

Addendum to Planning Policy Briefing Note – Former NIAB Site, Huntingdon Road, Cambridge For Marchingdale Developments / Vertex Living

1. In advance of the meeting with Officers from the Greater Cambridge Shared Planning Service on 12th November 2020, we prepared a Planning Policy Briefing Note, a copy of which is attached at Appendix 1.
2. The Briefing Note set the prospective applicants' approach to the delivery of the Build to Rent (BtR) accommodation on the former NIAB site on Huntingdon Road. In particular it addressed matters concerning the scope, mix and housing types to be delivered as well as management initiatives and measures.
3. In relation to affordable housing, the Briefing Note set out the applicants' position, which is that the BtR element of the mixed use scheme will propose 20% of the BtR units as the affordable content, and these will be offered at a 20% discount in relation to open market rents, as per the advice and guidance in the NPPF and the NPPG.
4. It was however explained in the Briefing Note, and touched upon in the meeting, that it is proposed that the 20% figure would only be applied to the net additional number of units once the Prior Approval consents in existence on the site are factored in. This would mean that the 20% would be applied to the 297 BtR units proposed less the 104 residential BtR units which already benefit from Prior Approval.
5. These 104 units are made up of existing dwellings and the following Class O Prior Approvals; 20/03335/PRI03O (95 units within the 1960's building) and 20/03334/PRI03O (7 units within the library building) with two existing units (14&15 Howes Place) already on the site.
6. The consequence of this is that the 20% would be applied to 193 net additional BtR units delivering 39 units which would be offered by the applicants on 20% to open market rent discount.
7. In the course of the recent meeting, Officers asked for further justification for this approach. This addendum note addresses that point.

Policy

8. The use of net additional dwellings is already recognised in local planning policy.
9. Policy 45 of the Cambridge Local Plan 2018 is the relevant policy for affordable housing and dwelling mix. The policy sets out thresholds for delivery of affordable housing on the following basis.
10. Schemes of below 10 dwellings are exempt. Where a scheme delivers between 11-14 units, 25% of units should be affordable. Where 15 or more units are proposed, 40% of the units should be affordable.
11. This however relates to 'conventional housing' and as our earlier Briefing Paper stated, the adopted Local Plan does not consider how one should apply affordable housing policies to BtR schemes. One therefore needs to 'default' to NPPF / NPPG advice.
12. Policy 45 does however confirm that in relation to the application of thresholds and percentages that *"Affordable housing provision should be calculated on the basis that the thresholds are to be considered against the net increase in the number of units on the site."*

13. Plainly put, the applicants' case is that the two existing dwellings on site, plus the 102 new units to be potentially delivered must be viewed as deliverable under Prior Approval consents that are in place.
14. While it is acknowledged that the comprehensive redevelopment of the site envisages that the 1960's building and the library will both be demolished to make way for the new proposal – as has been discussed at length with the Council – this does not mean that the consented units should not be seen as a reasonable and implementable 'fall-back'. It would of course also be possible to amend the emerging wider scheme to retain the 1960's building and the library and to simply redevelop the residual land north of these buildings.
15. This would clearly be a less satisfactory outcome for the development as a whole, however development economics are such that from a pure investment point of view, it would make more sense to go down this route than to deliver the more comprehensive solution should the Council's position be that the delivery of affordable units cannot be net of the Prior Approval and existing units.
16. While the 102 new units to be delivered under Prior Approval are not existing, they can be delivered without providing any affordable housing or other Section 106 obligations. That is a significant material consideration that must be weighed in the planning balance.

Fallback as a Legal Concept

17. The Court of Appeal in *Mansell v Tonbridge And Malling Borough Council [2017] EWCA Civ 1314* clarified when a 'fallback' development may be a material planning consideration for an alternative development scheme.
18. This case concerned a scheme for the demolition of a barn and bungalow and the construction of four detached dwellings. Under Class Q of the Town and Country Planning (General Permitted Development) Order 2015 ("GPDO") the barn could have been converted to three residential dwellings, which together with the existing bungalow would have resulted in the same number of dwellings proposed in the applicant's planning application.
19. The Council in question granted planning permission, considering that the GPDO change of use constituted a 'fallback' and was therefore a material planning consideration.
20. In the Committee report on the planning application, the Council's Planning Officer stated: *"a scheme confined to taking advantage of permitted development would, in my view, be to the detriment of the site as a whole in visual terms...the current proposal therefore, in my view, offers an opportunity for a more comprehensive and coherent redevelopment of the site as opposed to a more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights"*.
21. The decision was upheld in the High Court but appealed to the Court of Appeal. Lindblom LJ dismissed the appeal and further upheld the original Council decision. In relation to the 'fallback' point Lindblom LJ confirmed the legal considerations in determining the materiality of a fallback position as a planning judgement to be as follows: -
 - *the basic principle is that for a prospect to be a "real prospect", it does not have to be probable or likely: a possibility will suffice;*
 - *there is no rule of law that, in every case, the "real prospect" will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand.*

