

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 11 January 2016

Page

APPLICATION REF. NO:	16/01193/FUL
STATUTORY DECISION DATE:	6 January 2016
WARD/PARISH:	PARK WEST
LOCATION:	Site Of Former Darlington Football Club Ground, South Terrace
DESCRIPTION:	Modification of Section 106 Agreement attached to planning permission 13/01038/FUL dated 3 July 2014 for erection of 82 No dwellings and associated infrastructure) to allow the 12 No. affordable rented apartments (plots 34 - 46) to be delivered and disposed of on the open market in lieu of an off site affordable housing contribution
APPLICANT:	Persimmon Homes

APPLICATION AND SITE DESCRIPTION

When planning permission (ref no 13/01038/FUL) was granted for the housing development it was subject to a Section 106 Agreement. One of the planning obligations within the Agreement related to the provision of 12 affordable housing units on the site in the form of 2 bed apartments located in a block in the southern corner of the site. The Agreement continues to state that the affordable units shall be constructed in accordance with the planning permission by the date of the occupation of the 30th open market dwelling on the site. Using reasonable endeavours the owner shall then attempt to transfer the apartments to a registered social provider as soon as reasonable practicable. The Agreement then confirms that if a transfer to a provider cannot be achieved then the units shall not be used for any purpose other than as affordable rented housing. A failure to comply with any element of the obligation may result in enforcement action.

The applicant is seeking permission to modify the Section 106 Agreement by removing all references to the affordable rented units and replace the requirement with an obligation requiring the payment of a commuted sum in lieu of the onsite affordable rent apartments.

PLANNING HISTORY

13/01038/FUL In July 2014 planning permission was GRANTED subject to a Section 106 Agreement for 82 dwellings with associated infrastructure.

PLANNING POLICY BACKGROUND

The relevant development plan policies are:

Darlington Core Strategy Development Plan Document 2011

CS4 – Developer Contributions

Other Documents

Supplementary Planning Document - Planning Obligations

RESULTS OF CONSULTATION AND PUBLICITY

One letter of objection has been received making the following comments

- *I am extremely angry at this. When they knew they were obligated to build affordable, social housing surely some research into the size, type, affordability, which Associations et al were looking for homes in that area should have been taken into account? Not ooh let's build and see what happens? (Wish I could leave a video response as you need the tonal implications) And by the HAs suggesting that ground rent and service charges are too high, does that suggest that already Section 106 has been disregarded and no affordable housing was built? And Charles Church/ Persimmon's refusal to make the housing affordable to the HAs shows that they failed to comply with a statue of planning?*
- *Surely they will be fined for this? Boohoo Persimmon/Charles Church. Poor you. Section 106 is necessary and not debatable....hang on you are offering 30% of the overhyped, open market price back to a council which is failing on many levels for them to do it all for you?? Is a 30% return a fair amount?? I don't think so. And passing the book constantly is pathetic. Where is the crossing 'promised' as part of their original application? They have made a shed load of profit from these 'houses that Jack built' caused disruption to many of the local residents and still they are managing to make us angry by renegeing on 'promises'. I prefer to use the phrase 'lies'*

Any subsequent letters of objection or comment will be mentioned verbally at the Planning Applications Committee.

PLANNING ISSUES

Policy CS4 of the Core Strategy states that developer contributions will be negotiated to secure the physical, social and environmental infrastructure required as a consequence of development. Developers must be consistent with national planning guidance and appropriate to the type and scale of development and should mitigate any additional impacts the development will have on the locality. The appropriate range and level of developer contributions sought will be assessed in a comprehensive manner, taking account the viability of the development and any additional unforeseen costs associated with the development. The list of site related infrastructure that is identified within the policy includes affordable housing provision.

Policy CS4 is supported by the Supplementary Planning Document – Planning Obligations (2013). The SPD identifies that any housing development in the urban area that is for 15 dwellings or more should include up 20% of affordable housing (90% social rented and 10% intermediate housing). Affordable housing can be provided in three ways:

- On the development site; or
- Off site but on other developer owned land; or

- Off site as a financial contribution to be used to deliver affordable housing projects elsewhere in the Borough

The proposed development complied with the requirements of Policy CS4 and the SPD by providing 12 affordable 2 bed apartments on the site and the applicant subsequently worked the units into the build schedule relatively early to ensure compliance with the obligation.

