

PLANNING COMMITTEE – 26 MAY 2016

PART 1

Report of the Head of Planning

PART 1

Any other reports to be considered in the public session

1.1 REFERENCE NO – 16/500948/MOD106			
APPLICATION PROPOSAL			
Discharge of Section 106 Agreement made between Hyde Housing and Swale Council on 11th February 1994 - The Charges Register on the title; Part C: Charges register 1-3. This also includes reference to sell the property within social housing. Such Units to be utilised for such social and special needs housing whilst the application land is owned by a registered housing association			
ADDRESS 58 Whiting Crescent Faversham Kent ME13 7WB			
RECOMMENDATION - Approve			
SUMMARY OF REASONS FOR RECOMMENDATION			
To allow the owners to dispose of this damaged property and re-invest the proceeds in affordable housing.			
REASON FOR REFERRAL TO COMMITTEE			
Concerns express by Ward Councillors			
WARD St Ann's	PARISH/TOWN COUNCIL Faversham Town	APPLICANT Hyde Housing Group	
DECISION DUE DATE 29/03/16	PUBLICITY EXPIRY DATE 03/03/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/93/747	80 dwelling units for social and special needs housing for Hyde Housing Association, with Section 106 Agreement to retain them as social and special needs housing whilst owned by an RSL	Approved	11/2/1994

1.0 DESCRIPTION OF SITE

1.01 This application relates to a modern semi-detached house set within a modern estate of similar dwellings. It on an estate of social and special needs housing and is owned by the applicants, Hyde Housing Association.

1.02 The house is currently boarded up but externally otherwise seemingly intact. However, photographs of the interior show damage to ceilings, walls, window units lying against the wall, damaged kitchen units and plumbing, and rubbish and discarded furniture in the garden. The owners have prepared a schedule of necessary repairs relating to kitchen, bathroom, boiler, heating and hot water, re-wiring,

re-decoration, garden fence and gate, and replacement windows/doors which total over £30,000.

- 1.03 Two nearby similar properties at 77 and 85 Whiting Crescent are also boarded up at present.
- 1.04 The house was built under the above 1994 approved planning permission as part of an 80 unit social and special needs (disabled persons) housing development at a time when there were 946 people on the housing waiting list for Faversham, including 209 families in “great need”. At the time the land was zoned for business development and the Town Council and many others opposed the development.
- 1.05 From the original committee report it is evident that there had been little interest in the site for commercial development (as has been common to many sites in Faversham over many years) and residents of new housing on adjacent land had expressed concern over possible commercial development on the land.
- 1.06 The Council’s Principal Housing Officer was satisfied that there was demand for low-cost housing at Faversham which supported the development; and the Council had decided to allocate the site for social housing in the forthcoming 1994 draft Local Plan. However, funding was then available which would not remain available to suit the Local Plan’s timescale and the decision to grant planning permission immediately and “swiftly” as a departure from the then current Local Plan was taken.
- 1.07 There are quite rightly no tenancy conditions within the planning permission, but the tenancy issues are properly secured via a related Section 106 Agreement which requires that the housing is “to be utilised for such social and special needs housing whilst the application land is owned by a registered housing association”.
- 1.08 It seems that although this does not actually prevent wholesale sale of the estate, there were (and remain) established procedures for safeguarding such properties from sale on the open market.

2.0 PROPOSAL

- 2.01 This request first arose in August 2015 when Hyde Housing Association contacted our Housing Team to say that they wished to dispose of the property, but that they had noticed the “planning restriction”. They quoted the description of development according to the planning application, and seemed to believe that this meant that the use of the property was restricted to social housing. They asked if they could remove the property from the planning permission. Apparently our Housing Team agreed (October 2015) but the formality of the Section 106 Agreement then arose – this issue had never arisen before in terms of our Housing Team’s role.
- 2.02 Initial legal advice was that planning permission is not required as the use of the property would not change and there are no relevant tenancy related planning conditions. However, the (slightly ambiguous) wording of the Section 106 Agreement means that the properties should be used only for special or special needs housing “*whilst the application land is owned by a registered social landlord*”, and whilst Hyde retain the remainder (or any part) of the estate (application land) it means that a variation to the Section 106 Agreement is necessary.
- 2.03 Hence the application to vary the Section 106 Agreement.

