

Response to the call in of EDR 199.20

a. 11.2.2 proportionality (i.e. the action must be proportionate to the desired outcome);

Call in: There is a stated “Funding viability gap” which has been described as the difference between delivering affordable housing as compared to market housing. This gap has been valued, by developer assigned analysis, of £242,522. This decision is to contribute £240,000 of that which equates to 98.96% of the funding gap. We do not believe that the council’s response to this funding gap is proportionate given that the whole development will also deliver private commercial use which will generate profit for the developer of which we are unaware. In essence this £240K could therefore be said to helping to contribute to developer profit on this development. On social housing development the developer returns a yield of 4.5% and the purpose of this 240K is to push the yield to 6.5%, this is based on the independent advice sourced by the developer only. So the 106 contribution effectively increases developer yield by almost 50%, based on a valuation which is not council derived.

Response: Section B2 of the EDR states that: “the proposal is to contribute a total of £240,000 to this scheme, equalling £20,000 per unit, with the developer taking on the remaining viability gap obligation.” As such, it is confirmed within the EDR that under this decision, the developer will meet the obligation of the remaining gap in funding. In terms of that contribution being proportionate, the Council receives S106 commuted sums for affordable housing on the basis of £40,000 per unit. By contributing towards the creation of affordable housing on the basis of £20,000 per unit, the commuted sums are effectively facilitating the creation of twice as many units as expected.

The primary reason why a developer may choose to commute sums for affordable housing rather than provide that housing on their developments is because affordable housing is less profitable. This effectively creates a failure in the market around the provision of affordable housing and has led the Council to accumulate circa £4.6m in affordable housing commuted sums in recent years, with a potential further circa £5m in future years. On the first figure alone, this means that 115 affordable homes that should be provided within East Staffordshire have not yet been provided. This proposal, in line with the principles of the Council’s Brownfield and Infill Regeneration Strategy and Brownfield Process, seeks to support the delivery of affordable housing by ‘balancing’ the market conditions in a way that means providing affordable housing is just as attractive to a developer as providing market housing. This could be through removing obstacles associated with brownfield sites, such as demolition or remediation, or by contributing towards the cost of development. Therefore, this proposal makes an affordable housing development more viable for the

developer and it achieves the Council's ambitions for affordable housing on brownfield land.

b. 11.2.2 proportionality (i.e. the action must be proportionate to the desired outcome);

Call in: There is no evidence provided as to the deadline for use of this 106 funding. It could in fact be relatively urgent and so this is forcing the council to "use it or lose" it and in so doing making a hasty decision.

Response: This S106 funding relates to planning permission P/2013/00406, as mentioned within the EDR. The deadline for utilising the funding from this agreement is 30th June 2022, so not "relatively urgent". This deadline was also confirmed in the report "Contribution of S106 Funding for Affordable Housing to the development at Burton Rugby Club, Burton", which was considered by Cabinet on 7th October 2019 and at the Group meetings on 2nd and 3rd October 2019. The suggestion of this deadline was not challenged at these meetings at the time. Similarly, the deadline for this particular S106 agreement was also confirmed in an earlier report when the Brownfield and Infill Regeneration Strategy was approved by Cabinet in October 2017. Again, this was not challenged at the time.

The EDR process requires that the appropriate Officers from the Council's Finance and Legal teams approve the content of the EDR before it is considered by the Chief Officer and Deputy Leader. As this relates to a legal agreement and a financial payment, the approval of this EDR by those Officers is evidence that the stated deadline is accurate. Additionally, this proposal also does not fully utilise the sums of that S106 agreement and so we would not "use it before losing it".

c. 11.2.3 due consultation and the taking of professional advice from officers;

Call in: For this valuation the council is relying solely on the analysis the developer has sourced, not through any council independent valuation. Before agreeing to allow £240,000 of public funding for this development we believe that the council should consult with its own valuation in order to determine best value for money for its residents.

