



## Report of the Chief Planning Officer

### *PLANS PANEL SOUTH AND WEST*

Date: 2<sup>nd</sup> October 2014

**Subject: Application 14/01554/FU – Removal of conditions relating to greenspace provision and affordable housing on previous approval for 35 flats (06/01940/FU) at City View, Kirk Beston Close, Beeston, LS11 8TL**

**APPLICANT**

David Boulton

**DATE VALID**

8<sup>th</sup> May 2014

**TARGET DATE**

20<sup>th</sup> October 2014

**Electoral Wards Affected:**

**Beeston and Holbeck**

Yes

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

**RECOMMENDATION:**

**GRANT PERMISSION subject to the following conditions and the payment of the agreed greenspace contribution (£87,694) within 3 months of the date of the Plans Panel meeting.**

1. All walls, fences and/or other permanent boundary treatments shall be retained as constructed and in accordance with the details on acropolis design drawing 1216/A(90)-01 revision A, approved by letter 18<sup>th</sup> December 2008.
2. All areas laid out for use by vehicles within the site shall be retained in accordance with the plans approved under application 06/01940/FU and shall not be used for any other purpose other than the vehicle-related use approved.
3. Unless otherwise agreed in writing by the local planning authority, no building or other obstruction shall be located over or within 3 metres either side of the centre line of the water main i.e. a total protected strip width of 6 metres, which crosses the site.
4. Unless otherwise agreed in writing by the local planning authority, no building or other obstruction shall be located over or within 3 metres either side of the centre line of the sewer i.e. a protected strip width of 6 metres, which crosses the site.

**Appendix A to this report is exempt under Access to Information Procedure Rule 10.4(3).**

## **1.0 INTRODUCTION:**

- 1.1 This application seeks the removal of conditions regarding greenspace and affordable housing provision in relation to a development of flats in Beeston which has been completed and occupied for some time. The developer has agreed to pay the relevant commuted sum to discharge the requirements of the greenspace condition, but seeks to remove the affordable housing requirement altogether. In view of the history of the site and the policy implications of this proposal it is considered appropriate for the application to be referred to Plans Panel for a decision in this instance.

## **2.0 PROPOSAL:**

- 2.1 Permission was originally granted in June 2006 for a development of 35 flats on the site of a former working men's club at the junction of Town Street and Kirk Beston Close in Beeston. The permission was subject to conditions relating to the provision of affordable housing and greenspace. The development has been completed and occupied for some time. However, although discussions took place regarding affordable housing requirements following the commencement of the development, no affordable units have been provided on site, and the required contributions for affordable housing or greenspace were never received from the developer.
- 2.2 All of the flats are rented at present. The developer is currently seeking to refinance the development, but has been unable to secure alternative finance as the greenspace and affordable housing obligations remain undischarged. A viability appraisal submitted with the current application advises that to comply with these conditions would render the scheme unviable and would be likely to result in the company that owns the flats going into liquidation.
- 2.3 The application as originally submitted sought to remove both the greenspace and affordable housing conditions, however following further officer discussions with the three Ward Members, the developer has subsequently agreed to pay the required greenspace sum, and now seeks only to remove the affordable housing requirement. If this proposal is agreed by Plans Panel, the developer has agreed to pay the greenspace contribution within 3 months, and the decision removing this condition and the affordable housing condition would not be released until these funds had been received.
- 2.4 Although the development has been completed and occupied for some time, it has been agreed that the application would be assessed on the basis of current policy requirements relating to affordable housing and greenspace, including the Interim Affordable Housing Policy adopted in 2011. The relevant obligations have been calculated accordingly.
- 2.5 Because of the size and nature of the development it has been agreed to deal with the greenspace requirements by commuted sum, to be used towards greenspace provision or enhancement in the local area. In accordance with current policy requirements this has been calculated as £87,694.
- 2.6 Affordable housing would usually be required on-site. However, correspondence on the original application file from late 2008 between planning and housing officers confirms that neither the developer nor the Council's housing team were able to gain agreement from any Registered Social Landlords (RSLs) to take on units within the scheme. It was therefore agreed that a commuted sum would be acceptable in

principle, however this was never provided by the developer. In agreement with affordable housing officers, the current application to remove the condition has been considered in the same way, based on a requirement for a commuted sum for affordable housing, rather than provision on-site. Based on the current Interim Affordable Housing Policy this sum has been calculated as £225,660.

