

**Planning and Rights of Way Panel 31<sup>st</sup> July 2018**  
**Planning Application Report of the Service Lead – Infrastructure, Planning & Development**

<b>Application address:</b> Land At junction of Brownhill Way and Lower Brownhill Road, Southampton			
<b>Proposed development:</b> Application for removal of condition 21 relating to code for sustainable homes of planning permission ref 12/00596/FUL			
<b>Application number</b>	18/00673/FUL	<b>Application type</b>	FUL
<b>Case officer</b>	Stephen Harrison	<b>Public speaking time</b>	15 minutes
<b>Last date for determination:</b>	N/A	<b>Ward</b>	Redbridge
<b>Reason for Panel Referral:</b>	Request by Ward Cllr	<b>Ward Councillors</b>	Cllr Whitbread Cllr Pope Cllr McEwing
<b>Referred by:</b>	Cllr Pope	<b>Reason:</b>	Failure to meet Council Policy

<b>Applicant:</b> The Trustees of The Barker Mill Estates	<b>Agent:</b> Nigel Jacobs (Intelligent Land)
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<b>Recommendation Summary</b>	<b>Delegate to the Service Lead - Infrastructure, Planning and Development to grant conditional planning permission subject to the criteria listed in the report</b>
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<b>Community Infrastructure Levy Liable</b>	<b>No</b>
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**Reason for granting Permission**

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 186-187 of the National Planning Policy Framework (2012). Policies CS15 and CS20 of the of the Local Development Framework Core Strategy Development Plan Document (Amended 2015).

<b>Appendix attached</b>			
1	Planning & Rights of Way Panel Report (24 <sup>th</sup> April 2018)	2	Planning & Rights of Way Panel Minutes (24 <sup>th</sup> April 2018)
3	12/00596/FUL Planning Permission		

## 1.0 **Recommendation in Full**

- 1.1 Delegate to the Service Lead – Infrastructure, Planning and Development to grant planning permission subject to the planning conditions recommended at the end of this report and the completion of a S.106 Legal Agreement (Deed of Variation) to secure:
- i. Provision of 2 affordable housing units in accordance with Policies CS15, CS16 & CS25 of the Local Development Framework Core Strategy Development Plan Document - Adopted Version (as amended 2015) and the adopted SPD relating to Planning Obligations (September 2013).

## 2.0 **Introduction and Background**

- 2.1 Planning permission is in place for the following development (LPA ref: 12/00596/FUL):

*Erection of 14 two-storey houses (12 x three bedroom and 2 x two bedroom) with associated parking, vehicular access from Lower Brownhill Road and space for a children's play area.*

- 2.2 The Planning Panel considered the viability of this scheme, and the request to allow a reduced affordable housing requirement when it met on 13th March and 24th April 2018. A copy of the previous Panel report is attached at **Appendix 1**.
- 2.3 The Panel will recall that this site has stalled, following implementation, on viability grounds. The viability of the scheme has been independently assessed by the District Valuer Service (DVS) and they have concluded that the scheme only becomes deliverable/viable if the approved position of 3 on-site affordable units is relaxed to 1. In April 2018 the Panel rejected the applicants improved offer of 1 affordable unit plus £25,000, but supported further negotiations and the provision, if possible, of 2 on-site units. A delegation to officers was given on this basis. The Panel Minutes at **Appendix 2** refer.
- 2.4 The applicants have now offered 2 on-site affordable units in line with the Panel's most recent delegation – A pair of semi-detached houses (Plots 1 and 2 – 1 no.2 bed and 1 no.3 bed). However, the offer is on the basis that the development is built to Code for Sustainable Homes Level 3 – current Building Regulations - rather than Level 4 as originally approved to meet the current Development Plan (LDF Policy CS20 refers). The applicants claim that, given the margins involved, the additional cost of achieving Code Level 4 makes delivery of 2 affordable units non-viable.
- 2.5 The Panel are being asked to relax the Council's current policies in order to secure 2 affordable units. Whilst the current Development Plan position is 3 affordable units (LDF Policy CS15) with the scheme built to Code Level 4 (LDF Policy CS20) the scheme's viability, and the recent Panel delegation for 2 affordable units, are significant material considerations.
- 2.6 Given that DVS have independently confirmed that the scheme is only viable with 1 affordable dwelling, and the Council risks losing the second unit should the applicant appeal, officers consider that this application can, on balance, be supported.

### **3.0 Relevant Planning Policy**

- 3.1 The Development Plan for Southampton currently allows viability to be taken into account as set out within the “saved” Policy CS15 (Affordable Housing) of the City of Southampton Core Strategy (as amended 2015). This policy confirms that a scheme’s viability is a material consideration and, where an independent assessment confirms that a scheme is struggling, its delivery may still be policy compliant despite a shortfall to the 20/35% requirement. In this case 20% of the 14 units are required as affordable (2.8 rounded up to 3 units) as set out in the s.106 legal agreement associated with permission 12/00596/FUL.
- 3.2 Policy CS20 (Tackling & Adapting to Climate Change) of the City of Southampton Core Strategy (as amended 2015) requires new housing development to meet Code for Sustainable Homes Level 4. The Code for Sustainable Homes was launched by the Department for Communities and Local Government in December 2006 as a single national sustainability standard for the design and construction of new homes. It scores each dwelling within a scale from Level 1 (the lowest) to Level 6 (the highest, achieving Zero Carbon status). Since 2015 the Council has only been seeking Code Level 4 for ‘Energy’ and ‘Water’ in line with Government changes to the system.

