

<b>Planning Committee Report</b>	
<b>Report Title:</b>	<b>S106 Agreement in respect of application reference OUT/2018/3225</b>
<b>Site:</b>	Eastern Green, South of the A45, Coventry. CV5 7LG
<b>Ward:</b>	Bablake (adjacent to Woodlands)
<b>Proposal:</b>	To enter into a s106 Legal Agreement in respect of OUT/2018/3225, granted on 3 <sup>rd</sup> June 2021 for residential led development of up to 2400 dwellings, Including 'extra-care' accommodation; new vehicular access from the A45 and via Pickford Green Lane, with other non-vehicular access points; 15ha of employment land (B1, B2 and B8); a District Centre of approximately 10,000 sq.m. retail space; a Local Centre of approx. 1000 sq.m. local convenience retail plus other community facilities; provision of a Primary School; open spaces, substantial landscaping, green infrastructure and sports provision; earthworks including the provision of new drainage features; and associated demolition and groundworks
<b>Case Officer</b>	Owain Williams (Author Anne Lynch)

### **SUMMARY**

Planning Committee on 26<sup>th</sup> November 2020 in relation to the above proposal resolved:-

- “(1) *That planning permission be granted in respect of Application OUT/2018/3225 subject to the conditions listed in the report and the completion of a S106 legal agreement to secure the contributions listed within Section 23 of the report.*
- (2) *That authority be delegated to the Strategic Lead, Planning and Major Development (following consultation with the Chair of Planning Committee) to agree any amendments to these conditions and any S106 triggers/contributions set out within the report, which are considered necessary.”*

Following completion of the s106 Agreement the decision was issued on 3<sup>rd</sup> June 2021. This decision is now the subject of a Judicial Review Claim made by CPRE Warwickshire. The basis of the Judicial Review Claim centres on two grounds of challenge, one being that in the absence of a specific condition controlling housing mix within the Outline Planning Permission, the Local Planning Authority has “no ability at all to control the mix of housing that comes forward on the Site at Reserved Matters stage and as such, the Development failed to comply with Policy H4 of the Coventry Local Plan”.

The Local Planning Authority has provided its summary response to this ground of challenge and disputes that it has no ability at all to control housing mix as there are other conditions within the Outline Planning Permission which allow for broad control on the type of housing.

Notwithstanding the above, the Local Planning Authority has the opportunity of making this ground of challenge an academic point by entering into a further s106 Agreement with the Landowners and the Developer which will provide a mechanism for the Landowners to bring forward a Housing mix proposal alongside the submission of the Reserved Matters Application for a Sub-Phase of the Development.

This further agreement is in addition to the s106 matters set out within the report to Members on 26<sup>th</sup> November 2020. The purpose of this report is therefore to seek Planning Committee approval to enter into the additional s106 Agreement.

## **BACKGROUND**

Following independent examination by a Government Inspector the site was removed from the Green Belt and allocated for development as a Sustainable Urban Extension (herein after referred to as the SUE) under Policy DS4 (Part D) of the Coventry Local Plan 2017. The specific housing requirements are allocated under Policy H2:2 of the Coventry Local Plan, 2017, and the specific employment land was designated under Policy JE2:5 of the Local Plan, 2017. The site now has Outline Planning Permission for the development described above.

This application site forms part of the overall SUE allocation.

Given the outline nature of the planning application and the long-term timescale for this development the mix of housing to be provided (in terms of tenures and numbers of bedrooms) was not initially fixed through the outline consent. Instead, the detail of housing mix was intended to be considered at Reserved Matters stages.

Since the issue of the outline consent on 3<sup>rd</sup> June 2021, CPRE Warwickshire have issued a claim in the high court seeking a Judicial Review of the Council's decision to grant consent. There are two grounds to the claim; one ground relates to the technical basis of the transport assessment supporting the planning application and the related officer advice to committee – this ground is not relevant to this report or the associated s106 Agreement. The other ground for claim challenges whether the mix of housing can be controlled without a specific condition on the consent – and whether Planning Committee were therefore advised correctly by officers.

