

Report to the District Development Control Committee



**Epping Forest
District Council**

Date of meeting: 24 August 2011

Subject: Planning application EPF/1399/09 – 212 Manor Road, Chigwell – Outline planning application for 68 residential units (54 affordable), public open space and a community facility (D1 Use) with all matters reserved except access

Responsible Officers: Alan Hall, Director of Housing (01992 564004)
Katie Smith, Senior Planning Officer (01992 564109)

Committee Secretary: Simon Hill (01992 564249)

Recommendations:

- (1) That planning permission be granted, subject to the completion of a altered Section 106 Legal Agreement to secure the following planning obligations:**
 - (a) The provision of affordable housing (in accordance with the detailed Heads of Terms attached as Appendix 2, which have been negotiated with and agreed by the Applicant);**
 - (b) Highway improvements (works and/or financial contributions);**
 - (c) Vehicular access into the adjacent site;**
 - (d) The provision of an area of public space within the site to be transferred to Epping Forest District Council at nil consideration and a financial contribution towards the maintenance of the public open space; and**
- (2) That the Committee considers the timescale for the completion of the altered Section 106 Legal Agreement.**

Introduction:

1. This application was originally considered by the Committee in October 2009, when the Committee resolved to grant planning permission, subject to referral to the Government Office and to the completion of an agreement under Section 106 of the Town and Country Planning Act 1990 (a "Section 106 Agreement") to secure:
 - The amount, tenure and occupancy of the affordable housing;
 - Highway improvements (works and/or financial contributions);
 - A significant financial contribution towards the provision of a Post Office within the locality of the site;
 - Vehicular access into the adjacent site; and
 - The provision of an area of public space within the site to be transferred to Epping Forest District Council at nil consideration.

2. Ordinarily, planning permission would not be granted for residential development within the Metropolitan Green Belt, since it would be considered as inappropriate development. Accordingly, planning permission may only be granted if it can be demonstrated that there are “very special circumstances” which outweigh the harm to the Green Belt.
3. When originally considering the application, the Committee accepted that there were very special circumstances in this case. This was mainly because the development would provide a high percentage of affordable housing on a previously-developed site, located in a sustainable location adjacent to an Underground Station on the Central Line.
4. A copy of the previous report to the District Development Control Committee is attached as Appendix 1.
5. Confirmation was received from the Government Office in December 2009, stating that the Secretary of State had concluded that the application should be determined by the Council.
6. However, to date, no Section 106 Agreement has been completed to secure the planning obligations listed above, since the Applicant has stated that the affordable housing aspects of the development are no longer financially viable in the form previously submitted and agreed. At one point, the Applicant was proposing that a significant amount of the affordable housing could be provided as “low cost market housing”, which was not considered acceptable to officers since such provision is not recognised as affordable housing in either national planning policy or the Council’s Local Plan.
7. At its meeting held on 5th April 2011, the Committee considered the non-completion of the required Section 106 Agreement and agreed that the time limit for its completion should be extended for a period of six months, to enable further negotiations to take place with Officers.
8. Since the Committee meeting in April 2011, the Director of Housing and planning officers have held detailed and lengthy negotiations with the Applicant, and its Housing Association Partner (Moat – also one of the Council’s Preferred Housing Association Partners), and an approach has now been agreed which – under the circumstances - appears acceptable to all parties, subject to the approval of the Committee.
9. The proposed development has already been considered by this Committee, which has formally resolved to grant planning permission. Accordingly it is not, at this stage, appropriate to reconsider the merits of the proposal. Consideration may only be given to the deviations in the proposed Heads of Terms for the legal agreement, from those which were agreed in October 2009. The fundamental changes to the proposed Heads of Terms relate to the provision of affordable housing. This report explains the outcome of the negotiations and the rationale of the proposed approach, and recommends Heads of Terms relating to the provision of affordable housing for the proposed Section 106 Agreement that have been agreed with the Applicant.
10. The Heads of Terms now proposed also do not include the provision of a financial contribution towards the re-opening of a Post Office counter within the locality, as previously agreed. This is proposed as over the passage of time since the Committee resolved to grant planning permission changes in economic circumstances have affected the viability of the proposal. Officers have worked closely with the Applicant to ensure that the delivery of affordable housing is secured, despite these changed economic circumstances. On balance, it is considered that the community need for affordable housing is greater than the need for the additional Post Office Counter. Accordingly, it is

proposed that the sum sought for the Post Office service is directed towards providing affordable housing.

