

Report to the Council Housebuilding Cabinet Committee



Report reference: CHB-014-2014/15
Date of meeting: 5 March 2015

**Epping Forest
District Council**

Portfolio: Housing – Cllr David Stallan

Subject: Phase 2 Feasibility Report – Future Use of Burton Road Development Site

Responsible Officer: Paul Pledger, Assistant Director (Housing Property & Development) (01992 564248)

Democratic Services Officer: Jackie Leither (01992 564756)

Recommendations:

- (1) That the Cabinet Committee considers from the following options the future use, or approach, that is to be adopted for the development site at Burton Road, Loughton, following the decision of the Area Planning Sub-Committee (South) to refuse planning permission for Phase 2 of the Council's house-building Programme:
- a. To request the Council's Development Agent to submit an appeal to the Secretary of State, against the decision to refuse planning permission to deliver a scheme for 52 new affordable homes with 50% unallocated parking *"by reason of its bulk, design and density in terms of numbers of dwellings, the proposal would have an overbearing relationship with neighbouring land and detriment of the visual amenities of the locality"* at an estimated cost of between £7,500 and £68,875 (excluding VAT and disbursements) depending on which format the appeal is heard, funded in full by the Council from the House-building capital programme;
 - b. To submit a revised planning application for a scheme consisting of 43 new affordable homes with 100% unallocated parking (attached as Option 1 at appendix 1), as set out in the feasibility report, at an estimated cost of £8,058,476 that will require an increased subsidy of around £2,236,000 (£52k per unit) based on a 30-year pay-back period;
 - c. To submit a revised planning application for a scheme similar to that previously submitted, consisting of 52 new affordable homes and 50% unallocated parking (attached as Option 2 at appendix 2) but addressing the reasons for refusal by reducing its bulk, altering its design and overall height so as to reduce any impact on the neighbouring land and any detriment of the visual amenities of the locality, all as set out in the feasibility report at an estimated cost of £9,255,439 which will require an increased subsidy of around £2,184,000 (£42k per unit) based on a 30-year pay-back period;
 - d. Having regard to the options set out in the Cabinet's agreed *"Policy on the Future Use of Sites Unsuitable for Redevelopment"*

- i. To sell the site for social housing to a Housing Association in return for a capital receipt to fund future Council house-building and to gain nomination rights for applicants on the Council's housing register;
 - ii. To sell the site for private development, either for residential or other use in return for a capital receipt to fund future Council house-building;
 - iii. To divide up the site and sell the land to local residents to extend their private gardens in return for a capital receipt to fund future Council house-building;
 - iv. To demolish the garages, re-surface and mark out the land and to leave the site as open car parking for local residents;
 - v. To sell the site to a Town or Parish Council for their own purposes (eg. public amenity space) in return for a capital receipt to fund future Council house-building;
- (2) That, should the Cabinet Committee agree to submit a new planning application in line with recommendation 1b above, then the Director of Communities be delegated authority to enter into negotiations with:
- a. the HCA over the required reduction in Affordable Housing Grant that would apply; and
 - b. the NHS over an appropriate level of contribution for health for inclusion in any Unilateral Undertaking bearing in mind the reduced number of properties to be developed;
- (3) That, should the Cabinet Committee agree to submit a new planning application in line with either of Recommendations 1a or 1b above, then the Housing Portfolio Holder be authorised to submit a detailed planning application for the appropriate scheme.
- (4) That, should the Cabinet Committee agree to pursue any of the options within Recommendation 1(d) above, a further report be considered by the Cabinet Committee at a future meeting on delivering the preferred option.

Executive Summary:

Following the refusal of planning permission for the proposed development at Burton Road, Loughton, this report sets out the options, risks and costs where applicable, which include appealing the original planning decision, resubmitting a planning application for an alternative scheme, selling the site, or creating open parking on the land.

Reasons for Proposed Decision:

The Cabinet Committee has to decide on the future use of the development site at Burton Road since the planning application for Phase 2 of the Council House-building programme was refused permission at the Area Planning Sub-Committee (South) on 7 January 2015.

Other Options for Action:

The report sets out all of the options that are available, including the advantages, disadvantages and costs for each option.

