



PLANNING COMMITTEE: 29th September 2020
DEPARTMENT: Planning Service
DIRECTOR OF PLANNING: Peter Baguley

APPLICATION REF: N/2020/0790

LOCATION: Land south of Rowtree Road and west of Windingbrook Lane

DESCRIPTION: Request for variations to S106 agreement dated 22 December 2015, to amend mortgagee exclusion clause and removal of obligations relating to highways and secondary education, that are now covered by the Community Infrastructure Levy

WARD: East Hunsbury

APPLICANT: Clarion Housing Group
AGENT: N/A

REFERRED BY: Director of Planning and Sustainability
REASON: Major application with S106 agreement

DEPARTURE: No

APPLICATION FOR DETERMINATION:

1 RECOMMENDATION

- 1.1 That the Committee **AGREE** to vary the Section 106 Agreement dated 12 December 2015, to allow the amendment of the mortgagee exclusion clause and relevant definitions in the Agreement and to remove the obligations to make financial contributions to the Northampton Growth Management Scheme and Secondary School Transport as set out in the report.
- 1.2 That the Borough Secretary and Monitoring Officer in consultation with the Director of Planning and Sustainability be given delegated authority to agree the amended wording of the mortgagee exclusion clause and relevant definitions and to remove the obligations to make financial contributions to the Northampton Growth Management Scheme and Secondary School Transport together with any consequential amendments as are considered necessary.

2 THE PROPOSAL

- 2.1 The application requests variations to the S106 agreement dated 22 December 2015 (relating to the development of land at Northampton South Sustainable Urban Extension) to amend the mortgagee exclusion clause and to remove obligations relating to highways and secondary education, which are now covered by the Community Infrastructure Levy.

3 SITE DESCRIPTION

- 3.1 The application site is located to the southern edge of Northampton Borough and comprises approximately 96 hectares of land including parts of Collingtree Golf Course as well as agricultural land. It is allocated as the Northampton South Sustainable Urban Extension (SUE) under Policy N5 of the Joint Core Strategy for 1,000 dwellings, together with provisions for other facilities including a primary school, local centre, green space and flood risk management. The SUE site will have vehicular accesses taken from Rowtree Road and Windingbrook Lane and benefits from an outline planning permission granted at appeal under reference N/2013/1035. The first phase of the SUE for 349 dwellings accessed off Windingbrook Lane benefits from reserved matters permission under reference N/2017/1566 and works have recently commenced on site.

4 PLANNING HISTORY

- 4.1 N/2013/1035: Outline Application for the Northampton South Sustainable Urban Extension to comprise up to 1000 dwellings, a mixed use local centre, a site for a primary school, green infrastructure including formal and informal open space, reconfiguration and extension of Collingtree Park Golf Course, demolition of all existing buildings and structures within the site, new vehicular accesses off Windingbrook Lane and Rowtree Road, car parking, sustainable drainage systems (including flood risk betterment) and infrastructure (including highway improvements) all matters reserved accept access (the application was accompanied by an Environmental Statement). Refused permission; appeal allowed.
- 4.2 N/2017/1566: Reserved Matters application pursuant to planning permission N/2013/1035 (Sustainable Urban Extension to comprise up to 1,000 dwellings) for the approval of Phase 1 development comprising 349 dwellings served by a new access from Windingbrook Lane, re-configuration of part of the Golf Course including new temporary hole 17, children's play area, drainage attenuation and demolition of all existing buildings and structures within the site. Approved.
- 4.3 N/2020/0362: Variation of Conditions 1 and 15 of Planning Permission N/2017/1566 (Reserved Matters application pursuant to planning permission N/2013/1035 to revise house types and make minor layout changes. Pending consideration at time of drafting report.

5 PLANNING POLICY

5.1 Statutory Duty

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise. The Development Plan for the purposes of this application comprises the adopted West Northamptonshire Joint Core Strategy (2014) and Northampton Local Plan (1997) saved policies.

5.2 National Policies

The **National Planning Policy Framework (NPPF)** sets out the current aims and objectives for the planning system and how these should be applied. In delivering sustainable development, decisions should have regard to the mutually dependent social, economic and environmental roles of the planning system. The NPPF should be read as one complete document. However, the following sections are of particular relevance to this application:

Paragraphs 7-12 - Presumption in favour of sustainable development.