2.7 In summary, the application before Members seeks the following:

- Removal of Condition 24 (greenspace) by payment of the commuted sum of £87,694 in full within 3 months of the Plans Panel meeting and before the decision on the application is issued.
- Removal of Condition 25 (affordable housing).

2.8 The applicant has provided a viability appraisal as part of the application, which has been independently assessed by the District Valuer. Further details on the viability assessment are provided in an exempt appendix to this report, which will be provided to Members in advance of the Plans Panel meeting on 2<sup>nd</sup> October. The information contained in this exempt appendix is confidential as it relates to the financial or business affairs of the applicant. It is considered that it is not in the public interest to disclose this information as it would be likely to prejudice the affairs of the applicant. It is therefore considered that the supplementary report should be treated as exempt under Access to Information Procedure Rule 10.4 (3).

### **3.0 SITE AND SURROUNDINGS:**

3.1 The application relates to a development of 35 two-bedroom flats on the site of the former Beeston Working Men's Club on the corner of Town Street and Kirk Beston Close in Beeston. The development was approved in 2006 and appears to have been completed in early 2009.

3.2 The flats occupy a three storey L-shaped brick building which follows the site frontage along Town Street to the south and Kirk Beston Close to the west, stepping down gradually in height as land levels fall from south to north. Access to the site is taken from Kirk Beston Close to the west, through an archway in the building and into the car parking area in the north eastern part of the site. The site is enclosed by brick walls and timber fencing.

3.3 The surrounding area is predominantly residential, with houses of varying ages and designs on Town Street to the east and west and flats on Kirk Beston Close to the north. There is a pub on the opposite side of Town Street to the south east, and an area of open land, designated as protected greenspace, to the south west, with a community centre and Hugh Gaitskell Primary School beyond.

### **4.0 RELEVANT PLANNING HISTORY:**

4.1 Permission was originally granted for the flats development in June 2006 (application 06/01940/FU). It is understood that the development was commenced in late 2007 and completed in early 2009.

4.2 A previous application to remove the greenspace and affordable housing conditions was withdrawn in March 2010.

### **5.0 HISTORY OF NEGOTIATIONS:**

- 5.1 The application as originally submitted sought the removal of both the greenspace and affordable housing obligations, however in the absence of any supporting viability information and in the light of objections received from Ward Members, the applicant was advised that the scheme could not be supported on this basis.
- 5.2 A viability appraisal was subsequently received from the applicant, and an independent assessment has been carried out by the District Valuer. Further details of the report and conclusions are discussed in Section 10 below and in the exempt appendix referred to in paragraph 2.8. In summary, whilst differing in some aspects of their methodology, the District Valuer concluded that the development would not be profitable if the required contributions were to be provided. Further discussions have subsequently been held with the Ward Members in the light of this.
- 5.3 The Ward Members, Councillors Congreve, Gabriel and Ogilvie, have expressed their significant disappointment at the development having been completed without the relevant obligations having been provided. However, in the light of the District Valuer's report and conclusions, and noting that the development does provide some local benefit in terms of providing relatively low-cost housing close to local amenities, they agreed on balance that they would be more likely to support the removal of the affordable housing condition if the developer would agree to provide the greenspace sum in its entirety and without further delay in the event that the application is approved.
- 5.5 Subject to Plans Panel's agreement to the suggested approach and removal of the affordable housing condition, the developer has subsequently agreed to provide the greenspace contribution in full within 3 months, and on the basis that the decision removing this and the affordable housing conditions would not be issued until this payment had been received.

