

13. 18/2180/FUL - Modification of section 106 agreement pursuant to planning permission 16/2741/FUL at POCKLINGTON HOUSE DEVELOPMENT SITE, EASTBURY AVENUE, NORTHWOOD, HA6 3LN (DCES)

Parish: Batchworth Community Council
Expiry of Statutory Period: 51.1.2019 (Agreed Extension)

Ward: Moor Park & Eastbury
Case Officer: Claire Westwood

Recommendation: That Planning Permission be Granted.

Reason for consideration by the Committee: Called in by Three Members of the Committee.

1 Relevant Planning History

- 1.1 13/1457/PDND - Prior Notification of Demolition: Demolition of 3 storey flats, residential bungalow and section of garages. Permitted.
- 1.2 16/0237/FUL - Redevelopment of the site to provide 40 residential dwellings in three apartment blocks extending to four storeys in height with associated underground car parking, private and communal amenity space, refuse and cycle storage. Creation of second access off Eastbury Avenue. Refused.
- 1.3 16/2741/FUL - Redevelopment of the site to provide 40 residential dwellings in three apartment blocks, with Block 1 and Block 2 extending to four storeys in height, and Block 3 extending to three storeys in height with associated underground car parking, private and communal amenity space, refuse and cycle storage. Creation of second access off Eastbury Avenue. Permitted.

2 Description of Application Site

- 2.1 The application site has an area of approximately 14,000sqm and is located at the junction of Eastbury Avenue and Watford Road, Northwood. The site is to the south side of Eastbury Avenue and has a frontage of 220m to this road. At the west, the site has a depth of 51.5m although the site increases in depth towards the east such that the east boundary of the site with Watford Road has a frontage of 105m.
- 2.2 The site formerly accommodated Pocklington House, a residential home for the blind and partially sighted, which consisted of a flat roofed three storey residential block with ancillary offices and staff accommodation and a detached bungalow at the western part of the site. These structures have now been demolished following approval of Prior Notification of Proposed Demolition application reference 13/1457/PDND.
- 2.3 The western part of the site which was formerly occupied by Pocklington House with a total area of approximately 6,300sqm is identified as an allocated housing site (reference H(23)) with an indicative capacity of 30 dwellings in the Site Allocations document.
- 2.4 Land levels fall generally towards the west but appear to have been altered to the eastern part of the allocated site following demolition of Pocklington House.
- 2.5 The western part of the site includes a number of individual trees protected by Tree Preservation order TPO113, while the eastern part of the site consists of dense tree cover extending up to the boundary with Watford Road which is protected by a woodland Tree Preservation Order (TPO113).
- 2.6 Eastbury Avenue in the vicinity of the site is generally characterised by a mix of detached dwellings and flatted blocks of varied designs. Watford Road is characterised by detached

dwellings and the east side of Watford Road forms the boundary of the Frith Wood Conservation Area. To the north west of the site are Markab Road and Atria Road which are characterised by semi-detached dwellings finished in red brick, and to the north east is Woodhouse Eaves, a residential cul-de-sac with detached dwellings closest to the junction of this road Eastbury Avenue.

- 2.7 Latimer Place to the west of the site is a three storey block of flats with roof level accommodation which includes flank glazing facing the application site and underground parking. The treatment to this boundary consists of vegetation. To the south, the western part of the site adjoins the rear gardens of detached dwellings on Mountview, and the Erskine Hall care home east of these dwellings. This boundary is formed by close boarded fencing approximately 2m high and vegetation.

3 Description of Proposed Development

- 3.1 Planning permission 16/2741/FUL granted consent for the; ‘redevelopment of the site to provide 40 residential dwellings in three apartment blocks, with Block 1 and Block 2 extending to four storeys in height, and Block 3 extending to three storeys in height with associated underground car parking, private and communal amenity space, refuse and cycle storage. Creation of second access off Eastbury Avenue’.
- 3.2 The planning permission was subject to a Section 106 Agreement. Whilst it was demonstrated at the time of the application that it would not be viable for the scheme to make provision for affordable housing, whether on site or a commuted payment in lieu of on site provision, it was recognised that the position was based on current conditions and therefore it was considered appropriate to secure a review mechanism by way of a S106 Agreement.
- 3.3 The Section 106 Agreement requires that if substantial commencement has not occurred before the expiry of 30 months of the date of the grant of planning permission (i.e. by 23 September 2019), an updated appraisal shall be submitted to the Local Planning Authority to establish whether affordable housing can be provided. Substantial commencement is defined as; *‘The completion of the construction of the Development up to and including first floor slab level of Block 1 and Block 2’*.
- 3.4 The current application seeks to modify the S106 Agreement. The covering letter sets out that there have been delays due to legal restrictions on the site which have meant that works have not been able to commence. It is proposed to modify the S106 Agreement to extend the original 30 month period by the time which has elapsed (18 months) since the planning permission was granted.
- 3.5 The application has been submitted with an updated viability appraisal, which it is contended by the applicant demonstrates that the viability of the scheme has not improved in order to be able to provide affordable housing.

4 Consultation

4.1 Statutory Consultation

- 4.1.1 Batchworth Community Council: No comments received.

