

Agenda Item 7c - DC/20/04630 - Land West of Wattisfield Road, Walsham Le Willows

Explanation of legal position

The original planning permission ref: 1352/17 secured 21 affordable housing units and the current application (Ref: DC/20/04630), submitted under section 73 of the Town and Country Planning Act, proposes, amongst other things and additional 10 no. affordable housing units.

The current section 73 application requires a section 106 deed of variation agreement in order to secure planning obligations, including affordable housing.

Following negotiations with regards the content of this legal agreement with the applicant's solicitors, the applicant was unwilling to include the additional 10 affordable units as part of of this agreement.

On this basis, it is your officers assessment and advice is that your current planning policy position in relation to provision of a proportion of affordable housing in new housing developments, at altered local plan policy H4, allows the LPA to negotiate an element of affordable housing of up to 35% of the total provision of housing on relevant sites, such as the current proposal. As the additional 10 no. affordable units proposed would be in excess of 35% of the total provision, the LPA is unable to secure these additional 10 units as part of the current section 106 deed of variation agreement currently being negotiated.

The advice of your legal advisors is that the committee report presented to members at committee on 20th January 2021 described the additional affordable housing as providing "significant social benefit" which was to be weighed in the planning balance. The recommendation was to approve the application subject to prior agreement of a section 106 Obligation securing "onsite delivery of 31 Affordable Housing Units". Given that members were directed to give positive weight to this provision in the planning balance, it is the advice of your legal advisors that if the additional affordable housing units are no longer to be secured in perpetuity the application will need to be returned to committee for further consideration by members.

The current section 106 agreement also requires a financial contribution towards secondary School Pupils' transport costs. As Suffolk County Council have advised this contribution has already been paid, the current section 106 deed of variation agreement is being drafted to secure retention of this payment, and not to seek additional payment in this regard.

Your legal advisors also note that the current section 73 application seeks to vary the reserved matters. While the relatively recent legal cases of *Pressland* and *Fulford* appear to indicate that reserved matters may be varied by a s.73 application members will be familiar with the concept that s.73 approval creates a new planning permission and that a reserved matter approval is not a planning permission. A s.73 of a reserved matters approval therefore creates a challenge for local planning authorities. In order to address this challenge, should the current S.73

application be granted conditions from both the host outline planning permission and reserved matters approval will be required to be rolled forward onto the new decision notice.