## **6.0 PUBLIC/LOCAL RESPONSE:**

### Ward Members

- 6.1 Councillor Gabriel objected to the application as originally submitted. Councillor Congreve was also briefed when the application was originally received, and advised that he also objected to the proposals to remove the conditions, as these requirements had previously been agreed by the developer when permission was granted in 2006.
- 6.2 Following the receipt of a viability appraisal from the developer and further officer discussions with the Ward Members as detailed above, and in the light of the developer's agreement to pay the full greenspace contribution, Councillors Congreve, Gabriel and Ogilvie have all confirmed that they are prepared to support the removal of the affordable housing condition subject to the receipt of the greenspace contribution in full from the developer within a short timescale.

### Other public response

- 6.3 The application has been advertised as a major application by site notice, posted 11<sup>th</sup> April 2014, and press notice, published 17<sup>th</sup> April 2014. No representations have been received in response to these notices.

## **7.0 CONSULTATIONS RESPONSES:**

### **Statutory**

- 7.1 None.

## **Non-statutory**

### District Valuer

- 7.2 The developer's appraisal has been reviewed using land values and build costs based on the time of the original permission (2006) and current greenspace and affordable housing requirements. Some aspects of the developer's assumptions, such as the build costs, appear reasonable when compared with RICS Build Costs Information Service figures, and are accepted. Others, such as the sale values cited by the applicant, appear too low, and higher figures have been applied in this respect.
- 7.3 Using my residual land value and methodology of arriving at a gross development value, I consider that the project is not profitable enough to provide a contribution to affordable homes or green space.

## **8.0 PLANNING POLICIES:**

- 8.1 Section 38 of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise.

### Development Plan

- 8.2 The Development Plan consists of the adopted Leeds Unitary Development Plan (Review 2006) (UDP) and the adopted Natural Resources and Waste DPD. The Local Development Framework will eventually replace the UDP but at the moment this is still in production with the Core Strategy at an advanced stage.

- 8.3 The site is unallocated in the UDP. The following UDP policies are relevant to the consideration of the application:

GP5 – General planning considerations

GP7 – Planning obligations

H11 – Affordable housing

N4 – Greenspace as part of residential development schemes

- 8.4 Because of the nature of the application there are no DPD policies relevant to its consideration in this instance.

### Draft Core Strategy

- 8.5 The Inspector's Reports into the Core Strategy and the CIL examinations have now been received and reports on these were considered by Executive Board on 17 September 2014 with a view to the Core Strategy being referred to full Council for formal adoption. As the Inspector has considered the plan, subject to the inclusion of the agreed Modifications, to be legally compliant and sound, the policies in the modified Core Strategy can now be afforded substantial weight. Once the Core Strategy has been adopted it will form part of the Development Plan.

- 8.6 The following draft core strategy policies are relevant:

ID2 – Planning obligations and developer contributions.

H5 – Affordable housing

G4 – Greenspace

### Supplementary Planning Guidance and Documents (SPGs and SPDs)

- 8.7 The following SPDs and SPGs are relevant:

### National Planning Policy

- 8.8 The National Planning Policy Framework (NPPF), published on 27<sup>th</sup> March 2012, and the National Planning Practice Guidance (NPPG), published March 2014, replaces previous Planning Policy Guidance/Statements in setting out the Government's planning policies for England and how these are expected to be applied. One of the key principles at the heart of the Framework is a presumption in favour of Sustainable Development.
- 8.9 The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

## **9.0 MAIN ISSUES**

- 9.1 The application seeks to remove conditions relating to greenspace and affordable housing provision on a flats development originally approved in 2006. The main issues to consider are:
1. Whether the proposals comply with current development plan policy and relevant supplementary guidance, taking into account any changes in adopted policy and guidance since the development was originally approved.
  2. If the proposals are not compliant with development plan policy, whether there are any other relevant material considerations which justify a decision contrary to policy in this instance.

