

PLANNING COMMITTEE – 4 APRIL 2019**DEFERRED ITEM**

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

Def Item No. 1		REFERENCE NO - 18/503723/MOD106	
APPLICATION PROPOSAL			
Modification of Planning Obligation dated 18/05/2010 under reference SW/08/1124 to allow removal of on site affordable housing.			
ADDRESS 153 London Road Sittingbourne Kent ME10 1PA			
RECOMMENDATION Grant Modification			
SUMMARY OF REASONS FOR RECOMMENDATION			
The proposal would provide a mechanism whereby the provision of on site affordable housing, at a level which complied with policy DM8 of the Local Plan could be rigorously tested and delivered if a Registered Provider (RP) is willing and able to take this on. However, if there are no RPs willing and able to provide on site affordable housing then the mechanism provides a fallback option whereby the Council would receive a commuted sum, this would be put towards providing affordable housing elsewhere in the Borough. The commuted sum has been set at a level which, when considered in the context of the viability evidence, is believed to be compliant with Policy DM8 of the adopted Local Plan.			
REASON FOR REFERRAL TO COMMITTEE			
Initially called in by Cllr Mike Baldock, but subsequently called-in by Head of Planning Services at Committee meeting on 7 March 2019.			
WARD Borden And Grove Park		PARISH/TOWN COUNCIL	APPLICANT Clarity Properties Ltd AGENT Brachers LLP
DECISION DUE DATE 07/09/18		PUBLICITY EXPIRY DATE N/A	
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.	Approved	08.12.16
16/508336/NMAM D	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.	Approved	08.12.16
SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings	Approved	08.08.13

	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.		
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.	Approved	18.05.10

MAIN REPORT

1.0 INTRODUCTION

- 1.01 Members will recall that this application was reported to Planning Committee on 7th March 2019. The report to that meeting is appended (along with the appendices which were attached to this previous committee report) and provides the details of the application site, the proposal which was considered at that time and relevant policies. The application was deferred following the Head of Planning Services calling in the application *“as the Planning Committee was minded to make a decision that would be contrary to officer recommendation and contrary to planning policy and/or guidance.”*

2.0 PROPOSAL

- 2.01 For clarity the proposal as considered at the 7th March 2019 planning committee sought to modify the Section 106 Agreement so that prior to the occupation of the 21st unit, a commuted sum of £40,000 is paid in one instalment for off site affordable housing. Since the deferral of the application, Officer's have been contacted by the agent in relation to the possibility of amending the proposal. In light of this a meeting has taken place between Officer's and the applicant and agent. As a result of this meeting, a revised proposal has been submitted. In summary, this would seek to modify the Section 106 Agreement to provide for 3 affordable units on site. However, there will, due to potential delivery issues, which will be discussed in more detail below, be a fall-back option if these units are unable to be provided as on-site provision. The agent has submitted the following to describe the proposed modification:

- (i) *“The s106 agreement would be varied to provide for 3x units of affordable housing on site – the current affordable housing requirements in the Council's adopted policy require 10% on site provision equating to 2.6 units which has been rounded up to 3;*
- (ii) *The Developer will not be permitted to occupy more than 22 Open market units until such time as the AHUs have been transferred to a Registered Provider;*
- (iii) *During a three month period from completion of the deed of variation the Developer will offer the 3x units to the Registered Providers identified in our meeting; i.e. Sage and Landspeed and any others which our client and your Housing Department may identify. The developer will provide evidence of the offers to the Council's Planning and Housing Managers;*
- (iv) *If at the end of that three month period the developer can demonstrate to the Council's Planning and Housing Managers that no Registered Provider is*

willing to take the units then the affordable housing provisions in the s.106 will default to a financial contribution of £40,000;

- (v) *The default contribution will not be conditional upon a further viability appraisal and will be payable before the occupation of more than 22 Open Market units.”*

3.0 APPRAISAL

- 3.01 As Members will be aware, the current Section 106 Agreement requires 30% of the units to be provided on site as affordable prior to the occupation of 50% of the market units. However, this agreement was signed when the policies of the 2008 Local Plan were applicable. Since this time, and as set out in the viability reports and detailed in the appended report presented to the 7th March 2019 Planning Committee, the profit of the development has been demonstrated as being 0.65%. This is significantly below a ‘normal’ gross development profit of around 20% which would be considered as ‘normal’ and is typically accepted as such by Planning Inspectors.
- 3.02 Policy DM8 of the adopted Local Plan sets out that due to viability testing that was carried out, developments in Sittingbourne will be required to provide 10% of the total as affordable units. As a result of the considerations in this application I am of the view that due to the specific viability evidence that has been submitted in support of this proposal that a reduction from 30% to 10% is now wholly compliant with policy.
- 3.03 The above proposal, as Members will note, therefore now seeks to provide 3 on site affordable units. However, it is also important to note that the proposal seeks to insert a mechanism whereby if RP’s are not able to provide these units, then a commuted sum, set at £40,000 is provided so that affordable housing can be delivered elsewhere in the Borough. The reason for this fall-back option is due to, as set out previously, the potential difficulties with securing on site affordable units. In reaching this view, I have liaised closely with the Council’s Strategic Housing and Health Manager. From her discussions with larger RP’s it has become evident that they are becoming increasingly resistant to delivering a small number of units on site. There is also the added complexity of RP’s often being unwilling to provide affordable units in mixed blocks of accommodation, creating a further barrier to these units being delivered.
- 3.04 Despite the above, through my discussions with the Council’s Strategic Housing and Health Manager, I have been made aware that there are a limited number of RP’s who would potentially be able to provide these units. As such, the Council’s Strategic Housing and Health Manager has made initial contact with these providers. This has generated some interest. The Council’s Strategic Housing and Health Manager and myself are currently in the process of liaising with the RP’s and the applicants. There is potential that these discussions will have progressed between the time of writing this report and the meeting and if so I will update Members at the meeting. As a result of the above, I am of the view that the proposed modification now allow for the best opportunity to secure on-site affordable provision, at a level which is compliant with the adopted Local Plan. I am also currently in discussions with the applicant / agent regarding the tenure split and unit size of the affordable units. These matters have not at this point been concluded and I will update Members at the meeting of the latest position.
- 3.05 However, if, after rigorous testing, there are no RPs who are able to deliver these affordable units on site, then there would still be the requirement to pay the commuted sum of £40,000. As discussed in further detail in the report presented to the 7th March 2019 planning committee (attached here as Appendix 1, I am of the firm view that a commuted sum of £40,000 would in this scenario, due to the viability constraints, be policy compliant. I do recognise that Members were minded to refuse the application

