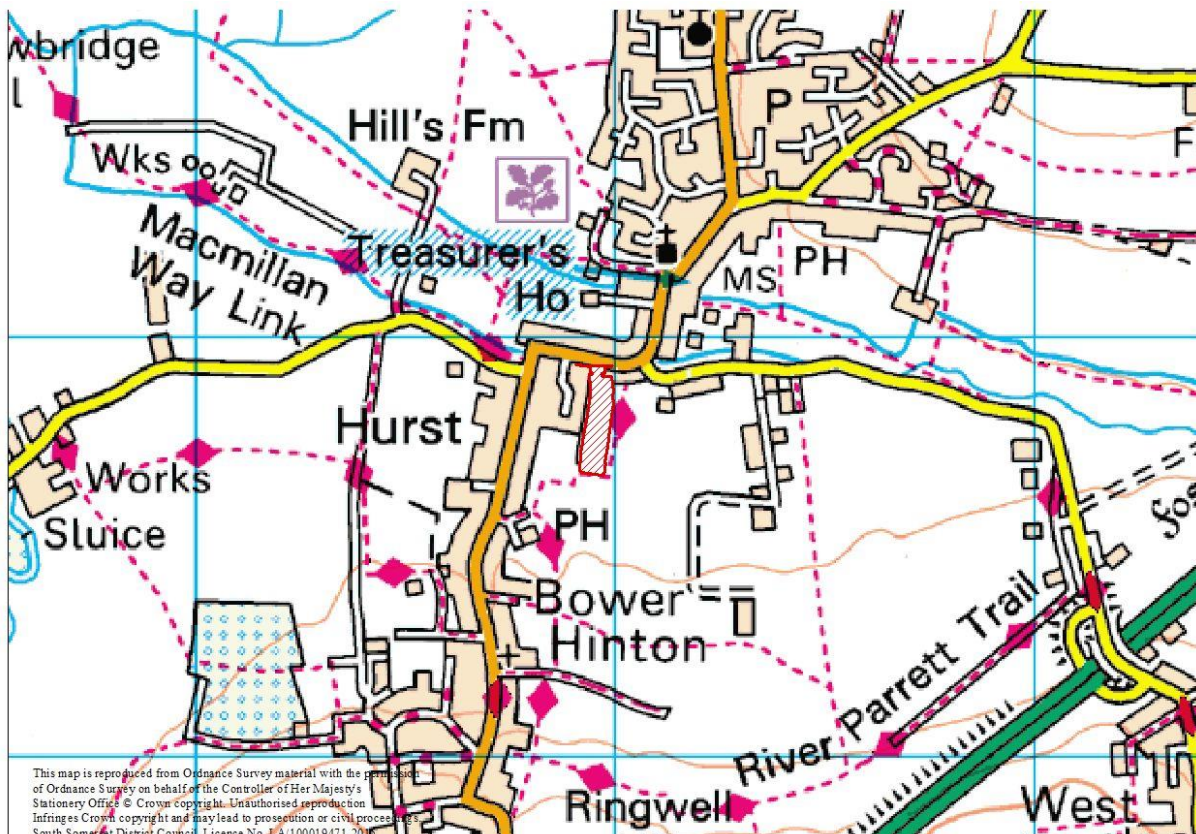


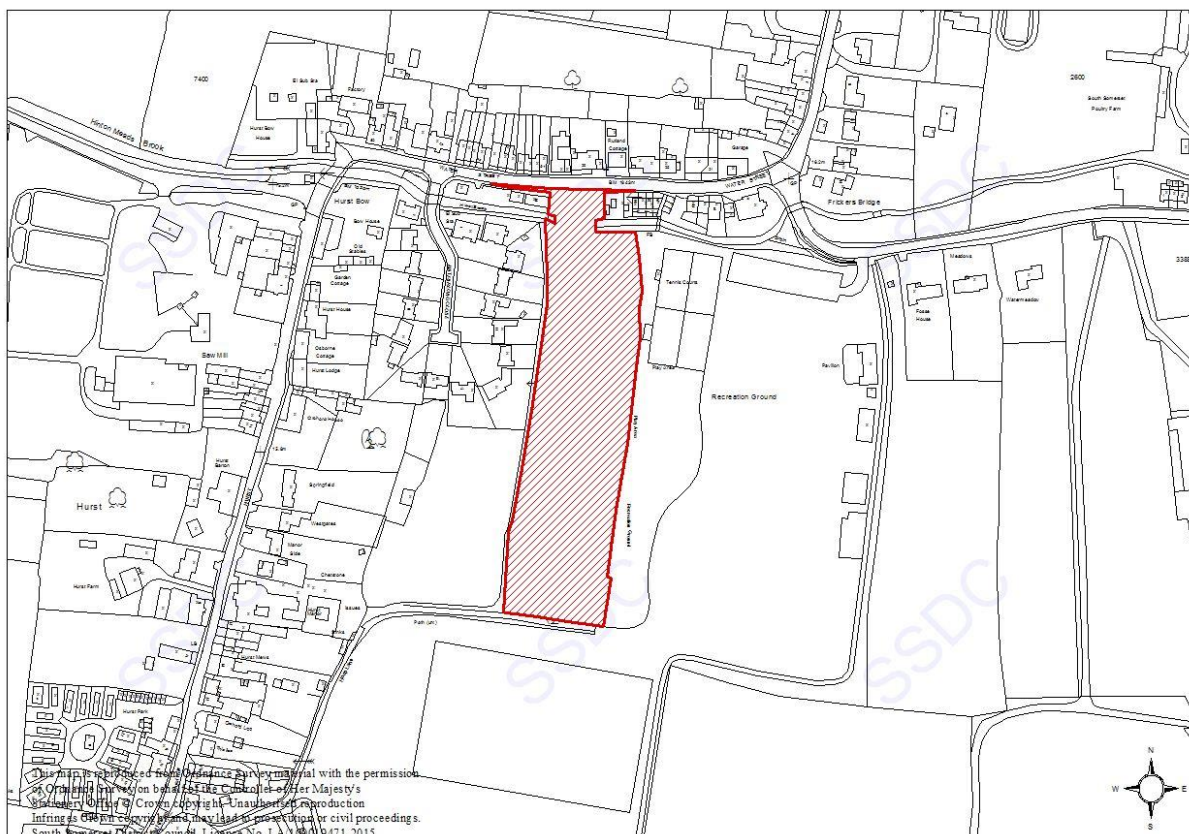
Officer Report On Planning Application: 16/00563/106BA

