

## Officer Report On Planning Application: 14/03171/DPO

<b>Proposal :</b>	Application to Modify a Section 106 Agreement dated 20 May 2014 relating to housing development (GR: 345972/118927)
<b>Site Address:</b>	Ex Showroom/Garage & Land Rear Of Long Orchard, Water Street, Martock.
<b>Parish:</b>	Martock
<b>MARTOCK Ward (SSDC Members)</b>	Cllr Neil Bloomfield Cllr Graham Middleton
<b>Recommending Case Officer:</b>	Nick Head Tel: (01935) 462167 Email: nick.head@southsomerset.gov.uk
<b>Target date :</b>	29th August 2014
<b>Applicant :</b>	Westco Properties Ltd
<b>Agent: (no agent if blank)</b>	Clarke Willmott LLP, Blackbrook Gate, Blackbrook Park Avenue, Taunton, Somerset TA1 2PG
<b>Application Type :</b>	Non PS1 and PS2 return applications

### Update

This application was considered by Area North Committee at their meeting in March 2015 when it was resolved to agree a variation to the S106 agreement in relation to the erection of 35 houses and a youth centre and pavilion (12/04897/OUT) that would allow for the lowering of the affordable housing contribution from 12 to 10 houses. This reflected the then viability and the request for a larger family unit of affordable housing.

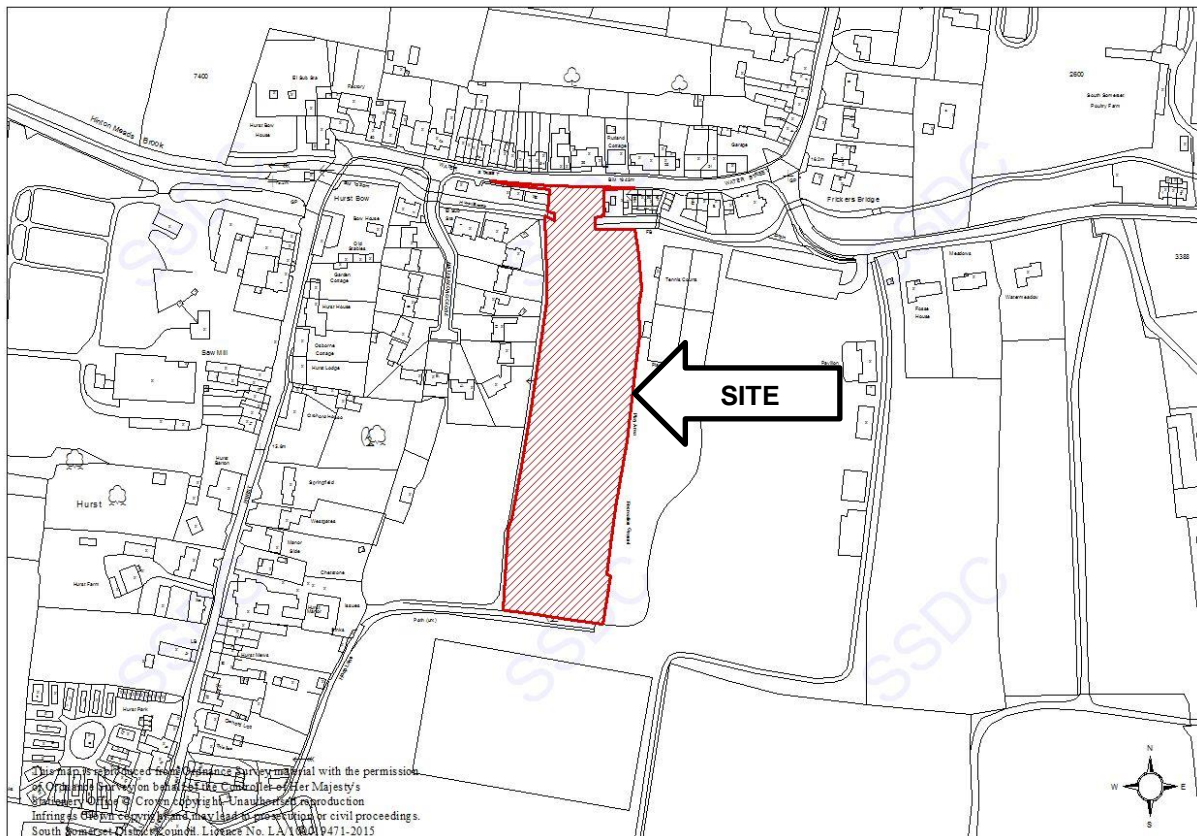
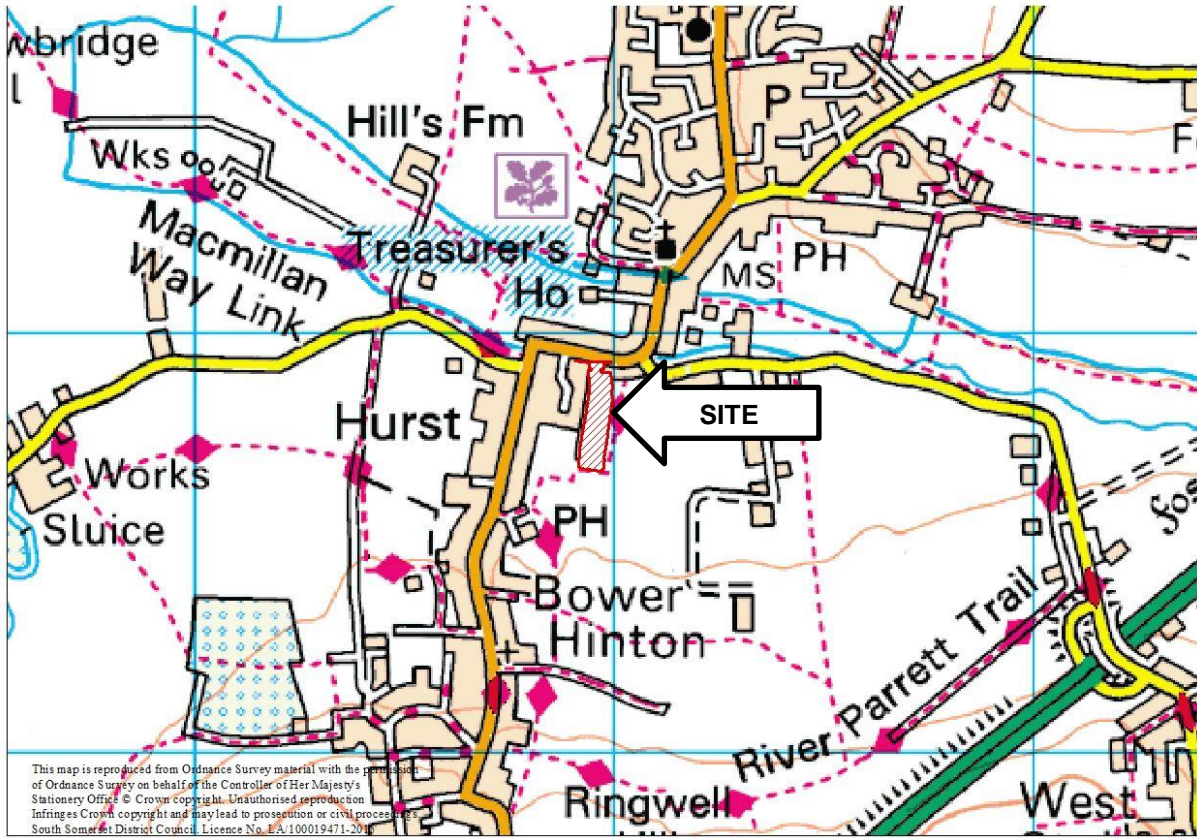
Since then, although the varying agreement was not signed, the development has commenced with most dwellings started. Unfortunately the contractor went into liquidation and the development has been put on hold pending re-tendering. Along with money paid to the contractor (and is not recoverable), costs have increased and the affordable housing provider has lowered the offer for the affordable housing. Accordingly the developer has asked the District Council to reconsider the viability of the scheme; initially it was contended that the development cannot provide any affordable housing, although the leisure obligations remain viable.

