

APPLICATION NO: 15/01048/OUT		OFFICER: Mr Martin Chandler	
DATE REGISTERED: 16th June 2015		DATE OF EXPIRY: 15th September 2015	
WARD: Benhall/The Reddings		PARISH:	
APPLICANT:			
AGENT:	Mr David Keyte		
LOCATION:	Land to rear of Nuffield Hospital, Hatherley Lane, Cheltenham		
PROPOSAL:	Residential development of up to 27 dwellings		

Update to Officer Report

Recommendation: Delegate authority back to officers to secure S106 agreement and highway alterations

1. OFFICER COMMENTS

- 1.1. Members will be aware that the officer report was incomplete at the time of publishing. This update completes the assessment of the application.

2. Design and layout

- 2.1. The application seeks outline planning permission for a residential development of up to 27 dwellings. At this stage, consideration is being given to the means of access to the site, the proposed layout and proposed scale of the development. External appearance and landscaping are being reserved for future consideration.
- 2.2. In its original form, the proposal sought consent for up to 30 dwellings but in a manner that officers felt uncomfortable with, essentially due to the wider context in which the application site sits.
- 2.3. The application site forms part of a wider complex of commercial development with Asda to the east, Pure Offices to the north and beyond that, the Nuffield Hospital. To the west of the application is a parcel of land with an extant permission for further office development.
- 2.4. The means of access to the site is the same access to the foodstore car park and officers have expressed reservations in relation to whether or not, given this wider context and access to the site, the site is suitable for residential development.
- 2.5. With this in mind, following receipt of the application in June, the applicant was asked to revisit the proposal with the aim of creating a welcoming and pleasing environment in which to live. The initial scheme did not achieve this; it was an overly dense development which failed to compensate for the somewhat 'harsh' surroundings in which the site sits. The proposed houses turned their back on to the access road and the internal courtyard that was created by this approach was cramped and dominated by car parking. Officers were firmly of the view that the proposal in that form could not be supported (regardless of any EM2 considerations) and therefore the applicant was strongly encouraged to pursue a landscape led approach if residential development were to be accepted.
- 2.6. In response to this advice, the applicant appointed a landscape architect and the subsequent site analysis has resulted in a fundamentally different scheme and one that officers are more comfortable with.

- 2.7. The proposal essentially revisits the original consent for office development and reintroduces a large sentinel building to address the access road. This is a three storey building that indicatively contains 15 apartments and its footprint and scale is very similar to that already consented as part of the office development. This building does two things: firstly it fronts on to and helps frame the access road and therefore gives an active presence to the development, but secondly, and perhaps more importantly, it acts as a buffer for the dwellings to rear, shielding them from the more commercial surroundings and therefore helping to create a more pleasing environment for incoming residents.
- 2.8. Officers accept that this is not the most natural home for a small residential development but it is not uncommon to see commercial and residential development in close proximity, indeed there are many examples of this throughout the borough, and if the layout is well-considered, the environment that is created does not have to be poor. The approach from the applicant suggests a well-landscaped and relatively spacious environment for residents and officers are of the view that the proposed layout and scale of development is appropriate for the site. The landscaping of the scheme will be critical to its success and therefore conditions are suggested below to ensure that this is fully considered at reserved matters stage.
- 2.9. One other important consideration for the redevelopment of this site is the relationship with the adjacent delivery yard serving Asda. Some members may recall that when the proposals for Asda were granted consent, it relied on the presence of a large acoustic screen to protect the residents in Tylea Close and Roxton Drive to the south of the application site. This screen has proved successful and the Council's Environmental Health Officers have been in discussions with the applicant to ensure that further mitigation forms part of this application. With this in mind, the applicant's acoustic engineer has advised that a four metre high wall should continue along the eastern boundary of the application site for 15 metres, dropping to 2.4 metres for a further 10 metres. This approach has been endorsed by the Council's Environmental Health team, subject to further detail which could be secured by way of condition to be submitted with any reserved matters application.
- 2.10. In light of all of the above, officers are satisfied that in its revised form the application complies with the aims and aspirations of local plan policy CP7 and guidance set out within the NPPF in relation to creating quality places to live.

