

BRECKLAND COUNCIL

DEVELOPMENT CONTROL COMMITTEE – 6TH JANUARY 2011

REPORT OF DEPUTY CHIEF EXECUTIVE

(Author: Nick Moys, Principal Planning Officer (Major Projects))

**SPORLE: VARIATION OF SECTION 106 AGREEMENT: PROPOSED
RESIDENTIAL DEVELOPMENT, HILL FARM**

Applicant: Mrs E Gent

References: 3PL/2007/1303/O & 3PL/2007/1305/O

DEFERRED ITEM REPORT

1. A proposal to vary the terms of a legal agreement relating to a housing development at Hill Farm, Sporle was considered by Members on 13th December 2010 (see attached report). It was resolved that the legal agreement should be varied, as requested, subject to the plots in the north-east corner of the site being developed first.
2. It is understood from the applicant's agent that agreements have already been made with prospective purchasers for 3 plots in the southern part of the site. It has been requested, therefore, that further consideration be given to this matter.
3. The applicant has no objection to the requirement to construct the access road for its full length at the outset. The applicant's agent has confirmed that this would be a requirement of the bank funding secured by the applicant and would also be a condition of any sale contracts with prospective purchasers.
4. As noted in the previous report, it is considered that any agreement to release open market plots should be subject to the proviso that the proposed access road is constructed (to base course level) for its full length and up to the affordable housing before the first occupation of any open market dwellings.
5. The 3 plots identified for early release by the applicant would be set back from the main access road. Given the layout and size of the plots, it is not considered that future occupants of these dwellings would be subject to undue disturbance from subsequent construction work elsewhere on the site.
6. **RECOMMENDATION:** That the existing Section 106 agreement be varied as described in the original report.

BRECKLAND COUNCIL

DEVELOPMENT CONTROL COMMITTEE – 13TH DECEMBER 2010

REPORT OF DEPUTY CHIEF EXECUTIVE

(Author: Nick Moys, Principal Planning Officer (Major Projects))

SPORLE: VARIATION OF SECTION 106 AGREEMENT: PROPOSED RESIDENTIAL DEVELOPMENT, HILL FARM

Applicant: Mrs E Gent

References: 3PL/2007/1303/O & 3PL/2007/1305/O

Summary – This report concerns a request to vary the terms of a section 106 agreement relating to a proposed residential development at Sporle. It is recommended that the section 106 agreement be varied as requested.

1. INTRODUCTION

This report concerns a formal request to vary the terms of a section 106 legal agreement relating to a proposed residential development at Hill Farm, Sporle. The proposed development would comprise two linked elements: i) an affordable housing scheme of 8 dwellings, and ii) an open market development of 9 houses. Separate outline permissions were granted for the two parts of the development in October 2008.

The proposed development site is located on the southern fringe of the village of Sporle. The site comprises an irregularly shaped parcel of land extending to around 1.5 hectares. The land was previously used as a poultry farm, but this use ceased in 2008 following the grant of permission for housing. The site is adjoined on one side by housing and elsewhere by open countryside.

The 2008 outline permissions are subject to a section 106 agreement, which includes obligations relating to affordable housing, open space, transport, and the cessation of a poultry business. The requested variation relates to the phasing of the affordable housing provision. Currently, the agreement requires the approved affordable housing development to be completed before the first occupation of any of the approved open market dwellings. The applicant has requested that this clause is varied to allow up to 3 open market units to be occupied before the completion of the affordable housing.

2. KEY DECISION

This is not a key decision.

3. COUNCIL PRIORITIES

The following Council priorities are relevant to this report:

- A safe and healthy environment
- A well planned place to live and work

4. POLICY

At a national level, advice on the use of section 106 agreements is set out in the DCLG's Circular 05/05 'Planning Obligations' and 'Planning Obligations: Practice Guidance'. The HCA's good practice guidance 'Investment and planning obligations: Responding to the downturn' is also relevant. Policies set out in PPS 3 *Housing* and

PPS 7 *Sustainable Development in Rural Areas* were particularly relevant in the consideration of the original applications.