Proposed reduction in number of dwellings for the Outline Planning Application

11. The application site is adjacent to another, smaller site - for which a resolution to grant planning permission to another applicant, subject to the completion of a Section 106 Agreement, has also been made by the Committee. That application is for the provision of 21 residential properties, with underground parking, of which 80% will be provided as affordable housing. That site would be accessed via the application site which is the subject of this report.
12. Members of both the Area Plans Sub-Committee and the District Development Control Committee have previously expressed a desire that the two sites be developed through a co-ordinated and complementary approach. The Applicant has recently advised officers that, following discussions with the applicant for the adjacent smaller site, an agreement has been reached in principle to provide some of the land within the application site to the smaller development, in order to provide surface parking, which would obviate the need for underground parking and make the adjacent development more viable.
13. However, for this reason, the Applicant has advised that the number of properties that can be provided on the application site which is the subject of this report has to be reduced from 69 properties (including 54 affordable homes) that was previously proposed, to 68 properties (still including 54 affordable homes – representing 79% of the total). This is considered acceptable to Officers.

Tenure mix of Affordable Housing

14. The Applicant's original Outline Planning Application for 69 properties, which was the one determined by the Committee in October 2009, provided the following tenure mix of properties:

Market Housing	15 properties (21.7%)	
Social Rented Housing	37 properties (53.6% - 69% of the a/h)	} 78.2% affordable housing
Shared Ownership	17 properties (24.6% - 31% of the a/h)	

15. Under the Council's Shared Ownership Policy, the Council would normally expect no more than 30% of the affordable housing to be in the form of shared ownership, with at least 70% of the affordable housing provided as rented housing. This is in recognition of the increasing numbers of households registered on the Council's Housing Register for rented housing, of which there is currently around 5,500 households - an increase of around 50% over the past 4 years.
16. The agreed tenure mix at that time was based on the reasonable assumption that sufficient capital grant would be provided by the Homes and Communities Agency (HCA) to subsidise the cost of provision. However, as explained in the introduction to this report, after the planning application was determined (subject to the completion of a Section 106 Agreement) the Applicant advised officers that, in the Applicant's view, such a tenure mix was no longer economically viable. It is on this issue that there has been disagreement, negotiation and now agreement in principle between officers and the Applicant.

Grant funding for affordable housing and the Government's new "Affordable Rent" model

17. One of the major changes since the time the planning application was originally considered, which affects the viability of the scheme, is a significant change in the way the provision of affordable housing is funded nationally. In the past, affordable rented housing provided by housing associations and local authorities has been in the form of “social rented housing” let at “social rents”, which are set at levels in accordance with a Government formula. Social rent levels are significantly lower than market rents, and were achieved through the provision of capital grants from the Homes and Communities Agency (HCA) which subsidised the construction costs.
18. Following the Government’s Comprehensive Spending Review in October 2010, the Government has introduced a new model for affordable housing called “affordable rented housing”, with a different funding regime. Under the new regime, housing associations are now required to charge much higher rents for new rented housing schemes, called “affordable rents”, which are up to 80% of market rent levels (including service charges). This enables more rental income to be generated by the housing association, which reduces the need (or amount required) for capital grant from the HCA.
19. The HCA’s Affordable Rent Framework states that, generally, no capital grant will be provided by the HCA to housing associations for affordable rented housing on development sites where there is Section 106 Agreement requiring the provision of affordable housing. This is based on an assumption by the HCA that the income generated from these higher rents, together with an appropriate level of subsidy from the developer, should be sufficient to meet the costs of providing the affordable housing and for the development to be financially viable.
20. In view of this change in national housing policy, it has been necessary for the Applicant to vary the form of rented housing proposed for the development from social rented housing to affordable rented housing, and it is recommended that this change be agreed.
21. However, despite this change and higher rents being charged, the Applicant has expressed the view that the scheme is no longer viable with the same tenure mix as previously agreed, without any capital grant. The main reason for this is that the HCA’s assumption/assertion that affordable housing developments provided through Section 106 Agreements should be viable without any capital grant relates to schemes where only around 40% of the total number of dwellings is provided as affordable housing. However, for this development, for the reasons explained earlier, around 80% of the dwellings will be provided as affordable housing. Therefore, for the scheme to proceed with a similar tenure mix without any capital grant from the HCA, a greater level of subsidy is required from the developer than assumed by the HCA. In this case, the Applicant has expressed the view that the increased level of developer subsidy required makes the scheme unviable.

