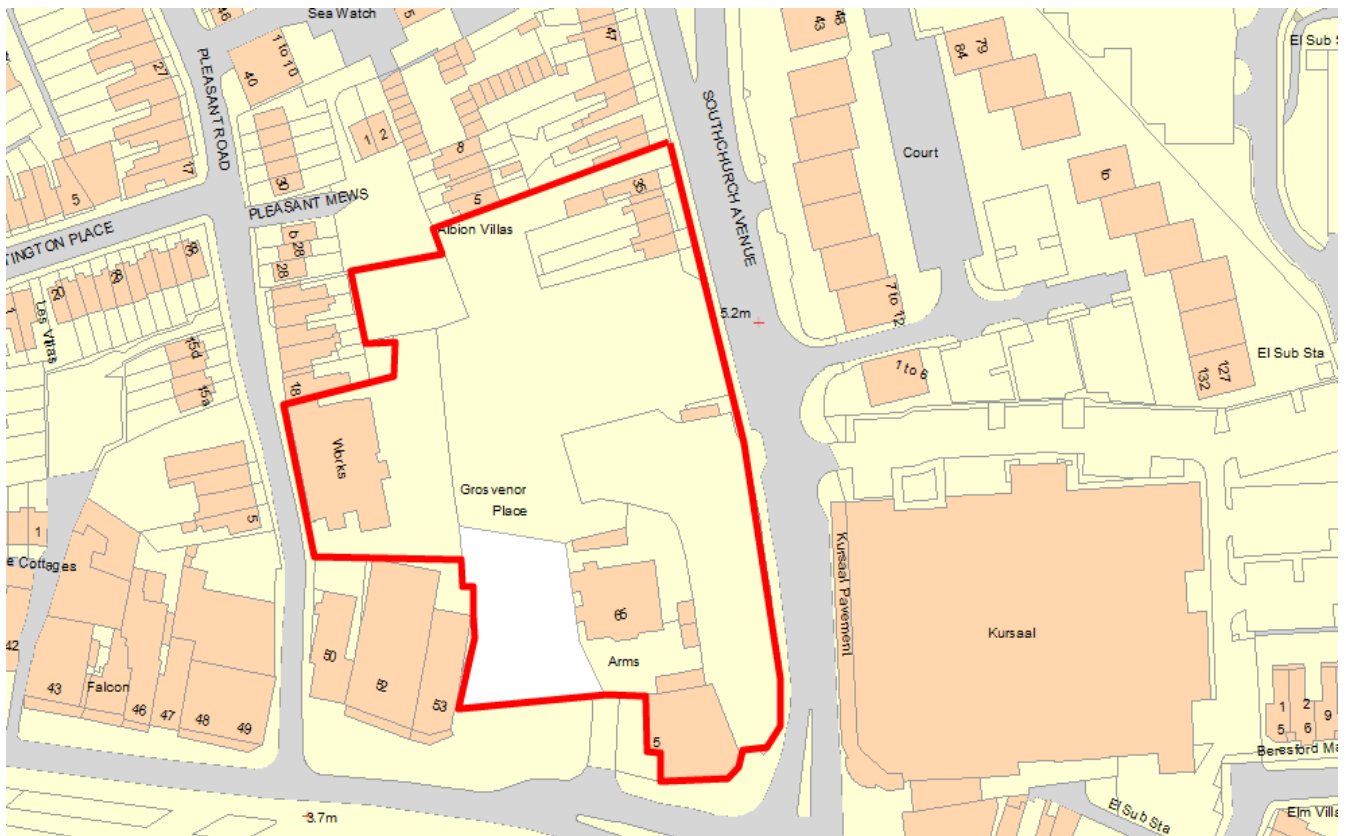


Reference:	16/01723/DOV5
Application Type:	Deed of Variation within 5 years
Ward:	Kursaal
Proposal:	Modification of planning obligation (Section 106 agreement) dated 22 nd July 2015 pursuant to application 14/01462/FULM to reduce the requirement to provide affordable housing.
Address:	Marine Plaza Land between Southchurch Avenue and Pleasant Road fronting Marine Parade, Southend-on-Sea
Applicant:	Inner London Group
Agent:	Christopher Wickham of Christopher Wickham Associates
Consultation Expiry:	n/a
Expiry Date:	9 th November 2016
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 22nd July 2015 pursuant to application 14/01462/FULM