- 2.04 The application was initially supported by a copy of the Section 106 Agreement, a copy of the original planning permission, a copy of a letter from the Homes and Communities Agency (HCA) accepting sale of the property. On this basis the application form suggests that the Section 106 Agreement is no longer relevant.
- 2.05 I have sought clarification for the applicant’s intention to dispose of the property and it boils down to the fact that they have a policy of disposing of properties if repairs total over £10,000. The applicants have also submitted a report saying that they have decided that it is uneconomical to repair the house; and that they have considered alternatives such as Affordable Rent, or transfer to another RSL. The £10,000 policy limit is contained within the report and described as a key criteria for disposal. It is made clear that proceeds of the sale would be re-invested in local affordable housing.
- 2.06 Apparently, the repair costs are not insured, and the costs of repairs would not be justified by likely new rental income. In short, they would expect to gain a net £47k over the next 60 years, but sale might yield an immediate £70k sum.
- 2.07 I am told that at number 85 Whiting Crescent the costs of repairs do exceed £10,000 but that the applicants will be re-letting this unit.
- 2.08 It is unusual for the Planning Department to be involved in a disposal of affordable housing as there are already well established procedures that our Housing Team deal with for the Council’s views to be canvassed. However, this is an unusual case where the estate was allowed as an exception to normal planning policy and is all specifically designed social and special needs affordable housing, not simply some units forming part of a mixed tenure scheme. The house sits squarely within the estate and is attached to another house.

3.0 PLANNING CONSTRAINTS

Environment Agency Flood Zone 2
 MOD Thurnham MOD Safeguarding Directive Thurnham
 MOD Thurnham MOD Safeguarding Directive Thurnham
 Section 106 or 52 Agreement SW/04/0875
 Section 106 or 52 Agreement SW/93/0747
 Thurnham Exclusion Zone Thurnham, Kent
 Thurnham Exclusion Zone Thurnham, Kent
 Thurnham Wind Station THURNHAM WIND SAFEGUARDING

4.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF):
 National Planning Practice Guidance (NPPG):
 Development Plan: Saved polices H2, H3 of the Swale Borough Local Plan 2008.

5.0 LOCAL REPRESENTATIONS

- 5.01 None

6.0 CONSULTATIONS

- 6.01 The Town Council has not commented on the matter

- 6.02 I have consulted both Ward Councillors and the adjacent Ward Councillor for Priory Ward, with copies of interior photographs and the applicant's evidence of their wish to dispose due to the high repair costs.
- 6.03 Councillor Cosgrove has been critical of the plan to sell the property and considers the repair estimates to be unrealistically high. He is worried about this approach being taken on their other properties, including one nearby that is boarded up.
- 6.04 Councillor Kay supports retention of the property and its repair by the applicants.
- 6.05 Councillor Henderson (adjacent Ward Councillor) does not oppose sale of this one unit, but does not wish to see this becoming more widespread.
- 6.06 Our Strategic Housing and Health Manager has already agreed the sale of this property due to the high repair costs, before she was aware of the Section 106 issue. She recognises that this will result in the loss of one affordable unit at Faversham, but confirms that the revenue raised would be put back into new build affordable housing within the Borough. I also understand that the likelihood is that the property would be purchased and developed by a private landlord and used as rented housing.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application papers for application 16/500948/MOD106
- 7.02 Section 106 Agreement dated 11 February 1994
- 7.03 Planning permission SW/93/747 dated 11 February 1994

8.0 APPRAISAL

- 8.01 This is an unusual application. The estate was clearly built for affordable housing as an exception to normal policy at the time. A clear attempt was made to secure that objective in the long term, and this is working.
- 8.02 The loss of an affordable house is always regrettable, and this one especially so as it is not old, nor is it unsuitable or remote. It also seems highly undesirable to take one house out of a comprehensively managed estate and sell it off, as this will inevitably bring about management difficulties for the applicants.
- 8.03 Accordingly, I have grave reservations about this sale against the clear backdrop of high housing need in Faversham. Local Members are also concerned as stated in the above section.
- 8.04 On the other hand, the management difficulties would be the problem for the applicants, and if funds are re-invested it might have a positive effect on affordable housing provision. Further, the house would not be lost entirely, and the sale may mean that it becomes available for occupation far sooner, possibly at a rent level similar to those of its neighbours, or at least one reflecting its location within a wider area of affordable housing.
- 8.05 To refuse the application may lead to the property remaining empty for a protracted period and will make the Council look inflexible and unrealistic. I am clearly advised by our senior housing officer that this is an accepted form of re-investment, with the private sector bearing the repair costs. I am not inclined to ignore this expert advice. I

understand that the applicants must have some criteria for assessing their response to such events and that they are best placed to make such decisions.

8.06 I am also mindful that the HCA have agreed the sale, and the Council has no good evidence that this decision was unsoundly taken.

8.07 I am advised that at least no.85 is being re-let despite extensive damage and I hope that this will also apply to no.77 - I am seeking confirmation from the applicants.

9.0 CONCLUSION

9.01 For the reasons set out above but with some reluctance I have concluded that the Council should not stand in the way of the sale of this sale and that the existing legal agreement should therefore be amended accordingly.

10.00 RECOMMENDATION

10.01 APPROVE – this application to modify the terms of the existing Section 106 agreement and that I should instruct our legal team to negotiate the appropriate variation to allow just this one property to be sold.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.