

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: THURSDAY, 24 MAY 2012
title: PROPOSED AMENDMENT TO CONTENT OF SECTION 106 AGREEMENT FROM THAT AGREED BY PLANNING AND DEVELOPMENT COMMITTEE ON 20 MAY 2010 IN RELATION TO AN OUTLINE PLANNING APPLICATION FOR THE DEMOLITION OF AN EXISTING COMMERCIAL BUILDING AND THE REDEVELOPMENT OF THE CLEARED SITE AND ADJOINING LAND FOR RESIDENTIAL DEVELOPMENT INVOLVING THE ERECTION OF 17 DWELLINGS, TOGETHER WITH GARAGES AND GARDENS AT OLD MANCHESTER OFFICES, WHALLEY NEW ROAD, BILLINGTON (3/2010/0078/P)
submitted by: DIRECTOR OF COMMUNITY SERVICES
principal author: COLIN SHARPE, SENIOR PLANNING OFFICER

1 PURPOSE

1.1 To ask Committee to agree to changes to the draft Section 106 Agreement in relation to the number of affordable units to be provided and the financial contribution to be requested.

1.2 Relevance to the Council's ambitions and priorities:

- Council Ambitions – To make people's lives safer and healthier by implementing established policy. Also assisting the Council to protect and enhance existing environmental qualities.
- Community Objectives – The report relates to issues affecting the delivery of affordable housing in the borough.
- Corporate Priorities – To facilitate the occupation of additional affordable homes.
- Other Considerations – To ensure a consistency of approach in the determination of planning applications where a quota of affordable housing is required.

2 BACKGROUND

2.1 The Planning and Development Committee considered a report relating to the above-mentioned planning application on 20 May 2010. Within the 'Proposal' section of that report, and in relation to the requirements of the then applicable Affordable Housing Memorandum of Understanding (AHMU) it was stated that "five terraced houses (or a number identified by a viability assessment) are offered as affordable homes". It was also stated in the report that the County Council had requested a contribution of £66,188 towards the provision of primary school places.

2.2 The recommendation of the report was as follows:

“that Committee be minded to grant outline permission subject to the following conditions and therefore DEFER and DELEGATE to the Director of Development Services to negotiate the satisfactory completion of a Section 106 Agreement to deal with the requested financial contributions and to ensure the delivery of an appropriate number of affordable housing units, both in the first instance and in the future.”

2.3 Committee resolved in accordance with that recommendation.

3 ISSUES

3.1 Due to the brownfield nature of the site that would incur demolition costs etc, the applicants and their agent claimed that the development would not be viable if they were required to provide five affordable units and pay the education contribution of £66,188. They therefore commissioned an Economic Viability Assessment the conclusion of which was that, if the education contribution of £66,188 is met, the site could only support an affordable housing contribution of 12% (two units).

3.2 The Council sought an independent appraisal of the applicant’s Economic Viability Assessment. The conclusion of that appraisal was that the development would be viable with the provision of three affordable homes (18%) and the payment of the requested education contribution. The applicants agreed with this conclusion and were prepared to work towards the completion of the Section 106 Agreement on that basis.

3.3 The matter, however, was considered at a meeting of the Housing Working Group on 1 May 2012. The Group was concerned about allowing the provision of affordable units below the minimum threshold of 20%. The Group therefore suggested that four units should be provided but that the education contribution should either be waived or the request should be for a sum that would equate to the balance that would still retain the overall viability of the proposed development. Committee may be aware that a report was taken to December 2008 Planning and Development Committee in relation to a document produced by Lancashire County Council in relation to planning obligation. It was resolved that the Council will seek to prioritise contributions with the need for affordable housing as the key priority. On that basis and given the evidence produced in the Viability Assessment, I consider that the requirement for affordable housing should override the education contribution. I have advised Lancashire County Council Education Department accordingly and any further comments will be reported verbally.

3.4 The applicant’s agent has agreed to this suggestion of the Housing Working Group but, at the time of preparation of this report, had not provided any figures in relation to what (if any) education contribution would be possible.

3.5 As the content of the Section 106 Agreement, if concluded in this way, would be different from that resolved by Committee in May 2010, Members are requested to agree to this course of action as detailed in the recommendation below.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – None.

- Technical, Environmental and Legal – None.
- Political – There is a risk of criticism that the Council could be seen as prioritising the local need for affordable homes above the County Council’s education requirements.
- Reputation - There is a risk of criticism that the Council could be seen as prioritising the local need for affordable homes above the County Council’s education requirements.

