



SHEFFIELD CITY COUNCIL Planning & Highways Committee

Report of: Director of Regeneration & Development Services

Date: 23 February 2016

Subject: APPLICATION SEEKING REVIEW OF AFFORDABLE HOUSING OBLIGATION UNDER S106BA OF THE TOWN AND COUNTRY PLANNING ACT

Author of Report: Trevor Sullivan

Summary:

Position Statement on an application submitted under s106BA of the Town and Country Planning Act seeking review of a planning obligation attached to a previous planning permission.

Reasons for Recommendations

In order for the Council, as Local Planning Authority, to provide the applicant with a determination on the application.

Recommendations:

It is recommended that this report is noted pending a further report providing a recommendation on the application.

Background Papers:

Category of Report: OPEN

UPDATE ON APPLICATION 16/00341/MDPO – APPLICATION TO MODIFY SECTION 106 AGREEMENT FOR PLANNING PERMISSION 15/00122/FUL AT DYSON REFRACTORIES LTD, GRIFFS FIRECLAY WORKS, STOPES ROAD, SHEFFIELD

Members will recall that at 20th October 2015 Planning and Highways Committee, they resolved to grant permission subject to the signing of a legal agreement for the erection of 88 houses at the former Dysons Site at Griffs Works Stannington. This legal agreement was to secure the provision of £1,856,641.35 towards the provision of affordable housing within the North West Affordable Housing Market Area.

Whilst members resolved to grant permission on 20th October, the subsequent issuing of a decision was delayed due to the applicant seeking to negotiate the wording of the legal agreement, and during this period a third party request was also submitted to the Secretary of State for the application to be called in. (This request for call in was rejected.) The final version of the legal agreement was completed by the Council's legal services team on the 11th January 2016 and the planning permission issued on the same day.

Despite the legal agreement only being agreed as recently as the 11th January 2016, and the decision being issued immediately after this, members are advised that on the 21st January the applicant submitted an application under section 106BA of the Town and Country Planning Act to review the planning obligation for affordable housing, on the grounds that the provision of this contribution would make the scheme unviable. The provision to make this application exists in legislation, but it is also noted that the intention of this provision was to help unlock 'stuck sites' where legal agreements had been completed in more profitable times and to help facilitate development.

Officers consider it important that members are aware of this unexpected turn of events in the application process, as the provision of an affordable housing contribution was clearly a material consideration for members in the determination of the application. It is also relevant to note that without this contribution being offered officers would have recommended the refusal of planning permission as the recommendation was an on balance one in which the benefits of the affordable housing contribution weighed significantly in favour. The District Valuer considered the development to be viable and therefore without the contribution the application would have been contrary to affordable housing policy. The legislation suggests that the Committee will be legally constrained in its consideration of the new s106BA application and unable to reconsider the original balance of considerations that led to the original approval, and only able to consider the new viability case. If the case is not credible that is not a problem, but if it has any merit, it will put the Committee in a difficult position. This will be reported on in full in due course.

It does appear that the legal provisions in respect of s106BA are not being used by Avant Homes for the purpose initially intended, i.e. this is not a long term stalled development site, and that this means that the Committee and local community have ended up being misled about the benefits of the original housing proposal, which is very regrettable.

As part of the consideration of the application, your officers have informed the applicant of the current position and the applicant has responded as follows;

'Avant Homes were dismayed to note officer disappointment with the approach that has been taken with the S106BA application. We have worked very closely with officers and built up a good working relationship over the last year or so to arrive at a scheme which in design terms is of the highest order and which has better sustainability features than any other comparable development in Sheffield. We very much hope that this positive approach can be maintained going forward as we strive to deliver new houses on the site.

We have been very open with officers at every stage in expressing the view that the scheme cannot viably support an affordable housing contribution. We have been absolutely transparent and consistent in this. From our own development appraisals and the specialist work carried out by our valuation advisor we remain convinced that this is the case. This is not a situation where we have sought to present one position prior to determination and a different one following the grant of planning permission. The grant of planning permission is helpful in establishing the principle of development on the site even if the economics undermine its deliverability and that is why we are pleased to secure it.

All of that said again, with the inclusion of any affordable housing element whatsoever this scheme is unviable and will not come forward.

We sought to advance our viability case through the determination period in the manner invited by local policy. We had some difficulty in that process in conducting what we felt to be a fair and balanced negotiation with the District Valuer who disagreed with our viability assessment and we explained those concerns to officers. In these circumstances the current S106BA application should not be seen as "playing the system" but rather as a house builder respectfully asking for a fresh set of eyes at the District Valuer's office to "take a second look" and advise the Council accordingly.

Avant remain committed to the Griffs Works site and securing its regeneration. It is very clearly in need of regeneration and we hope that we can continue to work with the Council in achieving that whatever the outcome of the S106BA application.'

The Council is currently considering this application, as it is obligated to do so. We await advice from the District Valuer, in respect of the viability of the development proposal. This advice and subsequent officer recommendation will be presented to members at a forthcoming committee. It is important to note however, that s106BA only permits members to consider matters of financial viability and members will not be able to re-consider the principle of the application and development proposal.

RECOMMENDATION:

That this report is noted pending a further report providing a recommendation on the application.