Proposal :	Application to Modify a Section 106 Agreement dated 20th May 2014 to discharge the affordable housing requirements (GR 345972/118927)
Site Address:	Site Of Showroom And Garages, Water Street, Martock.
Parish:	Martock
MARTOCK Ward (SSDC Members)	Cllr Neil Bloomfield Cllr Graham Middleton
Recommending Case Officer:	Nicholas Head Tel: (01935) 462167 Email: nick.head@southsomerset.gov.uk
Target date :	26th February 2016
Applicant :	Westco Properties Ltd
Agent: (no agent if blank)	Clarke Willmott & Clarke, Blackbrook Gate, Blackbrook Park Avenue, Taunton TA1 2PG
Application Type :	Non PS1 and PS2 return applications

BACKGROUND

At its meeting of 27 January, the Committee considered an application for the amendment of a S106 Agreement, dated 20 May 2014, related to this site. The amendment sought was the removal of the affordable housing contribution. The officer recommendation was that the affordable housing component be reduced to four dwellings. At the meeting, the application was approved subject to the addition of an uplift clause to require a final viability review upon completion of the last house. A proportion of any profits above 12.22% to be recovered as a contribution toward the provision of affordable housing in Martock. The detail of uplift clause to be agreed with ward members in drawing up the final agreement.





Further Application

The applicant has now submitted a further application under the formal procedure laid down under Section 106BA of the Town and Country Planning Act. This application is required to be determined within 28 days, and offers the right of appeal to the applicant in the event of a refusal. The applicant now seeks the full discharge of the affordable housing requirement (i.e. a reduction to zero).

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 remove all affordable housing contributions; all other obligations would remain.

The developer justifies these amendments on the basis of commercial viability and a detailed breakdown of the scheme's finances, which was considered by the District Valuer, and reported to Committee in January.

RELEVANT HISTORY

14/03171/DPO Application to modify a Section 106 Agreement dated 20 May 2014 relating to housing development – approved, subject to conditions.

- 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

Government Advice

Section 106 Affordable Housing Requirements, Department for Communities and Local Government, April 2013

CONSULTATIONS

Martock Parish Council – No comment received at the time of writing. Verbal update at Committee.

SSDC Housing Officer (verbal) – Not supportive of the proposal.

District Valuer (from project assessment previously considered) – 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

None received at the time of writing – any representations to be reported to Committee.

APPLICANT'S CASE

The applicant justifies the application making the following main points:

- the National Planning Practice Guidance requires that all development costs are taken into account in assessing viability.
- The costs associated with the insolvency of the previous site contractor should be taken into account amongst such costs, and these costs then result in making the project unviable.
- The District Valuer has expressed the view that a normally expected developer's profit would be 17.5% of GDV; various appeal decisions indicate a range in this percentage between 18% and 20% (three appeal decisions are quoted).
- Deliverability is a key aspect of national planning policy; SSDC cannot demonstrate an adequate 5-year land supply, and therefore all steps should be taken to facilitate development that is viable and deliverable.
- Development has commenced on site, and is summarised as follows:
 - construction not started on 5 plots
 - 12 plots constructed to joist level
 - 2 plots have roofs under construction
 - 4 plots constructed above joist level
 - 9 plots at floor slab level
 - 3 plots at foundation level
- New contractors have been approached but not formally appointed; in the event that they are not imminently instructed, their most recent price estimate is likely to rise, which will further affect viability.

CONSIDERATIONS

Main Issue

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.

The developer has provided a detailed financial appraisal of the site that is accepted by the DV. This appraisal was discussed by the Committee in January in reaching the decision on the previous application. 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 of the recent application (as reported in the case 14/03171/DPO) the applicant indicated that they would be prepared to accept a return of 10.4%.

It is stated that the collapse of the original contract has cost 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 justified given that 'contractor insolvency' is a normal risk and can be insured against.

Conclusion

It is not considered that the c£1m cost incurred by the applicant as a result of the bankruptcy of the developer is a reasonably attributable cost in assessing viability. As negotiated previously (14/03171/DPO) a scheme providing some affordable housing is considered viable, albeit at a lower profit than is generally accepted across the industry. Notwithstanding the open book submission assessed by the DV, it is not considered that a total removal of the affordable housing contribution is justified, taking into consideration Government advice and Policy HG3 of the Local Plan.

RECOMMENDATION

That the request to amend the Section 106 agreement by the deletion of the First Schedule and all references to affordable housing be refused.

Justification:

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