5 RECOMMENDED THAT COMMITTEE

- 5.1 Agrees to the completion of the Section 106 Agreement for this development on the basis of the provision for four affordable housing units and the payment of a contribution towards education provision of a sum to be agreed (that would be a minimum of zero and a maximum of £66,188) – and that the completion of the precise wording of the Agreement and the subsequent issuing of the planning permission be delegated to the appropriate planning, housing and legal officers.

DIRECTOR OF COMMUNITY SERVICES

BACKGROUND PAPERS

3/2010/0078/P – Outline application for the demolition of a existing commercial building and the redevelopment of the cleared site and adjoining land for residential development involving the erection of 17 dwellings together with garages and gardens at Old Manchester Offices, Whalley New Road, Billington.

For further information please ask for Colin Sharpe, extension 4500.

APPLICATION NO: 3/2010/0078/P

(GRID REF: SD 372799 435722)

OUTLINE APPLICATION FOR THE DEMOLITION OF AN EXISTING COMMERCIAL BUILDING AND THE REDEVELOPMENT OF THE CLEARED SITE AND ADJOINING LAND FOR RESIDENTIAL DEVELOPMENT INVOLVING THE ERECTION OF 17 NO DWELLINGS TOGETHER WITH GARAGES AND GARDENS (RESUBMISSION) AT OLD MANCHESTER OFFICES, WHALLEY NEW ROAD, BILLINGTON

PARISH COUNCIL:

The Parish Council wishes to repeat the objections made in relation to application 3/2009/0135/P. Even though the two houses which fronted onto Painterwood have now been changed to several terrace type dwellings, the Parish Council still holds its original objections which are:

- the land should be preserved for commercial use;
- there is no variety of house types such as affordable houses for young people;
- larger houses in the area are not in keeping with the local setting;
- the houses will be cramped together and the site will look overdeveloped.

ENVIRONMENT
DIRECTORATE

(COUNTY SURVEYOR):

No objection to the proposal on highway safety grounds.

There is a terrace of five properties associated with this development that open directly on to Whalley Old Road but have parking provisions that are accessed from Whalley New Road.

While the opportunity is available for these units to bring additional vehicular activity to Whalley Old Road via the bend with Whalley New Road, I would suggest that this may not be favoured and the majority of activity will be retained from the more appropriate access.

The 3m wide access road leading to the parking area for the five unit terrace extends for 23.5m, which is within the 45m maximum. This is sufficient to maintain safe access for emergency services, particularly fire tenders.

The junction radii to the Whalley New Road site are shown at 10m. I am concerned that this will lead to vehicles turning into the small development at inappropriately high speed. Accordingly, I would recommend that the radii be reduced to 6m.

LCC (PLANNING
CONTRIBUTIONS)
OFFICER:

Comments that there may be a request for a contribution towards sustainable transport costs (although the amount is not yet determined) and that contributions are required of £66,188 towards education (due to a short fall of primary school places) and £8,660 towards waste management.

ENVIRONMENT AGENCY:

No objections in principle subject to conditions and informatives to ensure that the development does not contribute to an increased risk of flooding in the locality.

ADDITIONAL
REPRESENTATIONS:

Ten letters have been received from nearby residents who object to the application for reasons that are summarised as follows:

1. Loss of privacy.
2. Loss of light.
3. Loss of view.
4. Detriment to highway safety.
5. Overdevelopment of the site.
6. The large detached houses are not needed and are not in keeping with the character of the area.
7. Detriment to wildlife including bats due to more people present in the area.
8. Loss of a green open space.
9. Possible blockage of streams running down from Whalley Nab increasing the risk of flooding to existing properties that have basements.
10. The terraced houses on Plots 13 to 18 (13 to 17 on the amended plans) are an improvement on the previous scheme, but the parking spaces for those houses would result in the loss of a green field and access to that parking area could cause security problems for existing residents and result in a noisier environment.

Proposal

The land that is the subject of the application has two distinct areas. Part is currently in commercial use as a coach builders and associated yard area and the remainder is vacant land which is down to grass.

