

DELEGATED OFFICER REPORT

Application Ref: X/24/97108

Site Address: 1-6 Winchester Close & 10-13 Wykeham Close, Netley Abbey, Southampton, SO31 5ES,

Case Officer: Gary Osmond

Description: Variation of Conditions 19 & 31 of Planning Permission F/10/68325 for the 'Construction of 10 no. two bed bungalows with new access, car parking and cycle stores and reinforced earth bank, following demolition of 10 no. existing bungalows and felling of trees.'

Particular Site Constraints?	Yes ☐	No ☒
- Within the urban edge		

Planning History?	Yes ☒	No ☐
F/10/68325	Construction of 10 no. two bed bungalows with new access, car parking and cycle stores and reinforced earth bank, following demolition of 10 no. existing bungalows and felling of trees.	Approved July 2011

Publicity:	Letters ☒	Site Notice ☒	Newspaper ☐
Representations:	One representation received querying the potential loss of affordable housing for the elderly should the application be approved.		
Parish Council:	Objection – Con.21, age should not be a consideration should a resident have disabilities. Con.19, would refer to EBC Legal Dept's view.		
Housing:	No objection to variation of Con.19 provided it follows the wording currently used in S106 agreements. However, object to revisions to Con.31 as it would result in the current age restriction being removed which is not supported.		
Legal:	Amendments suggested to wording of Cond.19 to reflect current S106 requirements/wording.		
Asset Management:	Did not wish to provide a comment.		

Site Visit:	Yes ☐	No ☒
The nature of the application is such that a site visit is not considered necessary.		

Policy:
National Planning Policy Framework Planning Practice Guidance Development Plan: The <u>Eastleigh Borough Local Plan 2016-2036</u> The most relevant policies are Strategic policies S1 and S2; and Development Management policies DM1, DM11, DM14, DM25 and DM28. Supplementary Planning Documents: Quality Places; Residential Parking Standards; Character Area Appraisals; Affordable Housing; Accommodation for Older People and Those in Need of Care

Assessment:**Proposal:**

The application seeks consent to vary the wording of Conditions 19 and 31 of F/10/68325, which was for the construction of ten bungalows to be used as affordable housing. No physical changes would result from that proposed.

Condition 19 required the development to be used as affordable housing for the lifetime of the development unless a number of specific requirements are met. Condition 31 restricts the occupation of Plots 1 to 6 to those 55 years of age or older.

The applicant is seeking to vary the wording of these conditions to update the clauses of Condition 19 to better reflect current mortgagee requirements and remove the need for occupiers of Plots 1 to 6 to be 55 years of age or older should the dwellings be sold off to another affordable housing provider or private individual.

Site Context & Planning History:

Nos.1-6 Winchester Close and Nos.10-13 Wykeham Close is a modern development of ten bungalows which were built to replace ten older bungalows which were no longer considered fit for purpose. The site is in a well-established residential area and surrounded by other former local authority housing.

Reviewing the planning history relating to the original planning permission shows that there was a need for the new dwellings to be secured as affordable units, including a number of older persons units. Such requirements would usually be secured through the use of a S106 agreement rather than via conditions of a planning approval. However, in this instance, as the number of proposed new dwellings was identical to those to be replaced, there was no net increase in the number of dwellings, meaning that it was not possible to secure planning obligations or affordable housing units through the usual S106 process, which is only intended to come into effect to mitigate any additional impact resulting from the development. In order to ensure that the new dwellings remained as affordable units, including the over 55's housing, conditions were applied to the planning permission instead.

Policy & Principle:

The usual principle of development does not apply in this instance as the development already exists. The matters to be considered therefore are how that proposed alters the original planning permission and whether it would accord with current planning policy.

Given that the existing development would not be physically altered as a result of that proposed being approved, the usual issues of amenity, etc do not come into play. However, that proposed may impact affordable housing provision and older persons housing, meaning that Policies DM25 (Delivering older persons housing) and DM28 (Delivering affordable housing) of the adopted Local Plan will be relevant.

