

Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

4 JANUARY 2017

DEV/FH/17/002

Report of the Head of Planning and Growth

**PLANNING APPLICATION DC/15/2120/FUL- KININVIE, FORDHAM ROAD,
NEWMARKET**

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

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Committee Report

Date 6/11/2015 **Expiry Date:** 25/11/2016 (with
Registered: agreed extension)

Case Gareth Durrant **Recommendation:** Refuse planning
Officer: permission

Parish: Newmarket **Ward:** Severals

Proposal: Planning Application DC/15/2120/FUL - Erection of retirement living housing for the elderly (29 No. units), part one-and-a-half / part two-and-a-half / part single storeys, including communal facilities, landscaping and car parking (demolition of existing buildings), as amended.

Site: Kininvie, Fordham Road, Newmarket

Applicant: McCarthy & Stone Retirement Lifestyles Ltd and Frontier Estates.

Background:

This planning application was first referred to the Development Control Committee at its meeting on 1 June 2016. Members expressed concerns about the impact of the development on its surroundings and resolved they intended to refuse planning permission. Members did not determine the planning application but deferred their final decision to the following meeting to enable a risk assessment to be considered in advance of determination.

A copy of the Officer report to the 1 June 2016 meeting of the Development Control Committee is attached to this report as Working Paper 1.

The planning application was referred back to the following meeting on 6 July 2016. At that meeting Members resolved to grant planning permission for the proposed development, subject to prior completion of a S106 Agreement to secure off-site affordable housing contributions. The Committee provided delegated authority for officers to negotiate and agree an appropriate level of affordable housing contribution in the light of a viability claim that had been presented by the applicants.

A copy of the Officer risk assessment report to the 6 July 2016 meeting of the Development Control Committee is attached to this report as Working Paper 2.

Officers have not been able to agree an appropriate affordable housing contribution with the applicant and, consequently, have not been able to complete a S106 Agreement. The applicants have indicated they are no longer willing to discuss viability matters as they cannot foresee agreement being reached and have effectively requested the Council determines the planning application based on their current affordable housing offer, (which now includes a minor upwards adjustment).

In accordance with the resolution of the 6 July 2016 meeting of the Development Control Committee, the planning application is returned to Committee for further consideration given that S106 obligations for affordable housing have not been agreed with the applicant.

Proposal:

1. The development proposed by this application is described at Paragraphs 1-4 of the report to the 1st June 2016 meeting of Development Committee (attached as Working Paper 1).

Application Supporting Material:

2. The material supporting the planning application is listed at Paragraph 5 of the report to the 1st June 2016 meeting of the Development Control Committee (attached as Working Paper 1).

Site Details:

3. The application site is described at Paragraphs 6 and 7 of the report to the 1st June 2016 meeting of the Development Control Committee (attached as Working Paper 1).

Planning History:

4. Relevant planning history is set out at Paragraph 8 of the report to the 1st June 2016 meeting of the Development Control Committee (attached as Working Paper 1).

Consultations:

5. Consultation responses received are summarised at Paragraphs 9-24 of the report to the 1st June 2016 meeting of Development Committee (attached as Working Paper 1). Further consultation response were reported to the subsequent committee meeting held on 6th July 2016. These are set out at paragraphs B6 and B7 of Working Paper 2.

Representations:

6. Representations received are summarised at Paragraphs 25-32 of the report to the 1st June 2016 meeting of Development Committee (attached as Working Paper 1). Further representations were reported to the subsequent committee meeting held on 6th July 2016. These are set out at paragraphs B9 and B10 of Working Paper 2.

Policy:

7. Relevant Development Plan policies were listed at Paragraph 33 of the report to the 1st June 2016 meeting of Development Committee (attached as Working Paper 1).

Other Planning Policy:

8. Other relevant planning policies were discussed at Paragraphs 34-39 of the report to the 1st June 2016 meeting of Development Committee (attached as Working Paper 1).

Officer Comment:

9. At the Development Control Committee meeting of 6th July 2016, Members resolved to grant planning permission for the proposed development, subject to the prior completion of a S106 Agreement to secure a developer contribution to be used to deliver affordable housing requirements off-site. At the time, the applicant had sought to demonstrate they could not provide the full 30% provision required by the Council's planning policies because of adverse viability. At the time Members considered the planning application in June and July 2016, officers were not in a position to advise whether the viability claim was reasonable, or even it were deemed to be reasonable, whether the level of contributions being offered was also reasonable.
10. Members' decision was informed by an Officer assessment of the planning application at Paragraphs 40-124 of the report to the 1st June meeting of the Development Control Committee (attached as Working Paper 1). Further discussion is set out within the subsequent 'risk assessment' Committee report to the 6th July meeting, at Sections 'C' to 'G' (attached as working paper 2).
11. The 1st June Committee report includes a discussion about the legal parameters of S106 Agreements, policy context with respect to affordable housing and development viability. A discussion about the respective positions of the applicant and your officers at that time was also included. Members will note the unresolved nature of the viability position at the time and the indication there was an emerging issue with the applicant's viability evidence. This discussion is set out at paragraphs 107 to 118 of Working Paper 1.

