

PLYMOUTH CITY COUNCIL

Subject: Proposed variation to Section 106 unilateral undertaking relating to planning consents 05/00440 and 05/00953.

Committee: Planning

Date: 31st May 2012

Cabinet Member: Councillor Brian Vincent

CMT Member: Director for Place

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Ref: 05/00440/FUL/ 05/00953/FUL

Key Decision: No

Part: I

Executive Summary:

This report seeks approval to enter into the process of securing a Deed of Variation for the S106 obligation with Matrix Plymouth SA in relation to the development at the Millfields.

The S106 obligation relates to two planning permissions: 05/00440/FUL for the erection of a new four-storey building on land between the Science and Trafalgar buildings containing 12 residential units; and 05/00953/FUL for the change of use, conversion and alterations to form 34 residential units at the Millfields in Stonehouse. The applications relate to four existing Grade 2* listed buildings at the Millfields: Glastonbury, Gambrell, Trafalgar and Science.

Planning permission for 05/00440/FUL was granted subject to a S106 obligation on June 8th 2005, while planning permission for 05/00953/FUL was granted subject to a S106 obligation on 10th August 2005. The unilateral undertaking covering both permissions under Section 106 was completed on 1st February 2006. This required the applicant to make contributions to education, off-site play and off-site affordable housing before the commencement of development.

The applicant has requested that the Council agree to vary the S106 obligation in light of the difficult market conditions which have detrimentally affected the viability of the whole development and the lapse in the planning permission for the new build element which means that the S106 obligation now falls on fewer residential units (34 units as opposed to 46 units). The applicant has submitted market viability data to demonstrate that the development proposal's capacity to meet its planning obligations is limited.

Officers have analysed the viability data submitted and accept that under current market conditions the development's capacity to meet its planning obligations is limited. On this basis officers recommend that the administration fee be waived in recognition of the current difficult market circumstances. Officers consider, however, that an upturn in the housing market in future will significantly improve the scheme's viability. Officers therefore recommend that the remaining payments should be re-phased so that they are more sympathetic to cash flows and linked to a future improvement in market conditions. Officers consider that this variation to the S106 will enable the continued conservation and

conversion of these listed buildings while still achieving community benefits that were assessed as necessary and relevant at the time the S106 obligation was negotiated.

Corporate Plan 2011-2014:

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 £9,894.50 towards administration would not be paid, and contributions of £66,000 to off-site affordable housing, £11,517 to off-site play and £21,428 to education would be deferred until further into the development of the scheme.

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 impacts of both developments on local schools, play facilities and on the requirement for new development to contribute towards the City's affordable housing needs. Through the variation of the S106 obligation, these impacts will still be mitigated, but rephrased as outlined in the report.

Recommendations & Reasons for recommended action:

It is recommended that Planning Committee:

Instruct the Assistant Director for Planning Services to prepare and complete a deed of variation which amends the existing S106 obligation as follows:

- That the administration fee of £9,894.50 is waived by the Council.
- That the single lump sum of £66,000, being the affordable housing contribution, is paid by Matrix Plymouth SA to the Council before occupation of the 5th unit in second building to be completed.
- That the sums of £11,517 and £21,428, being the off-site play and education contributions, are paid by Matrix Plymouth SA to the Council before occupation of the 5th unit in the third building to be completed.

Reason: To provide the applicant with the opportunity to progress the development in the short term while market conditions are difficult, while still providing a valuable community contribution in the medium to longer term and ensuring the preservation of these historic buildings in accordance with Plymouth's Local Development Framework.

Alternative options considered and reasons for recommended action:

1. To reduce or waive the sums payable towards affordable housing, play and education. However, this would mean that part or all of the money that has already been identified in the Council's Capital programme for affordable housing, education and play provision would not be received.

2. To refuse the applicant's request to vary the S106. Based on analysis of development viability information submitted, officers consider that the requirement to pay the full S106 monies immediately would delay commencement of development of the 2nd block and could jeopardize the viability of the whole scheme, endangering the future of the listed buildings.

Background papers:

1. Planning consents for applications 05/00440/FUL and 05/00953/FUL and related S106 obligation dated 1st February 2006.
2. Plymouth's Local Development Framework Planning Obligations and Affordable Housing Supplementary Planning Document First Review 2010.
3. Circular 5/2005 Planning Obligations (ODPM)
4. National Planning Policy Framework.

Sign off:

Fin	SG/Pla ceF PD121 3001.1 7.05.1 2	Leg	12994 A/JAR	HR	N/A	Corp Prop	N/A	IT	N/A	Strat Proc	N/A
Originating SMT Member: Paul Barnard Assistant Director for Planning											