### **4.0 Relevant Planning History**

- 4.1 As set out above

### **5.0 Consultation Responses and Notification Representations**

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, placing a press advertisement (**27<sup>th</sup> April 2018**) and erecting a site notice (**1<sup>st</sup> May 2018**). At the time of writing the report **0 representations** have been received from surrounding residents.
- 5.2 **Ward Cllr Pope**  
My position has not altered. If the amount of affordable homes is not as per this Council's policy, then it should go back to councillors on the Committee to decide.
- 5.3 **SCC Sustainability - Objection**  
Whilst for this case the removal of the Code condition is deemed acceptable, from a policy perspective the removal of the equivalent energy and water requirements is not supported.
- 5.4 UKGBC Policy Playbook (March 2018) (Driving sustainability in new homes) states that the Deregulation Act 2015 has not been enacted and that LPAs are able to set energy performance standards equivalent to Code for Sustainable Homes Level 4. Pages 9 to 11 of the Playbook set out the main argument for the above.
- 5.5 The applicant puts forward viability as the reason for the request for removal of any sustainability requirements. The estimated costs of £10k per unit appear to be rather high based on the evidence available (a detailed cost breakdown of the required of the extra 'over requirements has not been carried out, however there will inevitably be costs of some amount involved).

- 5.6 A 19% improvement beyond Part L 2013 can be achieved entirely through energy efficiency measures enhanced insulation, glazing, airtightness and high efficiency heating and hot water heat recovery). The UK Green Building Council state that discussions with developers suggest that this approach might cost between £2-3k for a mid or end terrace home or up to £5-6k for a detached house. However for those building to the Part L 2013 notional specification it is possible to achieved a 19% improvement through the use of photovoltaics (pv) or other renewables. A terrace would need around 0.8 kWp of PV with a detached housing needing perhaps 1.2 kWp (depending on floor area). The capital costs of adopting a renewable based strategy are likely to be c.£1.5-2k per home.
- 5.7 Other recent viability studies show that the cost may be even less than this, the Assessment of Viability of Carbon Emission Targets for New Builds shows a 0.97-1.16% uplift from part L Building Regs to 20% improvement (their 'policy B'), approx. £4/m<sup>2</sup> on average depending on what system is used. The lower rate 0.97 is for homes, the upper rate 1.16% for flats (p.30).
- 5.8 <http://www.guildford.gov.uk/newlocalplan/CHttpHandler.ashx?id=23949&p=0>
- 5.9 In conclusion, from a sustainability policy perspective the absence of any energy and water conditions is not supported, however if the case officer is satisfied that the evidence provided is sufficient to justify the applicants request they may wish to balance this against the merits of approval.

## **6.0 Planning Consideration Key Issues**

- 6.1 The key issue for consideration is whether or not the Panel are willing to vary the terms of the original Section 106 Agreement by way of reducing the provision of the fully policy compliant Affordable Housing obligation, on viability grounds, with the aim of encouraging the development proposal to be built out in the short term whilst also making provision for two units of Affordable Housing. The applicant (and officers) acknowledge that the Panel were able to support the principle of this request in April, and whilst 2 affordable units can now be provided the sustainability credentials of the development would need to be relaxed in order to do so. As officers had previously recommended the previous variation for approval this improved offer is again acceptable to officers as the delivery of affordable housing is afforded the greater weight in the assessment.
- 6.2 If the proposal is rejected it is unlikely that the consented development will come forward in the short term and a revised planning proposal will be required.
- 6.3 Another option for the applicant is to re-submit an updated viability assessment once the Section 106, 5 year period has elapsed (August 2018), whereby the Council will need to make a further decision (at Panel), which may then be subject of an appeal to the Planning Inspectorate where external resource would be needed to defend the appeal in light of the current recommendation and support offered by the DVS to the revised affordable housing offer. There is a risk that circumstances will change by the time an appeal is lodged and considered that any current offer will no longer be viable. Similarly, circumstances may improve and the scheme could become more viable in the longer term, but officers consider that weight should be given to the delivery of housing to meet current need and, therefore, support the amendment to secure 2 affordable units built out to current Building Regulation standards.

## **7.0 Summary**

7.1 The applicants request to relax the requirements for Code from Level 4 to Building Regulations need to be balanced against the provision of affordable housing (and housing in general). In this case, in light of the DVS conclusion that only 1 affordable dwelling is viable, officers recommend that an improved offer of 2 affordable units, albeit at Code Level 3 equivalent to current Building Regulation requirements, should be supported. This recommendation would bring forward the delivery of 14 dwellings, 2 of which would be provided on site as affordable, and would avoid an appeal where the DVS conclusions would be afforded weight by the Planning Inspector.

## **8.0 Conclusion**

8.1 As such, the proposal is recommended for approval subject to securing the matters set out in the recommendations section of this report.

### **Local Government (Access to Information) Act 1985**

1a, b, c & d, 2b & d, 6a & b

### **PLANNING CONDITIONS to include:**

Those conditions listed on the original planning permission – as attached at **Appendix 3** – as have been discharged under LPA ref: 14/01180/DIS & 15/01575/DIS shall be re-imposed with the deletion of condition 21 as hereby approved.