
Report of the Head of Strategic Investment**HEAVY WOOLLEN PLANNING SUB-COMMITTEE****Date: 04-Oct-2018**

Subject: Planning Application 2012/93803 Discharge of conditions on previous planning permission no. 2011/90359 for extension to time limit to previous app 2007/94743 for demolition of existing buildings and erection of 62 dwellings with garages and associated infrastructure Syke Ings Mills, 16, Off Ossett lane, Providence Street, Earlsheaton, Dewsbury, Dewsbury

APPLICANT

Glen Wilson, D Noble Ltd

DATE VALID

07-Dec-2012

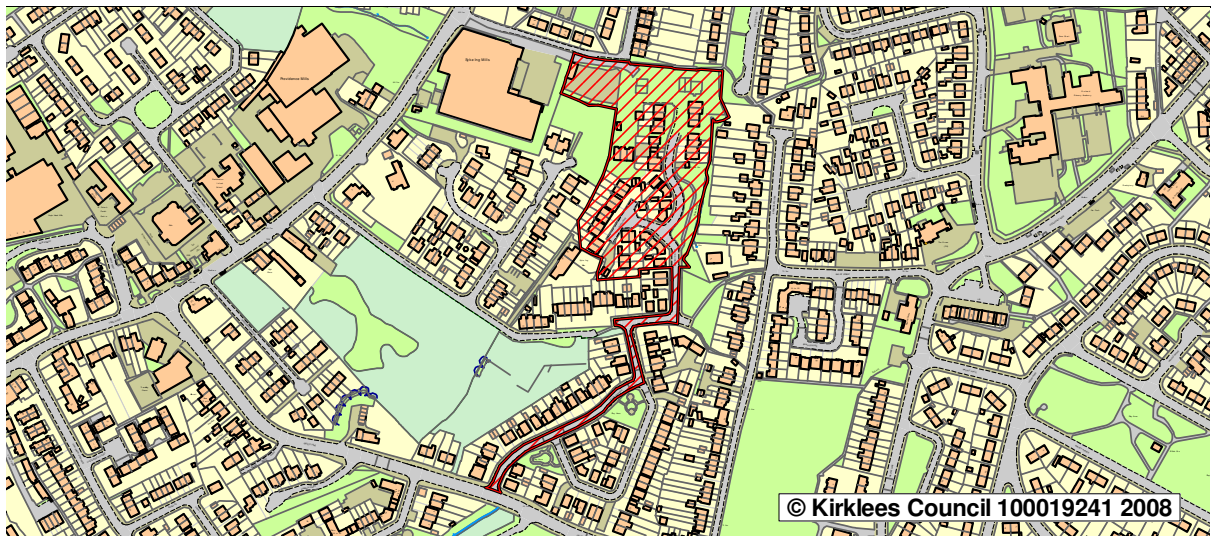
TARGET DATE

01-Feb-2013

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN

Map not to scale – for identification purposes only

Electoral Wards Affected: Dewsbury East

No

Ward Members consulted
(referred to in report)

RECOMMENDATION:

That the Planning Sub-Committee delegate to the Head of Strategic Investment authority to enter into a deed of variation as detailed in the report.

1.0 INTRODUCTION:

- 1.1 This application seeks the Sub-Committee's agreement to change arrangements for the delivery of social housing in a new residential development at the site of the former Syke Ing Mills, Earlsheaton. The application is brought for decision by the Sub-Committee at the request of the Chair.
- 1.2 The request was previously considered by the Sub-Committee at its meetings on 1st June, 12th July and 23rd August 2018. Members deferred a decision pending the receipt of further information on the financial implications of the request. Members considered that the proposal represented an identifiable loss in community benefit and were unable to agree to it. Officers were instructed to seek the comments of the Housing Association and the developer which were reported to the August meeting. Members did not consider the response to be sufficient and requested officers to report back with a reason for refusal. This is an amended report in the light of that response but also contains further information from the Housing Association.

2.0 BACKGROUND

- 2.1 At the Sub-Committee meeting on 1st June 2018 Members specifically requested further information on the changes to community benefit which would arise if the variation to the existing arrangements for the delivery of social housing was agreed. Members were also concerned at how future tenants' ability to purchase the properties would be affected.
- 2.2 The application site lies between The Laurels, Jilling Ing Park and Mill Lane, Earlsheaton and forms part of the larger area previously occupied by Syke Ing Mills which is currently in the course of development for housing. Planning permission for 62 dwellings on the site was issued in April 2008 (2007/94743) following decision by Sub-Committee on 7 February 2008. The permission was conditional including requirements for the provision of public open space and affordable housing. The permission was extended by approved application 2011/90359 issued on 28 September 2011.