Section 4 - Decision making

Section 5 - Housing Supply

Section 8 - Promoting healthy and safe communities

Section 9 - Promoting sustainable transport

Section 11 - Making effective use of land

Section 12 - Achieving well designed places

Section 14 - Meeting the challenge of climate change and flooding
Section 15 - Conserving and enhancing the natural environment
Section 16 - Conserving and enhancing the historic environment

5.3 **West Northamptonshire Joint Core Strategy (2014)**

The West Northamptonshire Joint Core Strategy (JCS) provides an up to date evidence base and considers the current Government requirements for plan making as it has been prepared in full conformity with the NPPF. Policies of particular relevance are:

Policy S1 - The Distribution of Development
Policy S3 - Scale and Distribution of Housing Development
Policy S5 - Sustainable Urban Extensions
Policy S10 - Sustainable Development Principles
Policy N5 - Northampton South Sustainable Urban Extension
Policy H1 - Housing Density and Mix and Type of Dwellings
Policy H2 - Affordable housing
Policy RC2 - Community Needs
Policy C1 - Changing Behaviour and Achieving Modal Shift
Policy C2 - New Developments
Policy BN1 - Green Infrastructure Connections
Policy BN2 - Biodiversity
Policy BN3 - Woodland Enhancement and Creation
Policy BN5 - The Historic Environment and Landscape
Policy BN7A - Water Supply, Quality and Wastewater Infrastructure
Policy BN7 - Flood Risk
Policy BN9 - Planning for Pollution Control
Policy INF2 - Contributions to infrastructure requirements

5.4 **Northampton Local Plan 1997 (Saved Policies)**

Due to the age of the plan, the amount of weight that can be attributed to the aims and objectives of this document are diminished, however, the following policies are material to this application:

Policy E9 – Locally Important Landscape Areas
Policy E20 – New Development (design)
Policy E26 – Conservation Areas
Policy H14 – Residential Development, Open Space and Children’s Play Facilities

5.5 **Other Material Considerations / Supplementary Planning Documents**

NBC CIL Charging Schedule 2015
NBC CIL Regulation 123 List 2016
Planning Obligations Strategy SPD 2013
Affordable Housing Interim Statement 2013

6 **CONSULTATIONS / REPRESENTATIONS**

6.1 None.

7 **APPRAISAL**

7.1 On the 22 December 2015, a S106 agreement was entered into in connection with an appeal against the refusal of outline application N/2013/1035 for up to 1000 dwellings together with provisions for other facilities at land relating to the Northampton South Sustainable Urban Extension. The appeal was determined by the Secretary of State in August 2016, following a public inquiry, and the outline application was allowed. The completed S106 agreement includes various obligations and the current application seeks to amend the mortgage exclusion clause relating to the affordable housing obligation and also remove the obligations to make financial

contributions to the Northampton Growth Management Scheme and Secondary School Transport which are now covered by the Community Infrastructure Levy (CIL).

Mortgagee Exclusion Clause

- 7.2 Mortgagee in possession clauses (also known as mortgagee exclusion clauses or mortgagee protection clauses) are standard in S106 Agreements which provide for the provision of affordable housing. These clauses provide for circumstances where a Registered Provider defaults on loan payments and the mortgagee takes control of the Registered Provider's interest in the affordable housing units as assets against which their loan is secured.
- 7.3 Such clauses allow for another Registered Provider or the Council to purchase the affordable housing units within a specified timeframe under a prescribed procedure. Where the affordable housing units are not purchased within this period, they are released from affordable housing tenure, enabling the mortgagee to dispose of the units to regain some or all of the loan that they have provided.
- 7.4 The wording of a mortgagee in possession clause affects the level of funding that a Registered Provider is able to secure against the affordable housing units to fund the provision of additional affordable housing as part of their delivery programme.
- 7.5 Where a mortgagee in possession clause does not provide sufficient protection for the funder and they would be bound by the affordable housing restrictions in the Section 106 Agreement, the funding value would be limited to Existing Use Value for Social Housing. The best possible funding value is Market Value Subject to Tenancies, where the funder would be able to sell on the open market, to either a Registered Provider or a non-regulated purchaser; and neither the lender nor successors in title would be bound by the affordable housing restrictions in the Section 106 Agreement.
- 7.6 In this instance, the wording of some of the relevant definitions and the mortgagee in possession clause in the S106 Agreement are such that the value of the affordable housing units is limited to Existing Use Value – Social Housing. Accordingly, it is proposed that these are amended to enable the property to be charged at Market Value Subject to Tenancies. This will enable a Registered Provider to obtain maximum value and reinvest in further affordable housing schemes.
- 7.7 In effect, to amend the mortgagee clause would allow the Registered Provider to obtain higher value funding from their funders, which in turn would allow them to fund further developments and deliver more affordable housing units elsewhere, but it would not affect the level of provision of the affordable units for this development in any event.