Background

1. On 7 January 2015, the Area Planning Sub-Committee (South) considered and refused planning permission for Phase 2 of the Council's House-building Programme at Burton Road, Loughton consisting of 52 new affordable homes for applicants on the Council's housing register. The decision is recorded as *"by reason of its bulk, design and density in terms of numbers of dwellings, the proposal would have an overbearing relationship with neighbouring land and detriment of the visual amenities of the locality"*
2. In line with the Policy on the Future Use of Development Sites Unsuitable for Development agreed in April 2014, the Cabinet Committee now needs to decide the future use of the development site at Burton Road, Loughton. Set out below are a number of options for consideration, including advantages, disadvantages and where available the estimated costs associated with each.

Appeal Against the Planning Decision

3. Any applicant is entitled to submit an appeal to the Secretary of State against a decision relating to a planning application. The Council has never before appealed against its own decision. However, in this instance, the application for Phase 2 of the Council's house-building programme was submitted in the name of East Thames Group (ETG), who is the Council's appointed Development Agent and they could be requested to submit an appeal, funded in full by the Council (since it is the Council that funds the Housebuilding Programme).
4. When submitting an appeal, applicants can ask for the case to be dealt with as a Written Representation, a Hearing or an Enquiry. If the Council is to take any of these appeal options it is important to note that the Council will have to pay for not only the Consultants fees and disbursements to prepare and present the appeal but also the fees associated with defending it. There are a number of differences for each of the appeal processes, which are set out below:
 - a. Written Representation – Where both the applicant (ETG) and the Council submit a written statement of case including all supporting documentations. The appointed Planning Inspector will then consider the documents, often visiting the site before reaching a decision. This can take between 3 and 6-months from submission before a decision is reached. ETG have estimated the cost of submitting a Written Representation to be around £5,000, and the cost of defending the appeal is estimated to be in the region of £2,500
 - b. Hearing – A simple examination of the matters arising under the appeal, normally where evidence does not need to be tested under cross examination. A hearing is normally heard over one day, and is led by the Planning Inspector. This can take between 6 and 9-months from submission before a decision is reached. ETG have estimated the cost of submitting an appeal and attending the hearing to be around £27,500 (excluding VAT and disbursements), and the cost of defending the appeal is estimated to be in the region of £4,500

- c. Public Inquiry – This is similar to a hearing. However, this requires the appointment of legal representation in the form of a Barrister on each side for the purpose of cross examination of evidence. This can take between 9 and 12-months from submission before a decision is reached. ETG have estimated the cost of submitting an appeal and attending the Public Inquiry to be around £34,375 plus £15,000 for Legal Representation (excluding VAT and disbursements) and the cost of defending the appeal is estimated to be in the region of £4,500 plus £15,000 for its own legal representation.
5. The Cabinet Committee does not have delegated authority to submit an appeal. Therefore, if the decision of the Cabinet Committee is to appeal, then on a point of procedure, it must seek the approval of Council. Any appeal must be submitted by 7 July, being 6-months after the decision was reached.
6. The main risks associated with submitting an appeal is that the Planning Inspector may decide to uphold the decision of the Area Planning Sub-Committee (South), in which case there would not only be a substantial delay in the house-building programme, but there would also be a significant amount of abortive fees. The risk to the Council's reputation over appealing against its own decision should also not be overlooked.

To submit a revised planning application for a scheme consisting of 43 new affordable homes with 100% unallocated parking (Option 1)