Proposed approach to the tenure mix

22. Therefore, in order for the development to be viable and go ahead, it is necessary to either vary the tenure mix from that previously agreed - by reducing the amount of affordable rented housing and increasing the amount of shared ownership - or by obtaining a capital grant to subsidise a similar level of affordable rented housing.
23. The Applicant has expressed the view that, without any capital grant, no more than 33% of the affordable housing can be provided as affordable rented housing, without the scheme becoming unviable.

24. Therefore, the Director of Housing has discussed with Moat, the proposed housing association to provide the affordable housing, the possibility of Moat either providing grant from its own resources, through its Recycled Capital Grant Fund (RCGF – from past shared ownership sales on other schemes) or seeking grant funding from the HCA, in order to achieve a similar tenure mix for the affordable housing of 60% rented housing and 40% shared ownership.
25. Any grant from the HCA would be sought on the basis that the grant would provide “additionality” to the affordable housing provision (by providing more rented housing than would otherwise be possible), and would require Moat to submit a bid to the HCA. Similarly, any grant funded from Moat’s RCGF would require the approval of the HCA.
26. In response, Moat has advised that, subject to approval of its Board and the approval of the HCA, it would be prepared to use sufficient grant from its RCGF to provide 60% of the total number of affordable homes as rented housing.
27. Since it will not be known whether or not the HCA agrees to the use of Moat’s RCGF, or to provide capital grant itself, until after the Section 106 Agreement has been completed it is proposed (and agreed with the Applicant and Moat, subject to the Committee’s agreement) that the Section 106 Agreement is drafted with a “cascade” approach to the proposed tenure mix, whereby the developer is required to provide either:
 - (a) 32 affordable rented properties (60% of the affordable housing); and 22 shared ownership properties (40% of the affordable housing);

if the HCA agrees to Moat utilising sufficient grant from its RCGF or to provide sufficient grant itself; or
 - (b) 18 affordable rented properties (33% of the affordable housing); and 35 shared ownership properties (67% of the affordable housing);

if the HCA does *not* agree to Moat utilising sufficient grant from its RCGF or to provide sufficient grant itself.

Heads of Terms relating to the provision of affordable housing for the proposed Section 106 Agreement

28. Heads of Terms, based on the above approach, have been agreed with the Applicant and Moat (subject to the Committee’s agreement), which are set out at Appendix 2. These also include the proposed property mixes of the affordable housing agreed with the Applicant and Moat.
29. It is proposed that Moat is a party to the Section 106 Agreement, since the approach is reliant on Moat providing grant funding from its RCGF, which another housing association may not be prepared to provide.

Summary and Conclusion

30. The changes to this proposal following the Committee’s previous decision to grant planning permission relate to a reduction in the number of units proposed from 69 to 68, the removal of the obligation upon the Applicant to contribute towards the cost of reopening a Post Office counter within the locality and changes to the proposed Heads of Terms for the delivery of the affordable housing. The planning merits of the case were determined to be acceptable at the time that the resolution to grant planning permission

was issued and there has been no material change in circumstances to support a different decision at this time.

31. Since this application was previously reported to Members in April of this year, the Director of Housing and planning officers have worked with the Applicant and Moat to ensure that the development would still deliver approximately 80% of the dwellings as affordable housing, which was fundamental to the case for very special circumstances for permitting the development within the Green Belt. Furthermore, those negotiations have led to proposed Heads of Terms which would ensure that as many of the dwellings as possible (between 33% and 60%) are available for rent, for which there is a greater need within the District.
32. In light of the above appraisal, it is recommended that the Committee resolves to grant planning permission for the proposed development, subject to the completion (within a set period of the resolution) to secure the provision of the affordable housing, highway works, the open space/maintenance contribution and the vehicular access into the adjacent site.