Northampton Growth Management Scheme and Secondary School Transport Obligations

- 7.8 The S106 Agreement the subject of the application includes obligations to make financial contributions to the Northampton Growth Management Scheme, specifically relating to works to the trunk road network at M1 Junction 15 and the A45 Wootton Interchange (Clauses 1.1-1.3 of the Second Schedule), and to the cost of Secondary School Transport (Clause 3.1 of the Second Schedule), to mitigate the impacts arising from the development.
- 7.9 However, Clause 19 (Community Infrastructure Levy) of the S106 Agreement details that, if after the date of the Agreement but prior to the planning permission being issued by the Secretary of State the Community Infrastructure Levy (CIL) is applicable, then all parties shall use reasonable endeavours to agree amendments to the Agreement with the intent that the owner is not adversely prejudiced by the introduction of CIL or required to contribute more than once for any item of infrastructure. As detailed above, the S106 Agreement was completed on the 22 December 2015 and the Appeal Decision Notice was issued by the Secretary of State on 9 August 2016.
- 7.10 The Council adopted CIL on 21 September 2015 and it came into effect on the 1 April 2016 such that all residential developments granted after this date are required to pay the levy to contribute to

infrastructure on the Council's list of CIL infrastructure types/projects (the CIL Regulations 123 List). Furthermore, the Council's CIL infrastructure list includes 4 infrastructure types/projects, which include the Northampton Growth Management Strategy and education (excluding primary schools). As such, CIL came into effect prior to the Appeal Decision Notice on the site being issued and its introduction would result in the developer being required to make financial contributions towards the NGMS and secondary education under both the S106 Agreement and CIL. Therefore, the provisions under Clause 19 of the S106 are enacted, which detail that the owner should not contribute more once for an item of infrastructure, and it is recommended that the NGMS and secondary education obligations are removed from the S106 Agreement.

8 CONCLUSION

- 8.1 The proposed amendment to the mortgage exclusion clause is in line with recent practices and allows a Registered Provider to seek funding which will enable investment in further developments and is considered to be an acceptable request.
- 8.2 The completed S106 agreement and CIL both include requirements for financial contributions towards the NGMS and secondary transport. However, the completed S106 agreement also includes a clause detailing that the owner should not contribute more than once for an item of infrastructure following the introduction of CIL. Therefore, the removal of the requirement in the S106 agreement to contribute towards these two forms of infrastructure is considered an acceptable request.

