



## **REPORT of CHIEF EXECUTIVE**

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**to  
PLANNING AND LICENSING COMMITTEE  
13 JUNE 2017**

### **LAND AT WYCKE HILL, MALDON**

#### **1. PURPOSE OF THE REPORT**

- 1.1 To report to the Committee the Council's successful application under Section 288 of the Town and Country Planning Act, known as a Statutory Review, to challenge the decision made at appeal by the Planning Inspector appointed by the Secretary of State, to amend the affordable housing provision as set out in a Section 106 Agreement. The site to which the challenge applied to is one of the key strategic sites identified for housing growth and shown in the proposed Local Development Plan as site 2C, on land to the south of the Morrison's Roundabout on Wycke Hill, which is to be developed by Linden Homes

#### **2. RECOMMENDATION**

That the Committee notes this report and recognises its importance of the outcome on affordable housing provision at strategic sites throughout Maldon.

#### **3. SUMMARY OF KEY ISSUES**

- 3.1 Identified as one of the key sites for growth, in a position at the gateway to Maldon, planning permission was granted in outline for residential development at this site on appeal for 120 dwellings with all matters reserved, including layout, scale, design etc. In granting planning permission a Section 106 Agreement was attached to the approval setting affordable housing provision at any detailed planning application stage to be 30% of the total as may be agreed.
- 3.2 Later a reserved matters application was submitted proposing 117 dwellings. This was considered overdevelopment and contrary to the Strategic Masterplan Framework for the area, the now endorsed design code, and refused planning permission. The submitted appeal was also dismissed.
- 3.3 The site developers then submitted an appeal under Section 106B of the Town and Country Planning Act to reduce the level of affordable housing from a figure of a lower percentage to zero should only 108 dwellings be approved on the site. In deciding the appeal and allowing the same officers of the Council considered that in making his decision the Inspector had done so unlawfully. Following the receipt of legal advice the Council submitted a Statutory Review to challenge the appeal decision. This process is almost identical to the process of issuing a Judicial Review

against a planning decision, the difference being that the end decision in this case which was challenged was made by the Planning Inspectorate acting for the Secretary of State in this specific case.

- 3.4 The Council's legal challenge, in brief, was on the basis that the Inspector applied the incorrect test, in law, when considering the issue of affordability on the grounds of viability and he was unable to qualify why both a sliding scale, and a no provision whatsoever, were both appropriate in this specific case.
- 3.5 The application was submitted to the High Court. After investigating the Council's application the Secretary to the Treasury as the "first defendant" to the claim indicated they did not wish to contest the application. In doing so it was agreed that the Planning Inspectorate's decision was unlawful, and hence the decision should be quashed.
- 3.6 The decision was communicated to the "second defendant", being the recipient of the planning application, who had to consider their position and decide whether to challenge the Review, or concede to the quashing of the permission.
- 3.7 The applicant has now agreed to the review and the planning decision will be quashed. The appeal to which the decision relates has also been withdrawn.
- 3.8 This means that the site reverts back to the original Section 106 Agreement therefore 30% of all dwellings will need to be affordable. If the applicant challenges this again any submission will be referred to an extraordinary meeting of the Council under the Council's Constitution for formal consideration.
- 3.9 The applicants also submitted a reserved matters application for 108 dwellings. This was refused at Members' request, and an appeal granted by the Planning Inspectorate in January 2017.
- 3.10 Members should note that the ability to appeal in this way (under Section 106B) has now been removed in law. This change to S106B had no bearing on this case.

#### **4. CONCLUSION**

- 4.1 This is a vitally important decision. The Council's strategic planning policy as led by the Local Development Plan (LDP) and informed by the supporting evidence base sets achievable and deliverable affordable housing targets. The appeal decision as was made would have significantly undermined this strategy potentially significantly reducing affordable dwellings on strategic sites throughout the District as significant strategic housing growth comes forward. The Council also saw the decision being interpreted as a precedent by other strategic developers to contest affordable housing contributions on their sites.
- 4.2 To retain the integrity of the LDP and the continued drive to provide identified affordable housing on strategic sites is seen as being a valuable component of the Council's Corporate Plan. Providing 30% affordable housing on this site is a key competent of this strategic goal.

## 5. IMPACT ON CORPORATE GOALS

- 5.1 Planning Policy supports the Council's corporate goals which underpin much of the vision for the District, protecting and shaping it for future generations in accordance with the emerging Local Development Plan and the Council's published Corporate Plan. This in turn balances the future needs of the community, meeting the housing need for the District for both market and affordable dwellings and enabling, supporting, empowering the needs of a mixed community to be safe, active and healthy.

## 6. IMPLICATIONS

- (i) **Impact on Customers** – Planning applications for development within the strategic allocated sites will be determined in accordance with adopted planning policies and ensure the delivery of development with much needed affordable dwellings whilst also creating high quality development.
- (ii) **Impact on Equalities** – The provision of affordable housing as a percentage of the overall strategic housing development is a key corporate goal to provide dwelling for those in need and to create social cohesion within the new development sites.
- (iii) **Impact on Risk** – The policies in the LDP, including the threshold for affordable housing, and the specific strategic development areas are a key part of the LDP which is an integral corporate goal. Affordable housing contributions are a significant material consideration in the determination of planning applications. Any applications approved at appeal which move away from policy can be considered a precedent for future like proposals.
- (iv) **Impact on Resources (financial)** – Challenging a decision by Statutory Review involves a cost in terms of legal advice, solicitors costs to serve the documents and act as out agents, and a court fee. With the application being successful the Council are able to ask for these costs to be reimbursed. Therefore in this case the only time which occurred financial costs is officer time in putting the application together and liaising between all parties in the application.
- (v) **Impact on Resources (human)** – Reducing affordable housing contribution on strategic sites significantly reduces the amount of dwellings for those identified as being at most need.
- (vi) **Impact on the Environment** – The provision of affordable housing will create balanced inclusive communities' and sustainable development.

Background Papers: The decision.

Enquiries to: Mark Woodger, Principal Planner (Strategic Sites). (Tel: 01621 875851).