7. Attached at Appendix 1 is a feasibility study, which considers an alternative design for the site based on a 43-home scheme with 100% unallocated parking. Whilst this does address the reasons for refusal, and also addresses objections raised by local residents in response to the planning application, it is less favourable to the Council's Planning Officers due to the large banks of open parking and its impact on the environment.
8. The main differences between this design and the original that was refused planning permission in January is the loss of 3 flats to one end of Block C to create one bank of parking spaces, the removal of the four top-floor flats reducing the overall height to 3-stories and the loss of 2x3-bed houses to create a second bank of parking spaces so as to achieve 100% parking across the whole scheme. There is a loss of amenity space as a result of this design change in order to accommodate the additional parking.
9. The schedule of materials, fenestration and overall elevational treatment will need to be considered in more detail to take account of the design changes.
10. From the financial Investment Report at appendix 3, the Total Scheme Costs for a 43-home scheme is £8.06m, which is made up of £7.2m works costs and £0.86m fees.
11. The financial target of loan repayment in Year 30 can be achieved providing it receives a subsidy of £2.24m. The subsidy per unit equates to £52k.
12. The additional design fees payable to ETG and their Architects for preparing a revised set of drawings and details and re-submitting the planning application will be £21,550 plus VAT. There are no additional planning application fees if resubmitted before 7 January 2016.
13. Should this option be agreed by the Cabinet Committee, there will be a resultant loss of HCA Affordable Housing Grant. For estimating purposes, a reduced rate of £12,500 per flat can be assumed. However, this will require negotiating with the HCA.

14. The Cabinet Committee has already agreed to make a contribution to the NHS for healthcare provision within the District, albeit based on a 52-unit scheme. Should that be reduced to 43 homes as a result of this option then the Council would need to negotiate with the NHS over an alternative amount of financial contribution and enter into a new Unilateral Undertaking.
15. Since the land has already been appropriated, the procedure under the Local Government Act 1972 and Town and Country Planning Act 1990 to change the purpose for which the land is held for one statutory purpose to another, then this will not be required again if this option is agreed.
16. The main risks associated with this option are that the revised scheme may not be seen as going far enough to overcome the concerns of the Area Planning Sub-Committee (South) and is once again refused planning permission by the Sub-Committee, resulting in further abortive fees.

To submit a revised planning application, for a scheme consisting of 52 affordable homes and 50% unallocated parking, but reduced in height, scale and massing (Option 2)

17. Attached at Appendix 2 is a feasibility study, which considers an alternative design for the site based on a reduction in height, scale and massing, yet still achieves 52 new affordable homes and 50% unallocated parking. Whilst this does address the majority of the reasons for refusal, it does not address concerns over density. The scheme does not increase the parking allocation either, although it should be noted that this was not a reason for refusal.
18. From the Financial Investment Report at Appendix 3, the Total Scheme Costs for this revised scheme consisting of 52 new affordable homes is £9.26m, which is made up of £8.25m works costs and £1.01m fees.
19. The financial target of loan repayment in Year 30 can be achieved providing it receives subsidy of £2.18m. The subsidy per unit equates to £42,000
20. The additional design fees payable to ETG and their Architects for preparing a revised set of drawings and details and re-submitting the planning application will be £21,550 plus VAT. There are no additional planning application fees if resubmitted before 7 January 2016.
21. Should this option be agreed by the Cabinet Committee, it would mean the existing HCA affordable Housing Grant would remain the same as would the financial contribution to the NHS towards healthcare in the district.
22. As with the option above, since the land has already been appropriated, then this will not be required again if this option is agreed.
23. The main risks associated with this option are, again that the revised scheme does not go far enough to overcome the concerns of the Area Planning Sub-Committee (South) and is once again refused planning permission, resulting in abortive fees.

To sell the site for affordable rented housing to a Housing Association in return for a capital receipt

24. Should the Cabinet Committee opt to sell the site, then one option would be to sell it to one of the Council's Preferred Housing Association Partners, for them to develop the site

for affordable housing, from which the Council could obtain nomination rights. This would benefit the Council by way of a capital receipt for the land value, which could be used to fund other Council House-building developments.

25. The value of the land has not been assessed; therefore, should this option be agreed by the Cabinet Committee, it would mean a separate financial viability study would need to be undertaken to establish a land value and consideration of the most appropriate way to appoint the housing association.
26. The main drawback is the fact the Council will not retain the affordable rent for the homes that are built, and that a similar number of homes will have to be put into the Council Housebuilding Programme to replace these ones taken out. There is also the consideration that a housing association could submit plans for more homes to be delivered on the site.
27. Since the Council has secured HCA Affordable Housing Grant for the delivery of affordable housing on the site based on a firm scheme, officers are also of the view that this would cause reputational difficulties with the HCA, bearing in mind that this is only the first scheme where grant has been secured, and could result in the not agreeing any future affordable housing grant applications from the Council.

