

CITY OF PLYMOUTH

Subject: Proposed variation to Section 106 unilateral undertaking to amend clause relating to measures to mitigate the impact of the development

Committee: Planning

Date: 28 July 2011

CMT Member: Director for Development and Regeneration

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Ref: 10/00180/FUL

Key Decision: No

Part: I

Executive Summary:

This report relates to planning permission 10/00180/FUL, which was for the erection of 12 affordable/local needs or sheltered/supported residential flats at Woodland Terrace Lane, Lipson, Plymouth. The planning permission was granted in May 2010, the developer having completed an associated unilateral undertaking under Section 106 of the Planning Act.

The application was assessed having regard to the Council's Planning Obligations and Affordable Housing Supplementary Planning Document (SPD) (adopted 2008) and, to address the cumulative impact of development on infrastructure needs, there was a need for mitigation measures to address strategic transport impacts of the development, namely an undertaking to pay £37,324 tariff contribution towards these measures.

Since that decision, the First Review of the SPD has been adopted in August 2010. This SPD exempts affordable housing developments from the seeking of tariff contributions, to support delivery of affordable housing consistent with the then emerging provisions for the Community Infrastructure Levy. It did not however exempt affordable housing schemes from bespoke planning obligations if they are needed to address specific local needs.

If the application was to be considered today, we would not seek any tariff contributions on the basis of this exemption. However, we would need to reconsider the application in light of other potential impacts, based upon the evidence at the time. In this respect, Children's Services has identified that a contribution of £8,168 to improve capacity at a specified local primary school would be necessary to the grant of planning permission, as a bespoke contribution that would need to be spent within 5 years of the date of the agreement.

The developer wishes to vary the unilateral undertaking so as to remove the clause referring to the payment of the transport contribution and replace it with the bespoke contribution to an education capacity project at the school.

The report is considered in the context of the Local Development Framework, which includes a policy framework for addressing the impacts of development in support of the Council's priority for delivering growth.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

The implication of agreeing to the variation as sought would be that a contribution of £37,324 to transport mitigation measures would not be forthcoming but a contribution of £8,168 to local schools would be paid.

Other Implications: e.g. Section 17 Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment, etc.

The case for seeking these measures in the first instance rested on the cumulative impact of new development on the City's transport network. However, since the planning application was considered and determined, the Council's policy framework in relation to planning obligations has changed. If the planning application was determined now, a tariff contribution would not be sought. This does not prevent a separate negotiation in relation to more local or site specific impacts as part of a bespoke planning obligation.

Recommendations & Reasons for recommended action:

It is recommended that, in accordance with policy CS33 of the Core Strategy of Plymouth's Local Development Framework, the Planning Obligations and Affordable Housing Supplementary Planning Document First Review and the Government's Community Infrastructure Levy Regulations, agreement is given to the variation of the existing Section 106 unilateral undertaking to amend clause 4.1.1 relating to mitigation measures so as to remove the payment of £37,324 in respect of strategic transport impacts and to add the payment of £8,168 in respect of improving capacity at a specified local primary school.

The background to, and reasons for, this recommendation are set out in the report below.

Alternative options considered and reasons for recommended action:

To refuse to agree to variation of the unilateral undertaking. This would cause the applicants to pay the sum of £37,324. However, the scheme is considered to be unviable on the basis of this payment and, given the pressing need for the type of development that is proposed, which has been verified by Housing Services, it is considered a reasonable position to support the variation sought by the developer in this particular instance.

Background papers:

1. Planning Officer's report for application 10/00180/FUL
2. Planning Obligations and Affordable Housing Supplementary Planning Document First Review 2010

Sign off: comment must be sought from those whose area of responsibility may be affected by the decision, as follows (insert initials of Finance and Legal reps, and of HR, Corporate Property, IT and Strat. Proc. As appropriate):

Fin		Leg JAR/ 9253		HR		Corp Prop		IT		Strat Proc	
Originating SMT Member											

Report:

In October 2009, planning permission (reference 09/00832/FUL) was granted to Bibio Limited for the erection of 12 sheltered/supported residential flats comprising 4 two-bedroom units and 8 one-bedroom units at Woodland Terrace Lane, Lipson, Plymouth. This scheme was for sheltered/supported accommodation and as such no impacts in need of mitigation through planning obligations were identified in consideration of the application.

