Area Committee of Salisbury District Council dated 19/3/09 explained in detail the problems that prospective purchasers were facing in obtaining mortgages to purchase the low cost market dwellings on this development due to the way in which the sale prices were calculated. At that time, Members were asked to agree a revision to the S106 agreement to allow for a revised method of calculating sale prices.
- 2.2 Members gave approval to allow officers to use delegated authority to agree a revised method of calculating sales prices as a percentage of open market value, to make the scheme acceptable to mortgage lenders. Officers were also given delegated authority to insert a Mortgagee In Possession clause and amend the cascades for local connection criteria. As a result a S106 variation was drawn up between all parties concerned.
- 2.3 At this stage, one of the low cost sale homes had already been sold, and two further properties were completed and awaiting sale. Over the following months those completed two properties were advertised, and prospective purchasers selected. However, despite provisional mortgage offers, the purchasers had their mortgage offers withdrawn later in the process, with lenders stating the S106 agreement as the reason for their withdrawal. The main issue was that, following the Deed of Variation, there are now too many different documents to refer to and they felt it was too complex to make a sensible lending decision and would want to see all clauses on one complete S106 agreement. They also still had some concerns over the timescales for the nominations process.

As a result, Plots 10 & 11 are still awaiting sale, 3 years after initial completion. The remaining three low cost sale units are due for completion in Spring 2011, and in the current circumstances the prospects of any applicants being able to secure a mortgage with the existing S106 restrictions in place is very slim.

- 2.4 In most instances we could not be completely certain that there were no other factors that influenced the mortgage lenders' decisions. However, we are now two years further on and the mortgage lending criteria has become even further restricted, and prospective purchasers who have approached lenders in recent months have all been refused a mortgage on these properties for all the reasons listed above. Between plots 10 & 11 there have been 4 potential purchasers who have all had their mortgage offers withdrawn, 2 of which were at the point of exchange. The inability to sell these properties has proved costly to the developer, with costs estimated at £90,000. The developer is having to pay empty property tax, statutory service charges, and interest to the bank. The bank has also considered repossession of the properties if the matter is not resolved as they are unable to receive their return on the loan until the properties are sold. In the event of repossession, the bank would be free to sell the homes on the open market, free of the S106 restrictions,

and would simply be required to pay the Council the difference between the open market value and the discounted sale value.

- 2.5 The New Housing Team has been working with the Homes & Communities Agency and Council of Mortgage Lenders to resolve issues where S106 clauses prevent mortgage lenders from granting mortgages. This particular S106 and the subsequent Deed of Variation were circulated to mortgage lenders via the Homes & Communities Agency, in order to receive their feedback. The response was negative and the lenders made it clear that they would not be prepared to refer to various different versions of a S106 agreement and Deed of Variation, and would only consider a scheme where one document covers all clauses. This point, together with other guidance on mortgage lending criteria, is covered in the good practice note "Mortgage Access for Affordable Housing" attached as appendix D.
- 2.6 We are now in the position where 5 out of 6 of the low cost sale homes on this development are likely to remain vacant unless the affordable housing elements of the S106 agreement can be amended to meet the lenders' requirements, whilst protecting the affordable housing for local people. Based on the length of time that these properties have been vacant, and the fact that mortgage availability may still be restricted in the current market, we do also need to consider adding the fallback option which would allow the developer to sell the homes on the open market after a set time period, with a clause that would require the developer to reimburse the Council with the difference between the open market value and the discounted sale price. As mentioned in 2.4 above, this clause is already in place in the event that the bank proceeds with repossession, but it does not currently allow the developer to take this course of action. This is a clause that has been used recently in other parts of Wiltshire on similar discounted sale schemes. Any income generated in this way would then be used to enable more affordable housing in Wiltshire.

3. Options for consideration

- 3.1 We have considered the option of a Registered Provider purchasing the properties to sell on a shared ownership basis. However, all of our Registered Providers were consulted and none expressed any interest in taking this option as there is no grant funding available to make that option financially viable.
- 3.2 The only other option is to amend the affordable housing elements of the S106 agreement to meet lenders' requirements, and to provide a fallback option to the developer in order to ensure that the homes are sold and occupied, whilst securing future affordable housing provision.

4. Recommendations

- 4.1 That Officers be given delegated authority to work with mortgage lenders and the developer to amend the affordable housing elements of the S106 to make the homes accessible and affordable to local people, whilst securing a fallback option that would still generate a commuted sum to use for future affordable housing provision in Wiltshire.

5. Background Papers

- A) Report to Western Area Committee dated 19/3/09
- B) Supplemental Report and Briefing Note for Western Area Committee 19/3/09
- C) Minutes of Western Area Committee dated 19/3/09
- D) Mortgage Access for Affordable Housing – good practice note

Author: Helen Taylor, Principal Development Officer

Andrew Bidwell, Principal Planning Officer