## **10.0 APPRAISAL**

### Development plan policy

- 10.1 The original application for the development was approved in June 2006, shortly before the adoption of the current UDP Review in July 2006. However, although some of the policy reference numbers have changed in the meantime, the general aims of the policies in the previous (2001) version of the UDP have been carried forward in the current version of the UDP and therefore remain relevant.
- 10.2 The specific requirements in relation to greenspace provision are detailed in SPG4, adopted in 1998. In view of the layout and nature of the current development, it is considered appropriate for the greenspace requirements to be dealt with by the payment of a commuted sum. In accordance with the SPG guidance and based on the number of units and current greenspace needs in the area, a commuted sum of £87,694 has been calculated for the development.
- 10.3 The developer has confirmed that, subject to a positive resolution from Plans Panel Members in relation to the proposed removal of the affordable housing obligation, they will provide the £87,694 commuted sum for greenspace in full within 3 months of the Plans Panel meeting. The payment of this contribution would be sufficient to discharge the requirements of condition 24, and therefore the removal of this

condition from the decision is considered acceptable, subject to the required sum being received within the agreed timescale and before a decision is issued.

- 10.4 Since the original application for the development was approved, there has been a change in affordable housing policy in the form of the Interim Affordable Housing Policy which was formulated to reflect changes in the economic climate and adopted in 2011.
- 10.5 Both the Interim Policy and previous affordable housing guidance specify that affordable housing will usually be expected to be provided on site. However, as documented on the original application file, following unsuccessful attempts by both the developer and the Council's housing section to gain agreement from any Registered Social Landlords to take on units within the development at the time of its construction, it was agreed that a commuted sum would be accepted in this instance. In agreement with affordable housing officers, the current application to remove the condition has been considered in the same way, based on a requirement for a commuted sum for affordable housing, rather than provision on-site. Based on the current Interim Affordable Housing Policy this sum has been calculated as £225,660.
- 10.6 Although the developer has agreed to provide the greenspace contribution, they have advised that they are unable to provide the required affordable housing contribution and that they wish to proceed with the application to remove this condition altogether. To do so would be contrary to adopted development plan policy and supplementary guidance, and it is therefore necessary to determine whether these are outweighed by other material considerations in this instance.

#### Other material considerations

- 10.7 The applicant has provided a viability appraisal which concludes that the provision of the required sums for affordable housing and greenspace makes the scheme unviable. The District Valuer (DV) has carried out an independent appraisal of the scheme's viability on the basis of the applicant's appraisal, as well as commuted sums for affordable housing and greenspace as calculated by the local authority, established data on build costs and sales values, and their own calculations and methodologies on matters such as land and development values.
- 10.8 The DV has accepted a number of the assumptions made by the applicant and applied these in their own appraisal. However in some respect the DV has applied different assumptions and methodologies, for example in the case of sales values, which the DV considers to have been set too low in the applicant's report based on sales data for the time that the development was carried out. There are therefore some differences in the conclusions of the two reports. However, in both cases, and even assuming the greater level of profit arising in part from the DV's assumption of higher sales values for the flats, both reports concur in their conclusion that the development is not profitable enough to provide a contribution to affordable housing or greenspace. Specific details of the appraisal and the DV's assessment are included in the exempt appendix to this report which is to be circulated separately.
- 10.9 The conclusions of the developer's appraisal and the DV's independent assessment regarding the implications of the commuted sum requirements for the profitability of the scheme are noted. However, the process of considering the viability implications of planning obligations is intended primarily to deal with schemes which are either unable to commence or which have commenced but stalled for viability reasons, rather than to provide a mechanism for developers to retrospectively renegotiate obligations based on their implications for profits having taken the risk of carrying

out a development in breach of these requirements. Therefore whilst material to the consideration of the application, it is not considered that the weight which can be attached to the conclusions highlighted by the DV is sufficient in itself to justify setting aside adopted policy in this instance. It is therefore necessary to consider whether there are other benefits arising from the suggested approach which justify such a decision.

