

REGULATORY SERVICES COMMITTEE

18 June 2015

REPORT

Subject Heading:

Proposed variation of Section 106 Legal Agreement in connection with P2246.07: Angel Way Retail Park, Angel Way, Romford

Application under Section 106BA of the 1990 Town and Country Planning Act (as amended by the Growth and Infrastructure Act) : Review of the provision of affordable housing.

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Policy context

Local Development Framework
London Plan
National Planning Policy Framework

Financial summary

None

The subject matter of this report deals with the following Council Objectives

Havering will be clean and its environment will be cared for	[x]
People will be safe, in their homes and in the community	[x]
Residents will be proud to live in Havering	[x]

SUMMARY

This report relates to the development of land at Angel Way, Romford. The site has the benefit of planning permission (under planning reference P2246.07) for a mixed use development comprising 350 residential units, a 63 bedroom hotel, ground floor mixed retail, basement car parking and a new public square which was granted on appeal in December 2009 following a public inquiry. A Unilateral Undertaking dated 19 November 2009 was attached to the permission which included, amongst other things, a requirement for the provision of 25% affordable housing.

The Council has received an application under Section 106BA of the Town and Country Planning Act (as amended by the Growth and Infrastructure Act) seeking a revised affordable housing obligation reducing the level of provision to nil affordable housing. The Economic Viability Appraisal Report submitted with the application has been assessed by independent consultants instructed by staff and as a consequence the applicants now accept that an element of affordable housing can be justified amounting to 8.86% of the total number of units and 10% of the habitable rooms.

It is concluded that the revised offer should be accepted and that the S106 agreement should be varied to reflect this.

RECOMMENDATIONS

It is recommended that the Head of Regulatory Services be authorised to negotiate and agree a Deed of Variation under section 106BA of the Town and Country Planning Act 1990 (as amended by the Growth and Infrastructure Act), to vary the legal agreement completed on 19 November 2009 in respect of planning permission P2246.07, to change the provision of affordable housing within the scheme and authority be given for the Council to enter into the agreed Deed of Variation.

The variation of the affordable housing provision shall be as follows:

- 8.86% affordable housing amounting to 31 units and 86 habitable rooms comprising 16 no. Shared Ownership units (1 No. studio, 3 No. one bedroom and 12 No. 2 bedroom) and 15 No. Affordable Rented units (3 No. one bedroom, 11 No. two bedroom and 1 No. three bedroom) to be provided within the first phase of the development.

The Developer and/or Owner to bear the Council legal costs in respect of the preparation of the Deed of Variation irrespective of whether the matter is completed.

Save for the variation to the level of provision of Affordable Housing set out above and any necessary consequential amendments to the legal agreement dated 19 November 2009 all recital, terms, covenants and obligations in the said agreement shall remain unchanged.

The planning obligations recommended in this report have been subject to the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the obligations are considered to have satisfied the following criteria:-

- (a) Necessary to make the development acceptable in planning terms
- (b) Directly related to the development; and
- (c) Fairly and reasonable related in scale and kind to the development.

REPORT DETAIL

1. The site to which this proposal refers is the former Decathlon Site, Angel Way, Romford. The site has planning permission for a mixed use development of 350 residential units, a 63 bedroom hotel, ground floor mixed retails, basement parking and a new public square. Permission for the development was granted on appeal on 14 December 2009 and was subject to a Unilateral Undertaking made pursuant to the Section 106 of the Town and Country Planning Act 1990 which provides for;
 - 25% affordable housing of which at least 52% is to be social rented housing and a maximum of 48% is to be intermediate housing;
 - Education contributions of £1,310,181.42;
 - Highway contribution up to a maximum off £150,000;
 - Contributions to Romford Ring Road up to a maximum of £300,000;
 - Town centre environmental improvements of £170,000;
 - Non-monetary elements including public art, provision of a police office at a peppercorn rent and a training and development scheme for local people.

2. Section 106BA of the Town and Country Planning Act (as amended by the Growth and Infrastructure Act) introduced an application procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing. The introduction of this provision reflects the guidance contained within the NPPF which states at Paragraph 173: “*To ensure viability, the costs of any requirements likely to be applied to development such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking*

account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable”.

3. The Council has received an application under Section 106BA from the current owners of the site seeking a revised affordable housing obligation reducing the level of provision to nil affordable housing. As required by the DCLG guidance which accompanied the introduction of Section 106BA, the application is based upon prevailing viability and supported by relevant viability evidence in the form of an Economic Viability Appraisal Report (EVAR) prepared on behalf of the owner.
4. The EVAR as submitted demonstrates by reference to known values of new private residential units in the locality, lettings, revenue and yield values together with costings for the development, that the project could not viably sustain any affordable housing contribution.
5. As a development that was originally referable to the Mayor for London, the Mayor was consulted on this application as required by guidance. The response raises questions about whether the permission to which the application relates remains extant given that its five year time limit expired on 14 December 2014. The consultation response concludes that the GLA would expect the maximum reasonable amount of affordable housing to be secured at the site having regard to ‘current market conditions’ and that the Council should undertake an independent assessment of the EVAR given that the applicant was seeking full exemption from the provision of affordable housing.
6. For members guidance the application does remain extant as all pre-commencement conditions have been discharged to the extent required and a substantive start has been made to the development by the commencement of piling for the proposal.
7. An independent assessment of the EVAR has been carried out on behalf of the Council which raised a number of issues about the values and costs upon which its conclusions were based. As a result of discussions and negotiations between the Council’s and the applicant’s consultants the applicant agreed to amend various elements of the EVAR. As a consequence of these alterations the applicants now accept that an element of affordable housing can be justified and it is proposed to provide this within the first phase of the development on the following basis:
 - 16 Shared Ownership units (1 x studio, 3 x 1 bedroom and 12 x 2 bedroom)
 - 15 Affordable Rented units (3 x 1 bedroom, 11x 2 bedroom and 1 x 3 bedroom)
8. The revised offer amounts to 31 affordable units, comprising 8.86% of the total number of units and 10% of the development in terms of habitable rooms. Whilst this is some way short of the original amount staff recognise that there has been a marked shift in market conditions since the original

grant of planning permission. Accordingly, staff are satisfied that the revised offer represents a significant improvement over the original application and that the proposed mix of units to be provided is broadly in line with known demand and policy.

9. **Conclusion**

- 9.1 Staff consider that the amended offer of affordable housing the subject of this S106BA application is acceptable. It is therefore recommended that the consequential variation of the legal agreement is approved

IMPLICATIONS AND RISKS

Financial implications and risks:

None arising.

Legal implications and risks:

Legal resources will be required for the variation of the legal agreement

Human Resources implications and risks:

There are no human resources and risks directly related to this report.

Equalities implications and risks:

The Council's planning policies are implemented with regard to Equalities and Diversity. The proposal will continue to meet the infrastructure requirements arising from the development, including education provision which is in the wider interest of the community.

BACKGROUND PAPERS

1. The S106BA application letter and supporting documents as submitted or subsequently revised..