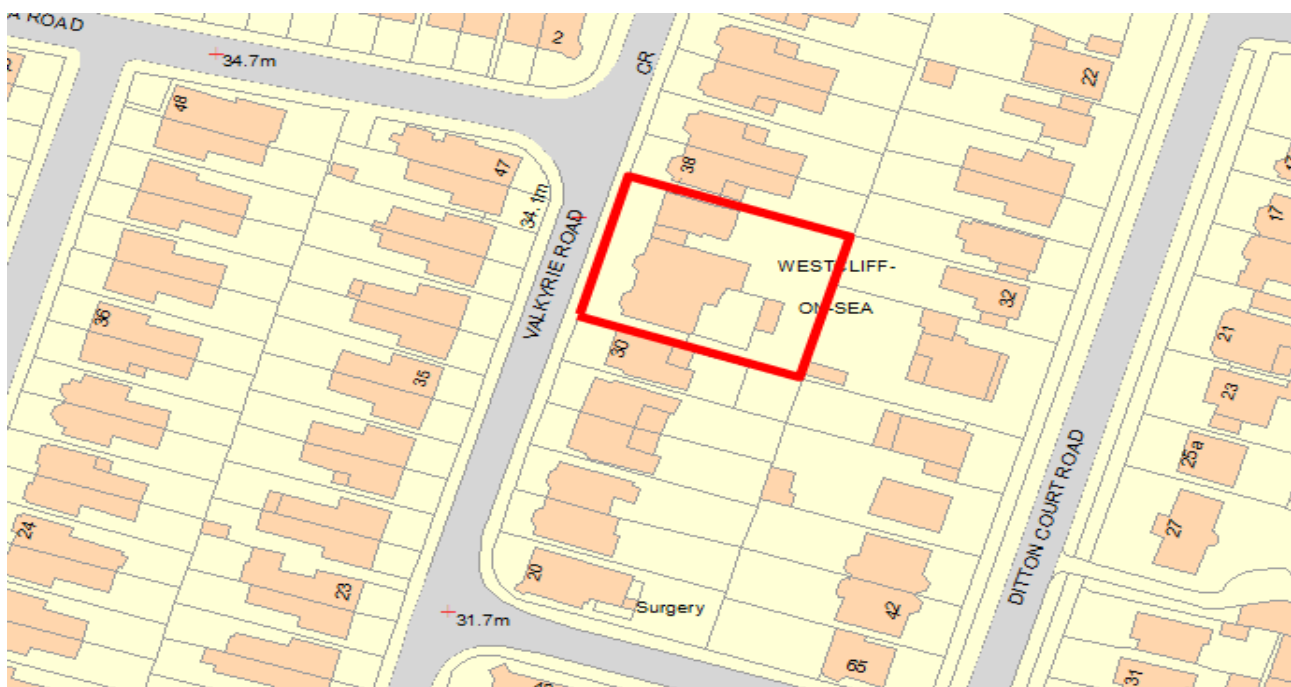


Reference:	17/00893/DOV5	
Application Type:	Deed of Variation within 5 years	
Ward:	Milton	
Proposal:	Modification of planning obligation (Section 106 agreement) associated with planning application 14/00914/FULM dated 3 rd July 2015 to provide a financial contribution in lieu of on-site provision of affordable housing.	
Address:	32 - 36 Valkyrie Road, Westcliff-On-Sea, Essex SS0 8BU	
Applicant:	Mr Dan Nyman of In Construction Services Ltd	
Agent:	n/a	
Consultation Expiry:	n/a	
Expiry Date:	18 th July 2017	
Case Officer:	Amanda Rogers	
Recommendation:	Delegate to the Director of Planning and Transport or Group Manager for Planning and Building Control to AGREE A MODIFICATION OF THE PLANNING OBLIGATION dated 3rd July 2015 pursuant to application 14/00914/FULM	



UPDATE:

This application was **deferred from DC Committee on 14th June 2017** as Members requested confirmation as to whether South Essex Homes had been consulted in respect of the application with a view to their potentially purchasing the 4 affordable housing units. The Strategic Housing Team have provided the following comment to address this query:

The delivery of affordable housing and the potential purchasing of housing units is the remit of the Council. The role of South Essex Homes (SEH) is as the Council's Arms Length Management Organisation (ALMO) and they are therefore primarily concerned with the management of the Council's housing stock and more recently in facilities management such as cleaning contracts. They were set up in order to access the Government's Decent Homes funding and are currently funded by the Council via the Management Agreement. The capital funding programmed by SEH is centred on the management and maintenance of the Council's housing stock such as replacement kitchens and bathrooms, and therefore the purchasing of affordable housing units would not be allowed for in their budget. As opposed to the Council, SEH are also not a Registered Provider of Social Housing (RP) and therefore would not comply with the necessary legal requirements to purchase affordable housing units. The delivery of affordable housing sits with the Council and its Strategic Housing Team which has the expertise in project managing housing developments. Alongside the Planning Team, the Strategic Housing Team has a long history of working with land owners and developers to ensure the best results for affordable housing provision for the borough. For the reasons set out above, South Essex Homes would not be consulted on planning applications for affordable housing nor purchasing S106 housing units.

