



REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)

RE: DUNLOP LIMITED, STATION ROAD, BAGWORTH

WARDS AFFECTED: BAGWORTH

1. **PURPOSE OF REPORT**

- 1.1 To request that Planning Committee consider a proposal to vary the terms of the Section 106 Agreement in relation to the grant of outline planning permission ref: 11/00063/OUT for the erection of up to 61 dwellings and 2800 square metres of employment floorspace (Class B1) at Dunlop Limited, Station Road, Bagworth.

2. **RECOMMENDATIONS**

- 2.1 a) That the Planning Committee agrees to the request for a variation of the S106 agreement dated 28 April 2012 and made between Hinckley and Bosworth Borough Council, Sukhbir Singh Johal, Svenska Handelsbanken and National Westminster Bank.
- b) That if Planning Committee is minded to agree to the request that such approval be subject to the terms as detailed in Paragraph 3.42 of this report and to the applicants meeting the Council's reasonable costs in concluding such an agreement.

3. **BACKGROUND TO THE REPORT**

- 3.1 Members may recall the above planning application being reported to Planning Committee on 29 March 2012. Members resolved to grant outline planning permission subject to conditions and the completion of the said Section 106 Agreement.
- 3.2 The signed Section 106 Agreement secured the following planning obligations:
- Affordable Housing: 40% of the total number of dwellings.
 - Formal Play Space: £586.80 per dwelling.
- 3.3 The affordable housing contribution originally secured in the Section 106 Agreement is in accordance with the requirements of Policy 15 of the adopted Hinckley and Bosworth Core Strategy.
- 3.4 The play and open space contributions as secured in the original Section 106 Agreement were compliant with the requirements of Saved Policy REC2 of the adopted Hinckley and Bosworth Local Plan 2001 and calculated in accordance with the standards set down in the SPD Play and Open Space.
- 3.5 In order to consider such a request it is necessary to explore the reasons behind the request and the implications of the variation.
- 3.6 The applicant has submitted information to show that the requirement for 40% affordable housing renders the site uneconomic in development terms and would result in an unacceptable profit level. This would prevent the site being brought forward for development.

3.7 The viability appraisal demonstrates the development costs including the committed developer contributions.

3.8 In accordance with current internal working arrangements Coventry City Council have consulted on the submitted viability appraisal and confirm that the applicant's appraisal is reasonable and confirms that the development with the originally committed contributions is not viable and that this development would be unable to support more than 8 affordable houses (13%) within the scheme.

3.9 The effect of the applicant's viability appraisal is an offer that proposes a total developer contribution of:-

- Affordable Housing: 13% (8 units) of the total number of dwellings
- Bagworth Community Facility Development Fund: £20,000.00 to be used for specific projects in Bagworth.
- Formal Open Space: £586.80 per dwelling.

3.10 **Policy Considerations**

3.11 National Policy Considerations:

3.12 In March 2012 the National Planning Policy Framework (NPPF) was published.

3.13 Paragraph 205 within the NPPF states that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

3.14 Development Plan Considerations:

3.15 Policy 10 of the adopted Core Strategy sets out the spatial vision for Bagworth and Thornton.

3.16 Core Strategy Policy 15 states that the starting point for the level and target for affordable housing in this location would be 40%, but that this figure may be negotiated on a site by site basis taking into account:-

- Identified local need
- Existing provision
- Characteristics of the site and
- Viability.

3.17 The Council's Housing Strategy and Enabling Officer has confirmed the latest local need and existing provision.

The Council's Housing Register at 4 October 2012 for properties is as follows:

- 1 bed properties 149 applicants
- 2 bed properties 109 applicants
- 3 bed properties 54 applicants
- 4 bed properties 19

The Council's existing supply of social rented properties at 4 October 2012 is as follows:

- 2 bed bungalow 21 properties
- 3 bed properties 9 properties

The Registered Provider's existing supply of affordable units at 4 October 2012 is as follows:-

- 1 bed flat 1 property
- 2 bed bungalow 1 property
- 3 bed properties 25 properties.

3.18 Appraisal and Consideration of the Issues and Offer

3.19 Affordable Housing

3.20 At the heart of the NPPF is the presumption of sustainable development and that applications that accord with the development plan should be approved without delay. Officers and Members agreed at the time of the determination of the outline application that the subject site and the proposal are sustainable in planning terms.

3.21 The applicant demonstrates that the development is unviable as approved and seeks to make a revised offer that is affordable to the development. The viability appraisal confirms that the level of affordable housing provision must be capped at 13% to make the development economically viable.

3.22 The applicant's viability offer needs to be considered alongside national government guidance and the development plan requirements for a development of this type. As such the options need to be considered against government guidance contained within the NPPF and alongside the requirements of Policies 10 and 15 of the adopted Core Strategy.

3.23 Policy 10 seeks to deliver a minimum of 60 new homes in Bagworth and the approved scheme provides 61 dwellings, therefore meeting that target. Any future proposals for residential development within Bagworth is unlikely to have policy support as a result of the housing target having already been achieved, and an over provision being likely to harm the spatial strategy of Bagworth. The development of this site may therefore be the only substantial opportunity to achieve the affordable housing target of 40% within Bagworth, within the life of the Core Strategy

3.24 Core Strategy Policy 15 states that the starting point for the level and target for affordable housing in this location would be 40%, but that this figure may be negotiated on a site by site taking into a number of factors. The applicant has sought negotiation on the basis of viability.

