

Agenda Item 5.5

Planning and Environmental Protection Committee 12 June 2018

Application Ref: 09/01368/OUT

Proposal: Development of an urban extension comprising up to 5350 residential dwellings; a District Centre (with up to 9200 square metres (99031 sq.ft) retail floor space) and two Neighbourhood Centres (with up to 2300 square metres (24758 sq.ft) retail floor space) comprising district/neighbourhood retail (A1-A5); community and health (C2, D1); leisure(D2); residential (C3) and commercial (B1) uses. Provision for education facilities (sites for three primary and one secondary school); sports and recreational facilities; a range of strategic open spaces including new landscaping, woodland and allotments; and cemetery provision. Associated highway infrastructure (including pedestrian, bridleway and cycle routes), public transport infrastructure and car parking for all uses. Utilities and renewable energy infrastructure; foul and surface water drainage networks (including suds and lakes)

Site: At land to the north of Norman Cross, east of the A1(M) and west of London Road (A15) Peterborough

Applicant: O & H Properties Ltd, Marlborough Oasis Ltd, Barratt Strategic (The Great Haddon Consortium)

Referred by: Director of Growth and Regeneration

Reason: Major Strategic Application, S106 Update

Case Officers: Lee Collins and Vicky Hurrell

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Recommendation: The Director of Growth and Regeneration recommends that the application be approved subject to final signing of the O & H and Marlborough Section 106 Agreements and the imposition of a condition in respect of the Barratts land (restricting development on that land until a S106 Agreement has been entered into) and the attached conditions with authority delegated to the Director of Growth and Regeneration and the Head of Legal Services to complete the S106 and to issue the planning permission.

Update

Background

The Great Haddon urban extension is allocated for development in the adopted Local Plan. The site is located to the west of the city adjacent to the A1 and north of the A15. An outline application was submitted in 2009 for up to 5350 homes with associated infrastructure. The application was submitted by the Great Haddon Consortium, which comprises the following parties:-

- O & H Properties
- Marlborough Oasis
- Barratt Homes

The Planning and Environmental Protection Committee resolved to grant permission for the Great Haddon development in January 2015 upon the receipt of further specific information, subject to the satisfactory completion of the S106 Agreement. The Committee subsequently resolved in July 2017 to allow officers to refuse the Great Haddon planning application if the

S106 legal agreement had not been signed by the end of September 2017, unless an additional period of time was given.

In light of progress being made and the complexities of the legal agreements, subsequent extensions of time have been agreed with the Director of Growth and Regeneration and the Chair of the Planning Committee.

Members will recall that in July 2017 Officers set out that the S106 obligations are to be partitioned with each landowner entering into and signing their own agreement. Under the terms of the partitioning arrangement, each landowner is required to deliver certain infrastructure on their own land and then to pay a set contribution per dwelling, into a communal pot for delivery of relevant infrastructure.

The S106 Agreements will deliver and fund the following infrastructure requirements arising from the development namely:-

- School provision (up to three primary schools and one secondary school)
- 16% affordable housing
- Highways Improvements including the construction of the Yaxley loop, a contribution towards the widening of the Fletton Parkway (which has been completed), works to junction 2 of the Fletton Parkway, a contribution towards the East Coast Mainline Bridge, the provision of traffic calming through Yaxley and a contribution towards the funding of a bus service.
- Travel Plan
- Provision of temporary and permanent community facilities
- Ecology Works
- Provision of a cemetery site/contribution
- Contribution toward the cost of a gypsy and travellers site (not located within Great Haddon)
- S106 Monitoring contribution
- Management and maintenance of open space

The S106 contributions pot will be held and administered by the City Council. The Council will then use this to pay for the key infrastructure to support the development when it is needed. The overall section 106 contributions and obligations have been divided equitably per landowner.

The per dwelling contribution varies between the landowners, with Marlborough paying the highest and O & H the lowest. It has been calculated on the basis of the land each owner has, how much of this land is given over to the site wide infrastructure and the costs of development. For example, O & H will be providing the land for two primary schools and the secondary school, along with the community centre and delivering the Yaxley Loop road. As such their per dwelling contribution is the lowest. In addition the S106 Agreements contain certain caps on development which prevent each landowner from building more than a set number of houses on their site until certain pieces of highways infrastructure are in place.

Current Position

It has always been the intention that O & H and Marlborough would sign their S106 Agreements (thereby enabling the planning permission to be issued because these agreements cover 90% of the total site) but that the third applicant, Barratts, would be subject to a condition which would prevent them from commencing works on their part of the site until they have entered into their own S106 Agreement (known as the B Agreement), which would be appended to the permission. Officers advised the Planning Committee that in progressing with this approach, they would be seeking to obtain a 'letter of comfort' from Barratts in terms of the content of their S106 to confirm that this was broadly acceptable to

them and therefore to provide comfort to the Council that the site wide infrastructure could be delivered.

This has not happened, as is detailed below. Officers are therefore taking the step of reporting the application back to Committee in order to seek its further approval to proceed.

Since the committee resolution in July, Officers have been working hard with O & H and Marlborough to resolve the key issues associated with the S106 agreements and the practical delivery of what is a very large and complex development.

The third applicant Barratt Homes has not been fully engaged in this process by their choice. They have been invited to meetings and copied into correspondence but for much of the process have chosen not to attend or reply (though they have attended some meetings and recent correspondence received is discussed below). Barratts co-own the land with the Morley and Martin families (who are not an applicant). Representatives of the Morley and Martin family have been kept updated on progress and have attended some but not all meetings.

