

APPLICATION NO: 14/01317/REM	OFFICER: Mrs Emma Pickernell
DATE REGISTERED: 23rd July 2014	DATE OF EXPIRY: 22nd October 2014
WARD: St Peters	PARISH:
APPLICANT:	Taylor Wimpey Bristol
AGENT:	Mr Chris Cox
LOCATION:	Christ College, Arle Road, Cheltenham
PROPOSAL:	Approval of reserved matters in connection with permission 13/00911/OUT. Residential development of 90 dwellings and associated roads, footways, parking, landscaping, and public open space.

Update to Officer Report

OFFICER COMMENTS – AFFORDABLE HOUSING AND CONTRIBUTIONS

- 1.1.1 As mentioned in the main report the outline application was indicatively shown to be for 85 dwellings. That outline application proposed that 15% of the units be provided as affordable units.
- 1.1.2 Members will be aware that Local Plan policy HS4 requires that on sites of 15 or more dwellings, or of a site area of 0.5ha a minimum of 40% of the total dwellings proposed will be sought for the provision of affordable housing. The notes attached to that policy allow for exceptions to be made and this is also enshrined in the NPPF. However any reductions must be fully justified and the case made must be assessed independently.
- 1.1.3 In the instance of the outline application the Council employed the District Valuer to assess the viability situation. The conclusion of their initial report was that it was not viable to provide 40% affordable housing. They were subsequently asked to consider what the maximum percentage of affordable housing would be that the scheme could provide whilst still being viable. The conclusion of this work was that 15% would be viable and that it might be possible to achieve up to 20%, depending on the mix of units proposed.
- 1.1.4 Officers subsequently negotiated with the applicants to find an appropriate mix of units which equated to 20% of the total 85 units proposed at the time. The provision which was agreed was for 12 affordable rent houses (6no. 2 bed and 6 no. 3 bed) and for 5 shared ownership houses (3 no. 2 bed and 2 no. 3 bed), thereby providing a total of 17 units.
- 1.1.5 When the outline application was discussed at planning committee, members raised the legitimate question of whether the percentage of affordable housing would rise should the overall capacity of the site rise. Officers consequently undertook to seek to ensure provisions to allow this to be looked at again, should a subsequent reserved matters application propose a higher figure overall. The relevant mechanism to achieve this would have been through the s.106 agreement.
- 1.1.6 Unfortunately no such clause was included within the s.106 and legal advice is now that there is no legal mechanism to insist on the level of affordable housing being reassessed. Officers acknowledge that it is regrettable that this has occurred and that it is not possible to reassess the level of affordable housing in line with members wishes. Officers fully intended to include a clause which would have allowed a re-assessment of the viability, however shortcomings in the drafting and checking processes, meant that this did not occur.

- 1.1.7 It should be stressed that officers did act upon the debate at committee and discussions with the applicant and the legal team did take place following the committee's resolution to grant outline consent with the genuine intention to include such a clause, but these discussions were not translated into the subsequently signed legal agreement.
- 1.1.8 Within the agreement there are clauses which require education, library and playspace contributions to be directly related to the number of units proposed; in relation to affordable housing, officers had anticipated a simple review mechanism to allow the matter to be revisited should number increase at the reserved matters stage. It is with regret that members are informed that this did not happen.
- 1.1.9 Members are subsequently advised that mechanisms which allow a re-assessment of viability related matters are becoming increasingly more common but it remains a complex area. Moving forward, discussions are already taking place with the Planning Advisory Service (PAS) in relation to additional training being provided in this area to improve the knowledge of the department.
- 1.1.10 Officers did suggest to the developer at pre-application stage in respect of the Reserved Matters application, that they assess the viability situation in any event in order to provide a commentary on the level of affordable housing included in the scheme. An affordable housing statement has been submitted with the application, however this does not comment on the viability or possibility of providing additional units.
- 1.1.11 The 17 affordable units secured within the S.106 agreement equates to 19% of the 90 dwellings now proposed. To extrapolate the 20%, which was found to be viable on 85 units, across this reserved matters proposal would have resulted in one additional affordable unit. However it must be acknowledged that a fresh viability assessment would have looked at the proposed mix of dwelling types/sizes proposed here and this may have resulted in a higher percentage.
- 1.1.12 The developers have been asked to consider offering up one additional dwelling as affordable, however no response to this suggestion has been received to date. Members will be updated on this point before Thursday's meeting.
- 1.1.13 In any event, whilst there is no legal mechanism to insist on a reassessment of the viability it seems unlikely given the relatively modest increase of 5 dwellings, that this would have yielded significant amounts of additional affordable housing. However it must be acknowledged that in the absence of a full report on this matter, it is not possible to decisively say what its conclusions might have been.
- 1.1.14 To conclude, officers accept that it is regrettable that a review mechanism was not included in the S106 agreement although discussions with the applicant remain ongoing. It is also accepted that members will be frustrated with this position but legal advice is quite clear that this matter cannot now be revisited. Members are advised that this Authority's approach to dealing with viability matters is continually evolving and improving, and with future training being considered, it is anticipated that our knowledge and experience in this area will improve yet further. Whilst this may not compensate fully, it shows that the department is willing to learn from its mistakes with the intention of making further improvements to the service provided by the Local Planning Authority.
- 1.1.15 The recommendation remains that permission be granted for this reserved matters application.