3. Impact on neighbouring property

- 3.1. Local plan policy CP4 requires development to safeguard the amenity of existing land-users. In relation to this site, it is the residents in Roxton Drive and Tylea Close that will be most impacted by any development.
- 3.2. Members will be aware that there is an extant permission for development on this site and that this allows for three storey development, which is also proposed as part of this scheme. Officers accept that residential development can bring with it different considerations in terms of amenity and therefore thorough scrutiny is again necessary.
- 3.3. Starting with potential loss of privacy, members are advised that at their closest point, the proposed dwellings are over 20 metres away from the nearest neighbouring boundary and window to window distances are almost 30 metres. This, coupled with the existing tree planting, will ensure that privacy will not be unacceptably compromised if this site is built out for residential purposes.
- 3.4. Given the distances set out above, the proposal also comfortably passes relevant loss of daylight tests.

- 3.5. Some concern locally has been raised in relation to the potential impact from noise created from the development. Officers accept that houses in this location will be noisier than a vacant parcel of land, but the relationship between dwellings is no different to anywhere else in such a suburban location.
- 3.6. The proposal is fully compliant with the aims of local plan policy CP4.

4. Access and highway issues

- 4.1. Access to the site is well-established and no objection is raised to this by the Highways Authority. The one area of concern that the County Council have in relation to the proposed development is the amount of car parking within the scheme. The proposed layout provides two parking spaces for each dwelling (one within integral car ports) and 17 spaces for the 15 apartments. The concern from the County Council is that there is a lack of space for visitor parking and that the road layout does not allow for this. The County have advised that if the road was changed from one with footpaths to a shared space, the objection would be overcome as this would enable a refuse vehicle and estate car to pass, even with on street car parking.
- 4.2. The applicant is yet to provide this revision to the scheme. They accept that it can be achieved and consider it be an appropriate change to the proposed layout (as do officers) but given the work that will be necessary, the applicant is eager for the planning committee to first endorse the proposals and then subsequently amend the scheme. Should members resolve to grant planning permission then more work will be necessary to finalise the content of the section 106 legal agreement, so there is time post decision to resolve this relatively minor point.

5. Other considerations

5.1. S106 agreement

- 5.1.1. The proposed development will trigger the need for the applicant to enter into a legal agreement to mitigate the impact of the proposed development and comply with local plan policy. With regard to this specific proposal, a minimum of 40% of the dwellings proposed should be affordable housing and contributions towards education requirements are also likely to be necessary, although on this point the County Council has yet to provide comments. Contributions towards sustainable transport will not be sought as the applicant has already made a substantial contribution in relation to the wider redevelopment of the site, including this parcel of land.
- 5.1.2. The applicant has confirmed that these heads of terms are acceptable to them and the agreement will be need to be completed before any decision is issued. Notwithstanding the above, both officers and the applicant are mindful that in the absence of any viability work, the full 40% provision may not be achievable at the time whereby any reserved matters application is submitted. The applicant was asked to conduct some viability work to give the authority a greater degree of comfort on this point but has declined to do this. Officers have reflected on this point and consider that despite the absence of this viability work, it would be unreasonable to withhold consent on this matter.
- 5.1.3. The applicant is proposing 40% affordable housing and the application should be determined on this basis. Whilst viability is fundamental to the delivery of affordable housing, government advice on this point is quite clear at this moment in time and local planning authorities are being asked to be as flexible for developers as

possible to ensure that new houses are being delivered in a viable way. This includes the ability to revisit extant planning permissions to improve viability and is a process that is very much stacked in favour of developers to ensure that the delivery of new housing is not stalled.

- 5.1.4. If 40% is not deliverable following independent scrutiny from the district valuer then a refusal on these grounds would be very difficult to sustain at appeal. This is exacerbated by our current housing supply position, which, as members will be aware, results in our housing delivery policies (which includes policy HS4 which delivers affordable housing) being deemed to be out of date in accordance with paragraph 49 of the NPPF. Members will also be aware that, as described in paragraph 14 of the NPPF, where relevant policies within a development plan are out of date, planning permission should be granted unless:

Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework as a whole; or Specific policies in this Framework indicate development should be restricted.