9 BACKGROUND PAPERS

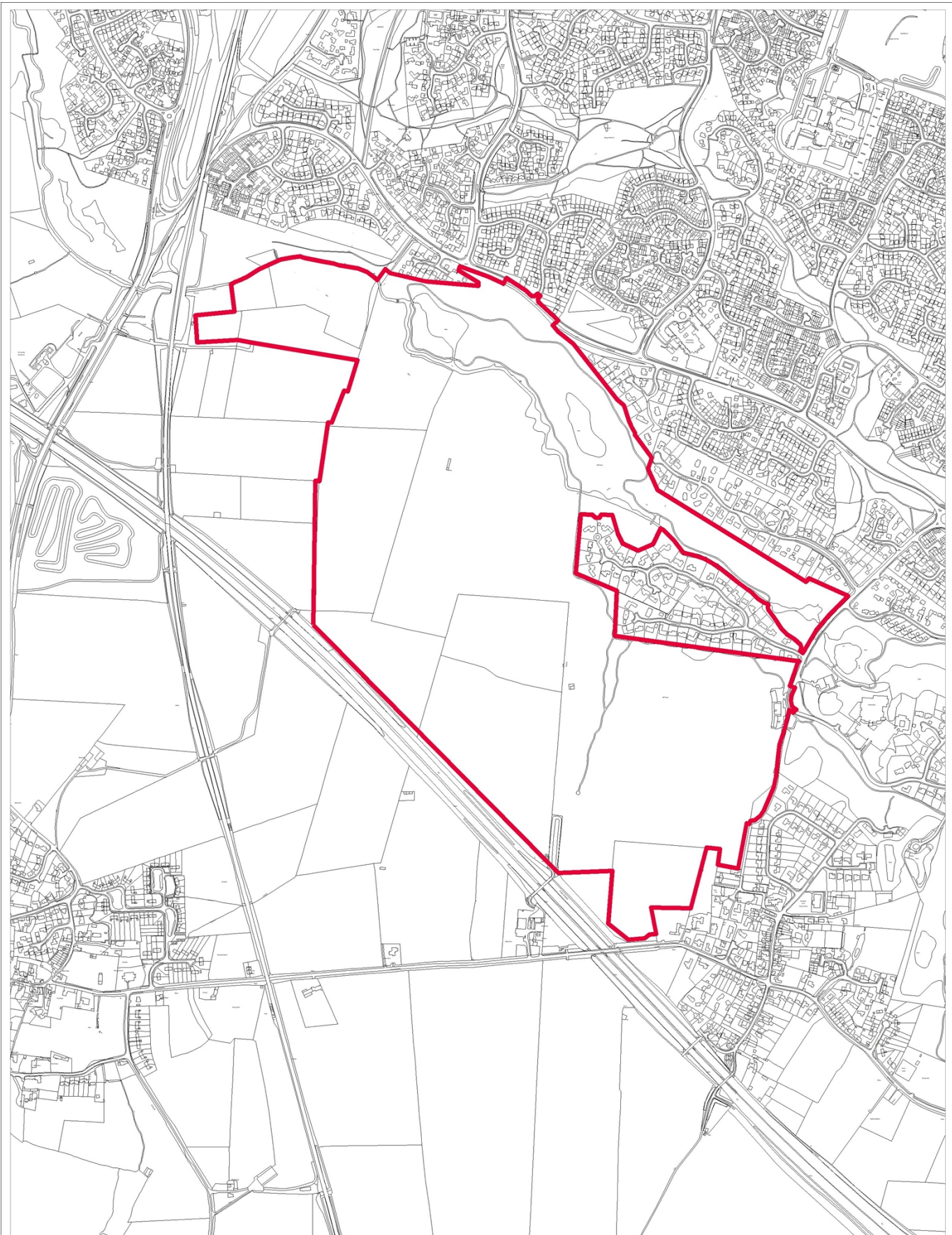
- 9.1 N/2013/1035.

10 LEGAL IMPLICATIONS

- 10.1 The Social Housing Regulator monitors the financial viability of Registered Providers and can intervene in the management of a Registered Provider in financial difficulty. There are few examples of Registered Providers falling into financial difficulties and where this has been the case Registered Providers have to date been taken over by another Registered Provider. There are no known cases of mortgagee in possession clauses being triggered in relation to assets owned by Registered Providers.
- 10.2 Taking these issues into account it is considered that any risk associated with a Registered Provider defaulting on a loan and the affordable housing units not being secured by the Council or another Registered Provider is limited and is outweighed by the factors referred to above.

11 SUMMARY AND LINKS TO CORPORATE PLAN

- 11.1 In reaching the attached recommendations regard has been given to securing the objectives, visions and priorities outlined in the Corporate Plan together with those of associated Frameworks and Strategies.



Name: **Location plan**
Date: **8th January 2015**
Scale: **1:10,000**
Dept: **Planning**
Project: **Planning Committee**

Title

Npton South SUE, Rowtree Rd & West of Windingbrook Ln

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