Policy DM25 states that "New development should seek to respond to the requirements of an ageing population by increasing the supply of specialist housing and accessible housing in accordance with policy DM29" and that "The Council will support the provision of accommodation suitable for the needs of older people" provided: it is located in a sustainable location with good access to public transport; close to facilities that residents can use; and that it is well integrated into the local community.

Policy DM28 relates the delivery of new affordable housing and sets out when it must be provided, what percentages, tenure splits and where it should be situated within a development. It also sets out that "an element of specialist residential accommodation and facilities for older people within the affordable housing requirement may be appropriate depending on the proposal."

Assessment:

Condition 19.

The original wording of Condition 19 is:

“(19) The development shall constitute affordable housing in its entirety in perpetuity, with the exception of the following events with respect to that specific plot(s):

- (a) if the affordable housing unit is transferred to the tenant thereof under the Right to Buy provisions of the Housing Act 1985 or the Right to Acquire provisions of the Housing Act 1996 (or any subsequent legislation amending or replacing the same);*
- (b) if in respect of any affordable housing unit held under a shared ownership lease the tenant has staircased to a 100% share in the unit;*
- (c) if any mortgagee or chargee of the affordable housing unit has exercised a power of sale;*
- (d) if the affordable housing unit is purchased under a shared equity scheme with a Registered Provider and the unit is then sold by its original purchasers.*

Reason: to maintain the stock of affordable housing.”

The applicant has suggested that the wording of part (c) be revised as follows:

“(c) exercise of a power of sale in respect of any affordable housing unit by a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) or any persons or bodies deriving title through such mortgagee or chargee or Receiver”

In principle the proposed wording suggested by the applicant is not unacceptable. However, that suggested does not include an obligation for the lender to try and sell to an alternative affordable housing provider for a 3 month period prior to being free of the restriction. As such, the LPA have suggested that this be include in addition to the suggested wording of the applicant, to ensure that any revised condition wording is fully aligned with that usually required by current S106 agreements on affordable housing. This will ensure that the units remain as affordable units. The LPA suggested wording is as follows:

(c) exercise of a power of sale in respect of any affordable housing unit by a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- (i) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the affordable housing unit and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the affordable housing unit to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses, and*
- (ii) such disposal has not completed within the three-month period.*

The applicant has been contacted a number of times with regards to altering the suggested wording, but no response has been received. Without the additional wording provided by the Council's Legal Team, revisions to Condition 19 as suggested by the applicant are not considered to be acceptable. As such, the application is recommended for refusal on the grounds that it would fail to ensure affordable housing provision is retained on site, contrary to the requirements of the original condition and Policy DM28 of the adopted Local Plan.

Condition 31.

The original wording of Condition 31 stated:

“(31) Plots 1 to 6 of the development hereby approved (Winchester Close), shall only be occupied by an individual or couple, where one of the residents must be a minimum of 55 years old. Reason: In the interests of highway safety.”

The applicant has requested that this condition be amended to include a clause similar to that for Condition 19 relating to the future sale/transfer of these units so that the condition would read:

“... residents must be a minimum of 55 years old provided that this condition shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of all or any of these affordable housing dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver.”

It is questioned why such a provision also needs to be included for Condition 31 when it is already covered by that proposed for Condition 19. It is also the case that were this provision to be included within Condition 31, it would effectively amount to removing the age restriction which has been applied to these dwellings were they ever to be sold on. This in the LPA's view would not be acceptable for two reasons: firstly, for the practical reason that the development cannot provide adequate off-street parking to serve the development, which was partly the reason for the condition being applied; and secondly that the loss of dedicated older persons housing would not be considered acceptable when there is a known need for such housing provision in the Borough. It is for this reason that the proposed revisions to Condition 31 are considered unacceptable and contrary to Policies DM25 and DM28 of the adopted Local Plan.

