

EAST AREA PLANNING COMMITTEE

2nd October 2019

Application number:	15/02282/OUT		
Decision due by	Application already determined		
Extension of time	N/A		
Proposal	Demolition of public house. Outline application (with all matters reserved) for the erection of 16 flats (6 x 3bed, 8 x 2 bed, 2 x 1 bed) on 3 floors. Provision of 19 car parking spaces. (Amended plans)		
Site address	Jack Russell, 21 Salford Road, Oxford, Oxfordshire – see Appendix 1 for site plan		
Ward	Marston Ward		
Case officer	Sarah Orchard		
Agent:	N/A	Applicant:	Mr Zaiqat Ali Saddique
Reason at Committee	Request for a Deed of variation to a S106 agreement on a Major scheme		

1. RECOMMENDATION

1.1. East Area Planning Committee is recommended to:

1.1.1. **Vary** the planning obligation previously secured from the provision of on-site affordable housing to a financial contribution towards off site affordable housing provision for the reasons given in the report.

1.1.2. **agree to delegate authority** to the Acting Head of Planning Services to:

- finalise the recommended Deed of Variation under section 106A(1)(a) of the Town and Country Planning Act 1990 and other enabling powers as set out in this report, including refining, adding to, amending and/or deleting the obligations detailed in the heads of terms set out in this report as the Acting Head of Planning Services considers reasonably necessary; and
- complete the deed of variation referred to above.

2. EXECUTIVE SUMMARY

2.1. This report considers a deed of variation to the s106 agreement secured under planning application 15/02282/OUT. This s106 agreement contains an obligation

that 50% of the development should be affordable housing (8 of the 16 units). In this case the development has commenced but stalled on site and the applicant has put forward a viability case which suggests that on site provision or a financial contribution towards off site provision of affordable housing is unviable. Policy HP3 of the Sites and Housing Plan allows for applicants to demonstrate that the provision of 50% affordable housing on a site would make a scheme unviable. This report therefore considers whether the scheme would be unviable if it were to provide on-site affordable housing in the permitted form (8 units) or in a reduced form or whether a financial contribution towards off site provision is more suitable. It is concluded that the scheme would no longer be viable if it were to comply with the original S106 agreement and it is recommended that an affordable housing contribution of £300,000 towards off-site affordable housing is accepted as an alternative to on-site provision in this case. On the basis that a financial contribution towards off site affordable housing provision is secured via a Deed of Variation, it is considered that the proposals accord with policy HP3 and the NPPF.

3. LEGAL AGREEMENT

- 3.1. A legal agreement was entered into under 15/02282/OUT to secure on site affordable housing provision. A Deed of Variation is now required to vary that requirement to secure a financial contribution towards off site affordable housing provision.

4. COMMUNITY INFRASTRUCTURE LEVY (CIL)

- 4.1. The proposal is liable for CIL. A payment of £52,534.02 has already been made on commencement of the development. If an off-site contribution were to be agreed, the CIL contribution would double to £105,068.04 as the on-site affordable housing exemption would be removed. This would leave an outstanding balance of £52,534.02 payable to the Council.

5. SITE AND SURROUNDINGS

- 5.1. The site is located within the Marston area of Oxford to the north east of the city centre. The site was formerly occupied by the Jack Russell pub which has now been demolished. Work has commenced on site for a development of 16no. flats following the approval of applications 15/02282/OUT and 16/03108/RES and subsequent approval of conditions. Work has currently reached approximately first floor level and has now stopped. The existing work that has been carried out is considered to be in breach of the S106 agreement secured under application 15/02282/OUT as this required a registered housing provider to manage the affordable units to be secured before commencement of development.

5.2. See site location plan below:



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Ordnance Survey 100019348

6. PROPOSAL

6.1. It is proposed to amend the existing S106 agreement for affordable housing provision under S106A(1)(a) of the Town and Country Planning Act 1990 to allow an off-site contribution towards affordable housing of £300,000 instead of the provision of 8no. affordable units on site.

7. RELEVANT PLANNING HISTORY

7.1. The table below sets out the relevant planning history for the application site:

51/00132/M_H - Land adjacent Marston Road - Housing layout. PERMIT 15th August 1951.

61/00803/M_H - Erection of new licensed premises with flat over and access. PERMIT 2nd August 1961.

15/01147/DEM - Application to determine whether prior approval is required for the method of demolition. PLANNING PERMISSION REQUIRED 8th May 2015.

15/02282/OUT - Demolition of public house. Outline application (with all matters reserved) for the erection of 16 flats (6 x 3bed, 8 x 2 bed, 2 x 1 bed) on 3 floors. Provision of 19 car parking spaces. (Amended plans). PERMIT 20th July 2016.