- 2.3 Following resolution by the Area Planning Sub-Committee on 4th July 2013 it was agreed that the applicant would construct four apartments for sub market rent (no greater than 80% of the prevailing market rent) to be made available to a Council approved tenant before 75% of the market dwellings are occupied.
- 2.4 It was agreed that the affordable housing element on the development would be provided by the landowners. There was as a result no requirement in the Section 106 Agreement on the landowners or the developer Noble Homes to partner with a Housing Association and transfer the affordable housing units to that Housing Association at the rates set out in the planning policy guidance. The form of affordable housing that was agreed was a form of “intermediate” housing that would be provided by the landowners and which was designed to promote home ownership.
- 2.5 As a consequence additional planning obligations were imposed on the landowners not just to construct 4 affordable housing units but also to then make those units available for letting at a rate of up to 80% of the market rent. In addition there was a provision (Clause 3.3) that required the landowner to accept 50% of the rent paid by the tenant during the first 24 months of a tenancy as constituting a deposit in the event of the tenant wishing to buy the affordable housing unit. It was necessary to have these additional provisions because the landowners were not a Registered Provider of any type.

3.0 PROPOSAL:

- 3.1 The proposal has been made by Connect Housing Association. Connect Housing Association have agreed terms with the developer to purchase five units within this scheme comprising the four specified in the S106 Agreement and one other at market value. Connect Housing Association has very recently obtained funding from the Homes and Communities Agency (HCA) to buy housing units on the open market. One of the HCA’s conditions of the funding is that any units that are purchased are bought at market value and that the units are not subject to any planning obligations that require them to be used as any form of affordable housing. Another of the conditions is that the funding is “spent” in the current financial year.
- 3.2 Connect Housing have agreed “subject to contract” to buy the four housing units that currently constitute the affordable housing at the Syke Ing Mills development and which have been recently completed. They will let the units at Affordable rent. However, they can only do so if the affordable housing provisions of the Section 106 Agreement cease to apply. Connect Housing have therefore applied to the council for the Section 106 Agreement to be varied so as to delete all the affordable housing provisions. The variation would take effect after Connect have acquired the four units.
- 3.3 The proposed revision is therefore to waive clause 3 of the Section 106 Agreement in its entirety to ensure that there are no affordable housing provisions in the Section 106 Agreement. This will enable Connect Housing to draw down their funding from the Homes England for the acquisition of these five units.

4.0 PUBLIC/LOCAL RESPONSE:

- 4.1 The proposed variation has not been publicised.

5.0 CONSULTATION RESPONSES:

- 5.1 Strategic Housing and Legal Officers have been involved in the preliminary discussions and raise no objections.

6.0 POLICY

- 6.1 The Kirklees Interim Affordable Housing Policy 2016 and policy PLP11 of the Emerging Local Plan give an appropriate rate of 20% of the number of market units.

7.0 ASSESSMENT

- 7.1 Based on valuations provided to the Council in confidence by Connect Housing Officers have calculated the size of the community benefit that the new arrangement might forego. This is based on Connect's acquisition of the units as now proposed compared to the 'cost' to Noble Homes of renting the scheme out and providing a discount after two years under the current terms of the agreement. It is estimated that the developer would benefit by approximately £20,000.

- 7.2 Following Members' resolution on 12th July 2018 Connect Housing Association has made the following comments in conjunction with the developer.

"Connect Housing entered negotiations with D Noble Limited to acquire properties at a reduced purchase price on their Inspire development to provide Affordable Housing.

Inspire has a non-standard Section 106 agreement, prepared by Kirklees Council, which sets out a proposal from the developer to offer four flats on a 'Try Before You Buy' basis. Kirklees Council confirmed these units are not defined as an Affordable Housing contribution in the traditional sense and do not benefit from local authority subsidy in terms of discounted transfer prices within their SPD2 or Interim Affordable Housing Policy 2016.

On this basis Connect were successful in securing funding from Homes England to purchase the units and offer them as Affordable Rent, bringing forward true additionality to a development absent of Affordable Housing.

The four flats are in a block of five, so it made management sense for Connect Housing (to) purchase the fifth unit, also with grant funding, and acquire the freehold interest in the block with associated car park and communal areas.

The local authority was very supportive of the purchase and pleased with the improved position from the S106 with the delivery of an additional unit, more sustainable tenure and introduction of Council nominations.

Homes England indicated that funding would be available under Continuous Market Engagement (CME) if the units were delivered before the end of March 2018.