12. An independent viability consultant was appointed by the Council to advise it with respect to the applicant's appraisal. The submitted viability appraisal is confidential, at the request of the applicants. Accordingly, the figures input into the appraisal are not discussed in detail as part of this report. The consultant's agreed that a contribution of around £1.1M would be sufficient to enable the 30% affordable housing required from the application proposals to be provided off site. The applicant's offer of circa £285,000 therefore represents around 5.5% affordable housing provision, set against the policy target of 30%.
13. The Council's viability consultant, having undertaken his own financial appraisal of the proposed development has concluded the developer should be able to provide a fully policy compliant financial contribution of circa £1.1M for affordable housing and does not consider the scheme to have genuine viability issues, certainly not to the extent that is being claimed by the applicant. The principal differences between the parties relate to the build costs of development which the Council's consultant believes have been over-inflated (or double counted) in the applicant's appraisal. The applicant disputes these conclusions and considers the appraisal is suitably robust.
14. The applicant's viability appraisal is beginning to age given it is dated March 2016 and is now some 9 months old. There is evidence the market has improved still further in the intervening period such that the increase in build costs have been out-paced by increases in sales values over the period. Accordingly, even if it could be agreed that the applicant's viability appraisal was robust as of March 2016, it is highly likely to have improved since. Officers understand relevant building costs have risen by circa 5% over this period and average sales values in Newmarket by circa 10%.
15. There is no recognised planning guidance with respect to development viability. Advice provided for the surveying industry via the RCIS is often referenced to assist with considering viability at the planning (S106) stage. The RCIS guidance document entitled 'Financial Viability in Planning' confirms "*Viability assessments may occasionally need to be updated due to market movements or if schemes are amended during the planning process*". As discussed above, there are indicators that market conditions have improved over the 9 months since the viability assessment was prepared.
16. To date, the applicant's have not updated the viability appraisal. Notwithstanding this, officers are confident there is sufficient evidence to demonstrate the applicant should be providing a significantly higher contribution than that indicated by the viability assessment, even when using March 2016 as a base date. The applicants have marginally increased their affordable housing contribution offer to £300,000 which they say is for "commercial expediency" reasons, but this is insignificant given the major differences that continue to divide the parties.

17. Should Members resolve to refuse planning permission for the scheme, the applicants will need to update the appraisal to the date of the appeal given an appeal is unlikely to be determined for a further 6 to 12 months away, depending upon the appeal type.
18. It is of relevance to this case that a more 'conventional' housing development of the application site would deliver greater viability (likely to be a policy compliant 30% provision) and would also deliver its affordable housing requirements 'in kind' at the site. This adds weight to the officer recommend refusal of planning permission in the absence of a policy compliant level of affordable housing provision and would carry weight even if the applicants own appraisal is deemed suitably robust.

Conclusions

19. The Council is able to demonstrate a five year supply of deliverable housing sites. Furthermore, Development Plan policies relating to affordable housing are not 'absent' or 'silent' with particular respect to affordable housing requirements. Paragraph 14 of the NPPF, which sets out the presumption in favour of sustainable development and suggests planning permission should be granted where the benefits of development are not significantly and demonstrably outweighed by the dis-benefits, is not engaged in this case. The planning application therefore falls to be considered against the provisions of the Development Plan in the first instance, to which a great deal of weight must be attributed.
20. Officers are advising the Committee the proposals are contrary to the Development Plan with respect to affordable housing provision, given that it has not been satisfactorily demonstrated the scheme cannot be viably delivered. Officers consider there are no material considerations in favour of the proposals which would outweigh the need to deliver a policy compliant level of affordable housing from a development of this site. This includes any perceived need for specialist 'retirement' housing in the District which, in any case, would be significantly and demonstrably outweighed by the need to provide for the well documented and evidenced need for affordable homes.
21. Whilst the proposed scheme remains acceptable in all other material respects, it is recommended that planning permission is refused given the absence of a policy compliant contribution towards affordable housing provision being secured from the scheme.

Recommendation:

22. It is recommended that planning permission be **REFUSED** for the following reasons:
1. The proposals for the erection of 29 retirement dwellings is contrary to national planning policies in the NPPF. The proposals are also contrary to the provisions of Policy CS9 of the Forest Heath Core Strategy (2010) and its supporting 'Joint Affordable Housing Supplementary

Planning Document'. The aforementioned Development Plan policies require new housing developments of this scale to provide 30% of the total number of proposed dwellings as affordable housing on site, or if agreed, an equivalent cash contribution to enable affordable housing requirements to be provided off-site. In this case, the applicants' have offered an off-site affordable housing contribution equivalent to circa 5.5% and have claimed any enhanced provision would render the development unviable and undeliverable. The Council does not agree with the viability appraisal submitted in support of the planning application and, having sought independent professional advice, considers the scheme can deliver a policy compliant level of affordable housing, both when considering market conditions at the date of the viability appraisal (March 2016) and in current housing market conditions.

Documents:

1. Working Paper 1 – Officer report to the 1 June 2016 meeting of the Development Control Committee.
2. Working Paper 2 – Officer report to the 6 July 2016 meeting of the Development Control Committee.

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online.

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