- 5.1.5. Members are advised that despite the actual quantum of affordable housing being unknown at this stage, in light of current government thinking on viability and the advice within the NPPF, the applicant is in a strong position in choosing not to undertake any viability work. Officers expect the eventual S106 (if members resolve to grant consent) to include the provision of 40% affordable housing but cannot state with any certainty that the developer will not want to revisit that as and when the proposal gathers momentum. This is an unfortunate position to be in, but in light of current circumstances officers consider there to be little 'wriggle-room' in this instance.

5.2. Flood risk

- 5.2.1. Some concern from residents has been raised in relation to discharging surface water run-off into Hatherley Brook. In light of this, members are advised that this is the drainage strategy for the extant planning permission and is therefore entirely appropriate for this scheme. Notwithstanding this point, the application that is before members proposes significantly less hardstanding than the extant scheme for office accommodation so the proposal is likely to offer a betterment for surface water run off than that which currently has permission.

6. CONCLUSION AND RECOMMENDATION

- 6.1. To conclude, it is clear that this is a finely balanced proposal that brings with it some interesting points of consideration, but, following a thorough assessment, officers recommend that outline planning permission should indeed be granted for this application.
- 6.2. The requirements of policy EM2 have been met in this instance and despite an ongoing shortage of employment land within the borough, market conditions remain such that speculative development is still not being delivered. There will be a point in the future where this changes but it is impossible to predict with any certainty. Evidence suggests that in the medium term (3 – 5 years) the market may be in a different position but based on the assessment of facts at this point in time, and on the specifics of this particular site and marketing campaign, officers are satisfied that demand for the site has been fully explored without success. Had any of these variables been different, officers may have arrived at a different conclusion; in this respect, this recommendation should not prejudice future use of policy EM2, and officers point to the recent appeal decision at Alma Road

Garages as evidence to suggest that the policy is still of distinct relevance in the assessment of planning applications.

- 6.3. Regarding the layout of the scheme, officers are satisfied that the proposal will represent an appropriate place to live despite the commercial surroundings, and subject to a subtle revision to the internal road, the County Council have no objection to the development.
- 6.4. Finally, whilst the provision of 40% affordable housing has not been proved despite being offered, officers do not consider that the Authority is in a position to explore this point further given current government advice and the housing land supply considerations set out above.
- 6.5. In light of all of the above, officers are satisfied that this application represents an appropriate development on this parcel of land and therefore recommend that members resolve to delegate authority back to officers to approve this application subject to the resolution of the necessary Section 106 agreement and alterations to the layout to satisfy the County Council.

7. CONDITIONS

To follow

APPENDIX to officer update, 14th December

15/01048/OUT Land to rear of Nuffield Hospital. Residential development of up to 30 dwellings in

These comments are provided in response to the applicant's "Report on the potential of Hatherley Lane for commercial uses", submitted 1st December 2015.

Initial planning policy comments concluded that the applicant was not demonstrating compliance with EM2. It was felt the applicant needed to provide further details and evidence to demonstrate the retention of the employment site has been fully explored without success.

The planning policy team provided further comments on Tuesday 17th November in response to further correspondence from the applicant. Again Planning Policy comments concluded this was still failing to demonstrate compliance with policy EM2 and in particular the need to show and explain why there has been no demand for employment uses on this site.

The applicant responded to these comments the following day but again comments were lacking in detail and several statements that were difficult to verify. On Tuesday 24th November officers met with the applicant to discuss planning policy and explain the type of information the Council would need to see to help meet policy EM2 requirements. Again it was explained that demonstrating compliance with EM2 is a vitally important step in the decision-taking and planning balance process.

Policy EM2 does not prescribe what this data should be although in note 1 it states, "*evidence will be required to demonstrate demand; this may include details of past advertising, vacancy levels, and rents levels. This list is not exhaustive and further information may be required.*" Advice was clear that evidence would need to provide a clear narrative as to why a spade ready brownfield site with good site access and close proximity to the M5 was struggling to find any potential suitors. Officers explained Council evidence¹ showed there is an overwhelming need/demand for sites that can deliver 1,000sqm modern buildings across the town.