which solely proposed this commuted sum. However, I believe that if a RP is not able to deliver the units on site, this would provide a fall back option, which would enable the delivery of affordable housing units elsewhere in the Borough.

- 3.06 Turning to the commuted sum and the weight to be given to the viability report, I believe it fundamentally important to draw Members' attention to an appeal that was recently allowed at Doubleday Lodge, Glebe Lane, Sittingbourne (PINS ref 3207752 – included on this agenda as Item 5.1). In the case of Doubleday Lodge, Members may recall that the application was refused in line with Officers' recommendation. The application sought to remove the majority of developer contributions which had been agreed as part of the original approved scheme. The reason being that due to additional unexpected costs, the proposal would be unviable if the developer was required to pay them. Although this application required a balancing of the harm of not providing the contributions against the benefits of affordable housing, the Inspector was extremely clear in that the viability report (the contents of which were assessed by the Council's independent consultants and conclusions agreed with), which demonstrated that the development would not be viable, carried significant weight. It is important to note that the Inspector commented that the applicant had complied with the relevant part of the policy which required an open book assessment in order to seek to reduce developer contributions.
- 3.07 In the case of the current application, the applicant's have, as set out in the previous Committee Report, demonstrated via an open book assessment that the development would not be viable. Therefore, as required by Policy DM 8 I also give very significant weight to the lack of viability that has been demonstrated in this case.
- 3.08 I do appreciate that the viability report which was submitted in the case of this current application dates from 2017. However, Officers have undertaken a further assessment of the variance in property prices since the date of the original viability report which would, due to a slight reduction, generate a slight reduction in expected returns. On this basis, it was considered that the viability evidence still carried significant weight. Despite this, the applicant has offered to provide an update to the viability report so that Members can be provided with up-to-date information. I have not received this at the time of writing this report, however, I have been informed that the intention is to provide this in advance of the Committee meeting. As such, once received this updated viability evidence will be provided as a tabled update to Members in advance of the Committee.
- 3.09 In addition to the above, the Inspector when deciding the Doubleday Lodge appeal, did not consider that the advancement of development in that case should weigh against the proposal. Instead, the view was taken that any further delay would have led to the applicant incurring further costs. I believe that the same assessment could be made here and as such even less weight, than the limited amount that was identified in the previous report, should be given to this factor weighing against the proposal.
- 3.10 Furthermore, from a practical perspective, if a registered provider was unable to provide affordable units on site, then the commuted sum approach would allow for delivery of units off-site. I have discussed the way in which commuted sums are used to provide affordable housing with the Council's Strategic Housing and Health Manager. In terms of this, as an example, in relation to the commuted sums received under the applications discussed in the previous Committee Report - 14/506623/OUT for 18 dwellings at 109 Staplehurst Road and 16/501883/FULL for 45 one and two bedroom dwellings at 4 Canterbury Road – the Council has agreed to support a RP with the delivery of affordable housing units in the Borough. The commuted sum, if provided in this case would also be put towards the delivery of affordable units, likely

through a similar arrangement. As such, I am very firmly of the view that if an RP is unable to bring forward on site affordable provision then the commuted sum can be used to enable the delivery of affordable housing off site, in the same way that the commuted sums in the above two cases have been.

4.0 CONCLUSION

- 4.01 As a result of the above, I am very firmly of the view that the proposal now provides for the potential for an RP to bring forward affordable units on this site. The level of affordable provision is proposed to be 3 units which in light of the adopted Local Plan and in the context of the viability evidence is in my view acceptable. However, due to the potential barrier of providing these units, as has been discussed in both this and the previous committee report, I am also of the firm view that having the commuted sum as a fall-back option provides the Council with the certainty that, if necessary, this scheme will contribute towards the provision of affordable housing elsewhere in the Borough.
- 4.02 On the basis of the above, I believe that in light of the viability evidence, the recent appeal decision and the revised proposal, this proposal is policy compliant. I therefore consider that there are no material planning grounds on which this proposal could be refused. As a result, if the Council were to refuse this application, I believe that there is the strong possibility that a subsequent appeal would be extremely difficult to successfully defend and that an award of costs could be made against the Council.
- 4.03 In conclusion, I take the view that the Section 106 should be amended on the basis of the wording as set out above and recommend that the modification is granted.

5.0 RECOMMENDATION – 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.