

PLANNING DEVELOPMENT CONTROL COMMITTEE

27 May 2010

HIGHCROFT, ROMSEY ROAD, WINCHESTER

REPORT OF HEAD OF LEGAL SERVICES

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

Planning permission for the erection of 88 dwellings, comprising of 35 affordable units with associated car parking and garages was granted (reference 07/03187/FUL) subject to a Planning Agreement dated 5 November 2008 between the Council and BDW Trading, Investec Bank (UK) Limited and Winchester and Eastleigh Healthcare National Health Service Trust and Hampshire County Council and National Housebuilders Council ("the Agreement")

The Owners seek to vary the Agreement such that 6 Open Market Units of accommodation on the Land shall be occupied before all of the Affordable Housing Land has been transferred to the Registered Social Landlord, in this case, First Wessex.

This Report advises Members on the legal, planning and housing considerations relevant to the proposal.

RECOMMENDATIONS:

That the Head of Legal Services be authorised to enter in to a Deed to vary the Agreement dated 12 November 2008 to allow the marketing and selling of 6 Open Market Units before all of the affordable units are transferred to the RSL.

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DETAIL:

1 The Proposed Variation

- 1.1 The report deals with the land at Highcroft Hospital site in Romsey Road, Winchester. The land was the subject of an application (reference 07/03187/FUL) for the erection of 88 dwellings, comprising of 35 affordable units with associated car parking and garages.
- 1.2 The Agreement required that 35 units of affordable housing were to be provided: 3 three bedroom houses, 15 two bedroom flats and 3 one bedroom flats all of which to be social rent. Also 8 two bedroom flats and 3 one bedroom flats for shared ownership.
- 1.3 One block of the flats is a mixture of shared ownership and open market rent. There are 6 open market rent flats and 6 shared ownership flats.
- 1.4 Under the Second Schedule Affordable Housing, Part 2, section 1.7 states:

‘No Open Market Units of accommodation on the Land shall be Occupied until the Affordable Housing Land has been transferred to the Registered Social Landlord (either by way of freehold transfer or where the Affordable Housing dwellings comprise flats apartments or maisonettes within a block that also includes Open Market Units by way of lease for a minimum term of 125 years) at a consideration of one pound (if demanded) and on terms to be agreed with the Registered Social Landlord’.
- 1.5 However, one block, block D which consists of 12 units, 6 Open Market units and 6 shared ownership units will not be completed until April 2011. Accordingly the transfer of land into the ownership of the RSL cannot occur until there is a structure to transfer by way of leasehold. This will happen in the Autumn of 2010.
- 1.6 The Applicant now seeks in effect to vary the Agreement so that 6 Open Market units can be marketed and sold before the transfer of all of the affordable housing land to the RSL.

2 The Law, Planning and Housing Considerations

- 2.1 There are three routes by which a planning obligation might be discharged or varied: by compliance with the terms of the agreement and so subsequent discharge; by agreement as to the merit of any such modification or discharge

with the Planning Authority; by statutory process and appeal which in turn engages the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992. The Applicant seeks to agree a variation on merit, and so submit a Deed which provides for the variation.

- 2.2 There is at present no formal application; the Applicant seeks an agreed variation. Consequently, although the provisions of s106A (which deals specifically with modifications to agreements in the context of formal applications) is a useful starting point, the proposal falls to be considered having regard to policy and guidance relating to s106 of the Act generally.
- 2.3 The proposed variation to the planning obligation should be considered first in a planning context. The starting point (but not the entire analysis) might usefully be as prescribed by s106A of the Act. Where the issue is modification, rather than discharge, the issue is whether the obligation would serve a “useful purpose” “equally well” with the modifications specified by the applicant.
- 2.4 That “useful purpose” should be considered in land use planning terms. That means that the planning merits of the current situation can be considered and a useful purpose could be other than that which was originally intended.
- 2.5 The consideration of a modification requires not only analysis of the “useful purpose” but also the degree to which the modification would serve that purpose. The Circular suggests “equally well” as being an appropriate indicator of the acceptable, or otherwise, nature of the proposed modification. Would the varied obligation serve a useful purpose “equally well”?
- 2.6 There are matters which are relevant to planning, which go to that assessment of “equally well” and also more broadly fall within s106 of the Act, which might be weighed in this decision being essentially a matter for agreement as opposed to a formal application. For example, the harm or benefit in terms of land use and planning as a consequence of permitting the sale of open market units before the transfer of those units set aside for affordable housing to the RSL.
- 2.7 The Head of Planning Management has been consulted and has confirmed that there is no planning objection to the proposal. The proposal is wholly consistent with the objective identified in the Winchester District Local Plan Review 2006 and the Affordable Housing Supplementary Planning Document (adopted 2008) to provide affordable housing in the District.
- 2.8 The Head of Strategic Housing confirms that due to the order of the programme the Owner has been unable to transfer all of the land for affordable housing to the RSL. The only land that has not been transferred is the block (Block D) of 12 units, 6 of which are affordable. The reason for this is because there is not a structure to be transferred as yet. This will be built in Autumn 2010 and then transferred to the RSL. The RSL is content with the applicant’s proposals and the proposed development and transfer of the affordable units. This variation will still deliver the 35 affordable units which

are needed within the Winchester District and which were secured by the Agreement.

- 2.9 Winchester City Council's Supplementary Planning Document Policy 3, states 'Affordable housing should be well integrated with market housing, in a way which results in different kinds of housing being in close proximity to each other', therefore Strategic Housing are pleased to see this mixed tenure block.
- 2.10 It is considered that the proposal is consistent with maintaining affordable housing, consistent with planning policy, and that this site provides much needed affordable housing within a prime location and assists to meeting current demand for affordable housing within the District.

3 Conclusion

- 3.1 This is a request to vary a planning agreement and accordingly consideration has been given to planning policy and legal principle, together with strategic housing objectives. It is the recommendation of your Officers that the request for the modification of the Agreement be approved and that the Head of Legal Services be authorised to enter into the appropriate agreement.

OTHER CONSIDERATIONS:

4 SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

- 4.1 The Corporate Strategy highlights the need to enable affordable housing to be provided and to use the planning system to promote building of new homes to meet both local needs and Government set targets.

5 RESOURCE IMPLICATIONS:

- 5.1 The proposed Deed will require limited officer time which can be included within existing available resources.

6 RISK MANAGEMENT ISSUES

- 6.1 An evaluation of the risks associated with the matters in this report indicate that further risk assessment is not needed because the changes/issues covered do not represent significant risks or have previously been considered by Councillors.

BACKGROUND DOCUMENTS:

Agreement dated 5 November 2008

APPENDICES:

None