



## PLANNING COMMITTEE

- MEETING** : Tuesday, 12th April 2016
- PRESENT** : Cllrs. Taylor (Chair), Lewis (Vice-Chair), McLellan, Smith, Hobbs, Hanman, Williams, Brown, Dee, Chatterton and Etheridge

### **Officers in Attendance**

Jon Sutcliffe, Development Control Manager  
Michael Jones, Solicitor, One Legal  
Nick Jonathan, Solicitor, One Legal  
Adam Smith, Principal Planning Officer, Major Developments  
Joann Meneaud, Principal Planning Officer  
Tony Wisdom, Democratic Services Officer

- APOLOGIES** : Cllrs. Hilton and Toleman

Councillor Lewis did not join the meeting until the conclusion of this item

### **101. LAND AT WINNYCROFT LANE, MATSON - 14/01063/OUT**

Councillor Smith had declared a disclosable pecuniary interest in agenda item 5, land at Winnycroft Lane, Matson. As she lived near the site and could be affected by the impact of increased traffic. She withdrew to the public gallery during the consideration of this application.

The Principal Planning Officer presented her report which detailed an outline application for the erection of up to 420 dwellings and community space/building, as well as associated landscaping, public open space, access, drainage, infrastructure, earthworks and other ancillary enabling works on land at Winnycroft Lane, Matson.

The application had previously been considered by the committee in December 2015 and it had been resolved to grant outline planning permission subject to the completion of a S 106 agreement to secure the required contributions including 20 per cent affordable housing. The applicant had offered ten per cent affordable housing and was unwilling to complete the agreement requiring twenty per cent.

She referred Members to the late material which contained the independent review of financial viability for the application which had been undertaken by Mark Felgate

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of Parkwood.

She advised that Mr Felgate was available to answer Members' questions.

She noted that previous reports had not taken account of the sum of £915,860 required for future maintenance of open space and play areas. This increased the total contributions to £4,258,646 which could reduce by £41,632 dependent on the potential development and timing of the adjoining site. She outlined the other contributions required.

She referred to the amended recommendation in the late material which called for 10 per cent affordable housing together with a review mechanism after 140 dwellings and three years thereafter.

A Member was advised that the community building was for changing rooms for the sports pitches and the size and design of the building had been determined following guidance from Sport England.

Another Member noted that the open space maintenance contribution included the cost of provision of play areas and was advised that the figures had been provided by the applicant and deemed reasonable by the Council's open space officers. He was further advised that these costs were determined by a complex formula which included SUDS, play areas, sports pitches and community orchard and would be dependent upon the detail and design of the various areas. If the expected costs were substantially different to actual costs this would be picked up in the review mechanism.

The Chair asked if Members could be sure that the land was not overvalued. Mr Felgate stated that the government guidance was clear stating that land had to be valued at a level that a landowner would be prepared to sell and the data available, in comparison with other land within the JCS area suggested that the valuation was reasonable.

He noted that 50 per cent of the site area was developable land with a high proportion of open space areas compared to the usual expectation of about 65 per cent. This impacts on profitability and therefore viability.

A Member questioned the low density and was advised that, at the preapplication stage officers had advised the applicant that a sensitive development was required for the site which was adjacent to the Cotswolds AONB and marked the transition from urban to rural landscape.

Mr Felgate did not provide an answer to a Member who asked about the impact on profit levels of an additional ten per cent affordable housing. He stated that the development would not in any event be viable at a figure of twenty per cent contribution for affordable housing. The question relating to the profit level was hypothetical and not relevant.

The Development Control Manager advised that as the development was identified as being marginally viable at ten per cent affordable housing it would not be viable at greater numbers. The question of the level of profit was not relevant.

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A Member asked if the financial contributions could be reduced to allow more money going towards affordable housing. He was advised that contributions were set by formulae with the greatest amount going towards education. Other elements such as the highways works were required for the development to be considered acceptable and in those circumstances it would not be reasonable to divert contributions to affordable housing. The Member noted that Community Infrastructure levy was to be set requiring twenty per cent affordable housing and he was advised that whilst the CIL payment was fixed, proposals were also subject to viability testing in relation to affordable housing.

