

PLYMOUTH CITY COUNCIL

Subject: Proposed variation to Section 106 relating to planning consent 04/00850/FUL

Committee: Planning Committee

Date: 10th October 2013

CMT Member: Anthony Payne (Director for Place)

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Ref: 04/00850/FUL

Key Decision: No

Part: I

Purpose of the report:

This report seeks approval to enter into the process of securing a Deed of Variation for the S106 obligation with Prestige Homes South West Ltd "In Administration" and Bank of Scotland PLC for the development at the Ballard Centre.

The S106 obligation relates to planning permission: 04/00850/FUL to demolish leisure centre and redevelop site by erection of nine and ten storey building containing 122 flats above ground floor food and drink use and basement parking (amended proposals). The development has been completed and is known as "Zero 4".

Planning permission for 04/00850/FUL was granted subject to a S106 obligation on January 13th 2005. The S106 required the applicant to make contributions to education, highways, public realm and off-site affordable housing. The payments were to be phased from commencement of the development until occupation of the last two residential units.

The education and highways contributions were paid on 5th September 2007 but the original S106 was then varied by a deed of variation dated 18th August 2009. The revised S106 re-phased the contributions for the public realm and off-site affordable housing. The variation required the applicant to make the contributions in two stages three and five years from the date of the agreement.

Prestige Homes South West Ltd entered into administration on 18th June 2012 and the administrators, Deloitte LLP, have now requested that the Council agree to vary the S106 obligation in order to ensure an early payment from Prestige. The applicant has submitted market viability data to demonstrate that the development'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 level of mitigation is reduced from £1,351,490 to £675,000. Officers consider that great weight should be attached to securing early payment which would be made within 6 months of the date of the agreement. Whilst the S106 secured contributions towards both public realm and off-site affordable housing officers consider that the reduced payment secured by this deed

of variation should be used purely for off-site affordable housing given the greater level of need and input into the growth agenda. The contributions towards the public realm were to be directed to improvements around Derry's Cross. Further redevelopment in this area is likely and it is hoped that public realm improvements would be delivered in the future.

The Brilliant Co-operative Council Corporate Plan 2013/14 -2016/17:

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.

<http://www.plymouth.gov.uk/corporateplan.htm>

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 the overall S106 contribution would be reduced from £1,351,490 to £675,000. The public realm contribution of £252,728 would not be paid and the amount for off-site affordable housing would be reduced by £423,762.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

The case for seeking these measures in the first instance rested on the impact of the development on local schools, highway network, public realm and on the requirement for new development to contribute towards the City's affordable housing needs. Through the variation of the S106 obligation, the Council's priorities will be used to determine where the S106 contributions should be allocated, as outlined in the report.

Equality and Diversity:

Has an Equality Impact Assessment been undertaken? No

Recommendations and Reasons for recommended action:

It is recommended that Planning Committee:

Agree to the preparation and completion of a deed of variation which amends the existing S106 obligation as follows:

- That the off-site affordable housing contribution be reduced from £1,098,762 to £675,000 and paid by Prestige Homes South West Ltd within 6 months from the date of the Deed of Variation
- That the public realm contribution of £252,728 is waived.

Reason: To allow the administrators to sell the building as an investor sale and guarantee timely payment of the S106. Securing payment of the S106 will ensure approximately 34 affordable homes are delivered in accordance with Plymouth's Local Development Framework.

Alternative options considered and rejected:

To refuse the applicant's request to vary the S106. The applicant has indicated that if the Local

Planning Authority were not happy to vary the S106 then payments could not be made until sufficient realisation of net costs had been generated from apartment sales. It is indicated that payment may not therefore be forthcoming for up to 8 years. Officers consider that it is not acceptable to wait this length of time for a payment, which may still need to be reduced if sufficient funds are still not available at this stage.

Published work / information:

1. Planning consent for application 04/00850/FUL and related S106 obligation dated 1st February 2006 and Deed of Variation dated 18th August 2009.
2. Plymouth's Local Development Framework Planning Obligations and Affordable Housing Supplementary Planning Document Second Review 2012.
3. National Planning Policy Framework

Background papers:

Title	Part I	Part II	Exemption Paragraph Number							
			1	2	3	4	5	6	7	

Sign off:

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Originating SMT Member													
Has the Cabinet Member(s) agreed the content of the report? Yes / No													

1.0 Background

1.1 The development known as “Zero 4” occupies a prominent site to the west of the City Centre. The site was formerly occupied by the Ballard Centre a small leisure facility with planning permission being granted on 13th January 2005 for its redevelopment.