Acting on legal advice both Connect and Kirklees Council agreed the S106 would require a variation to omit the "Try before you buy" clause as the provision of Affordable Rent at 80% of the market rent in perpetuity offers a significant betterment than the equivalent discount written into the S106 only being provided for maximum of 2 years. In addition Connect Housing, with the investment from Homes England, can offer residents of all five units a £10,000 discount with the Right to Acquire scheme should the resident wish to purchase their home which is an improved position from the provision to potentially have half of the tenant's rent refunded after two years' occupation to assist with their purchase of their flat which equates to a £4,800 discount. In both instances there is no obligation to buy however the original S106 offer is time restricted.

Connect has a strong partnership with the Council and sought advice and support with our funding bid to purchase these units and worked together to achieve the March 2018 deadline with a letter of comfort provided by the Senior Legal Officer advising of their instruction to prepare a Supplemental Agreement and on acceptance of the legal fee by Connect this proceeded into draft. On this basis Connect's solicitor completed the purchase of the five flats.

Subsequently, Connect has worked with the Council to allocate all five properties to eligible tenants via Kirklees' Choice-based lettings system (Choose & Move) to people on the housing waiting list."

"Connect acquired and completed on the purchase of these units in March 2018. Clause 3.2 of the report in particular doesn't really highlight this point sufficiently. Connect / Noble Homes proceeded with this transaction in good faith further to a series of exchanges with Kirklees Council officers. This included reassurance from officers that the council will work with us to vary / remove the S106 obligation and in the interim Connect obtained written assurance that Kirklees would not enforce any breach of the S106 "try before you buy" obligation. As such Connect proceeded to purchase the units Although concerns have been raised about the developer's role, they did not seek to avoid their obligations. The developer was party to discussions with Kirklees; all parties considered that the final solution provided betterment in comparison to the "try before you buy deal". As outlined in your report this betterment includes additional affordable units, increased potential discount to occupiers, and importantly the units will be managed by a reputable social housing provider. From our perspective, Noble co-operated with (the) local authority to ensure their obligations under the S106 were fulfilled to the satisfaction of officers."

7.3 In response to Members' resolution on 23rd August the Housing Association have made additional comments as follows:

"I confirm that all our units for rent are let at 80% of market rent as calculated by an independent RICS valuer. Our total rent charge includes service charge and meets the expectations of "sub market rent" as set out in the original S106 agreement Connect has acquired plot numbers 50, 51, 52 & 53 (as identified in the S106 Agreement). In addition to these 4 units we have also acquired an additional 3 units (1 for rent, 2 for shared ownership). This now provides a total of 7 affordable units at this site.

We have been working with Noble Homes to continue to acquire further units for shared ownership on this scheme, however the threat of possible enforcement action is highly undesirable and is likely to cause us to pause on any further investment until the position is clearer. This is regrettable as Homes England have acknowledged our positive working relationship with Noble Homes as beneficial for provision of affordable housing and they continue to support us with additional grant funding for this purpose.

The current situation is highly disappointing. Connect are a reputable housing provider, we are a not for profit organisation committed to providing as many affordable homes as possible. Comments made in relation to planning enforcement against us in a public meeting and the implied suggestion that we've acquired units without undertaking appropriate diligence are highly disappointing and potentially damage our reputation.

Connect have had a positive relationship with the council and its officers. This positive working relationship and reassurance from officers, led us to acquire these units from Noble Homes in good faith. Neither ourselves or Noble Homes would have entered into this transaction without support and reassurance from the local authority.

We are already acquiring additional units on this scheme to facilitate shared ownership for customers who want to acquire an affordable stake in their home. This is to support customers who want to buy. It is part of our objectives to encourage affordable home ownership.

The original variation proposed to omit affordable housing requirements from the S106 agreement. This was to meet our lenders requirements, this enables us to continue to borrow and invest in new homes to benefit the community, the spirit of this is demonstrated by our ongoing commitment to buy additional units on this scheme."

- 7.4 Noble Homes have commented that they are a reputable builder of over 50 years and are not trying to avoid their obligations in the S106 Agreement. They argue that they acted following the advice of the Council's Legal Officers. Noble Homes add

"These properties were not sold at market value, as the committee seems to imply, even though Connect had confirmed, but sold at a reduced rate to a (Registered Provider), which was NOT a stipulation of the S106 so the developer has taken a loss at that point, as irrespectively after two years they can be sold at 100% Market Value. Of the five units Connect paid Open Market Value x1 of £110,000 and the other four were reduced to £92,500-£95,000, thereby a loss of up to £65,000 to the developer at today's prices."