The Council's Strategic Housing Team is responsible for increasing the provision of affordable housing in the borough amongst other roles in their remit. The Council's view on affordable housing is that developers should provide it on site wherever possible however the Council understands that in some instances this is not possible for example where housing associations have become disinterested in purchasing small sites due to Government funding changes. Therefore in September 2016, the Council agreed the Interim Affordable Housing Policy which includes the requisite methodology to calculate the sums developers must pay in lieu of providing affordable housing on site. This process is common place with local authorities and in regards to SBC these funds are gratefully received and are utilised for funding the council house building programme that has been undertaken since 2015. Funds have been used to help fund both the Council's first affordable house build at 32 Byron Avenue and also the 18 units of affordable housing in Phase 1 of the HRA Land Review Project that were completed in 2016-17 by the Strategic Housing Team. Funds from developers will also help to fund the Council's next phase of housing delivery – 16 units at Rochford Road and Audleys Close. This also gives the Council more control into what affordable housing is provided so that it can better reflect the housing need in the borough. For example, the Council has a commitment to build affordable rented family houses and also adapted flats and bungalows which would be unlikely to be brought forward by developers.

1 The Proposal

- 1.1 Planning permission was granted on 3rd July 2015 to “Demolish parts of existing building and carry out various extensions to form 3 storey block of 22 self-contained flats with associated car parking, amenity space and cycle store to 30 - 36 Valkyrie Road”.

- 1.2 This permission was subject to a Section 106 (S.106) agreement dated 3rd July 2015 to secure the following:
- Provision of 4 affordable housing units including 1 x one bedroom flat, 2 x two bedroom flats and 1 x three bedroom flats comprising 50% rental dwellings and 50% shared ownership dwelling
 - Education contribution £22,346 (paid 13/02/2017)
 - Public art contribution £775 (paid 13/02/2017)
- 1.3 Under section 106A of The Town and Country Planning Act 1990 (as amended) (TCPA) the applicant is seeking to vary the requirement for the provision of affordable housing to provide a financial contribution in lieu of on-site provision on the grounds that there is no interest from Registered Providers. The financial contribution would still represent a policy compliant position in this instance.
- 1.4 The applicant originally submitted a pre-application enquiry on 9th February 2017 seeking removal of the affordable housing requirement on viability grounds. However, officer negotiations have resulted in the applicant now agreeing to provide a financial contribution in lieu of on-site provision that is considered to be an equivalent alternative provision. The following evidence has been submitted in support of the application:
- Confirmed offer of an in-lieu affordable housing contribution of £218,000 payable within 3 months
 - Correspondence from 10 Registered Providers confirming a lack of interest in taking on the affordable housing units on-site
 - Estimated sales values from two local estate agents – Leonard Peters and Think Property
 - Assessment of Economic Viability undertaken by Morley Riches & Ablewhite Chartered Surveyors in November 2016

2 Site and Surroundings

- 2.1 The site is located on the eastern side of Valkyrie Road southeast of its junction with Genesta Road. The former hotel has been converted and extended in accordance with the permission granted in 2015 to create a 3 storey block of 22 self-contained flats, which are now partially occupied.

3 Planning Considerations

- 3.1 The material planning consideration in respect of this application is whether or not a modified planning obligation will equally meet the requirement for a contribution towards affordable housing by providing a financial contribution in lieu of on-site provision.
- 3.2 Section 106A of the TCPA allows for an application to be made to a local authority to consider a proposed modification or discharge of a planning obligation.

- 3.3 Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. A planning obligation is enforceable as a contract and whether it is varied or not is at the local authority's discretion. Where there is no agreement to voluntarily renegotiate, and the planning obligation is over 5 years old, an application may be made to the local planning authority to change the obligation where it "*no longer serves a useful purpose*" or would continue to serve a useful purpose in a modified way (see Section 106A of the TCPA). However, as this application to modify the S106 agreement has been made within 5 years of completion, this statutory test is not applicable.
- 3.4 The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (as amended) set out the procedure for dealing with applications to modify or discharge a planning obligation that is more than 5 years old. However, these Regulations do not apply to requests to modify a planning obligation that is dated less than 5 years ago, which is the case in this instance. As such, an application form and public consultation is not required.

4 Appraisal

The National Planning Policy Framework, Southend Core Strategy (2007) strategic objective SO7, policies KP3 and CP8; Development Management Document (2015) policy DM7 and A Guide to Section 106 & Developer Contributions (2015)

- 4.1 Core Strategy policy CP8 states the following:

For sites providing less than 10 dwellings (or below 0.3 ha) or larger sites where, exceptionally, the Borough Council is satisfied that on-site provision is not practical, they will negotiate with developers to obtain a financial contribution to fund off-site provision. The Council will ensure that any such sums are used to help address any shortfall which in affordable housing.