The applicant has had difficulty in securing a willing Registered Social Provider to manage and maintain the units at a price commercially viable to the company. The units were initially marketed in September 2014 where 18 Registered Providers were contacted inviting any expressions of interest. Only one offer was received which was significantly less than the applicant had budgeted for before any reductions for ground rent and service charges were applied.

The units were marketed again in May 2015, once the development had progressed further on site. In this second exercise, a total of twenty one Providers were contacted and offers were received from three interested Providers which were all subject to Trustee/Board approval and further discussions regarding the level of service charges and ground rent. Following these discussions, one offer was made that the applicant considered being commercially unviable, one Provider withdrew their interest and the remaining Provider did not respond any further despite numerous attempts by the applicant to make contact.

The marketing exercise, which lasted for a period of nearly 17 months, failed to register any interest in the affordable rented apartments.

Another factor contributing to the inability to attract a Provider is the economic uncertainty and the recent rent reforms announced by the Government in the July 2015 budget.

The applicant approached the Council as there is a serious risk that the requirements of the Section 106 Agreement have the potential to stall the delivery and completion of the remainder of the site. Consideration was given to extending the trigger within the Section 106 Agreement for the completion of the affordable units so that they remained on site but it was agreed with Officers that it would be highly unlikely that current circumstances would change and an application to modify the Agreement would still be submitted in the future.

As a solution to this, the applicant is proposing that the affordable rented units are still built on the site but delivered as open market units with an appropriate off site contribution to the provision of affordable housing whilst allowing the site to continue being brought forward as planned.

As previously stated, policy CS4 of the Core Strategy and the Planning Obligations SPD does permit affordable housing being provided by an offsite contribution. The SPD confirms that any financial contribution will be equivalent to the value of affordable housing element of a notional scheme and that contributions will be used to provide affordable housing elsewhere; enable the provision of affordable housing elsewhere or help to deliver other affordable housing projects.

Officers have accepted the justification for the request to modify the Section 106 Agreement along with the alternative solution of an offsite contribution which is in accordance with the Council's adopted policy and guidance.

Based on the formula contained within the SPD, the off site contribution would amount to £300,600.00 (based on a market value price of £83,500 for each apartment) and the applicant has agreed to the insertion of an overage clause in case the apartments are marketed for a higher price.

If this planning application is approved, the applicant will need to submit a formal Deed of Variation to modify the legal agreement which would need to be agreed by all interested parties, including the Council.

SECTION 17 OF THE CRIME AND DISORDER ACT 1998

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

CONCLUSION

The applicant has been unsuccessful in trying to transfer the twelve apartments to a Registered Social Provider despite extensive marketing exercises. The Local Planning Authority accepts that all reasonable endeavours have been taken by the applicant and it is also recognised that the way the existing Section 106 Agreement is worded would prevent the remainder of the housing development coming forward. An offsite financial contribution for affordable housing provision is an accepted alternative solution that would accord with Policy CS4 of the Darlington Core Strategy Development Plan Document 2011 and the Supplementary Planning Document – Planning Obligations.

RECOMMENDATION

THE DIRECTOR OF ECONOMIC GROWTH BE AUTHORISED TO MODIFY THE SECTION 106 AGREEMENT ATTACHED TO PLANNING PERMISSION REFERENCE NUMBER 13/01038/FUL TO ALLOW THE 12NO APARTMENTS (PLOTS 34 – 46) TO BE DELIVERED AND DISPOSED OF ON THE OPEN MARKET IN LIEU OF AN OFF SITE AFFORDABLE HOUSING CONTRIBUTION.

THE FOLLOWING POLICIES AND DOCUMENTS WERE TAKEN INTO ACCOUNT WHEN ARRIVING AT THIS DECISION:

Darlington Core Strategy Development Plan Document 2011

CS4 – Developer Contributions

Other Documents

Supplementary Planning Document - Planning Obligations