22. In the above case, the conclusion of the Court was that so long as there was a '*real prospect*' that the development under the GPDO might proceed (and note that the test is whether there is a possibility rather than a probability) then the decision maker was entitled to take this into account in determining whether an alternative scheme was acceptable or otherwise.
23. Applying this to the current case, the schemes that deliver the 102 new BtR units have Prior Approval, and those consents were obtained specifically with a fallback position in mind and in the interests of proper and sensible 'estate management' by the applicants.
24. There can be no question that the applicants might seek to deliver those units if negotiations over the affordable provision on the comprehensive scheme were to stall as that would represent the better commercial outcome for them. To this end, the fallback scheme is more than possible and hence is a strong material consideration which the Council should have regard to in negotiating the affordable content for the site.

Summary

25. Planning policy allows affordable housing to be calculated on a net gain basis as set out in Local Plan policy 45. This would mean on the NIAB site that the applicants would deliver 39 units representing 20% of the gain in number of units over those existing and those with Prior Approval.
26. Case law has established that so long as there is a possibility (and not even a consent in place) that an alternative proposal might be brought forward, then such a scheme has to be viewed as material in a fallback sense.
27. There could very well be a commercial imperative for the applicants to pursue the Prior Approval for the 102 units proposed in the various Prior Approval consents. However, they would be willing to set those to one side so long as the negotiations over the quantum of affordable housing to be delivered as part of their comprehensive redevelopment of the site 'credits' the foregone units under Prior Approval.
28. It is considered that this would be both an appropriate and legally sound outcome having regard to national and local planning policy as well as case law.

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Appendix 1

Planning Policy Briefing Note – Former NIAB Site, Huntingdon Road, Cambridge

For Marchingdale Developments / Vertex Living

1. The Greater Cambridge Shared Planning Service (“SPS”) has confirmed that the principle of providing an aparthotel use alongside a Build to Rent scheme (“BtR”) would be acceptable at the site. The County Council’s Design Quality Panel has also endorsed both uses, indicating that they would complement each other.
2. Officers from the SPS have however requested that the prospective applicants prepare a planning policy briefing note relating to the appropriateness of the proposed land uses and setting out the approach to the delivery of affordable housing.

Build to Rent (BtR) Use

3. The principle of delivering a BtR scheme on the site is considered by the applicants to be acceptable in planning policy terms. The BtR element of the scheme is a C3 use class and would therefore be compliant with Proposed Site allocation R43 within the adopted Cambridge Local Plan 2018 which indicates that the entire allocation should deliver c.1,696 dwellings. The Phase 1 Darwin Green development has Outline permission for 1,593 dwellings and this was granted consent in 2010. Individual parcels have subsequently obtained reserved matters approval.
4. The frontage buildings on the site are currently in employment use, however the principle of a residential use in respect of these buildings has been established through a series of GDPO Class O Prior Approvals granted, which permit conversion from office use to residential. As confirmed previously, one of the Prior Approval consents is to be implemented and a C3 use will be introduced within the frontage 1920’s building.
5. It is not currently intended to implement the Class O Prior Approval for the more modern extensions to the original NIAB building.
6. The Cambridge Local Plan 2018 is silent about the delivery of BtR accommodation and in the absence of any local policy one needs to look at national advice. The NPPF and National Planning Practice Guidance (NPPG) do provide guidance and should therefore be given considerable weight in any planning decisions. The Glossary to the NPPF includes a definition of BtR as follows:

Build to Rent – *‘Purpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/ or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control’.*

7. The NPPG states that as part of Local Plan process, authorities should use a local housing need assessment to take into account the need for a range of housing types and tenures in their area including making provision for those who wish to rent. Information has previously been provided to Officers confirming that a need exists and attached to this briefing note is a copy of a Market Research Report that has been produced by Icen Projects Ltd. A BtR Benefits and Opportunities Report for Huntingdon Road has also been produced and this is also attached for reference. These reports were submitted in support of Representations that were made to the Greater Cambridge Local Plan Issues and Options Consultation earlier this

year. The reports will be updated in advance of submission of any planning application on the site.

