

WIRRAL COUNCIL

PLANNING COMMITTEE

18 AUGUST 2016

SUBJECT:	Removal of requirement for a Section 106 Legal Agreement for the provision of affordable housing on APP/14/01198 – Erection of 10 dwellings on land adjacent to The Rectory, Mark Rake, BROMBOROUGH
WARD/S AFFECTED:	BROMBOROUGH
REPORT OF:	Head of Regeneration and Planning Regeneration and Environment Department
RESPONSIBLE PORTFOLIO HOLDER:	Councillor Phil Davies
KEY DECISION?	No

1.0 EXECUTIVE SUMMARY

- 1.1 Planning application APP/14/01198 was reported to Planning Committee on 18 February 2016 where it was resolved to approve the development of 10 dwellings on this site subject to conditions and a Section 106 Legal Agreement. The application was subject to a formal site visit by Members prior to the decision being taken.
- 1.2 Since the decision of the Planning Committee, the Court of Appeal has ruled that contributions for affordable housing should not be sought from small scale and self-build developments.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 The development sought outline planning permission for the erection of 10 dwellings on this site. The decision to approve the application included a requirement that the developer enters into a S106 Agreement to ensure that on-site affordable housing provision was secured.
- 2.2 In 2014, the Government had introduced into planning policy an exemption for small sites (10 units or fewer) from affordable housing contributions. However, on 31 July 2015 this decision was successfully challenged in the High Court by West Berkshire District Council and Reading Council which effectively re-instated the threshold for affordable housing contributions on developments of 5 dwellings or more.

- 2.3 This decision meant that APP/14/01198 was considered having regards to the 31 July 2015 High Court decision and a Section 106 Legal Agreement seeking on-site provision of affordable housing was approved by the Planning Committee on 18 February 2016.
- 2.4 The applicant for this application has not yet entered into the Section 106 Agreement and therefore, the permission has not yet been formally granted. Following the Court of Appeal judgement of 11 May 2016, which ruled the 2014 ministerial statement exempting small sites from affordable housing contributions was not unlawful, in the case of this application which seeks permission for a development of 10 units, the Council is unable to require affordable housing provision on this site.
- 2.5 On the basis of the above, the Council is unable to require the developer to enter into a Section 106 Agreement to secure affordable housing on this development and this should now be removed from the Committee resolution of 18 February 2016.

3.0 FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications arising from this report.

4.0 LEGAL IMPLICATIONS

- 4.1 As the Section 106 Legal Agreement cannot now be required, there are no legal implications arising from this report.

5.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 5.1 As Planning Committee as already considered the planning merits of this development and determined that they were acceptable, there are no additional resource implications arising from this report in terms of further determining this application.

6.0 RELEVANT RISKS

- 6.1 There are no direct implications arising from this report

7.0 ENGAGEMENT/CONSULTATION

- 7.1 APP/14/01198 was subject to statutory publicity when the application was first submitted to the Council. Representations made to the Council were summarised for Planning Committee in the case officers report of 18 February 2016 and all planning material considerations were taken into account when considering this development.

8.0 EQUALITY IMPLICATIONS

- 8.1 There are no direct equality implications arising from this report.

9.0 RECOMMENDATION/S

- 9.1 That the requirement for a Section 106 Legal Agreement to secure on-site affordable housing provision be removed from the Planning Committee's resolution of 18 February 2016 and that authority be delegated to the Head of Planning and Regeneration to now APPROVE the application subject to conditions as outlined in the attached report considered by Members on 18 February 2016.

10.0 REASON/S FOR RECOMMENDATION/S

- 10.1 To reflect the recent Court of Appeal judgement and to enable a decision to be issued on the planning application without further delay.

REPORT AUTHOR: Joanne Storey
Principal Planning Officer
telephone (0151 691 8674)
email joannestorey@wirral.gov.uk

APPENDICES

Planning Committee Report APP/14/01198 from 18 February 2016

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Planning Committee	18 February 2016