3.25 In more recent years it has become recognised that the economic viability of any development is to play a fundamental role in the delivery of schemes. Recent appeal decisions have confirmed that economic viability is a determining factor in deliverability and therefore the consent of schemes and should be a material consideration in the determination of any planning application. As such Core Strategy Policy 15 does allow for affordable housing figures to be agreed on a site by site basis. It is within this context that the viability of the scheme needs to be carefully considered.

3.26 In recent years officers have sought to take a pragmatic view towards the delivery of development whilst meeting policy objectives, therefore embracing the planning

authority's role as a controller and enabler. This has been reinforced through the implementation of the NPPF.

- 3.27 In light of the provisions which allow flexibility of Policy 15, the release and core principles outlined within the NPPF and the intention of delivering the scheme, it is officer's opinion that the most balanced and sustainable approach is to consider the developer's option of maintaining the developer contributions for open space, but to agree to the reduction in affordable housing provision
- 3.28 This recommendation is based on the assumption that should this application have been submitted with this lesser degree of affordable housing now, officers would be recommending approval on the basis that the application is a sustainable development and would be in accordance with the three core strands underpinning the presumption in favour of sustainable development promoted within the NPPF – economic, social and environmental.
- 3.29 Bagworth Community Development Fund:
- 3.30 In considering the viability of the site, the applicant has sought to approach the matter in as flexible a way as possible to ensure that, whilst there is a reduction in affordable housing provision, that the local community is still able to benefit from the package of contributions offered.
- 3.31 The viability assessment has confirmed that whilst increasing the percentage of affordable housing from 13% to 14% would not be viable, by achieving a 13% provision there would be an amount of money left over.
- 3.32 As such the applicant has sought to provide a one off sum of £20,000.00 to be placed within a community fund which they propose to be entitled "Bagworth Community Facility Development Fund".
- 3.33 The Fund has been offered by the applicant on the basis it would be used in order to provide financial support and deliver specific services and amenities within Bagworth such as:-
- Improvements to Primary Care Provision within Bagworth
 - Improvements to Bagworth Village Hall
 - Improvements to the Sports Pavilion and Sports Ground
- 3.34 There is no policy basis within the development plan or at national government level to accept such a payment.
- 3.35 The Bagworth Community Facility Development Fund is intended to be managed in such a way that it will be drawn upon by the Borough Council when monies are required in connection with the specified projects.
- 3.36 This approach to provide an additional community fund has also been considered against the test within the Community Infrastructure Levy (CIL) 2012. The three tests are:-
- Necessary to make the development acceptable in planning terms;
 - Directly related to the development;
 - Fairly and reasonably related in scale and kind to the development.
- 3.37 It is considered that this contribution would not meet these tests as there is no assessment of why a contribution towards such services is necessary as a result of this development. In addition there has been no assessment of the current services within the community and whether they have any capacity to deal with the possible

increase in use as a result of this development. Finally the figure is arbitrary and does not seek to mitigate any specific impact of the development. To accept such a contribution as a planning contribution under a Section 106 agreement would therefore be contrary to the CIL regulations.

3.38 Given that this fund is considered contrary to the CIL tests and there is no policy basis to accepted it, it is not considered that such a fund should be accepted or secured or drawn up through the Section 106 process.

3.39 Conclusions

3.40 To this end, it is considered that Members should agree to renegotiate the terms of the Section 106 Agreement to secure the most appropriate amount and mix of affordable housing at 13% provision. Whilst members might be minded to accept the additional £20,000.00 for a community fund, officers are unable to support this.

3.41 It is proposed that the details of the negotiations should be delegated to officers to agree the most viable and appropriate provision for this site and settlement.

3.42 The recommendation to approve the variation is that the approval is subject to:-

- Not less than 13% affordable housing provision will be accepted.
- The agreed tenure split will be in agreement with the Council's Housing Strategy and Enabling Officer and will reflect the Council's Housing Register.
- The full formal play and open space contribution of £586.80 per dwelling will not be amended and will be required to be provided.
- To ensure that any renegotiations are promptly concluded in accordance with the current economic climate, any new Section 106 Agreement should be signed within 2 months of Members resolution.

4. FINANCIAL IMPLICATIONS [PE]

4.1 There are no financial implications for HBBC arising directly from this report.

5. LEGAL IMPLICATIONS [EP]

5.1 A s.106 agreement can be varied by agreement in accordance with the provisions of s.106A of the Town and Country Planning Act 1990.

5.2 In the event the Committee resolve not approve this variation the s.106 will remain as originally entered into, securing the 40% Affordable Housing Development. In the absence of agreement the Developer will then have to wait a period of 5 years from the date of the original agreement, after which time they can formally apply for a variation and, if refused at that point, challenge the decision of the Council.

5.3 Even where a contribution is requested as a result of an agreement to vary a s.106 agreement the contribution the contribution must meet the test laid down in regulation 122 of the CIL Regulations.

5.4 The assessment as to CIL compliance within the report is legally sound and were the Council to accept the payment as a planning contribution it would be acting unlawfully. The risks of including the contribution is that it will open the Council to the risk of a judicial review, an appeal by the developer or future site owner and the risk of complaints to the Ombudsman.

6. CORPORATE PLAN IMPLICATIONS

6.1 This document contributes to Strategic Aim 3 of the Corporate Plan: Safer and Healthier Borough.

7. **CONSULTATION**

7.1 None

8. **RISK IMPLICATIONS**

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision/project have been identified, assessed and that controls are in place to manage them effectively.

8.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Reduced contribution to affordable housing	Reduce expectations on level of investment on infrastructure and services due to financial climate	[Lead Officer]

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

9.1 The renegotiations are seeking to ensure that the development is deliverable and therefore the affordable housing offer is also deliverable.

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

Background Papers: Planning application committee report 29 March 2011

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