

2.9 REFERENCE NO - SW/08/1124 & SW/13/0568			
APPLICATION PROPOSAL			
Modification of Section 106 agreement to allow removal of on-site affordable housing with a viability re-assessment submitted upon occupation of the 21 st unit and a commuted sum payable at a maximum of £31,000 for off-site affordable housing. Original application - to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.			
ADDRESS 153 London Road, Sittingbourne, Kent, ME10 1PA			
RECOMMENDATION Grant modification			
SUMMARY OF REASONS FOR RECOMMENDATION			
On-site affordable housing would be difficult to provide. Allowing a viability re-assessment once the development has commenced and upon occupation of the 21 st unit, would ensure that a commuted sum is secured for off-site affordable housing, subject to there being a profit above 17%. This modification of the Section 106 agreement responds to the changing financial and property markets in difficult economic times. The modification would allow the development of much needed housing to be provided within an urban and sustainable site. It would also significantly improve the appearance of the site which is an eyesore in a prominent position.			
REASON FOR REFERRAL TO COMMITTEE			
Modification of Section 106 agreement			
WARD Grove Ward	PARISH/TOWN COUNCIL Sittingbourne	APPLICANT Clarity Properties Ltd AGENT Mr Keith Plumb	
DECISION DUE DATE 08/08/13	PUBLICITY EXPIRY DATE	OFFICER SITE VISIT DATE 09/01/17	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/507631/LDCEX	Certificate of Lawful development to establish that works commenced under the approved planning permission, SW/13/0568, in the form of demolition of the existing buildings on 23rd May 2016.	Approval	08.12.16
16/508336/NMAMD	Non material amendment to alter the description of application SW/08/1124 to reflect the approved drawings which show 13 one bedroom apartments and 13 two bedroom apartments.	Approval	08.12.16
SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.	Approval	08.08.13

SW/08/1124	Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access.	Approval	18.05.10
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MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site is 0.09ha and is rectangular in shape. It is directly adjacent to the Wickes car park and fronts onto London Road (the A2). On the site is a partially demolished two ½ storey building and a single storey flat roof building to the rear of the site.
- 1.02 The site lies to the west of Sittingbourne Town Centre. Residential properties lie opposite and to the west of the site. There is a Petrol Filling Station on the opposite side of London Road slightly to the east. The site is currently messy and unsightly.

2.0 PROPOSAL

- 2.01 Planning permission was originally granted under SW/08/1124 for the demolition of existing buildings and redevelopment of the site to provide 12, two bedroom apartments, 14, one bedroom apartments with amenity space and parking and a new vehicular access. Permission to extend the time limit for implementation of the development was granted under SW/13/0568. Application reference 16/508336/NMAMD later corrected the description to accurately reflect the approved plans which showed 13 one bedroom and 13 two bedroom apartments.
- 2.02 An application for a Lawful Development Certificate (16/507631/LDCEX) was later submitted to establish that the 2008/2013 permissions had been implemented by virtue of development commencing prior to the expiration of the time limit imposed. In this case, the partial demolition of the property constituted the commencement of development. The certificate was issued confirming that the permission was extant. We are currently considering the details submitted pursuant to conditions attached to the 2008/2013 permissions. Upon approval of these details, the approved development can continue.
- 2.03 I understand that the applicant was required to start the demolition process due to the unsafe state of the building fronting onto London Road. This Council served a Stop Notice on the applicant once this demolition was started because the work did not have the benefit of prior approval or planning permission. There has been no work on site since then. The applicant is aware that the conditions details, including contaminated land, will need to be agreed before any further work is carried out on site. I am informed by the planning agent that the required contaminated land surveys are being carried out and will be submitted shortly.
- 2.04 The current proposal is to modify the Section 106 agreement attached to the original permissions (SW/08/1124 & SW/13/0568) to allow removal of the requirement for on-site affordable housing. Among other things, the requirement of the Section 106 agreement is currently for the provision of 30% affordable housing on site (8 units), though a tenure split was not specified.

2.05 In addition, the Section 106 agreement required the following developer contributions:

- i) £227 per dwelling for library improvements;
- ii) an open space contribution of £17,940;
- iii) an adult social services contribution of £2362.85;
- iv) a community learning contribution of £981.05;
- v) a primary education contribution of £590.24 per dwelling; and
- vi) a secondary education contribution of £589.95 per dwelling.

2.06 We have negotiated with the applicant that a viability re-assessment would be submitted upon the practical completion of the 21st unit and a commuted sum payable at a maximum of £31,000 (plus an adjustment for inflation) for off-site affordable housing. This would be paid in three installments: 1st – practical completion of 21st unit, 2nd - practical completion of the whole scheme and 3rd – sale of 26th unit or 6 months after the 2nd instalment, whichever is sooner. The wording of the Section 106 agreement will need to be modified to enable this change, the precise wording of which would be agreed under the instruction of the Head of Legal Services.

3.0 POLICY AND OTHER CONSIDERATIONS

3.01 The National Planning Policy Framework (NPPF) – paragraph 173 is quoted below.

3.02 National Planning Practice Guidance (NPPG): Viability & Planning Obligations

3.03 Swale Borough Local Plan 2008: SP1 (sustainable development); SP4 (housing) and; H3 (affordable housing).

3.04 Bearing Fruits 2031 The Swale Borough Local Plan Proposal Main Modifications June 2016: ST1 (sustainable development); ST2 (development targets for jobs and homes); CP3 (delivering a wide choice of high quality homes) and; DM8 (affordable housing).

