

FORMER BRISTOL STREET MOTORS,
LONDON ROAD
ADOBE RESIDENCIES

16/01106/FUL

Full planning permission for 499 studio apartments for student occupation on the above site was granted by the Council in October 2017.

The development referred to is subject to planning obligations (contained with a Section 106 agreement that was completed on 30th October 2017) to provide several index linked financial contributions relating towards public open space and public realm enhancement and maintenance; Travel Plan monitoring; parking surveys; residents parking zone creation; real time passenger information displays; bus shelter upgrades and cycle network improvements.

A request from the developer has now been received to vary the current terms of the section 106 agreement which accompanies the planning consent. This is based on the claim made by the developer that the scheme is not financially viable if the contributions detailed within the s106 agreement have to be paid in full.

The developer is seeking to reach an agreement with the Council regarding this matter.

RECOMMENDATION

1. That the Council agree to amend the existing Section 106 agreement so that it requires contributions totalling £300,000 (index linked as from October 2017)
2. That such contributions comprise the following
 - i. £207,455 (index linked) towards public open space and public realm enhancement and maintenance;
 - ii. £2,245 (index linked) towards Travel Plan monitoring;
 - iii. £50,000 (index linked) for residential street parking surveys and if required the implementation of resident on-street parking controls;
 - iv. £10,000 (index linked) for Real Time Passenger Information displays (and maintenance) at the bus stops on London Road;
 - v. £5,000 (index linked) for bus shelter upgrades;
 - vi. £25,300 (index linked) towards local cycle network improvements from Newcastle Town Centre to Keele University.
3. That the Section as varied require, in the event of the full £50,000 (referred to in 2ii above) not being required for the residential street parking survey and implementation of resident on-street parking controls, the remainder of that sum then being made available for public open space and public realm enhancement and maintenance.
4. That the Section 106 as varied include a review mechanism of the scheme's ability to make a more or fully policy compliant contribution to public open space and public realm enhancement and maintenance, should the development be not substantially commenced within 12 months of the date of this decision, and payment of such additional contribution if then found financially viable
5. That the section 106 includes any appropriate amendments to ensure, as assumed in the appraisal, in particular that no revenue is obtained for the development from 53 car parking spaces within the development (such spaces being either in the case of 35 "gifted" to the occupiers of certain properties in London Road (in respect of proposals to introduce a Traffic Regulation Order on that road) or available for staff and visitors to the development
6. That the Council's agreement to the above be time limited, such deed of variation/ revised Section 106 agreement needing to be completed by the 3rd March; or such other date as the Head of Planning may consider appropriate

Reason for Recommendation

It is accepted, following the obtaining of independent financial advice, that a policy compliant scheme is not viable and that the scheme can only sustain reduced contributions but the benefits of the development are considered to outweigh the harm caused by the additional unaddressed demand created by the development on the public open space and public realm in the area. A revised or varied Section 106 agreement is required to secure those policy compliant contributions which can be afforded and a viability review mechanism should substantial commencement not be achieved promptly. It is considered that priority should be given to those contributions which assist in addressing issues that might otherwise arise of on street parking and promoting the use by the occupiers of the development of means of transport other than the private motor car

Key Issues

When the original Section 106 agreement was entered into in November 2017 with respect to the development referred to in planning application 16/01106/FUL the agreement secured a number of matters including the following:-

1. A contribution of £1,199,396 towards public open space and public realm improvement – including the upgrading of the subways that pass under the Grosvenor roundabout
2. Contributions relating to highways and transportation matters of:-
 - A) £2,245 towards Travel Plan monitoring;
 - B) £50,000 for residential street parking surveys and the potential implementation of residential parking zones
 - C) £10,000 for Real Time Passenger Information displays (and maintenance) at the bus stops on London Road;
 - D) £5,000 for bus shelter upgrades;
 - E) £25,300 towards local cycle network improvements from Newcastle Town Centre to Keele University
 - F) £25,300 towards cycle network improvements from Newcastle Town Centre to Keele University

The developer submits that the contributions required would render the scheme unviable and has requested that the original Section 106 agreement is varied by the Council. This is not a formal application but a request to the Council. As the County Council are party to the agreement their agreement will also be required if the agreement is to be varied

Two appraisals have been undertaken - one by the developer and one by the District Valuer instructed by the Borough Council

The Development Appraisal submitted by Abode Residences provides for the payment of no section 106 contributions and assesses the viability of the proposed scheme using the Developer's Return approach whereby their purchase price for the property has been input as a cost and this, together with the other scheme costs, has been deducted from the Gross Development Value (GDV) of the completed scheme, with the resultant output of their appraisal being a Developer's return of 4.4% of GDV. This return has then been compared to their assessment of the Benchmark Developer's return for a scheme of this nature of a minimum of 15% of GDV in order to assess viability and shows a deficit of £3,488,290 against this benchmark figure.

The developer has in light of the above proposed revised Section 106 contributions of £300,000.

The District Valuer has undertaken an appraisal that results in a Residual Land Value of £1,971,000, and details how he has reached that figure. As he advises it is accepted practice that residual appraisal methodology for financial viability testing should be used, and that this can be whereby either the level of return or site value can be input and the consequential output (either a residual land value or a level of return respectively) can then be compared to a benchmark to assess the implications of planning obligations on viability. He has calculated the site value/benchmark land value of the proposed scheme on a residual basis and he has then compared this figure to site value as a benchmark to assess viability. His report has been undertaken in accordance with the NPPF key principles regarding viability as revised in July 2018. Specifically the approach recommended for the assessment of site value/benchmark land value is either Existing Use Value + (known as EUV+), whereby it is "established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner" (in order to incentivise the landowner to sell the land for development); or alternatively on the basis of the alternative use value of the land (its AUV).