"Connect Housing, with the investment from Homes England, can offer residents of all FIVE units a £ 10,000 discount with the Right to Acquire scheme should the resident wish to purchase their home. By Noble not benefitting from letting the x4 properties out for 2 years, we the developer have a loss of income of the rent of circa £ 38,400 or £ 19,200 if ALL of the tenants took up the option to buy, which is highly unlikely, but none the less, still another loss to the developer. We the developer fail to see any financial benefit, just a total loss of income, allowing for the reduced sale price and rent, of up to £ 103,400, if no tenant bought after 2 years, or a total loss of income of £ 84,200, if ALL tenants purchased."

- 7.5 Officers remain of the opinion that on balance the offer is reasonable and recommend acceptance for the following reasons.
- 7.6 The proposal as previously agreed in the S106 Agreement at the time did not fall within the definition of affordable housing. However, the current proposal aligns with the government's position on promoting home ownership.
- 7.7 The scheme promoted a 'try before you buy' arrangement and the management of the 4 units agreed was a matter for the site owner and developer to administer. The council was required to nominate tenants. These would be drawn from the Housing Register and would place tenants eligible for a range of affordable housing in a private scheme with no accredited housing manager from the perspective of a Registered Provider such as the Council, KNH or a Housing Association.
- 7.8 The new proposal is subject to Homes England funding support as part of their Continuous Market Engagement programme where Registered Providers can acquire units from the market. The Connect scheme entails their acquisition and provision of the initially agreed 4 units plus a further unit, to provide 5 new affordable homes managed and provided by them, and it provides affordable housing supply which could not have previously been counted in affordable housing delivery figures. It is important to emphasise that these units are subject to Homes England grant and regulation, and the management by Connect as Registered Provider, a factor which was not regulated in the original S106 Agreement. At some point, it was likely that the developer would sell the units to the sitting tenants. This acquisition brings that forwards, and consolidates the provision of the four, plus one further unit, as fully regulated and managed affordable homes. Homes England have supported other market acquisitions to increase affordable housing supply and this scheme is in line with their Continuous Market Engagement programme.
- 7.9 Officers consider that the current proposal represents a better offer than the existing S106 requirements as:
- The community get 5+ affordable homes delivered (an increase in that previously agreed).
 - They will be managed by a Registered Provider (RP).
 - This Authority retains the right to nominate tenants.
 - The RP can later borrow against the stock to invest in their future housing products.
 - The scheme is in the area of focus for growth for this partner.
 - It represents expedient delivery and additions to the District's affordable housing stock.
 - The existing S106 Agreement does not incorporate any default arrangements if the developer failed to find a Registered Provider.
 - Anyone eligible to exercise the right to acquire would be entitled to a discount which would be likely to be greater than half of the rental paid in the first 24 months of the tenancy as referenced in clause 3.3.
 - The rental to be charged at Affordable Rent will be up to 80% of market rent as defined in the existing agreement and in practice will be the same in operation, albeit within the management undertaken by Connect.
 - The fifth unit will operate in the same way, at Affordable Rent, and be eligible to the right to acquire, and be part funded by Homes England grant as would the other 4 units.

- Connect will need to liaise with the Council in respect of our Choice Based Lettings scheme [Choose-n-Move] and the Council will nominate as is standard practice.
- 7.10 It is accepted that the developer will benefit financially from the proposed deed of variation. However, this benefit would not come from the receipt of market value for the units as it was always intended that this would be the case in the signed S106 Agreement. The benefit to the developer comes from getting the sales now rather than needing to wait for a tenant to buy - and whilst waiting for the tenant to buy, having to accept a sub market rental income and then pay part of that towards a deposit.
- 7.11 On balance Officers consider it appropriate to vary the Section 106 Agreement as proposed if (and only if) the apartments are acquired by a Registered Provider.
- 7.12 Notwithstanding the above, Officers are currently seeking legal advice on a possible reason for refusal as instructed at the previous Sub-Committee meeting and an update on this matter with any potential wording for the reason for refusal would be reported in the Committee Update report.

8.0 CONCLUSION

- 8.1 That authority be delegated to the Head of Strategic Investment to vary the terms of the existing S106 Agreement in accordance with the Officer's recommendation.
- 8.2 Having regard for the previous clear position of the Committee an Update report on potential wording for the refusal of the application will be brought to the Planning Committee via the Update report.

Background Papers:

Link to application details (2012/93803):-

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2012%2f93803>

Link to the Extension to time application (2011/90359):-

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2011%2f90359>

Link to the original application (2007/94743):-

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2007%2f94743>