

UPDATE REPORT

		Committee Date: 1st May 2018
Sidmouth Sidford (SIDMOUTH)	17/2850/MFUL	Target Date: 02.03.2018
Applicant:	Churchill Retirement Living	
Location:	Green Close Drakes Avenue	
Proposal:	Demolition of former residential care home and construction of 39 sheltered apartments for the elderly including communal facilities, access, car parking and landscaping.	

RECOMMENDATION: Refusal

UPDATE REPORT

Further to the publication of the Committee Report for this application, the applicant has amended their position on the application in relation to the financial contribution towards affordable housing.

Members will have noted from the Committee Report that the applicant originally offered a financial contribution of £423,576 towards off-site affordable housing but that the contribution fell short of that required using the Council's on-line affordable housing calculator that generated a contribution of £654,870.

The applicant has now offered the full £654,870 contribution. However they have reserved their position on this should planning permission be refused and an appeal submitted.

The applicant has also offered agreement to a condition to ensure works are commenced within 6 months of any permission to give certainty to the development proceeding and to demonstrate that they propose to build the scheme out quickly.

This offer is on the basis that the applicant believes that Vacant Building Credit (VBC) should be applied to the site and that with its application and the contribution, no overage clause would be applied. The applicant wishes to avoid the application of an overage clause as they want to keep their costs private and confidential and out of the public domain where their competitors may be able to use them to seek an advantage.

The revised offer from the applicant makes the recommendation on the application more finely balanced.

Whilst the proposal is still not considered to comply with the Planning Obligations SPD criteria for the application of VBC, and Strategy 34 requires the application of an overage clause in any case, there is no denying that the higher contribution and early commencement weigh in favour of the proposal.

Bearing in mind that through viability a scheme for 36 units could only provide a £41,000 contribution last year, it is very likely that the applicants offer is in excess of that which could be secured up front if a viability appraisal were submitted on this scheme for 39 units (although whether the overall final figure would be higher would depend upon the outcome of the overage exercise). The applicant is willing to offer the contribution in this instance to secure an early consent and avoid an overage clause.

Given that the current offer would result in £654,870 being guaranteed now, alongside a start within 6 months, a case can be made for accepting this offer despite the proposal being contrary to the SPD in terms of the application of VBC and lack of overage. This is on the basis that an Inspector considering an appeal may decide that taking this level of contribution now, plus the early commencement, outweighs the proposal being contrary to the SPD and lack of an overage clause. In addition, and although uncertain at this stage, if the new NPPF to be published in June/July makes the application of VBC mandatory, this will decrease the chances of success for the Council at appeal.

Weighing against the acceptance of the offer is the fact that the proposal is contrary to the SPD on the application of VBC, and contrary to Strategy 34 in terms of the lack of agreement to an overage clause. Whilst the applicant believes that the contribution plus application of VBC means that an overage is not required, this does not reflect the wording of Strategy 34. Strategy 34 requires an overage clause to be applied ‘...where levels of affordable housing fall below policy targets.’ Whether an overage clause could be applied in a circumstance such as this where VBC is relied upon would need to be tested via an appeal as Strategy 34 is silent in terms of the application of VBC.

The lack of an overage clause in this instance is particularly difficult to accept given the efforts that have been made to require overage for this site in terms of the refusal of the previous application on the grounds of a lack of overage, subsequent appeal that was dismissed, and the High Court challenges that have both found in favour of Strategy 34 and the application of an overage clause on this site. It would also be the first instance where overage has not been applied to a non-policy compliant proposal.

In summary, whilst the recommendation on the application is much more finely balanced due to the revised offer from the applicant, and there is a case to be made to accept the substantial offer and application of VBC in light of possible changes to the NPPF, until the NPPF changes the officer recommendation remains unchanged. This is based on the current planning policy position that VBC should not be applied to the site and that in the absence of a viability appraisal and overage clause, the affordable housing offer is not policy compliant and unacceptable.