

Title of Report:	Delays to the release of affordable housing units at Parkway
Report to be considered by:	Overview and Scrutiny Management Commission
Date of Meeting:	24 February 2015

Purpose of Report: To introduce to the Overview and Scrutiny Management Commission an examination of the circumstances surrounding the provision of affordable housing units at Parkway.

Recommended Action: Note the contents of the report, carry out scrutiny and make recommendations as appropriate.

Overview and Scrutiny Management Commission Chairman	
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Executive Report

1. Introduction

- 1.1 At its meeting of 21 October 2014, the Overview and Scrutiny Management Commission considered an item on affordable housing in the district, following which it was agreed that the circumstances surrounding the non-release of the affordable housing units at the Parkway development would be examined.
- 1.2 This report provides background for the terms of the discussion and sets out:
 - The process to date
 - The present situation
 - The process moving forward
 - The lessons that have been learnt for future developments
- 1.3 The Council's Head of Legal Services, David Holling, and Head of Care Commissioning, Housing & Safeguarding, June Graves, will be in attendance to expand on the information within the report and to answer questions. Councillor Gordon Lundie, the Leader of the Council, and Brian Kelly from Standard Life Investments have also been invited to address the Commission.
- 1.4 As noted below there is a confidentiality clause within the agreements which covers various aspects of public disclosure. Should discussion and debate develop into areas which fall within these clauses the meeting may have to move to Part II in order that a full and frank debate may continue without potential breach of the agreement.

2. Background

- 2.1 Negotiations with SLI began in 2004, and the original Project Agreement was concluded for November 2005. Following further discussions a final format of the Development Agreement was completed 26th August 2007. This was followed by a variation to the agreement, concluded 30th June 2008.
- 2.2 The Development Agreement covered a wide range of topics including a list of pre-conditions relating to Planning Permissions, phasing, Compulsory Purchase by the Council and indemnities from the Developer. The final agreement ran to well over 100 pages.
- 2.3 The Key Clauses of the Development Agreement were
 - (1) Clause 23 (disposal of the residential units)
 - (a) The Developer was under an obligation to secure sales or "otherwise dispose of all residential units on the site in accordance with a Residential Area Strategy"
 - (b) The Developer also has to notify the Council of each and every proposed sale along with information which the Council might require. However, if the proposed sale conforms with the Residential Area Strategy the Council is not required for such a sale.

- (2) Clause 24 (press notices and other publications and confidentiality)
 - (a) Both the Developer and Council agreed not to issue any press notice without the consent of the other as to the contents and to the context in which such notice would appear
 - (b) Neither the Developer nor the Council shall disclose or permit or suffer to be disclosed any of the contents of the agreement except as required by law
 - (c) Financial terms of the agreement which includes any figures or financial expectations derived from the various appendices to the Development Agreement are confidential and no disclosure can occur without the consent of the other party. There are exemptions to that particular requirement where disclosure is required by law or it is by the Developer “commercially normal or sensible so to do”

(3) Clause 37 (disputes)

This sets out a dispute resolution process which is shown at confidential Appendix A.

- 2.4 On 1st November 2006 West Berkshire District Council sealed and dated Compulsory Purchase Order 2006 for the Land at Park Way and Northbrook Street, Newbury.
- 2.5 On 23rd October 2006 a Section 106 Agreement (the Original Agreement) was agreed which covered a number of aspects of the Development relating to the planning permission dated 28th March 2006. This agreement also contained a dispute resolution process slightly different from the Project Agreement process (shown in Appendix A)
- 2.6 Schedule 1 of the Original Agreement set out the provisions relating to Affordable Housing, including the Developer’s obligations. These were;
 - (1) Paragraph 1 relates to financial contributions made by the Developer, which were extensive;
 - (2) Paragraph 2 – highway works. These were also referred to in a S278 Agreement dated 17th September 2008;
 - (3) Paragraph 3 – affordable housing;
 - (a) Development has to include a minimum of 37 affordable housing units or “homeless families, homeless vulnerable single persons, persons needing care, persons having special needs and persons on the Council’s housing waiting list – 19 units would be social rented units, 18 units would be shared ownership. The location of the affordable housing has to be in a particular part of the Development site and that site is not to be used for any other purpose other than affordable housing. The affordable units have to include a minimum of 2 units designed and constructed for wheelchair access.

- (b) In order to ensure that the Development progressed and was commercially viable the S106 Agreement had a two phase “trigger”
 - (i) not to cause, suffer or permit to be occupied more than 74 of the private residential units unless 19 of the affordable housing units have been “constructed and completed and are capable of being used and occupied as such”
 - (ii) not to cause, suffer or permit to be occupied more than 120 of the private units unless ALL of the affordable housing units have been “constructed and completed and are capable of being used and occupied as such”

2.7 A variation to the various obligations of both parties was concluded following consideration of the variation to the S106 which was considered at Western Area Planning Committee on 30th April 2008 and was subject to Executive agreeing funding in relation to the terms set out below at a meeting on 15th May 2008.

2.8 The Council’s obligations were;

- (1) The Council agreed to pay an “affordable housing contribution” to the Developer for the “purpose of securing affordable housing within the Development site”.
- (2) Such payment to be made once the Developer gave notice of its intention to commence development on site.