Following discussions with the applicant and the District Valuer (DV), the applicants have agreed to provide 4 two- bed shared equity units and the DV has been asked to revisit the case. The previous officer report has been updated and is presented as follows.

### Reason for Referral

The application is before the committee as it relates to a proposal to reduce planning obligations that were originally agreed by the Committee.

# SITE DESCRIPTION AND PROPOSAL



This proposal relates to a site where permission has been granted for the erection of 35 dwellings and a youth centre/pavilion with associated parking and site access arrangements, subject to a S106 agreement to deliver appropriate planning obligations. The site was a flat area of agricultural land and a former car show room separated by a stream. Most of the land was formerly used as a poultry farm.

It is proposed to vary the terms of the s106 agreement to reduce the affordable housing provision to 4 intermediate units; all other obligations would remain. The insertion of a mortgagee in possession (MIP) clause is also requested.

The developer justifies these amendments on the basis of commercial viability and has provided a detailed breakdown of the scheme's finances. This has been considered by the District Valuer.

## RELEVANT HISTORY

- 25/03/15 Area North Committee resolved to vary S106 agreement attached to 12/04897/OUT to:-
- Reduce the affordable housing from 12 to 10 units
  - To vary the tenure of the affordable units from 67% rented / 33% intermediate to a 60/40 split.
  - The insertion of a Mortgagee in possession (MIP) clause.
- 12/04897/OUT Permission granted (21/05/14) for a mixed use development comprising 35 dwellings and site access arrangements (full details) and a youth centre and pavilion with associated parking (outline details, access, layout and scale). This permission as subject to a section 106 agreement that:-
- Ensured the provision of 12 affordable homes in perpetuity.
  - Secured a contribution towards off-site open space provision in lieu of on-site POS,
  - Secured a contribution towards strategic and local outdoor playing space, sport and recreation facilities (£4,746.82 per dwelling).
  - Ensured that the land necessary to enable the development of the pavilion and the proposed car park is ceded to the parish council, and a pedestrian and vehicular access to the site from Water Street is fully constructed prior to the occupation of any of the approved dwellings.
  - That a travel plan is agreed with Somerset County Council.