Briefing Report

I.0 Background

- I.1 The Millfields is a historically significant group of buildings and was designated as a Conservation Area in 1977. Application 05/00440/ful relates to a vacant site (known as former Block E) where a ward building was demolished in the past. Application 05/00953/FUL relates to four Grade 2* listed buildings called Glastonbury, Gambrell, Trafalgar and Science. Both sites are part of the former St Dunstons School.
- I.2 The S106 obligation that was signed on 1st February 2006 covers both permissions: the 'first application' (05/00440 for the new build of 12 units) and the 'second application' (05/00953 for the conversion of 34 units). The obligation states that 'commencement of development' means the carrying out of a material operation pursuant to either of the planning permissions.
- I.3 The obligation states that:
- The applicant enters into a covenant with the Council so as to bind the site 1 and site 2 and its successors in title.
 - The applicant does not commence development until it has paid to the Council:
 - £11,517 for the provision of off-site play areas or equipment
 - £21,428 as a contribution towards education provision
 - £66,000 as a contribution towards the provision of off-site affordable housing.
 - £9,894.50 administration fee.
 - (Totaling an amount of £108,839.50)
 - The payments are not apportioned between the two permissions.
 - The applicant does not permit or suffer the occupation of the last two dwelling units of the first development (the new build element) until the applicant has completed the approved conversion works.
- I.4 The reason that a single S106 undertaking was agreed to cover two permissions was to ensure that the developer would not complete the new build without completing the conversions. Therefore, the S106 undertaking included a clause stating that the last two dwelling units of the new build should not be occupied until the applicant had completed the approved conversion works.
- I.5 Subsequently, development has commenced on the conversion scheme without payment of the contributions, but the new build scheme has not progressed due to difficult market conditions, and planning permission 05/00440/FUL for the new build element has now expired. One block (Glastonbury) has been converted into eight flats and is being marketed, but no work has commenced yet on the other blocks.
- I.6 The Council accepted the developer's view that the profits from the new build would be invested in the conversion and repairs to the existing listed buildings, but

considered that the scheme would still need to contribute to a community development package.

- 1.7 Subsequently, the properties have been acquired by Matrix Plymouth SA as the previous owner (Wykeham Homes) ceased trading. The new build infill development of 12 units that was granted permission under 05/00440/FUL has not been built and the permission has now lapsed. The conversion of Glastonbury block has been completed and the flats are being marketed, meaning that development has commenced according to the terms of the S106 obligation, but work has not yet commenced on Gambrell, Trafalgar or Science blocks. The contributions that were due prior to commencement of development have not yet been paid.
- 1.8 The money negotiated for affordable housing in the S106 obligation has been earmarked for the Stonehouse Arena affordable housing development of 56 dwellings. Officers understand that the sums for off-site play and education have also been earmarked for local projects.

2.0 Current position

- 2.1 The applicant's view is that it is unreasonable that they should be required to pay the full S106 moneys when the permission for the new build has lapsed, and the full burden is placed on the existing listed buildings. The applicant notes that the S106 undertaking does not apportion the obligations between the two sites. In the current market situation, forecast profits on the whole scheme are only 1% which makes the scheme unviable. Sales of flats in the completed scheme (Glastonbury) are slow and asking prices are being reduced. Although the market may pick up in future, there would need to be a substantial rise in market values to achieve a reasonable return. Given that the buildings are listed, the applicant does not wish to cut costs on the quality of materials used in their conversion. The Section 106 contributions are the only area where the viability situation can be improved in the short term.
- 2.2 Officers are mindful that any proposal to vary the obligation should be considered in the context of the Council's current policy on planning obligations as set out in the 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. The Planning Obligations and Affordable Housing SPD First Review sets out a tariff approach to address the cumulative impacts of development on infrastructure needs. This requires all residential developments of 5 or more dwellings to be considered for tariff payments. Officers consider that it would be contrary to current policy to waive or reduce any of the contributions agreed to in the original S106 obligation.
- 2.3 The applicant has submitted viability information in support of their request to enable officers to evaluate the project's viability. While the viability data confirms that under current market conditions the development's capacity to meet its planning obligations is limited, the officer's recommendation is that the payments should be deferred rather than reduced with the exception of the administration fee of £9,894.50 which officers consider should be waived in view of difficult market conditions. This view is based on the following reasons:
 - The development will be built over a number of years and later phases will not commence unless market conditions improve. While the development is currently

- The S106 payment represents just 1.5% of overall development costs and while this is not insignificant, it is not the key factor that is causing the scheme's viability challenges.
- 2.4 Officers consider that re-phasing the payments will provide the applicant with the opportunity to progress the development in the short term while market conditions are difficult, while still providing a valuable community contribution in the medium to longer term and ensuring the preservation of these historic buildings. Officers consider that the payments should be re-phased as follows:
- That the single lump sum of £66,000, being the affordable housing contribution, is paid by Matrix Plymouth SA to the Council before occupation of the 5th unit in second building to be completed.
 - That the sums of £11,517 and £21,428, being the off-site play and education contributions, are paid by Matrix Plymouth SA to the Council before occupation of the 5th unit in the third building to be completed.
- 2.5 The prioritising of the affordable housing contribution is in recognition that the money has been earmarked for the Stonehouse Arena affordable housing development of 56 dwellings. Officers recognise that re-phasing this payment may affect the delivery of the affordable housing project in the short term, but consider that it is necessary and justifiable given the viability reasons outlined above.

3.0 Recommendations

- 3.1 Officers recommend that the request to vary the existing Section 106 unilateral undertaking should be agreed as follows:
- That the administration fee of £9,894.50 is waived by the Council
 - That the single lump sum of £66,000, being the affordable housing contribution, is paid by Matrix Plymouth SA to the Council before occupation of the 5th unit in second building to be completed.
 - That the sums of £11,517 and £21,428, being the off-site play and education contributions, are paid by Matrix Plymouth SA to the Council before occupation of the 5th unit in the third building to be completed.