1.2 The S106 obligation that was signed on 10th January 2005 states that:

- On commencement of development the applicant must pay to the Council.
£50,000 towards the provision of pedestrian crossing facilities
£24,354 towards the improvement of local education infrastructure
- Prior to occupation of more than 50% of the residential properties the applicant must pay to the Council:
£549,381 towards the provision of offsite affordable housing
£126,364 towards public realm improvements in the vicinity of Derry’s Cross
- Prior to occupation of the last two residential properties the applicant must pay to the Council
£549,381 towards the provision of off-site affordable housing
£126,364 towards public realm improvements in the vicinity of Derry’s Cross
- £74,156 administration fee.
- Totalling an amount of £1,500,000

1.4 Subsequently, work commenced on the site with the administrative fee paid on 1st April 2005. Contributions for education and the pedestrian crossing were then received on 5th September 2007.

1.5 Unfortunately, during the construction of the building market conditions changed, which made it impossible to make the pay the remaining contributions at the required time. A deed of variation was therefore submitted for consideration and signed on 18th August 2009.

1.6 The deed of variation states that:

- £252,728 towards public realm improvements in the vicinity of Derry’s Cross shall be paid to the Council within 3 years from the date of the deed
- £1,098,762 towards the provision of off-site affordable housing shall be paid to the Council within 5 years from the date of this deed.

1.7 The lack of improvement in the economy and continued low demand for city centre flats in Plymouth had a significant impact on the business success of the applicant which resulted in Prestige Homes South West Ltd entering administration in Spring 2012.

2.0 Current position

2.1 The administrators appointed for Prestige Homes made an application on 12th July 2013 to discuss the willingness of the Council to consider a variation to the S106 agreement in order to secure an early payment.

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 Second Review and the Government’s Community Infrastructure Levy Regulations. The Planning Obligations and Affordable Housing SPD Second Review sets out an approach to address the cumulative impacts of development on infrastructure

needs. This requires all residential developments of 10 or more dwellings to be considered for mitigation payments. Officers consider that it is appropriate to reduce the level of mitigation payable in light of suitable, robust viability information.

2.3 The applicant has submitted viability information in support of their request to enable officers to evaluate the developments ability to pay the current required level of mitigation. The information submitted by the applicant indicated that a 67% reduction in the total S106 obligation was required, meaning a total of £445,000 would be paid, in order to guarantee early payment.

2.4 While the viability data submitted demonstrates that the development's capacity to meet its planning obligations is limited, officers consider that a reduction of 67% is not justified. This view is based on the following reasons:

- 18 flats within the development were sold around 2008. This represents 13.2% of the value of the development. 13.2% of the S106 liability is £178,397 and it is therefore reasonable to expect this amount to be paid in full. This would leave £1,173,093 that could be subject to a reduction.
- The 92% reduction in the value of the retail units is not sufficiently evidenced. Officers consider that retail values have not declined by this extend even in out of favour locations.
- The data suggests an approximate 45% decline in the total value of the flats between 2005 and 2012. Land registry data from these years does not support a decline of this magnitude.
- A reduction in the value of the development will be required in order to make it an attractive investment opportunity.

2.5 Officers consider that a total contribution of £675,000 would be reasonable in order to allow the development to be sold as an investment opportunity and guarantee payment within 6 months of the date of Deed of Variation.

2.6 The decision to allocate all the money to affordable off-site housing provision has been taken due to the high priority given to the need to provide new affordable homes in the City. The monies would be used to provide a £20,000 subsidy per dwelling to provide approximately 34 affordable homes. However it is important to understand that this is an estimate and it may be possible to exceed this level of Affordable Housing unit support. It should also be noted that if this money did provide 34 affordable homes then this would generate approximately £260,000 in New Homes Bonus.

2.7 The table below summarises the original S106, payments received, the Deed of Variation agreed in 2009 and the proposal currently under consideration.

S106 agreed in 2005	Contributions paid in 2007	Deed of Variation agreed in 2009	Proposed Deed of Variation
Education £24,354	Education £24,354	Public Realm contribution re-phased to be paid by 18 th August 2012	Affordable Housing contribution reduced to £675,000 and to be paid within 6 months of the date of the agreement.
Highways £50,000	Highways £50,000	Affordable Housing contribution re-phased to be paid by 18 th August 2014	
Public Realm £252, 728			
Affordable Housing £1,098,762			
Total - £1,425,844	Total - £74,354	Total - £1,351,490	Total - £675,000

3.0 Recommendations

3.1 Officers recommend that the request to vary the existing Section 106 should be agreed as follows:

- That the off-site affordable housing contribution be reduced from £1,098,762 to £675,000 and paid by Prestige Homes South West Ltd within 6 months of the date of the Deed of Variation.
- That the public realm contribution of £252,728 is waived.