On the basis that the site has no existing use (the garage buildings were removed some considerable time ago and the land has been unused for almost 10 years) and therefore cannot be valued on the basis of EUV+, the District Valuer has valued the site on the basis of its AUV.

In his view the most valuable use of the site would be for the development of student units. That planning permission 16/01106/FUL was granted indicates that 499 student units can be accommodated on the site. He has therefore researched and analysed comparable land sales, looking at the price paid per unit and has adjusted them to take into account location, size, type of construction and required Section 106 contributions before applying an adjusted per unit figure to the site. Having done so he then has deducted from the resultant figure the cost of abnormalities (the planning practice guidance advising that site-specific infrastructure costs should be taken into account when defining benchmark land value). On this basis he derives a figure of £2,843,000 as the site value/benchmark land value. Because the Residual Land Value is £1,971,000 against a site value/benchmark land value of £2,843,000 his conclusion is that the scheme is not viable on a policy-

compliant basis. Sensitivity testing shows that the proposed scheme could support the payment of Section 106 contributions of no more than £280,000 without being rendered unviable on the basis that this sum is payable prior to commencement of construction. If payments were to be delayed then this figure could rise to £296,000. However in that he did not take into account that the contributions in the existing Section 106 are indexed linked he would wish to adjust downward these figures – by the order of approximately £40,000.

The assessment of the Alternative Use Value is dependent upon the use of comparators (details of which have been provided), and is always a matter of professional expert judgement, hence the instruction of the District Valuer to advise the Council. In this case the purchase price paid by the developer of the land (£2,000,000) is less than the AUV. The District Valuer points out that the NPPG specifically advises against giving weight to the price paid for a site and he is of the view that the price paid was less than market value with the benefit of consent. He explains in detail why he considers the AUV is the amount that he advises it to be.

Members are advised that your Officer has been in extensive dialogue with the District Valuer about a number of points within his draft report and is now satisfied that the District Valuer's advice is a reasonable basis upon which to proceed.

As already indicated the applicant has previously advised that the scheme could afford contributions of £300,000 and the reasonableness of this figure should be judged in the context of the District Valuer's advice that has now been received.

The revised NPPF marks a significant change in the approach to be adopted to viability in planning decisions. It indicates that where up-to-date policies have set out the contributions expected from the development, planning applications that comply with them should be assumed to be viable, and it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. Policies about contributions and the level of affordable housing need however to be realistic and not undermine the deliverability of the Plan. In the Borough it is not presently the case that up-to-date development plan policies, which have been subject of a viability appraisal at plan-making stage, have set out the contributions expected from development, so the presumption against viability appraisals at application stage does not apply. That will not be the case until the Joint Local Plan is finalised.

National Planning Practice Guidance indicates that in decision making the consideration of viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission.

The scheme does provide benefits, notably the provision of student accommodation within a highly sustainable location making use of previously developed land that has been vacant for some considerable time. The introduction of such accommodation should also benefit the town centre, making it a more vibrant place and having positive economic benefits. Members will also be aware that such purpose built student accommodation developments are now viewed as making a contribution, albeit not on a 1:1 basis, both to the Borough Council's housing land supply position and its housing delivery performance, in that they release market housing. The contribution from purpose built student accommodation makes up about one third of the expected delivery of housing within the Borough over 5 year period commencing 1st April 2018. Maintaining and indeed boosting the delivery of housing should be a key objective of the Council. These benefits are considered to outweigh the harm associated with the additional demand created by the development on the infrastructure of the area that would not be addressed were a much reduced financial contribution be made.

If the Committee are prepared to accept the above conclusions and reduce the total required contribution figure to £300,000 as is being recommended by your Officer, they can either reduce all of the contributions that are required by the same proportion (76%), or they can 'ring-fence' and protect one or more of the contributions and allow others to be even more substantially reduced or not obtained at all. The Council has no agreed formal "hierarchy of need" in its Developer Contributions SPD which can be referred to in such cases.

In this case, your Officer would suggest that given that some 150 car parking spaces are proposed on site for the student units, the location of the site on the edge of the town centre within a residential area that has limited off street parking, and the potential by reason of the location to achieve as a result of the proposed measures a significant modal shift away from use of the private motor car, those contributions that are focussed on the promotion of sustainable transport and addressing any consequential on-street parking demand issues, should be required in full to give them the maximum opportunity of working. That would equate to £92,545 leaving the remaining £207,455 for a significantly reduced Public Open Space/Public Realm contribution.

APPENDIX

Relevant Material Considerations include:

[National Planning Policy Framework](#) (July 2018)

[Planning Practice Guidance](#) (March 2014 as updated)

[Community Infrastructure Levy Regulations](#) (2010) as amended and related statutory guidance

[Supplementary Planning Guidance/Documents](#)

[Developer contributions SPD](#) (September 2007)

The planning application documents the request relates to can be found at

<http://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/16/01106/FUL>

Background papers

Planning files referred to

Planning Documents referred to

Date report prepared

21st December 2018.