Another Member calculated that applying an average house price of £190,000 and twenty per cent affordable housing a profit of 17.6 per cent should be achievable.

Mr Felgate advised that the calculation of costs and profits was not that simple and when pressed for further figures he reiterated that viability was marginal at ten per cent. He also advised that accepting ten per cent affordable housing in this case would not set a precedent for other proposals as each scheme needed to be considered on the basis of its own particular circumstances.

The Development Control Manager stated that his professional advice together with that of the Solicitor was that there was no evidence to support the viability of twenty per cent affordable housing.

There was a short adjournment in order that Members could reflect upon the advice supplied by Mr Felgate.

The Principal Planning Officer noted that the applicant had been patient but could not tolerate further delay. She stated that the independent review had been undertaken to thoroughly examine the figures and there was no technical evidence to support twenty per cent and there would be a risk of incurring an adverse costs order if the applicant went to appeal and applied for a costs order against the Council on the grounds of unreasonable behaviour. A decision to require a twenty per cent contribution of affordable housing without any supporting evidence would constitute unreasonable behaviour.

The Solicitor advised that an appeal would be lodged after the meeting if Members failed to accept the Officers' recommendation for ten per cent affordable housing and the Inspector could accept the applicant's original assertion that the development was only viable with no affordable housing.

The Council's technical expert was asked by a number of Councillors why the profit margin of 19.3% was only marginally viable. Councillors also asked what level of profit provided a threshold to viability. The technical expert did not have the information to answer the specific questions and some Members expressed their dissatisfaction with the response.

A Member pointed out that developer profit at 19.3% was high and that the Government District Valuer Service said last year that; "most development schemes when analysed following completion average out below 15%" It was also

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noted that the Joint Core Strategy referred to profitability within a range of between 15% and 20%. On this basis the assumed profitability at 19.3% was again towards the higher end of that scale.

The Council's technical expert stated that the development was marginally viable with ten per cent affordable housing and any higher figure would make it unviable. A profit figure of 19.3 per cent was only marginally viable and any reduction in that figure may prevent funders from financing the scheme.

The Chair pointed out that the original viability study suggested a much higher percentage of affordable housing would be obtainable and that, depending on the assumptions, the level of affordable housing could change.

The Solicitor advised that the Council could, in his view, be exposed to a risk of a high costs award for unreasonable conduct given that there is no evidence to support the view of the Committee. The Chair disputed this, pointing to the original viability report.

The Solicitor noted that a series of experts had now supplied broadly similar evidence and, in his view, none of it supported the views now advanced by the Committee and accordingly the Council would run the risk of losing an appeal if the Committee required a twenty per cent contribution for affordable housing.

Members asked whether using different assumptions from those used by the developer would lead to the viability of different levels of affordable housing. The technical expert responded that by using the assumptions in the report ten per cent of affordable housing was marginally viable.

Members pressed the expert as to why the Councils policy and the JCS policy of 40% and 20% respectively weren't being adhered to. Members made the point that the value of the land under the NPPF should be worked out in relation to the policy requirement of affordable housing and asked the technical expert why this was being ignored.

A Member moved the recommendation on Page 2 of the late material to grant outline permission with ten per cent affordable housing and failed to find a seconder.

A Councillor indicated that no new information had been presented which was sufficient to prompt the Committee to reconsider its original decision.

The Development Control Manager reiterated the advice previously given at the December meeting.

A Member moved that the Committee endorse the decision made on 15 December 2015, requiring a twenty per cent contribution and this was seconded.

As the Committee had considered the information and no further relevant information had been provided, the Committee proceeded to take the vote.

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**RESOLVED that the decision in respect of application 14/01063/FUL on 15 December 2015 be endorsed.**

Councillor Lewis joined the meeting.