2.9 The Developer’s obligations were;

- (1) Not to use the affordable housing contribution other than for the provision of affordable housing on the site.
- (2) If any of the affordable housing units were sold on the open market the Developer became responsible to pay back a relevant proportion of the affordable housing contribution
- (3) The above obligation to repay ceases once the Developer transfers\leases the site of the affordable housing to a Registered Social Landlord (registered provider)

2.10 Prior to the conclusion of the original S106 Agreement and to the Project Agreement and after their completion the Housing Service of the Council actively advised and negotiated with the Developer as regards affordable housing related matters. The Developer was told on a number of occasions of the availability of grant to support development of affordable housing. The suggested routes to funding were not acted upon by the Developer which missed out on a number of opportunities to secure grant funding from various sources.

2.11 At the outset of the project the Developer was advised to engage and contract with a registered provider. Officers were aware that a number of offers from registered providers were considered by the Developer from 2008 but they fell over time due to changes in economic circumstances and the aspirations of the Developer. In May 2011 there were two offers outstanding as far as the Council was aware but both were either rejected or the registered provider withdrew. It should be noted

that the Council were not involved directly in contract negotiations between registered providers and the Developer.

3. The current position

- 3.1 One registered provider is in discussion with the Developer for the 37 affordable housing units. Discussions are alleged to be at “an advanced stage” with contracts due to be exchanged “shortly”. Again the Council is not involved in these negotiations so it is reliant on statements or information from provided by the registered provider or the Developer.
- 3.2 Of the trigger dates referred to in the original S106 Agreement the first was reached in March 2014 (the second trigger date has not yet been reached). The Following is of note:
 - (1) 6th March 2014 – Council advised Developer that no more leases were to be signed off until first 19 affordable houses were released.
 - (2) 1st May 2014 – a meeting was held with the Developer when reassurances that a registered provider was to be appointed and that affordable housing would be made available for those in need “shortly”.
 - (3) 1st June 2014 – difficulties between the Developer and the registered provider showed little momentum because of “due diligence” items raised by the registered provider and the Council determined not to sign off any further leases of the Private residential units.
- 3.3 Total housing within Parkway Living (as per planning permission) - 184
- 3.4 At present the total number of leases held by the Council and not completed is 18.
- 3.5 The total private residential sales completed is 107.
- 3.6 The total units held and let by Developer is 4.
- 3.7 The total units exchanged (not completed) is 18
- 3.8 The total number of plots being marketed – 11.
- 3.9 A meeting was held between the Leader and the Developer on 21st January 2015 and there appears to have been no real progress as regards completion of the transfer of the Affordable Housing Units to the registered provided. At that meeting an indicative exchange date of 27th January 2015 for the affordable housing site was intimated.
- 3.10 A further meeting was held on 10th February involving the Leader, Chief Executive and the Developer. Whilst an indicative date for the exchange of the affordable housing was given as mid February this cannot be guaranteed.

4. Proposed future action

- 4.1 It is proposed that the action set out below is being or will be undertaken;
- (1) continue to encourage the Developer to exchange and complete the transfer of the affordable housing units to the registered provider and that these be released to occupiers as a matter of urgency;
 - (2) see additional analysis in confidential Appendix B

5. Analysis and conclusion

- 5.1 The Parkway Development has created a major improvement to the retail offer within Newbury Town Centre, and has provided a major new car park and additional housing. It has transformed a previous backland area of the Town. The Development has clearly stimulated economic growth through additional footfall and has been instrumental in placing Newbury within the Top 100 retail destinations in the country.
- 5.2 The relationship with the Developer Standard Life Investments have been positive through much of the 8 year life of the project. This was a major regeneration project which included the use of Compulsory Purchase Powers and a complex and challenging construction. The proposal for the Council to contribute to the cost of affordable housing on site was in itself unique and was not something that Standard Life regularly undertake. With the exception of the delivery of the affordable housing the project has generally been seen as a success bringing significant benefit to the local area.
- 5.3 The agreement to provide affordable housing through a S106 Agreement was not seen as controversial or high risk at the time the Agreement was signed. There was an expectation that Standard Life would sell the affordable homes to a registered provider who would then manage them. At the time of writing this report, the exchange had yet to occur with none of the required alterations specified by the registered provider having been made to the units. This makes completion potentially unlikely until the Summer of 2015. Occupation of the units is unlikely until 2-3 months after completion.
- 5.4 Conclusions that can be drawn from the current difficulties are;
- (1) the delay is not of the Council's making. It has been caused by the delay in SLI finding a registered provider who would offer an acceptable price for the affordable units;
 - (2) the delay has been further exacerbated by the failure of the Developer and Registered Provider to exchange contracts. This is outside the Council's control;
 - (3) the Council has triggered Dispute Resolution Procedures. This might potentially provide the Council with some compensation but it is difficult to see how it will accelerate delivery of the affordable housing;
 - (4) there is no reason to believe that the affordable housing won't be delivered but the Council is extremely limited in what it can do to both facilitate and accelerate this.

6. Lessons Learnt

6.1 The following lessons have been identified;

- (1) going forward, if similar agreements are to be put in place where the Council is making a financial contribution to the provision of affordable housing then there should be a strong link between the making of the Council payment and the delivery of the affordable housing. It would also seem appropriate to consider a claw back clause - if the affordable housing is not delivered by a specific point then the funding would be returned.
- (2) it might be appropriate to agree that the sale to a registered provider is in place by a specified date and once again to link any payment to that date if it is achieved.

Confidential Appendices

Appendix A	Dispute Resolution Process
Appendix B	Remainder of 4.1 and 5.3
Appendix C	Copy of e-mail to Nick Carter