- 4.2 Paragraph 2.7 of "Supplementary Planning Document: Planning Obligations" (SPD2) reiterates the fact that "*The policy [CP8] generally requires 20-30% of the proposed units to be affordable depending on the scale of the development, or a financial contribution to be made where on-site provision is either not feasible or not practicable.*" Hence, the preference in terms of affordable housing provision is on-site. Alternatively, the Council may seek to secure the affordable housing provision on another site owned by the applicant or in exceptional circumstances accept a financial contribution in lieu of on-site provision.
- 4.3 In September 2016 the Council adopted the following Corporate Policy:- "*Interim Affordable Housing Policy*". Whilst is not a planning policy, and does not form part of the development plan, it compliments existing planning policy and sets out guidance in relation to how financial contributions for affordable housing will be calculated. The Corporate Policy was prepared in liaison with the Council's Strategic Housing Team and has been agreed by members. It is a material consideration in the determination of this application.

- 4.4 As set out in paragraph 1.4, the applicant decided (during the pre-application process) not to pursue a reduction in the affordable housing provision on viability grounds. Therefore, to some extent the “*Assessment of Economic Viability*” (undertaken by Morley Riches & Ablewhite Chartered Surveyors in November 2016) is not relevant; however, it is considered that this report does sufficiently evidence the financial difficulties that have been encountered in relation to this site. Thus, it is considered justified in this instance to delay payment of the financial contribution for 3 months, as requested by the applicant, to give them the opportunity to refinance to raise the funds.
- 4.5 In accordance with the Council policies set out above, it is considered that the applicant has satisfactorily demonstrated that there is no interest from Registered Providers (RP’s) for the relatively small scale provision of 4 affordable housing units on this site. The same issue has been encountered recently on other sites within the borough where a small number of affordable units were to be provided. It is consistently proving difficult to secure a Registered Provider on sites where 5 affordable housing units or less are required. In addition, as far as officers are aware the developer is not in a position to locate the affordable housing on an alternative site, which may also present the risk of a Registered Provider still not being interested in purchasing the units. It is therefore, considered appropriate to allow a financial contribution in lieu of on-site affordable housing provision.
- 4.6 In this instance, the Strategic Housing Team support the proposition of accepting the offer of a financial contribution of £218,000 in lieu of providing 4 affordable housing units on site. This figure has been calculated on the basis of the methodology/formula set out in the “*Interim Affordable Housing Policy*”. The funding will be utilised to provide further affordable housing in the borough by either purchasing units or help to fund the Council’s affordable housing development programme.

5 Conclusion

- 5.1 On the basis of the above, it is considered that sufficient evidence has been provided to justify a modification of the S106 affordable housing requirement to allow payment of a financial sum in lieu of on-site provision. The financial contribution towards affordable housing is £218,000 (based on the methodology/formula set out in the “*Interim Affordable Housing Policy*”) and this represents a planning policy compliant position.
- 5.2 For the reason set out in paragraph 4.4, the affordable housing contribution would be payable within 3 months of the date of this committee.

6 Planning Policy Summary

- 6.1 National Planning Policy Framework (NPPF) 2012 and National Planning Practice Guidance (NPPG).
- 6.2 Development Plan Document 1 (2007): Core Strategy Policies KP3 (Implementation and Resources) and CP8 (Dwelling Provision).

6.3 Development Management Document (July 2015): Policy DM7 (Dwelling Mix, Size and Type).

6.4 Supplementary Planning Document 2: A Guide to Section 106 & Developer Contributions (2015).

7 Representation Summary

7.1 **Strategic Housing:** In this instance, the Strategic Housing Team support the proposition of accepting the commuted sum of £218,000 in lieu of providing 4 affordable housing units on site. This funding will be utilised to provide further affordable housing in the borough by either purchasing units or help to fund the Council's affordable housing development programme.

8 Public Consultation

8.1 None required (see paragraph 3.4 above).

9 Relevant Planning History

9.1 3rd July 2015 (14/00914/FULM): Conditional planning permission granted to *“Demolish parts of existing building and carry out various extensions to form 3 storey block of 22 self-contained flats with associated car parking, amenity space and cycle store to 30 - 36 Valkyrie Road”*.

10 Recommendation

10.1 Members are recommended to delegate to the Director of Planning and Transport or Group Manager for Planning and Building Control to **AGREE A MODIFICATION OF THE PLANNING OBLIGATION** dated 3rd July 2015 pursuant to planning application 14/00914/FULM to provide a financial contribution for affordable housing of £218,000 (index-linked) in lieu of on-site provision by 14th September 2017 (i.e. within 3 months of the date of this committee).