Previous application 3/2009/0135/P sought outline planning permission for the demolition of the existing commercial building and its associated yard areas and the construction of a development of 14 detached houses, together with garages and gardens. Although precise design details were not included in that application, the properties were all to be two storey houses with internal floor areas ranging from 88m² to 156m². The majority of the development was to be served by an access road off Whalley New Road, although two of the properties would have had individual access onto Painterwood. Although the previous application was in outline it was stated in the submitted Design and Access Statement that all dwellings would be constructed of natural stone with slate roofs and would therefore be in keeping with the locality.

That original application was considered by the Planning and Development Committee on 16 July 2009 when it was resolved that it be refused for the following reasons:

1. In the absence of evidence of any attempts that have been made to secure an alternative employment generating use of the site, the proposal would result in the loss of an employment site contrary to the requirements of Policy EMP11 of the Ribble Valley Districtwide Local Plan.
2. Due to the topography of the site, it is considered that the houses on Plots 13 and 14 would have seriously overbearing effects on the adjoining properties on Whalley Road that are on lower ground to the detriment of the amenities of the occupiers of those neighbouring properties contrary to Policy G1 of the Ribble Valley Districtwide Local Plan.
3. The two large detached houses on Plots 13 and 14 would have a detrimental impact on the appearance and character of the locality contrary to Policy G1 of the Ribble Valley Districtwide Local Plan.

This resubmission has sought to overcome those reasons for refusal of the original application. In response to the first reason for refusal, the premises have been marketed for sale for commercial use since 3 September 2009. The estate agents confirm that they targeted a select number of industrial occupiers within the Ribble Valley/East Lancashire area. This entailed writing to various companies providing them with the details of the property which incorporated full marketing particulars, including details of the accommodation, rateable value and the asking price. The sales information was also included on their website and a more general mail shot was sent to companies whose details had been registered on their company property database. In addition, marketing particulars were forwarded to the North West Development Agency and Lancashire Economic Partnership. The agents say that, during the course of the marketing, they only received a limited number of enquiries, and it is apparent from the feedback they received that many parties considered the property unsuitable for a continued commercial/industrial use.

With regards to the other two reasons for refusal, the two large detached houses on Plots 13 and 14 were shown on the plans originally submitted with this current application as being replaced by a terrace of six two storey houses sited closer to the site boundary to Painterwood and, therefore, further away from the houses on lower ground on Whalley New Road. These terraced houses would have parking spaces to which access would be gained from the estate road serving the rest of the development. There would be no vehicular access onto Painterwood.

As a result of discussions with the applicants agent, amended plans were received on 6 May 2010 in which the terrace has been reduced from six units to five in order to further reduce the impact of those dwellings on the existing properties on Whalley New Road.

In response to the adoption of the Affordable Housing Memorandum of Understanding (AHMU) as a "material planning consideration", since the refusal of the original application, the five terraced houses (or a number identified by a viability assessment) are offered as "affordable" homes. A draft Section 106 Agreement on that subject has been submitted with the application.

The amended plans also:

1. Delete conservatories from the rear elevations of plots 1, 2 and 3 that would have been prominent features when viewed from Whalley New Road.
2. Amended the house types on plots 4 and plot 9 in order to resite and reduce the impact of the dwelling on plot 9 when viewed from Painterwood.
3. Remove the two storey projection on the rear of plot 12 in order to improve separation distances between that plot and existing houses on Painterwood.
4. Amended the kerb radii at the junction to Whalley New Road to 6m as required by the County Surveyor.

At the time of report preparation, further drawings showing sections across the site were also awaited.

Site Location

The site has an area of approximately 0.76 hectares. It is presently occupied by the buildings and yard areas of a coachbuilders business, with the remainder being land that is grassed.

It is a sloping site with the higher land to the south adjoining Painterwood and the lower ground to the north fronting Whalley New Road.

The majority of the southern boundary of the site adjoins the rear gardens of terraced houses in Painterwood. Approximately half of the northern boundary is directly onto Whalley New Road, whilst the rest is to the back gardens of five properties on Whalley New Road. To the west the site is adjoined by a public footpath, beyond which is agricultural land. Its short eastern boundary adjoins a small piece of open land, beyond which is a row of cottages on the northern side of Painterwood.

The whole of the site is within the settlement boundary of Billington which is defined by Policy G2 of the Local Plan as a main settlement.

Relevant History

Whilst there have been numerous applications relating to the existing business on the site, none are considered to be of any relevance to the consideration of this application for residential development. The only relevant previous application is therefore the following:

3/2009/0135/P – Outline application for demolition of existing commercial building and redevelopment of the site involving the construction of 14 detached dwellings. Refused.