8. It is relevant to note that the NPPG indicates that if a need exists, authorities should include a local plan policy to promote and accommodate BtR accommodation.
9. The Greater Cambridge Housing Strategy (2019-2023) 'Homes for our future' is exploring the role that new private rented sector housing can have in broadening housing options. This states that the Private Rented Sector (PRS) models can help support the needs of those on middle incomes who come to work in the area but cannot afford to live locally. One of the priorities of the Housing Strategy is to encourage investment for purpose-built PRS Housing and moving forward the Councils are committed to carrying out further research to identify need and demand for this form of housing.
10. The Issues and Options Consultation for the Greater Cambridge Local Plan has also identified the need to provide market and affordable homes that meet the varied needs of communities. It is acknowledged that consideration needs to be given to how Build to Rent homes should form part of the housing mix.
11. The Diamond affordability analysis (June 2018) produced for the Greater Cambridge Partnership and Cambridge Sub-Region Housing Board provides an analysis on the affordability of housing within the area. Across Greater Cambridge some 26% of households are on incomes of £30K to £50K. Private rented housing constitutes an unusually high proportion of the stock in Cambridge at 26% and often the only viable and available options for people in the middle of the market. It is also dominated by short term landlords, short term tenancies and (for residents) a lack of security and less of a feeling of "making home" in private rented housing.
12. Build to Rent schemes have a number of benefits, including longer-term tenancies, providing a higher standard of rented accommodation, meeting housing needs, and retaining employees that would otherwise be unable to afford to live locally.

Aparthotel Policy

13. The aparthotel element of the scheme is considered to be a *Sui Generis* use and would cater for a mixture of short, medium and long-term stays, which might last up to 90 nights. All of the apartments would be fully equipped for self-catering, but the aparthotel would provide significant shared facilities, including staffed reception and security desks, catering facilities, swimming pool, gym, lounge and external courtyard as well as other associated facilities.
14. Policy 77 of the Cambridge Local Plan (2018) refers to the Development and expansion of visitor accommodation and states the following:

Policy 77: Development and expansion of visitor accommodation

Proposals for high quality visitor accommodation will be supported as part of mixed-use schemes at:

- a. *Old Press/Mill Lane;*
- b. *key sites around Parker's Piece;*
- c. *land around Cambridge Station and the proposed new Station serving North East Cambridge (see Section Three); and*
- d. *any large windfall sites that come forward in the city centre during the plan period.*

Proposals for high quality visitor accommodation will also be supported in other city centre locations, while larger high quality hotels beyond the city centre may come forward in North West Cambridge and at Cambridge Biomedical Campus (including Addenbrooke's Hospital).

New visitor accommodation should be located on the frontages of main roads or in areas of mixed-use or within walking distance of bus route corridors with good public transport accessibility.

15. The introduction of an aparthotel use on the site would be compliant with the Cambridge Local Plan 2018 whereby policy 77 supports the promotion of high quality visitor accommodation beyond the City Centre. The site is located on the frontage of a main road, within an area of mixed use, within walking distance of bus corridors and benefits from good public transport accessibility.

Associated uses

16. A range of other uses will be delivered at the site and these can be summarised as follows:

BtR Use

- The apartments – C3 Use Class
- Community meeting rooms/residents' event space (residents only) – Ancillary to C3 Use
- Concierge and lounge foyer area (residents' and management staff only) – Ancillary to C3 use
- Management Offices – Ancillary to C3 Use
- Staff facilities (maintenance, cleaners, front of house etc.) – Ancillary to C3 Use
- Bike shop (bike repairs, hire and sales (public use) – E Use Class (note: this use will also include an area of the basement for bike storage and hire bikes).
- Café (public use) – E Use Class.

Aparthotel Use

- Aparthotel – Sui Generis
- Co-working areas (residents of the aparthotel and BtR only) – E use Class. This facility would be managed by the operator/ management company responsible for the overall development.
- Gym and swimming pool (public use) – E Use Class (note this facility is likely to be split between basement and first floor with the main reception area between)
- Micro-brewery – E Use Class/ Sui Generis - the micro-brewery will be at ground floor level but include servicing, storage etc. at basement level. The facility is effectively a pub with onsite brewing facilities. The brewing element is considered to be a light industrial use with the pub element Sui Generis. However, this will also include ancillary off licence sales and deliveries of bottled/canned beer and supplies of beer to other drinking/restaurant establishments in the area. The facility will be operated independently but owned and under the control of the operator/management of the overall development. There are not considered to be any environmental issues arising from this use, however it will be referred to within the technical reports (Noise) that will accompany the application.