3.05 Supplementary Planning Documents: Developer Contributions 2009

3.06 Section 106A of the Town and Country Planning Act 1990 allows the modification and discharge of planning obligations.

4.0 CONSULTATIONS

4.01 The Head of Housing has been involved in the discussions and negotiations throughout and is in agreement with the commuted sum approach in this case and to the payment being capped at £31000 plus indexation. This is in response to a number of viability assessments that have been submitted - one in 2012, one in 2015 and the most recent in 2016. Each appraisal has shown that the scheme would be unviable if affordable housing were to be provided on site. They have agreed since 2012 that a commuted sum in lieu of on-site affordable housing would be acceptable.

4.02 With regard specifically to the possible availability of grant funding, she comments as follows:

“The current grant programme (Shared Ownership Affordable Homes Programme 2016-21) is for the delivery of shared ownership product only with limited affordable rent tenure for specialist/supported housing. Therefore our current affordable homes delivery programme is based solely around shared ownership with zero affordable

rent. This also means that our 'new' policy split of 90% affordable rent tenure with 10% shared ownership will be difficult to meet, as has been the case so far."

5.0 BACKGROUND PAPERS AND PLANS

5.01 Draft Section 106 agreement & application documents and plans for SW/08/1124 & SW/13/0568.

6.0 APPRAISAL

Principle of Development

6.01 As noted above, Section 106A of the Town and Country Planning Act 1990 allows the modification and discharge of planning obligations. NPPG – Planning Obligations states:

"Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it "no longer serves a useful purpose" or would continue to serve a useful purpose in a modified way".

6.02 In this case the planning obligation is over 5 years old, being completed on 18th May 2010, and so the developer could have applied formally to the council for this modification. However, all negotiations to date have been successfully undertaken without the need for the formal application.

6.03 In April 2013, the Government produced guidance on Section 106 Affordable Housing Requirements. This introduced a new temporary procedure, with the ability to appeal, for the review of planning obligations where it relates to affordable housing under Section 106BA of the Town and Country Planning Act. The guidance notes at paragraph 2 that:

"Unrealistic Section 106 agreements negotiated in differing economic conditions can be an obstacle to housing building. The Government is keen to encourage development to come forward, to provide more homes to meet a growing population and to promote construction and economic growth. Stalled schemes due to economically unviable affordable housing requirements result in no development, no regeneration and no community benefit. Reviewing such agreements will result in more housing and more affordable housing than would otherwise be the case."

6.04 Although this procedure was repealed in April 2016, the guidance referred to above and the change in legislation sets the tone for negotiations on the loosening of requirements to provide affordable housing on schemes that were approved at a time of economic difficulty and for schemes that are proving difficult to get off the ground, such as 153 London Road.

6.05 Now that the temporary change in legislation has come to an end, the modification of planning obligations can still take place under Section 106A but, arguably, under a less, streamlined process and without the right to appeal.

6.06 NPPG - Viability, notes that viability can be important where planning obligations or other costs are being introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support

development and promote economic growth. The guidance states that where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible. Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations. This is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. These contributions should not be sought without regard to individual scheme viability. The financial viability of the individual scheme should be carefully considered in line with the principles in this guidance.

6.07 Paragraph 173 of the NPPF states:

“...To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”

6.08 In the case of 153 London Road, the guidance is clear that we should be flexible in terms of the provision of affordable housing. The applicant has submitted three separate viability assessments, one in 2012, one in 2015 and the most recent in October 2016. All of these assessments demonstrate that the scheme would be unviable with affordable housing provided on site. It is my strong view that the proposed modification would allow the development of the site to come forward much more quickly than it would do if affordable housing was required to be provided on site at 30%. The requirement for a viability re-assessment, which would be independently assessed, will ensure that if the developer makes a profit above 17% (which is considered to be a reasonable % for developer profit and has been similarly applied to other schemes), a contribution of £31,000 (index linked) will be paid to the Council. This would be used towards the provision of affordable housing elsewhere within the Borough. The capping of the contribution at £31,000 gives the developer the certainty that they require in order to secure the necessary funds to develop the site. I consider that this is reasonable in this case.

6.09 The figure of £31,000 has been arrived at following extensive negotiations. The developer had originally offered a much smaller figure of £19,800 based on their calculations of the value of the market value of the 8 affordable units. We queried this figure based on our knowledge of larger commuted sums that had been secured on sites within close proximity to 153 London Road. The developer has agreed to pay this higher figure on the terms set out at paragraph 2.06 above.

6.10 Allowing the planning obligation to be modified in the way proposed will enable the provision of much needed housing and would improve the appearance of the site which I consider is, at present, an eyesore.

7.0 CONCLUSION

7.01 The proposal to modify the planning obligation in respect of the affordable housing provision on site would enable the development of much needed housing to come forward and would result in a significant visual improvement of the site. These factors weight significantly in favour of the modification which would see the loss of all on-site affordable housing. However, the scheme would still be subject to a viability re-assessment which would see £31,000 secured towards off-site affordable housing, should the developer make a profit of more than 17%.

8.0 RECOMMENDATION – To Grant modifications to the existing Section 106 as set out above and delegation to agree the precise wording of the modified planning obligation under the instruction of the Head of Legal Services.

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

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.