## POLICY

Section 38(6) of the Planning and Compulsory Purchase Act (2004), and Paragraphs 2, 11, 12, and 14 of the NPPF states that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

For the purposes of determining current applications the local planning authority considers that the adopted development plan comprises the policies of the South Somerset Local Plan 2006 2028 (adopted March 2015).

The policies of most relevance to the proposal are:

**Policies of the South Somerset Local Plan (2006-2028)**

HG3 – Provision of Affordable Housing

SS6 – Infrastructure Delivery

**National Planning Policy Framework**

Chapter 6 - Delivering a Wide Choice of High Quality Homes

**CONSULTATIONS**

**Martock Parish Council** – primary concern is to see this site built out to a good quality as soon as possible. However the PC are concerned that the applicant is seeking to re-invest any profit in its own affordable housing programme, presumably in Devon and Cornwall, rather than investing in provision in Somerset. The Parish request that SSDC ensure that an equitable balance is struck.

**SSDC Housing Officer** –

**District Valuer** – suggests that:-

- Fully open market housing accepting the c£1m insolvency cost as an abnormal - £547,865 or £176,162 per acre = unviable against adopted benchmark land value
- Fully open market housing NOT accepting the c£1m insolvency cost as an abnormal - £1,596,142 or £513,229 per acre = viable against adopted benchmark land value, and suggests that some AH may be able to be provided.
- Revised 10 AH unit Yarlinton offer accepting the c£1m insolvency cost as an abnormal - negative land value of - £171,594 or - £55,175 per acre = unviable
- Revised 10 AH unit Yarlinton offer NOT accepting the c£1m insolvency cost as an abnormal - £876,683 or £281,892 per acre = just unviable against adopted benchmark land value

However a final appraisal suggests that on a fully open market basis if accepting the £1m abnormal costs the scheme would be viable if the developer accepted a profit return of some 12.22% - which is above the figure DCH state they seek and would suggest that development could recommence on this basis.

**REPRESENTATIONS**

One letter has been received to the original proposal objecting to the youth/community centre and raising concerns about traffic and flooding

**CONSIDERATIONS**

The sole issue is whether or not it would be reasonable to insist on maintaining the previously agreed level of planning obligations in light of the case the applicant now makes and the advice offered by the District Valuer (DV).

Whilst the original agreement covered a range of obligations the applicant has sought to vary only the affordable housing component. Whilst the proposed reduction from 12 to 4 affordable units is regrettable, government advice in this respect is clear – the delivery of development on

sites with planning permission for should not be held up by an insistence of planning obligations that jeopardise the viability of this proposal.

In this case the developer has provided a detailed financial appraisal of the site that is accepted by the DV. This includes a profit of 12.22%, whereas the DV suggests that it would normally be reasonable to factor in a profit of 17.5 - 20%. In this case the applicant has indicated that they would be prepared to accept a return of 10.4%.

It is stated that the collapse of the original contract has costed the applicant c. £1M in additional costs and that these costs are non-recoverable. Such costs are attributed to increase on building costs plus the need to ensure that work carried out by the original contractor is of a sufficient quality and has not degraded as a result of standing incomplete for a considerable period.

It is considered that the full recovery of this cost at the expense of affordable housing is not fully justified given that 'contractor insolvency' is a normal risk and can be insured against. Nevertheless in this case it seems that the applicant for whatever reason was not fully covered, and, without apportioning blame, the end result is a stalled site that will not be completed unless a way forward is found. To avoid blighting the locality, a fear expressed by the Parish Council, officers have sought to achieve appropriate balanced solution that will ensure the site is completed, with reasonable planning obligations being balanced against the need to incentivise the developer.

The 'offer' of 4 shared ownership homes plus the previously agreed leisure contributions is considered to be a reasonable offer given the DV's advice. The addition of a MIP at the request of the affordable housing provider clause does not give rise to any planning concerns.

### **Other Matters**

Whilst a local resident remains concerned about the impacts of the development, planning permission has been granted for the scheme and it is not considered that the proposed variation of the planning obligation would in any way change the impacts of the proposal.

### **Conclusion**

It is regrettable that the original, policy compliant planning obligations cannot now be delivered without adversely affecting the commercial viability of the scheme. Government advice and policy HG3 are clear that it is unreasonable to resist a reduction in affordable housing provision where that has been justified by an open book submission in accordance with policy SS6.

### **RECOMMENDATION**

That the Section 106 agreement be amended to:-

- reduce the affordable housing contribution to 4 intermediate affordable units
- insert a mortgagee in possession clause
- retain all other previously agreed obligations.

### **Justification:**

The revisions to the affordable housing provision, for which a financial justification has been made, would not unacceptably undermine the benefits to the community of this development. As such the scheme is considered to comply with the policies of the local plan and the aims and objectives of the NPPF.