To allow a fall-back position if there were insufficient nominations or funds for supported housing, a further planning application (reference 10/00180/FUL) was submitted by Bibio Limited in February 2010 that included the alternative of affordable housing. Planning permission was granted in May 2010 for the erection of 12 affordable/local needs or sheltered/supported residential flats at the site. With this application, a unilateral undertaking had been submitted under Section 106 of the Planning Act. This undertaking included a provision to address the cumulative impact of development on infrastructure needs, namely the payment of £37,324 tariff contributions towards addressing the strategic transport impacts of the development. Although the applicants had not realised (prior to making the second application) that this was an impact the Council would normally seek to mitigate in relation to general affordable housing schemes, they did not have time to submit a viability assessment and instead decided to agree the payment so as not to delay the scheme and compromise its Homes and Communities Agency (HCA) funding.

The second application (10/00180/FUL) had been considered and determined having regard to the Council's Planning Obligations and Affordable Housing Supplementary Planning Document (SPD). In August 2010, the First Review of the SPD was adopted. This took due account of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. It also gave exemptions to certain types of development from tariff contributions (including affordable housing) in recognition of the wider role of such developments and to provide consistency with the exemptions likely to apply through the CIL process. However, the 2010 SPD was clear that negotiated bespoke obligations may still be sought where there is a local impact that needs to be addressed.

In August 2010, the possibility of removing the payment of the £37,324 was first raised by an agent acting on behalf of the applicants. In October 2010, a request was made on behalf of the applicants for agreement to amend the unilateral undertaking on the basis that, if a third application was submitted, the Council would no longer seek a developer contribution to mitigate strategic transport impacts, given the exemption made in the First Review of the SPD. A third application was not submitted as this would have caused costs and delays that would have potentially jeopardised the scheme. The development, for a supported housing client group of people of all ages with learning disabilities, all being affordable housing to lifetime homes standards, has been commenced, again partly due to HCA funding requirements.

Unfortunately, there has been a long delay in considering the request. This is in part due to the unusual nature of the request for a scheme which has now commenced on the basis of a planning permission which included a transport contribution.

This is an important scheme which the Council would wish to support. Housing Officers have confirmed that the financial cost of the transport contribution would be a significant burden on this development, and were the application to have been considered now rather than in early 2010, we would not have sought to negotiate the transport contribution. However, we would have had regard to the fact that it allows for a more general affordable

housing development and would have identified a local impact on education capacity which would need some mitigation through a capacity improvement scheme in a local primary school. The cost of mitigating this impact is £8,168, which would be a bespoke negotiated planning obligation. The developer has agreed to make include such a contribution in the deed of variation to the unilateral undertaking, in lieu of the transport tariff.

The set of circumstances in this case lead your officers to recommend agreement to variation of the unilateral undertaking. These circumstances include:

- the fall-back reason for submitting a second planning application
- the applicant's need to avoid delay in obtaining the second planning permission, leading to agreement to paying the sum in respect of strategic transport impact without further assessment
- the important nature of the scheme ~ supported housing for people with learning difficulties
- the absence of any advantage in requiring a third planning application to be submitted
- the disadvantages of requiring a third application, including costs, delay and uncertainty for the applicants

It is therefore recommended that, in accordance with policy CS33 of the Core Strategy of Plymouth's Local Development Framework, the Planning Obligations and Affordable Housing Supplementary Planning Document First Review and the Government's Community Infrastructure Levy Regulations, agreement is given to the variation of the existing Section 106 unilateral undertaking to amend clause 4.1.1 relating to mitigation measures so as to remove the payment of £37,324 in respect of strategic transport impacts and to add a bespoke contribution of £8,168 to increase education capacity at a specified local primary school, such a scheme of improvement to be implemented within 5 years, in accordance with the "negotiated element" provisions of the 2010 SPD.