Delivery of affordable housing

17. Policy 45 of the Cambridge Local Plan 2018 fails to accord with NPPG guidance regarding the delivery of affordable housing in that it is silent about the BtR sector. There is also not an updated Supplementary Planning Document (SPD) in place regarding affordable housing. The Local Plan requirement for a conventional C3 housing use is for the affordable housing to have a 75%/25% tenure split as between social rented and intermediate tenures of housing. The affordable housing definition at Table 6.2 of the Local Plan does make reference to the delivery of affordable rented housing and that this is subject to rent controls that require a rent of no more than 80% of the local market rent. It does not however expand any further on this and in any event is not written with the BtR model in mind.
18. Policy 64 of the NPPF states that major housing development should deliver a minimum 10% affordable housing, however an exception to this requirement should be made where the site or development provides solely for Build to Rent homes.
19. Within Annex 2: Glossary of the NPPF affordable housing for rent is referenced and this states that rental level for units should be set at least 20% below local market rents. The units will be known as Affordable Private Rent units.
20. Guidance within the NPPG confirms that affordable private rent is a form of affordable housing specifically designed for Build to Rent. 20% is generally a suitable benchmark for the level of affordable private rent homes to be provided. There is scope for this to be reduced through viability testing. The guidance also advises that the minimum rent discount should be 20% relative to local market rents.
21. We have noted that the recently published draft North East Cambridge AAP has included a proposed Policy(13a) regarding the delivery of BtR accommodation and this states:

Any Build to Rent scheme must comply with the following:

- a. individual schemes to be under common ownership and management control for the long term;*
- b. dwellings to be retained as Build to Rent under a covenant for at least 15 years with a clawback mechanism and compensation mechanism if the covenant is broken;*
- c. include a minimum of 20% affordable private rent units, which will be counted towards overall 40% affordable housing figure;*
- d. ensure all units are self-contained;*
- e. offer rent certainty for the period of the tenancy;*
- f. offer longer tenancies (three years or more) to all tenants and break clauses for tenants, which would allow a tenant to end the tenancy with a month's notice any time after the first six months; g) have on-site management; this does not necessarily mean full-time dedicated on-site staff, but all schemes need to have systems for prompt resolution of issues and some daily on-site presence;*
- g. ensure providers have a complaints procedure in place.*

Affordable private rent is also considered to require:

- o a minimum rent discount of 20% for equivalent local private rent homes, inclusive of service charges, taking into account up to date evidence on local rent levels and incomes;*
- o held under common management control together with the market homes;*
- o evenly distributed throughout the development physically; indistinguishable from market rent units in terms of quality and size; and*

- *maintained as affordable in perpetuity.*

Approach to be taken on the NIAB Site

22. The proposals for the site would involve the introduction of 297 self-contained BtR apartments. It is proposed that 20% of these (in line with National Guidance and the draft NE Cambridge AAP) would be provided as discounted rent homes to be capped at 80% market value subject to a 15-year clawback provision. The 15-year clawback provision form the basis of the affordable housing provision on the applicants recently approved BtR scheme at Orchard Park.
23. It must be noted that the site at present benefits from having planning permission for 104 residential units that were secured through the following Class O Prior Approvals; 20/03335/PR103O (95 units within the 1960's building) and 20/03334/PR103O (7 units within the library building) with two units (14&15 Howes Place) already on the site. The net increase in residential units at the site will be 193 and therefore the delivery of affordable housing will be calculated on this basis. 20% of 193 equates to 39 affordable dwellings and as outlined above these would be capped at 80% market value subject to a 15-year clawback provision. The applicants would be content for the affordable dwellings to be allocated to local key workers and this could be secured via Condition or within the S106 Agreement.
24. It is proposed that the following principles would apply to the BtR accommodation and these are similar to those provided within the draft NE Cambridge AAP document:
 - The development will be under common ownership and management control for the long term.
 - Dwellings will be retained as Build to Rent under a covenant for 15 years with a clawback mechanism and compensation mechanism if the covenant is broken. *(Note: Orchard Park was the first BtR consent for the Greater Cambridge area where this specific obligation was included in the 106 Agreement – the same terms would be acceptable).*
 - The development will include 20% affordable private rent units (based on a net increase basis)
 - All affordable dwellings will be self-contained.
 - The affordable dwellings will be evenly distributed throughout the development and physically indistinguishable from market rent units in terms of quality and size.
 - A rent discount of 20% calculated against equivalent local private rent dwellings will be applied taking into account up to date evidence on local rent levels, this will be inclusive of service charges.
 - Tenancy agreements will offer rent certainty for the period of the tenancy.
 - Longer tenancies (three years or more) will be offered to all tenants with break clauses, which would allow a tenant to end the tenancy with a month's notice any time after the first six months.
 - The development will have on-site management and systems in place for prompt resolution of issues.
 - A complaints procedure will be in place and maintained.

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