Response: There is no requirement for a valuation report for this proposal as the Council is not selling any land or partaking in the transfer of property. The referred to document is in fact a RICS certified Rental Analysis report has been produced by Salloway, who are local property consultants based in Burton. The Council use Salloway for a number of services for its Planning, Assets, Regeneration, and Finance teams, most regularly for valuations of assets for the asset register and for market valuations. If the Council had commissioned its own analysis, it is highly likely that Salloway would have been commissioned. The Rental

Analysis is considered to be independent. For it to be lacking independence the developer would have to be buying the valuation outcome from Salloway and the call-in is not suggesting that scenario.

d. 11.2.3 due consultation and the taking of professional advice from officers;

Call in: We do not see evidence that wider consultation of members has taken place in advance of this decision either in terms of funding or additional uses of the site.

Response: The Cabinet Members agreed the approval of the Council's Brownfield and Infill Regeneration Strategy in 2017 as well as the Brownfield Process in 2018, both following consultation with members through the group process. These two items set out the principles for making contributions of S106 funding for affordable housing to facilitate the delivery of affordable housing by others which is what this decision seeks to do and follows on from. This Executive Decision Record has gone through the due process with the Council's Legal and Finance teams and so has received the appropriate professional advice from Officers and so meets 11.2.3. Similarly, the proposal has been discussed with the Council's Housing Options team outside of the EDR process.

Please note, the contribution of commuted sums funding is contingent on the site gaining the appropriate planning permission. If Members have any concerns on the use of the site, this would be for Members to make the appropriate representations to the Local Planning Authority. If the LPA does not consider this proposal to be an appropriate use of the site, the funding will not be contributed accordingly.

e. 11.2.5 a presumption in favour of openness;

Call in: In not seeking additional valuation we do not feel the council is being open in its decision making

Response: Please see response to C.

f. 11.2.5 a presumption in favour of openness;

Call in: It has not been made clear who the developer is and whether or not they have an existing or previous development link to ESBC or Burton Upon Trent. We feel that in not disclosing the developer in this decision that there is no openness here.

Response: The developer is stated in the Rental Analysis in Appendix 2. It is a local developer, Jas Singh, who now owns the site and is working with Action Housing, a Registered Social Landlord provider, to provide supported living at the property. The contribution of funding is also contingent on an agreement being in place with a Registered Social Landlord for a minimum of 10 years along with a covenant that the property is used for affordable housing, as defined by the National Planning Policy Framework at the time, until such time that the Council approves an alternative use. This guarantees intended use for a good period of time and possibly beyond.

g. 11.2.7 a consideration of other options;

Call in: There is no evidence that other options have been considered in this decision making (for example but not limited to)

1. Could the whole site not be made available for affordable housing

Response: This is for the consideration of the Local Planning Authority. If the LPA deem that the whole site should be affordable housing, it may be that the developer approaches the Council again in the future to propose the additional provision of affordable housing on the basis of supplementary S106 funding following a decision from Planning Committee.

Call in: 2. Could the developer not agree to accommodate more of the funding gap than 1.04%

Response: The developer is also taking on the whole of the remaining costs of development. The funding gap is simply the difference between providing market housing and affordable housing. As previously mentioned, it is the Council's agenda to facilitate, and so encourage, the provision of affordable housing over market housing via a contribution of S106 commuted sums.

Call in: 3. Given the council's previous aspiration to provide elderly accommodation could this whole site not been made available for that purpose.

Response: To be clear, this is a consideration of the Local Planning Authority, not of the Council's regeneration portfolio. These proposals must be predominantly led by the market demand and so the developer, along with the Enterprise service, has been in continued discussion with the Council's Housing Options service to establish whether there is a local need for assisted living facilities. It has been confirmed that there is. The LPA will need to be satisfied of this.

Call in: 4. Could the council not fund purchase of the site itself for development purposes

Response: As per the Council's Brownfield and Infill Regeneration Strategy, the Council works with developers and Registered Social Landlords to facilitate the provision of affordable housing utilising S106 commuted sums. This approach was approved by Cabinet in 2017 on the basis that in comparison to direct purchase and development, it holds a reduced risk (in terms of financial exposure primarily to the Council) and it achieves greater value for money (see earlier reference to achieving twice as many units of affordable housing this way as expected).