The applicant has been informed of this and recommended to remove this proposed change from the application. However, no response has been received. As such, the application is recommended for refusal on the grounds that it would result in the loss of dedicated older persons housing, as well as potential impact upon parking provision in the locality and resulting highway issues and inconvenience to existing neighbouring residents through the creation of parking issues in the locality, contrary Policies DM1 and DM14 of the adopted Local Plan.

Other Matters.

If approved in accordance with the LPA's suggestions, that proposed would:

- Have no adverse impact upon the amenity of neighbouring uses or occupiers;
- Have no impact upon parking or highway matters;
- Have no additional impact upon drainage or local services;
- Have no additional impact upon trees or nature conservation interests;
- Have no additional impact upon water quality or nutrient loading of protected waters; and
- Have no additional impact upon SPA sites through recreational disturbance

Climate Change:

In July 2019, the Council declared a Climate Change and Environmental Emergency. In doing so it agreed, among other things, to: (a) put in place measures to ensure the Council's own operations and functions achieve carbon neutrality by 2025; (b) work with partners to aim for all projects and services delivered in the Borough to achieve carbon neutrality by 2030; (c) ensure that the Council's procurement policy recognises carbon neutrality as one of its primary considerations; and (d) recognise the urgency of action to mitigate and adapt to climate change in every decision taken by the Council. This is

underpinned by the Climate and Environment Emergency Strategy 2020–2030 and the supporting Climate and Environmental Emergency Action Plan – Update June 2020.

The declaration of the Climate Change and Environmental Emergency demonstrates a strong commitment from the Council to achieve net zero. The NPPF, development plan and adopted local plan policy do not set this as a specific target, but it is a material consideration to be considered alongside all other material considerations. In any case addressing climate change is a core part of the NPPF and local plan policy. The need to support the economy is part of the Strategic Environmental Assessment for the adopted local plan, as is an assessment of climate impacts.

The NPPF aims for the need for housing to be met, and policy S2 of the Local Plan sets a target for 14,580 dwellings to be provided by 2036. The NPPF, Policies S1, DM2 and DM3 of the Local Plan and energy and water elements of the adopted Environmentally Sustainable Development SPD require development to be sustainable in terms of resource use, climate change and energy use. When considering the impact of climate change, the proposed development is expected to be resilient to the potential effects of climate change and is expected to reduce/limit impacts on climate emissions as a result of the development or its use.

Equalities Implications:

Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states:

- 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.

When making policy decisions, the Council must take account of the equality duty and in particular any potential impact on protected groups. It is considered that this application does not raise any equality implications

Conclusion:

Recommendation:	PERMIT ☐	REFUSE ☒
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For the reasons set out above the application is recommended for refusal for the following reasons.

1. The proposed revisions to Condition 19 and 31 of the original planning permission would fail to ensure affordable housing provision is retained on site, resulting in the potential loss of affordable housing in the locality and contrary to the requirements of the original condition. As such, the application is considered to be contrary to Policy DM28 of the adopted Eastleigh Borough Local Plan 2016 – 2036 and the Council's 'Affordable Housing' and 'Accommodation for Older People and Those in Need of Care' Supplementary Planning Documents.
2. The proposed revisions to Condition 31 of the original planning permission would result in the loss of dedicated older persons housing, contrary to the requirements of the original planning approval. As such, the application is considered to be contrary to Policies DM25 and DM28 of the adopted Eastleigh Borough Local Plan 2016 – 2036 and the Council's 'Affordable Housing' and 'Accommodation for Older People and Those in Need of Care' Supplementary Planning Documents.
3. The proposed revisions to Condition 31 of the original planning permission would result in potential highway issues and inconvenience to existing neighbouring residents through inadequate parking provision to serve the resulting development.

As such, the application is considered to be contrary Policies DM1 and DM14 of the adopted Local Plan and the Council's 'Quality Places' and 'Residential Parking Standards' Supplementary Planning Documents.