4.2 Public/Neighbour Consultation

- 4.2.1 Number consulted: 29
- 4.2.2 No of responses received: 0 objections, 0 letters of support
- 4.2.3 Site Notice: Expired 13.12.2018 Press notice: Expired 14.12.2018

4.2.4 Summary of Responses: None received.

5 Reason for Delay

5.1 No delay.

6 Relevant Planning Policy, Guidance and Legislation

6.1 National Planning Policy Framework and National Planning Practice Guidance

On 24 July 2018 the new National Planning Policy Framework was published. This is read alongside the National Planning Practice Guidance (NPPG). The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another. The 2018 NPPF is clear that “existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework”.

The NPPF states that ‘good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities’. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would ‘significantly and demonstrably’ outweigh the benefits.

6.2 The Three Rivers Local Plan

The application has been considered against the policies of the Local Plan, including the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development Document (adopted November 2014) as well as government guidance. The policies of Three Rivers District Council reflect the content of the NPPF.

The Core Strategy was adopted on 17 October 2011 having been through a full public participation process and Examination in Public. Relevant policies include Policies PSP3, CP1, CP2, CP3, CP4, CP8 and CP12.

The Development Management Policies Local Development Document (DMLDD) was adopted on 26 July 2013 after the Inspector concluded that it was sound following Examination in Public which took place in March 2013.

The Site Allocations Local Development Document (SALDD) was adopted on 25 November 2014 having been through a full public participation process and Examination in Public. Policy SA1 is relevant.

6.3 Other

Affordable Housing Supplementary Planning Document (adopted June 2011).

The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).

The Localism Act received Royal Assent on 15 November 2011. The growth and Infrastructure Act achieved Royal Assent on 25 April 2013.

The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010, the Natural Environment and Rural Communities Act 2006 and the Habitat Regulations 1994 may also be relevant.

7 Planning Analysis

- 7.1 Policy CP4 of the Core Strategy requires development that would result in a net gain of one or more dwellings to contribute to the provision of affordable housing, and in most cases, affordable housing provision would be required on site. Policy CP4 sets out that 45% of all new housing should be affordable and that as a guide, 70% of the affordable housing should be provided as social rented and 30% should be intermediate.
- 7.2 The Affordable Housing Supplementary Planning Document was approved by the Council in June 2011 as a material consideration and supports implementation of Core Strategy Policy CP4.
- 7.3 The approved development (16/2741/FUL) of 40 dwellings resulted in a policy requirement for 18 affordable units, of which 13 should have been social rented and 5 intermediate.
- 7.4 No affordable housing was proposed as part of application 16/2741/FUL on viability grounds. The Core Strategy sets out that in assessing affordable housing requirements, the Council will take each case on its merits taking into account site circumstances and financial viability. Where non-viability is cited as the reason for a development proposal not complying with the affordable housing requirements, applicants for planning permission must support this reason with financial evidence to be submitted alongside the planning application.
- 7.5 A viability assessment was submitted with application 16/2741/FUL indicating that it would not be viable for the development to contribute to the provision of affordable housing. This was independently assessed with the review concurring that no affordable housing provision would be viable. As such there was no requirement for the development to make provision for affordable housing in accordance with the provisions of Core Strategy Policy CP4, however, the planning permission was subject to a S106 Agreement. Whilst it was demonstrated at the time of the application that it would not be viable for the scheme to make provision for affordable housing, whether on site or a commuted payment in lieu of on site provision, it was recognised that that position was based on current conditions and therefore it was considered appropriate to secure a review mechanism by way of a S106 Agreement.
- 7.6 The use of such mechanisms is supported by the Affordable Housing SPD which states that (para 6.11);
- “Where a below-policy level of provision is considered appropriate by the Council (either of on-site or payment in lieu), the use of mechanisms to protect the achievement of Development Plan objectives in relation to affordable housing will be considered. Unless the applicant accepts an absolute obligation to deliver a policy-compliant level of affordable housing, the Council will consider the use of mechanisms to protect the public interest...”*
- 7.7 The S106 Agreement requires that if substantial commencement has not occurred before the expiry of 30 months of the date of the grant of planning permission (i.e. by 23 September 2019), an updated appraisal shall be submitted to the Local Planning Authority to establish whether affordable housing can be provided. Substantial commencement is defined as; *‘The completion of the construction of the Development up to and including first floor slab level of Block 1 and Block 2’.*

7.8 It is proposed to modify the Section 106 Agreement to extend the original 30 month period by the time which has elapsed (18 months) since the planning permission was granted (ie. restarting the clock). The application has been submitted with an updated viability appraisal, which it is contended by the applicant demonstrates that the viability of the scheme has not improved in order to be able to provide affordable housing.

7.9 The updated viability appraisal has been reviewed and this review concludes that there is currently no scope for the scheme to provide the required affordable housing. The starting point remains that zero contribution is viable and the clause would serve the same purpose. As such it is recommended that the S106 is modified to extend the original 30 month period by the time which has elapsed (18 months) since the planning permission was granted.

8 Recommendation

8.1 The proposed changes to the original Section 106 Agreement, detailed above, are considered acceptable. The Deed of Variation should be issued with these changes included.