Relevant Policies

Policy G1 - Development Control.

Policy G2 - Settlement Strategy.

Policy EMP11 - Loss of Employment Land.

Policy L4 of the Regional Spatial Strategy.

PPS3 – Housing.

Affordable Housing Memorandum of Understanding (AHMU).

Environmental, AONB, Human Rights and Other Issues

The key issues with regards to this resubmission are the same as those considered in relation to the original application which are discussed below under appropriate headings.

Compliance with Settlement Strategy Policy

Policy G2 of the Local Plan states that development will be directed mainly towards land within the main settlement boundaries. In respect of Billington, the Policy states that the scale of development that will normally be approved comprises “development wholly within the built part of the settlement or the rounding off of the built up area”.

As a development wholly within the settlement boundary, the original application was considered to comply with Policy G2. The same applies to this resubmission.

Compliance with Housing Policy/Guidance

At the time of consideration of the original application, the Affordable Housing Memorandum of Understanding (AHMU) was in draft form and had not been adopted. That application was not, therefore, refused because it did not contribute any affordable dwellings. The AHMU, however, is now a “material planning consideration” and, in response to this, there is now an element of “affordable” housing in the application as previously described. Subject to the completion of an appropriate Section 106 Agreement, the current proposal is therefore in accordance with the relevant housing policy/guidance.

Loss of Employment Land – EMP11

The previous application was refused for a reason concerning non compliance with Policy EMP11 because the premises had not been marketed for an alternative employment/commercial use. Such marketing has now been carried out and I am satisfied, from the information provided by the estate agents, that the requirements of EMP11 have now been satisfied.

Amenity Considerations

As with the original application, nearby residents have expressed objections regarding issues such as loss of light and privacy in relation to the whole of the development. As the land slopes downwards from Painterwood, it was considered in relation to the original application that the separation distances between the terraced houses on Painterwood and the proposed houses on Plots 10,11 and 12 were acceptable. With the exception of the deletion of the two storey extension on plot 12 (in the amended plans) the position and size of the houses on those plots have not been changed in the current application. Those plots therefore remain acceptable.

In the original application, however, two large detached houses were proposed on Plots 13 and 14 which were considered to have seriously overbearing effects upon adjoining houses on lower ground on Whalley New Road. It was also considered that those two houses would have a detrimental impact upon the appearance of the locality as they would not be in keeping with the adjoining terraced houses on Painterwood. In this resubmission, those objections have been addressed as follows:

- the two houses on Plots 13 and 14 have been replaced by a row of five terraced cottages which will be similar in appearance to those on Painterwood which adjoin this part of the application site;
- the proposed terraced cottages will be accessed from the main development site and therefore will not increase traffic on Painterwood;
- the proposed terraced cottages will be set several metres further away from the properties on Whalley New Road, thereby reducing the impact that they would have on those adjoining dwellings;
- a landscaping belt is now shown between the proposed terraced cottages and the properties on Whalley New Road, thereby further reducing the impact that the development will have on those neighbouring dwellings.

I consider that the amended proposal has satisfactorily and fully addressed reasons 2 and 3 for the refusal of the original application.

Conclusion

For the reasons given in the report, I consider that this new application has fully and satisfactorily addressed all the objections to the original application and permission should therefore be granted subject to appropriate conditions following the prior completion of an appropriate Section 106 Agreement.

SUMMARY OF REASONS FOR APPROVAL

The proposed development would provide 18 dwellings including an appropriate element of “affordable” housing without any seriously detrimental effects upon visual amenity, the amenities of nearby residents or highway safety.

RECOMMENDATION: That Committee be minded to grant outline permission subject to the following conditions and therefore DEFER AND DELEGATE to the Director of Development Services to negotiate the satisfactory completion of a Section 106 Agreement to deal with the requested financial contributions and to ensure the delivery of an appropriate number of affordable housing units both in the first instance and in the future.

1. The development must be begun no later than the expiration of three years beginning with the date of this permission.

REASON: Required to be imposed in pursuance to Section 91 of the Town and Country Planning Act 1990.

2. This outline planning permission shall be read in conjunction with the Section 106 Agreement dated which relates to the delivery of affordable housing and appropriate financial contributions.

REASON: For the avoidance of doubt as the permission is subject to an Agreement.