- 10.10 Although the developer has advised that they consider the flats to be 'affordable', the units cannot be defined as such with reference to the definitions in the NPPF, since the absence of an RSL to manage relevant units within the scheme means that there is no mechanism for controlling their affordability or occupancy by eligible households now or in the future. However, it is significant to note that, despite attempts by both the developer and the local authority at the time of the development's construction, no RSL could be found that was prepared to take on units within the development, and therefore it has already been established and accepted that no affordable housing would be provided on site, with a commuted sum having been agreed as an acceptable alternative in principle. Although the developer has agreed to pay the greenspace contribution, they have advised that they are unable to provide this sum and that they wish the application to be determined on this basis. In considering the proposals it is therefore necessary to consider the implications if the application were to be refused.
- 10.11 Although not 'affordable' in terms of planning policy definitions, the size, layout and situation of the flats is such that they are likely to be targeted at and occupied primarily by individuals and couples seeking smaller, low-cost housing units, rather than by families or those higher up the property ladder. It is understood that taking into account a reasonable level of turnover that would be expected for units of this nature, the flats have been fully or almost fully occupied since their completion over 5 years ago, and the buildings appear to be in a good state of repair and well-maintained. Whilst not including any managed 'affordable' units, it is nonetheless considered therefore that the development provides some local benefit as a source of reasonably low-cost housing close to local amenities.
- 10.12 The possibility of the affordable housing contribution being paid at a future date in the event that the development were to become viable has been raised with the developer. However, they have advised that, even were they to secure alternative finance, the terms of any such finance would be so restrictive and repayments so high compared with rental income from the flats that there would be very little surplus for the payment of any further sums for the foreseeable future. The developer has therefore reiterated their request for the application to be considered as set out above.
- 10.13 Even in the event of the required commuted sum being provided, it is unlikely to be sufficient in itself to provide an affordable housing scheme, and the ability to do so would therefore be reliant on this being pooled with other contributions and/or funding and on the availability of suitable deliverable sites within the area. Even though suitable sites may be coming forward, there would nonetheless be a considerable delay in any commuted sum being realised in the form of affordable housing provision. If the application is refused, there is the likelihood of an appeal, with associated time and cost implications, and, even even if such an appeal was dismissed, there would be further delay in any sum being provided, particularly in the event of the site being repossessed and a new owner having to be sought. Furthermore, refusal of the application would result in the loss of the opportunity to secure the greenspace contribution that the developer has agreed to provide, or at



least a considerable delay in the receipt of this sum pending the outcome of an appeal.

- 10.14 Although the current situation is regrettable, and the merits of current proposal are finely balanced, it is considered that the suggested approach which has been agreed with Ward Members provides a positive and pragmatic solution to a long-running situation which provides the developer with the certainty to secure alternative finance, allowing continuity in the ownership, management and maintenance of the building as a source of low cost housing close to local amenities, whilst securing an immediate and considerable contribution towards greenspace, allowing such benefits to be realised and the matter to be drawn to a close without further delay. On balance therefore, and with the support of the Ward Members, it is recommended that the application application to remove the conditions is approved, subject to the receipt of the £87,694 greenspace contribution from the developer within 3 months and before a decision is formally issued.

## **11.0 CONCLUSION**

- 11.1 Whilst the merits of this case are finely balanced, it is considered in the light of the above that the proposed approach, to remove the affordable housing requirement subject to the receipt of the greenspace contribution, represents an acceptable compromise which would provide the opportunity for community benefits in the form of greenspace enhancements to be delivered in the short-term and without significant further delay, whilst providing some certainty in terms of the ownership and maintenance of the building to continue to provide a source of relatively low-cost housing in the local area. On this basis, and with the support of the three Ward Members to this approach, the application is recommended for approval.

### **Background Papers:**

Application file and history file 06/01940/FU

Certificate of Ownership: Signed by applicant.