16/01934/RES - Demolition of public house, erection of 16 flats (6 x 3-bed, 8 x 2-bed, 2 x 1-bed) on three floors. Provision of 19 car parking spaces. (Reserved matters of outline planning permission 15/02282/OUT seeking approval of access, appearance, landscaping, layout and scale). WITHDRAWN 24th October 2016.

16/03108/RES - Demolition of public house, erection of 16 flats (6 x 3-bed, 8 x 2-bed, 2 x 1-bed) on three floors. Provision of 19 car parking spaces. (Reserved matters of outline planning permission 15/02282/OUT seeking approval of access, appearance, landscaping, layout and scale).(Amended plans). PERMIT 16th March 2017.

15/02282/CND - Details submitted in compliance with conditions 4(Landscape Plan), 7(Car parking), 8(Cycle Parking), 10(Travel information pack), 11(Construction Traffic Management Plan), 13(Drainage strategy), 14(Biodiversity Enhancement) and 15(Refuse and Recycling) of Planning Permission 15/02282/OUT. PERMIT 12th September 2017.

16/03108/CND - Details submitted in compliance with conditions 3(Samples), 4(Bat assessment) and 5(Contaminated Land 1) of Planning Permission 16/03108/RES. PERMIT 4th September 2017.

19/01288/POM - Variation of legal agreement attached to planning permission 15/02282/OUT (Demolition of public house. Outline application (with all matters reserved) for the erection of 16 flats (6 x 3bed, 8 x 2 bed, 2 x 1 bed) on 3 floors. Provision of 19 car parking spaces. (Amended plans). WITHDRAWN.

8. RELEVANT PLANNING POLICY

8.1. The following policies are relevant to the application:

Topic	National Planning Policy Framework	Local Plan	Core Strategy	Sites and Housing Plan	Other planning documents	Emerging Oxford Local Plan 2036
Housing	63			HP3		H2
Miscellaneous	5		CS17	MP1	Affordable Housing and Planning Obligations SPD	

9. CONSULTATION RESPONSES

9.1. A deed of variation is not subject to public consultation.

10. PLANNING MATERIAL CONSIDERATIONS

10.1. Officers consider the determining issues to be:

- Affordable Housing Provision
- Planning Obligations

a. Affordable Housing Provision

10.2. Policy HP3 of the Sites and Housing Plan relates to affordable housing on major development sites of 10 or more units. It requires 50% of dwellings on site to be provided as affordable housing. A minimum of 80% of the affordable homes must be provided as social rented, with remaining affordable homes provided as intermediate housing. This level of affordable housing provision was secured through the S106 agreement under application 15/02282/OUT.

10.3. Paragraph 63 of the NPPF also allows for affordable housing contributions on major development sites of 10 or more dwellings.

10.4. Policy HP3 does however allow for developers to demonstrate that this provision would make a scheme unviable and states that:

Exceptions will be made only if it can be robustly demonstrated that this level of provision makes a site unviable, in which case developers and the City Council will work through a cascade approach in the following order until a scheme is made viable:

- firstly, reduce the percentage of affordable housing provided (to a minimum of 40% of all homes) by reducing the intermediate housing element only;*
- secondly, at 40% affordable housing, reintroduce an element of intermediate housing incrementally up to a maximum 8% of all homes;*
- thirdly, make a financial contribution in lieu of on-site provision, to be calculated using the approach set out in Appendix 2.*

10.5. If the City Council is satisfied that the site would be unviable, a cascade approach is to be used to determine an appropriate contribution which looks at reduced the percentage of affordable housing and changing the percentages of social rent to intermediate housing. This cascade does not allow for the percentage of affordable housing to drop below 40% or the intermediate element to exceed 8% of the whole development (1.24 units). If the scheme is still unviable having been through the cascade mechanism, an off-site financial contribution should be sought.

10.6. At the time the S106 agreement was signed, the viability of the scheme was not questioned. The S106 agreement set out that a registered provider must be brought on board before development commenced on site. The developer obtained approval of reserved matters in 2016 and approval of conditions on both the reserved matters and outline application in 2017. The developer then proceeded to commence works on site without securing an agreement with a Registered Provider (RP) to manage the affordable housing element of the scheme.

10.7. The developer then approached the LPA and highlighted this issue. When this was queried by the Local Authority, it was advised that the developer was unable to find an RP that was interested in the site. Evidence has been provided to the Local Authority in the form of email replies showing no interest from RPs. The developer's planning agent (JPPC) has made the most recent attempt to contact 6no. RPs with no success. From all emails sent, only three email responses were received, two of which indicated that the scale of development is too small and one where the RP does not operate in this area of Oxfordshire. Whilst the

Local Authority are a registered provider and have the potential to take on the accommodation, they have advised that it is less than ideal to meet their needs and also would not be interested in managing a small number of units if 8 were not to be provided (as discussed further below). It is also understood that the applicant has tried to become a RP themselves, but been unsuccessful. It is therefore considered that the applicant has made reasonable attempts to try to find an RP to satisfy the original S106.