The Council has taken extensive legal advice on this matter in order to be able to defend the claim. With the benefit of this advice, Council officers remain of the view that housing mix can legitimately be (and very often is) agreed as a component part of the Reserved Matters submissions. Notwithstanding this position, officers consider it pertinent and sensible to take all reasonable steps to defend the decision made by Planning Committee against the submitted claim for Judicial Review. To this end, the Council have approved a non-material amendment to the outline consent that inserts the following planning condition:

*39. The submission of Reserved Matters applications relating to any residential phase of development pursuant to this outline permission shall include a schedule of the mix of dwellings proposed within that phase, demonstrating how the proposed mix relates to the overall mix of dwellings within the wider site approved under the outline permission. The mix shall take full account the latest evidence of housing needs (whether contained in a housing needs assessment or otherwise) and local market demand.*

Whilst the addition of this condition satisfies one key element of the legal challenge submitted on behalf of CPRE Warwickshire beyond all reasonable doubt, there remains the potential for the Council's decision to approve the non-material amendment to itself be the subject of a legal challenge. To mitigate this risk, legal advisors have also recommended that the Council enter into an additional s106 Agreement that will provide

further safeguards on the agreement of housing mix. It is this proposed s106 Agreement that is the subject of this report.

## **RECOMMENDATION**

Planning Committee are recommended to:

- approve the entering into of a further s106 Agreement with the Landowners which secures a mechanism for the submission of the housing mix for the residential development in respect of this application; and
- delegate authority to the Strategic Lead for Planning (following consultation with the Chair of Planning Committee) to agree any amendments to the s106 Agreement, which are considered necessary.

## **REASON FOR DECISION**

The proposal to enter into a s106 Agreement:-

- is consistent with an allocation in an up to date development plan and is acceptable in principle.
- would not adversely impact upon the issues of highway safety and amenity of neighbours previously considered.
- does not impact the provision for necessary developer contributions already secured through a s106 Agreement.
- Does not conflict with the policies set out within the officer's report in November 2020, namely Policies DS1, DS3, DS4, H1, H2, H3, H4: H6, H9, GB1, GE1, GE3, GE4, DE1 HE2, JE2, JE7, HW1, R1, R3, CO1, AC1, AC2, AC3, AC4, AC5, EM1, EM2, EM3, EM4, EM5, EM6, EM7, IM1 of the Coventry Local Plan 2016 and in particular Policy H4, together with the aims of the NPPF.

## **SITE DESCRIPTION**

The site is located adjacent to the north western edge of the urban areas of Allesley Green and Eastern Green. The site falls within the Bablake ward and is bounded on its southern boundary by the Woodlands Ward. The A45 trunk road forms the site's northern boundary, with Pickford Green Lane and existing homes and associated gardens located along parts of the road containing the site to the west. The southern boundary of the site is formed by properties located on Upper Eastern Green Lane, with the neighbourhood of Eastern Green further south and west.

The Allesley Green area of Coventry is located to the immediate east of the site, with the Windmill Hotel and golf course located to the north-east of the site, between the site boundary and the A45. The golf course site also forms part of the 'Eastern Green' SUE allocation, and will form a separate planning application. The Windmill Hotel itself, does not form part of the SUE allocation.

The application site has an area of approximately 142ha. It is currently largely in agricultural use, but also includes small groups of trees, and numerous hedgerows to field boundaries. The site is largely open, but also includes a small number of agricultural buildings. The north-western corner of the site includes two over-head powerlines which run diagonally from Pickford Green Lane and over the A45.

## **PROPOSAL**

The proposal is to enter into a s106 Agreement to secure the housing mix for the residential elements of this development, the current proposed draft of which is appended to this report. The s106 will require the owner:-

- Not to carry out the Development on a Sub-Phase unless and until the Housing Mix for that Sub-Phase has been approved by the Council;
- Not to carry out the Development on a Sub-Phase other than in accordance with the approved Housing Mix for that Sub-Phase.

The actual housing mix is not being proposed at this stage.

## **PLANNING HISTORY**

There have been a number of historic planning applications on this site; the following is the most recent/relevant:

<b>Application Number</b>	<b>Description of Development</b>	<b>Decision and Date</b>
OUT/2018/3225	Residential led development of up to 2400 dwellings, Including 'extra-care' accommodation; new vehicular access from the A45 and via Pickford Green Lane, with other non-vehicular access points; 15ha of employment land (B1, B2 and B8); a District Centre of approximately 10,000 sq.m. retail space; a Local Centre of approx. 1000 sq.m. local convenience	Approved 3 <sup>rd</sup> June 2021

	retail plus other community facilities; provision of a Primary School; open spaces, substantial landscaping, green infrastructure and sports provision; earthworks including the provision of new drainage features; and associated demolition and groundworks	
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## **POLICY**

### **National Policy Guidance**

National Planning Policy Framework (NPPF). The NPPF published in July 2021 sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system only to the extent that is relevant, proportionate and necessary to do so. The NPPF promotes sustainable development and good design is recognised as a key aspect of this.