Officers guided the applicant to demonstrate how they had marketed the site; provide reasons why potential users chose not to locate on site and where possible state the type of user; and demonstrate that their build, rent and other value assumptions are reflective of the local market.

Following this meeting the applicants provided a report titled "Report on the potential of Hatherley Lane for commercial uses". Whilst the report is very succinct, the NPPF reminds decision-takers to look for solutions rather than problems and that evidence should not be over burdensome for the applicant.

Overall the report represents an improvement on information provided to date and helpfully brings together some of the correspondence and information the applicant has provided over the past few weeks. With regards to the marketing campaign officers have explained that the length of time a site has been vacant and advertised for is not a determining feature of EM2, but rather the policy requires the applicant to "fully explore" opportunities to retain the site for employment uses. The applicant can demonstrate the site has been offered for sale/to let since 2003 and at least two attempts have been made to fully market the site for a sustained period, first in 2009 and more recently since February 2015.

The report helpfully details the nature of the interest shown in the site over the past few years (although it does not state how recent these are) and reasons why the site was not suitable. The report also states they acted on interest identified by the Cheltenham Taskforce although they were already in contact with the interested parties.

¹ Developing Cheltenham as a business location study, January 2015

APPENDIX to officer update, 14th December

The applicant provides a short discussion on alternative uses and concludes that the council had previously informed the applicants that Class B2 and Class B8 uses were not suitable. At the meeting on Tuesday 24th November, officers were clear that policy EM2 supports all employment uses on the site. It is worth noting the context of this issue; although not mentioned in this report the applicant has explained there is a restrictive covenant on the land which seeks to prevent B2 and B8 uses to help protect land interests immediately adjacent to the north. Planning Aid² helpfully provides a simple guide on what constitutes a material consideration in planning law. The guide identifies that a covenant is a non-material consideration and therefore little if any planning weight can be afforded to this issue.

The report also discusses market values. The report concludes that rents have not caught up with build costs and until they are over circa £20 sq ft speculative building is unlikely; this also reflects evidence the council published in early 2015. This report represents a more detailed account of market conditions and although it took some time for the applicants to provide and release this information, it is clear the local market is currently finding it difficult to build speculative units. The market still remains reactionary.

This places the council in a difficult situation. National planning policy is clear that councils should be committed to build a strong and competitive economy; Cheltenham's response is to safeguard existing employment land uses. There is however a clause within the NPPF that requires Councils to avoid the long term protection of sites allocated for employment use where there is no prospect of the site being used for that purpose. Coupled with the limited ability of the council to persuade the market to build speculative buildings (e.g. build it and they will come approach), this has meant employment sites are increasingly being proposed for alternative uses, namely residential.

It's worth noting an interesting point made by the applicants at the meeting, they stated the local market might be better able to take risks and undertake speculative developments if the Council relaxed the time it allows before it charges vacant building business rates³.

Frustratingly there is a clear and demonstrable need for high quality 1,000sq m office space and new start up space in Cheltenham; the LEP and Chamber of Commerce are also adamant there is a clear need for increased office and employment space in the town. The market however remains unable to take the financial risk at this time.

A constant theme running through all discussions with the applicant is their use of statements as fact, this process has been difficult for both parties as the applicant seeks to protect sensitive business interests and the Council seeks to evaluate and understand the hard facts behind the statements. It is clear the applicant's report should not stand out as best practice, but the combined total of all information provided since the application was validated helps to demonstrate and confirm there is a lack of demand to retain this site for employment uses.

Decisions must be made in accordance with the adopted local plan unless material considerations indicate otherwise.

² <http://www.rtpi.org.uk/media/686895/Material-Planning-Considerations.pdf>

³ Existing CBC business rate reliefs and discounts.

http://www.cheltenham.gov.uk/info/200012/business_rates/124/business_rate_reliefs_and_discounts