3. This outline permission shall relate to the proposal as shown on the amended plan (drawing No. WIL/256/1083/01/A) received by the Local Planning Authority on 6 May 2010.

REASON: For the avoidance of doubt and to ensure compliance with the submitted plan.

4. Prior to the commencement of development, a scheme identifying how a minimum of 10% of the energy requirements generated by the development will be achieved by renewable energy production methods shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall then be provided in accordance with the approved details prior to occupation of the development and shall be retained thereafter.

REASON: In order to encourage renewable energy and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

5. No development approved by this permission shall be commenced until a scheme for the provision and implementation of a surface water regulation system has been approved by the Local Planning Authority. The scheme shall be completed in accordance with the approved plans.

REASON: To reduce the increased risk of flooding and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

6. Prior to the commencement of the development hereby approved in outline, (or such other date or stage in development as may be agreed in writing with the Local Planning Authority) the following components of a scheme to deal with the risks associated with contamination of this site shall each be submitted to and approved in writing by the Local Planning Authority:

(1) A preliminary risk assessment which has identified:

- all previous uses;
- potential contaminants associated with those uses;
- a conceptual model of the site indicating sources, pathways and receptors;
- potentially unacceptable risks arising from contamination at the site;

(2) A site investigation scheme based on (1) to provide information for a detailed assessment of the risks to all receptors that may be affected, including those off site.

(3) The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation methods required and how they are to be undertaken.

(4) A verification plan providing details of the data that will be collected in order to demonstrate that the work set out in (3) are completed and identifying any requirements for longer term monitoring of pollutants linkages, maintenance and arrangements for contingency action.

REASON: To ensure that the development does not pose a risk of pollution to controlled waters and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

7. The development hereby permitted in outline shall not be commenced until details of the landscaping of the site, including wherever possible the retention of existing trees, have been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall indicate, as appropriate, the types and numbers of trees and shrubs, their distribution on site, those areas to be seeded, turfed, paved or hard landscaped, including details of any changes of level or landform and the types and details of all fencing and screening.

The approved landscaping scheme shall be implemented in the first planting season following occupation or use of the development, whether in whole or part and shall be maintained thereafter for a period of not less than 5 years to the satisfaction of the Local Planning Authority. This maintenance shall include the replacement of any tree or shrub which is removed, or dies, or is seriously damaged, or becomes seriously diseased, by a species of similar size to those originally planted.

REASON: In the interests of the amenity of the area and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

8. No site works, including any demolition works of buildings or boundary walls, shall be commenced until a further protected species/ecological survey has been carried out during the optimum time of May to September. The updated survey shall be submitted to the Local Planning Authority for approval in writing prior to any works commencing on site. If roosting bats are detected or suspected a further survey and mitigation methods will be required for submission to and approval in writing by the Local Planning Authority prior to the demolition of any buildings or boundary walls on site, with the works to be carried out in strict accordance with any mitigation methods identified.

REASON: To comply with Policies G1 and ENV7 of the Ribble Valley Districtwide Local Plan ensuring that no species/habitat affected by the Wildlife and Countryside Act 1981 are destroyed; and due to the passage of time since the original survey was carried out in November 2008.

NOTE(S):

1. Surface water run-off can be managed through the use of sustainable drainage systems (SUDS), and we advocate their use. SUDS are a range of techniques including soakaways, infiltration trenches, permeable pavements, grassed swales, ponds and wetlands that attenuate the rate and quantity of surface water run-off from a site, and contribute to a reduced risk of flooding. SUDS offer other benefits in terms of promoting groundwater recharge, water quality improvement and amenity enhancements. Approved Document Part H of the Building Regulations 2000 sets out a hierarchy for surface water disposal which encourages a SUDS approach.

Further information on SUDS can be found in the following documents:

- Planning Policy Statement 25: Development & Flood Risk (DCLG);
- C522: Sustainable Urban Drainage Systems - Design Manual for England and Wales (CIRIA);
- Interim Code of Practice for Sustainable Drainage Systems (SUDS Working Group).

The Interim Code of Practice provides advice on design, adoption and maintenance issues and a full overview of other technical guidance on SUDS, and is available on both the Environment Agency's website (www.environment-agency.gov.uk) and CIRIA's website (www.ciria.org.uk).

We also recommend that the developer considers the following, as part of the scheme:-

- Water management in the development, including, dealing with grey waters;
- Use of sustainable forms of construction including recycling of materials;
- Energy efficient buildings.