The National Planning Practice Guidance (NPPG) 2014, this adds further context to the NPPF and it is intended that the two documents are read together.

### **Local Policy Guidance**

The current local policy is provided within the Coventry Local Plan 2016, which was adopted by Coventry City Council on 6<sup>th</sup> December 2017. Relevant policy relating to this application is:

Policy DS1: Overall Development Needs

Policy DS3: Sustainable Development Policy

Policy DS4: (Parts A and D) – General Masterplan and Eastern Green Principles

Policy H1: Housing Land Requirements

Policy H2: Housing Allocations

Policy H3: Provision of New Housing

Policy H4: Securing a Mix of Housing

Policy H6: Affordable Housing

Policy H9: Residential Density

### **Supplementary Planning Guidance/ Documents (SPG/ SPD):**

SPG Design Guidelines for New Residential Development

SPD Sustainable Urban Extensions

## **CONSULTATION**

There is no statutory consultation.

## **APPRAISAL**

The development already has Outline Planning Permission. The issue to be considered by Planning Committee in this report is the entering into a further s106 Agreement to secure the housing mix.

The Council is required to make decisions in accordance with the statutory development plan unless material considerations indicate otherwise. (Section 38(6) PCPA 2004 and Section 70(2) TCPA 1990). The statutory development plan is the Coventry Local Plan adopted in December 2017. The National Planning Policy Framework (NPPF) is a key material planning consideration.

Policy H4 seeks to secure a mix of housing and states:-

1. The Council will require proposals for residential development to include a mix of market housing which contributes towards a balance of house types and sizes across the city in accordance with the latest Strategic Housing Market Assessment.
2. In assessing the housing mix in residential schemes, the Council may take into account the following circumstances where it may not be appropriate to provide the full range of housing types in accordance with the latest Strategic Housing Market Assessment:
  - physical constraints, such as those associated with small sites of less than 5 houses and conversion schemes, where opportunities for a range of different house types are limited;
  - locational issues, such as highly accessible sites within or close to a designated centre where larger homes and low/ medium densities may not be appropriate;
  - sites with severe development constraints where housing mix may impact on viability;
  - sites where particular house types and/ or building forms may be required in order to sustain or enhance the setting of a heritage asset; and
  - developments in parish or neighbourhood plan areas, where there is an up-to-date local housing needs assessment which provides a more appropriate indication of housing need.”

The development will provide a maximum of 2400 dwellings distributed across the site in a range of development blocks as shown on the Parameters Plan. Residential development is proposed on approximately 69ha (gross). The dwellings will range in type, size and tenure and 25% of the dwellings will be provided as ‘affordable’ properties as required by Policy H6.

The purpose of the s106 is to ensure the housing mix to be brought forward with the subsequent Reserved Matters submissions accord with the legal agreement.

It is considered that this approach would be consistent with Policy H4 and would provide a legal mechanism to secure the housing mix as part of the determination of Reserved Matters details.

In considering the outline application on 26<sup>th</sup> November 2020, the officer report set out details of a s106 agreement that was completed before the decision was issued in June 2021. The agreement referred to in this report is in addition to that agreement and does not affect the obligations and contributions set out within that agreement.

## **Equality implications**

Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states: - (1) A public authority must, in the exercise of its functions, have due regard to the need to: a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application. Furthermore, attention will be paid to the duty as Reserved Matters applications are submitted for the detailed design of buildings and the internal layout of the various development parcels.

## **CONCLUSION**

The Planning System is plan led. The Local Plan is up to date in policy terms being consistent with the NPPF. It was adopted in December 2017 after extensive publicity, consultation and independent scrutiny. The application site is part of a SUE that through the plan making process was removed from the Green Belt and specifically allocated for development and Outline Planning Permission has now been granted for this development.

Entering into a further s106 Agreement to secure the housing mix is considered acceptable and consistent with Policies H4 and IM1 of the Coventry Local Plan 2016 together with the aims of the NPPF and will not have any impact on the matters considered as part of the Outline Planning Permission.

The Outline Permission was subject to an ES which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations. The further legal agreement is not considered to have any impact on the matters considered as part of the ES.