To sell the site for private development in return for a capital receipt

28. The benefits, drawbacks and risks associated with this option are similar to those above. However, the land value would be higher; no more than 40% affordable homes are likely to be provided; and the potential for a private developer submitting plans for more units on the site is greater.

To divide up the site and sell the land to local residents to extend their private gardens in return for a capital receipt

29. Whilst this option appears in the policy for the Future Use of Development Sites Unsuitable for Development, in this instance this option is not ideally suited since the site backs on to a row of flat blocks where the gardens are back to back.
30. Since the land would be sold for private gardens, the value would be very low and reaching agreements with all of the individual occupiers of the flats would be near impossible. The cost of drawing up legal agreements would almost offset any value in the land.

To demolish the garages, re-surface and mark out the land and to leave the site as open car parking for local residents

31. With Debden Station so close, and with the adjacent shopping parade at Debden Broadway, the land could be utilised as an extension of the "Pay and Display" car park. This would create a revenue income for the Council, but it would require the land to be transferred from the HRA to the General Fund, for an appropriate fee.
32. Such an option will not provide any much needed affordable housing in the district, and as with selling the site, there is a risk that the HCA will frown upon any future affordable housing grant applications from the Council, as the allocation has been based on a firm bid.

To sell the site to a Town or Parish Council for their own purposes (eg. public amenity space) in return for a capital receipt.

33. Whilst this could be viable option, this is likely to generate a significant capital receipt on the scale of selling to a private developer or an ongoing revenue income similar to what could be realised from car parking charges, and as such is not recommended.

Resource Implications:

Should either of the redesign options be approved by the Committee then the resource implications would be £8.06m or £9.26m depending on which of the two options is agreed. This will be in addition to any design fees payable to the Council's Development Agent, estimated to be £21,550. This would be funded from the existing Capital Programme for 2014/15 and 2015/16 inclusive of works and fees, using £2.236m or £2.184m subsidy (again, dependant on the option agreed by the Committee) in line with the Council's Development Strategy for the House-building Programme.

The cost of submitting an appeal would be between £7,500 and £70,000 (plus VAT and disbursements). The capital receipt for the sale of the site has not been calculated at this stage.

Legal and Governance Implications:

Within its Terms of Reference, the House-Building Cabinet Committee is expected to consider the Future Use of Development Sites Unsuitable for Development as well as agreeing each feasibility study.

The Cabinet Committee is expected to follow the Financial Regulations and Contract Standing Orders when disposing of an asset, which means obtaining the best value.

Safer, Cleaner and Greener Implications:

The site being considered currently has garage blocks, rented to garage tenants, but not necessarily adjacent to the blocks. A large proportion of the site contains a former Council depot and garages which are either vacant or not used to park vehicles (Source: ECC Parking Standards) Redeveloping this former depot site, garages and amenity land will add value to and enhance the local environment and streetscape.

Consultation Undertaken:

Local Ward Councillors and residents have been consulted on a previous scheme through the feasibility process and planning application. They will again be consulted at the meeting on the options being put forward.

Background Papers:

- Previous Cabinet Committee decisions relating to the site;
- Development Strategy;
- Policy on Funding the House-building Programme;
- Policy on the Future Use of Development Sites Unsuitable for Development;
- Planning decision relating to the original application.

Impact Assessments:

Risk Management

The risks are identified against each of the options within the body of the report.

Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

Within the Housing Service Strategy, it has been identified that the target groups that are affected by the Council's house building programme are people in need of:

- Affordable Housing,
- Homelessness assistance,
- Supported housing for special needs groups,
- Owners and occupiers of poor condition housing
- Council and housing association tenants.

From that, it was identified that generally, there is an under provision of suitable accommodation for nearly all target groups. This has been reaffirmed in the most recent Strategic Housing Market Assessment.

Decision making is affected by funding and other factors, such as the availability of building land suitable for particular groups e.g. the elderly or young families.

There is no evidence of unlawful discrimination in relation to the provision of affordable housing.