A letter was received from the Morley Martin families' planning agent Framptons on 13 February 2018 and discussed with both Barratts and a representative from the family on 21 February. At this meeting Barratts and the families' representative verbally stated that in broad terms they were willing to accept the level of tariff payment for their part of the site and the caps on development, but in doing so needed to be assured that they would derive the benefits from paying into the communal pot. Their particular concern is access to services including roads and utilities. In order to have this assurance they are seeking a collaboration agreement with O&H (this would be a legally binding agreement with O & H to allow connections). Such agreements are standard in the development industry, the terms of which are agreed between landowners completely separately to the planning process and often prior to a planning application being submitted. They advised that they would not sign their S106 Agreement until a Collaboration Agreement was in place.

Officers have received two further letters from representatives of the Morley and Martin families (12 March from their planning agent Framptons and a letter dated 10 April from Geoffrey Leaver Solicitors), there has been an email exchange and a further letter sent by lawyers (Shakespeare Martineau dated 28 March) on behalf of Barratt Homes. These letters do not in themselves fundamentally object to the per dwelling contribution. However, they do raise concerns about the imposition of a condition preventing Barratts' from starting on site until they have entered into a S106 Agreement (in the form of the S106 Agreement to be appended to the permission) and also to the fact that they will not, in their view, have the right to benefit and make use of the infrastructure, utilities and services to which they have contributed because there is no Collaboration Agreement in place. All of these letters are appended in full to this report under Appendix A.

The letters ask for either the S106 to be amended to require the parties to enter into an appropriate collaboration agreement or for a condition to be imposed to the effect that no development on the site should take until a strategy for the delivery of infrastructure, services and utilities, including the timing of delivery has been agreed between all landowners.

With regard to the imposition of a condition requiring the entering into the S106 Agreement before development can commence on the B land Officers do consider the condition to be reasonable and necessary to allow the planning permission to be issued. It is required to ensure the comprehensive delivery of the site, to prevent planning harm arising and to ensure that all of the necessary infrastructure can be funded. The same approach has been

taken with each land owner and the 'per dwelling' contributions have been calculated equitably.

Officers have also considered the request for a condition or S106 obligation in relation to a Collaboration Agreement . However, as indicated above, a Collaboration Agreement is an agreement between landowners and sits outside of the planning process. It is a commercial matter and at this stage no such agreement is in place.

In addition to the above, there are good planning reasons for not imposing the suggested condition/obligation. As members are aware, in order to properly impose a condition or an obligation in a S106 Agreement certain tests have to be met. For example two of the tests are reasonableness and necessity. In Officers' view these tests would not be complied with as the scheme is not unacceptable without the suggested obligation/condition. O & H and Marlborough have also advised that they would not sign their S106 Agreements if the Council tried to impose such a requirement. The S106 Agreement with the Council does set out that the other landowners shall not frustrate delivery of the development on the other land and shall provide reasonable assistance in relation to comprehensive delivery. Officers consider that this is reasonable in the circumstances and that it would not be reasonable or necessary to go further than this in the Section 106 agreement. Officers remain of the view, notwithstanding the representations in the letter received, that planning permission should be granted.

Implications

In putting forward a recommendation of approval, Officers have considered the risks around the land owned by Barratts'/ the Morley Martin family, given their current position.

The representatives of the Morley Martin family have confirmed that they are not seeking refusal of the planning application, but instead seek the additional condition or section 106 obligation set out above which officers consider to not meet relevant tests and inappropriate for reasons set out. Nevertheless, if the permission were to be refused they would need to make a new planning application, pay a new fee, prepare new reports and the whole process would start again. A stand-alone application is unlikely to be acceptable to the Local Planning Authority given the need to ensure the comprehensive development of the site and its overall infrastructure.

There is the potential for Barratts' to seek to appeal the condition which prevents them from commencing development on their land until they have entered into the S106 Agreement to be appended to the planning permission. However, as set out above, this condition is considered to be necessary and the financial contributions which are being sought have been equitably calculated and divided between the landowners. As such Officers are of the view that the condition is reasonable.

Barratts/ the Morley Martin families have queried in their recent letters how the overall viability of the scheme would be affected without their tariff payments and therefore whether the necessary infrastructure could still be delivered. The Barratts land equates to 647 homes, roughly 10% of the total Great Haddon site. Officers are of the view that it is extremely unlikely that the Barratts land will not come forward for development at some point, given that the permission is for 18 years. However, in the event that it does not, the land required for all the necessary key infrastructure i.e. schools, community facilities, drainage, open space, main roads can be delivered via the O & H and Marlborough land. Without the Barratts dwellings the infrastructure requirements for the site as a whole are reduced proportionately and therefore so are the costs i.e. the secondary school could be reduced in size as not as many forms of entry would be required and the third primary school would not be needed as this is intended to serve the Barratts dwellings.

Finally, in weighing up the above risks with the Barratts' land, Officers have balanced this against the need to deliver the housing requirements of the city as set out in the adopted Local Plan and the emerging Local Plan along with the benefits which the development will bring to the local economy in terms of job creation and the development industry supply chain.

Great Haddon represents the most significant allocation of new housing. If this application is not approved the site would remain allocated but there is a risk that the Inspector could find the emerging Local Plan unsound as she may consider that it is undeliverable. If this was the case, to meet the identified housing need, the Council would need to identify alternative housing sites elsewhere within the administrative area.

Moreover, the Council's five year land supply would be put significantly at risk and this would leave the Council open to challenge from speculative developers on other less sustainable sites.

Recommendation

Given the above, Officers recommend that planning permission be granted subject to final signing of the O & H and Marlborough Section 106 Agreements and the imposition of a condition in respect of the Barratts land (restricting development on that land until a S106 Agreement has been entered into) and the attached conditions with authority delegated to the Director of Growth and Regeneration and the Head of Legal Services to complete the S106 and to issue the planning permission.

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