10.8. To try and overcome these issues discussions were held between the developer, their agent and Officers. During these discussions it was advised that the developer could no longer afford to deliver affordable housing on the site. Officers advised that if this was the case, it would have to be demonstrated through a viability appraisal which would have to be externally reviewed.

10.9. A planning obligation modification (POM) application was submitted asking to discharge the S106 agreement on the grounds that the scheme was not viable to provide on-site affordable housing on the site in any form or a financial contribution for off-site provision. This POM application was accompanied by a viability appraisal carried out by Savills as well as evidence showing a lack of interest from RP's. The Local Authority commissioned a review of the Savills report by Dixon Searle. The Dixon Searle report advised that the site is still viable to provide some affordable housing; however this would be in a reduced form from the 8no. affordable units previously secured under the agreed S106 agreement. The Dixon Searle report concludes that the scheme could either provide 3no. affordable units on the site (which is significantly lower than the minimum of 40% identified in the policy) or a financial contribution for off-site provision of £300,000.

10.10. Given the difficulty of obtaining a RP for 8no. units, where some of the RPs advised the scheme was too small, it was considered that the provision of 3 affordable units on site would be unsuitable, which has also been advised by Oxford City Housing Officers. Officers therefore considered that the most suitable solution would be to obtain a contribution towards the delivery of affordable housing elsewhere in the city. The findings in the report were presented to the applicant.

10.11. In response to the Dixon Searle report, a counter offer of £127,000 was made by the applicant as they did not agree with some of the inputs and assumptions within the viability review undertaken by Dixon Searle. The applicant's agents argued that a higher profit above 15% should be allowed as 15% is not a realistic profit. They advised that if a lower profit were to be accepted contingency on build costs should be instead increased. The benchmark land value (BLV) was also questioned and it was suggested by the agents that it should be higher. In response to this it was advised a lower contribution would not be acceptable and specifically:

- A profit of 15-20% is usually offered depending on risk. In this case the development has unusually already commenced. Therefore there should be less financial risk going forward as costs to complete the development are already known and certain costs already committed taken into account such as build costs. Therefore Officers and Dixon Searle are of the

opinion that 15% profit is appropriate in this case and it would not be reasonable to allow for a higher profit rate within the viability review on this basis.

- A higher BLV has not been adopted by the Council and Dixon Searle as the Savills report took a BLV for the site as a pub. The pub is no longer there and in any case, it was shown to be unviable thus reducing its value. Officers are therefore satisfied with the BLV used by Dixon Searle in the viability review and would not accept a higher BLV.

10.12. As the Local Authority was not willing to discharge the S106 agreement as requested by the POM application, this application was withdrawn. Following the above discussions, it has been accepted by the applicant that a payment of £300,000 could be made and therefore a deed of variation has been sought to amend the existing S106 agreement from an on-site delivery of affordable housing to a financial contribution towards off-site affordable housing provision.

10.13. Furthermore, an application under section 106A(1) (b) (a POM application) is also only permissible after a period of 5 years from the date of the agreement. As the agreement is dated 15 July 2016, the 5 year period has not yet elapsed and so a POM application cannot be accepted. A Deed of Variation is thus the correct approach to secure the off-site contribution.

b. Planning obligations

10.14. It is considered that the following matters should be secured through a deed of variation to the section 106 legal agreement:

- A financial contribution of £300,000 to deliver affordable housing off-site.

CONCLUSION

10.15. The viability of the site has been robustly tested through viability appraisals and it is concluded that it would be unviable and unreasonable to expect the delivery of 8no. affordable units on the site. Given that the small number of units which could be delivered on site to make the scheme viable is so low and unmanageable for any registered provider, it is reasonable to accept a financial contribution of £300,000 towards the delivery of affordable housing elsewhere in the city and this would be in line with policy HP3 of the Sites and Housing Plan and the cascade approach set out. It would also accord with the NPPF.

10.16. It is recommended that the Committee resolve to accept a financial contribution for off-site affordable housing provision subject to the satisfactory completion (under authority delegated to the Acting Head of Planning Services) of a Deed of Variation under section 106A(1)(a) of the Town and Country Planning Act 1990.

11. APPENDICES

- **Appendix 1 – Site plan**

12. HUMAN RIGHTS ACT 1998

12.1. Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to vary the section 106 agreement and accept a financial contribution for off-site affordable housing provision in lieu of on-site provision. They consider that the interference with the human rights of the applicant under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others or the control of his/her property in this way is in accordance with the general interest.

13. SECTION 17 OF THE CRIME AND DISORDER ACT 1998

13.1. Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this request to vary the section 106 agreement, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to vary the section 106 agreement and accept a financial contribution for off-site affordable housing in lieu of on-site provision officers consider that the proposal will not undermine crime prevention or the promotion of community.

Appendix 1 – Site Plan



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