In terms of local planning policies, it should be noted that the development site falls outside the defined Settlement Boundary for Sporle, as set out on the adopted Proposals Maps accompanying the adopted Core Strategy (rolled forward from the previous Local Plan). No changes to the current Settlement Boundary are proposed which would affect land at Hill Farm in the Site Specific Policies and Proposal Preferred Options Consultation Document 2010. The Core Strategy does not identify Sporle as a service centre village. The following policies contained in the Core Strategy & Development Control Policies DPD are relevant as background information: Policy CP1 (Housing), Policy CP14 (Sustainable Rural Communities), Policy DC2 (Housing), Policy DC4 (Affordable Housing), Policy DC5 (Affordable housing on exception sites) and Policy DC11 (Open Space).

5. ASSESSMENT

The key question for consideration here is whether the proposed variation to the section 106 agreement would undermine the original purpose of the agreement and/or the bases on which the outline planning permissions were granted.

The reasons for granting permission for residential development at Hill Farm may be summarised as follows. Outline planning permission was granted for the affordable housing scheme as it was considered that the project would comply with policy relating to exception site developments, the scheme being well related to the existing village and designed to meet an identified local housing need. Permission was granted for the open market housing element of the development, despite conflicts with settlement policies, as it was considered that the development was necessary in order to bring forward the affordable housing and to deliver wider environmental benefits through the removal of an existing poultry farm. The overall development would also provide transport improvements in the village.

The reasons for granting permission (as outlined above) are reflected in the terms of the section 106 agreement. Particular priority is given to the timely provision of the affordable housing, and the requirement of the agreement to provide the affordable housing prior to the occupation of any open market units reflects this. It is important that a strong link between the affordable and open market elements of the development is maintained if the original purpose of the agreement is not to be undermined.

A detailed report has been submitted on behalf of the applicant to explain the reasoning behind the requested variation. It is understood that since the grant of outline permission in 2008 the applicant has made a number of attempts to implement the development through negotiations with potential developers and housing associations (principally Hastoe Housing Association). However, various factors have frustrated the delivery of the development to date, including difficulties in securing funding for essential road infrastructure. Due to the shape of the site and the layout of the development, all of the main access road must be constructed at an early stage in the development. It is understood that the applicant has secured funding for the construction of the road and associated infrastructure, but that this is conditional on the release of three open market building plots. This would conflict with the terms of the current section 106 agreement, hence the requested variation.

In the light of the information provided, and taking into account the current economic conditions and limits on grant funding for affordable housing, it seems reasonable to conclude that the terms of the current section 106 agreement are likely to remain a

significant obstacle to the delivery of the approved development at Hill Farm for some time. National guidance issued last year encourages local authorities to apply some flexibility when considering stalled housing schemes in order to ensure a continued supply of housing in the economic downturn. The current shortages of housing land in the District and the need to provide more affordable housing provide further justification for sympathetic consideration of the requested variation. In the present economic conditions, the delivery of exception site affordable housing schemes is likely to be increasingly dependant on new funding sources, such as cross-subsidy from market housing.

Following extensive discussions with the Council's Housing and Legal teams and the applicant, it has been concluded that the proposed variation of the section 106 agreement would be acceptable in planning terms. The suggested changes would provide the applicant with an additional degree of flexibility in the phasing of the scheme in order to maximise the chances of securing funding and delivering the development, whilst maintaining (albeit in a slightly diluted form) the essential link between the development of the affordable and open market elements of the development.

It is therefore recommended that the current section 106 agreement is varied along the lines requested to allow a maximum of 3 open market dwellings to be completed in advance of the development of the affordable housing scheme. This would be subject to the proviso that the proposed access road is constructed (to base course level) up to the affordable housing before the first occupation of any open market dwellings. It is also recommended that the agreement be varied to allow all of the open market dwellings to be occupied once a binding legal contract had been made to transfer the proposed affordable housing to a housing association.

6. RECOMMENDATION

That the existing section 106 agreement be varied as described above.