1 The Proposal

- 1.1 Planning permission was granted on 22nd July 2015 to *“Demolish existing building and erect 282 self-contained flats in six blocks (comprising: one 14 storey block, one 9 storey block, one 5/6 storey block, one 4/6 storey block, two 2/4 storey blocks), erect 2717sqm of commercial floorspace (A1, A3 and D2 uses), layout 318 underground parking spaces, landscaping, cycle/motorcycle/refuse storage, formation of vehicular access from Southchurch Avenue and Pleasant Road”*.
- 1.2 This permission was subject to a Section 106 (S.106) agreement dated 22nd July 2015 to secure the following:
- **Provision of affordable housing (84 flats including 58 rented and 26 shared ownership; 32x1bed, 27x2bed, 25x3bed)**
 - Education contribution £160,334
 - Relocation of CCTV
 - Highway works
 - Public art to the value of £150,000
 - Travel Packs/Travel Plan
 - Other monetary contributions towards tree planting, pedestrian signage, changes to signal timings, real-time bus information signs, bus shelters, new taxi rank layout, TRO, relocation of traffic speed system and car parking signs
- 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 reduced financial contribution in lieu of on-site provision on the grounds of viability. All other S.106 contributions set out above remain unchanged.
- 1.4 The applicant originally submitted an application in September 2016 seeking removal of the affordable housing requirement in its entirety on viability grounds. However, negotiations with officers and the Council’s appointed viability advisers have resulted in the applicant now offering to provide a financial contribution in lieu of on-site provision plus a two stage viability review mechanism post-commencement. The following evidence has been submitted in support of the application:
- Toolkit Viability Assessment undertaken by Savills UK Limited dated 2nd September 2016
 - Rebuttal Statement by Savills UK Limited dated 8th March 2017
 - Confirmed offer of an in lieu affordable housing contribution of £300,000 (index-linked) payable prior to first occupation of any dwelling in the development and subject to a viability review mechanism as set out in paragraph 4.9 below

2 Site and Surroundings

- 2.1 The application site, which has an area of 1.1036 hectares, is located within the established commercial central seafront area at the junction of Marine Parade and Development Control Report

Southchurch Avenue. It includes a western frontage onto Pleasant Road. A large proportion of the site comprises open land that is used for car parking. The Marine Parade frontage includes buildings used as a fast food outlet, amusement arcades and a public house. The Pleasant Road frontage is occupied by a former sweet factory, and there is a short terrace of four houses on the north-eastern corner of the site fronting onto Southchurch Avenue. Three of these houses are derelict. Existing buildings on the site range between one and three storeys in height.

3 Planning Considerations

- 3.1 The material planning consideration in respect of this application is whether or not the applicant has adequately demonstrated that the planning obligation relating to affordable housing would cause the development to be unviable thus justifying a degree of flexibility in relation to the affordable housing obligation.
- 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 (NPPF) and Planning Practice Guidance (NPPG), Southend Core Strategy (2007) strategic objective SO7, policies KP1, KP3 and CP8; Development Management Document (2015) policy DM7 and A Guide to Section 106 & Developer Contributions (2015)

- 4.1 Paragraph 205 of the NPPF states the following:

"Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled."

- 4.2 The need to take viability into account in making decisions in relation to planning obligations on individual planning applications is reiterated in the NPPG, which sets

out the following guidance:

“In making decisions, the local planning authority will need to understand the impact of planning obligations on the proposal. Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations.

This is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. These contributions should not be sought without regard to individual scheme viability. The financial viability of the individual scheme should be carefully considered in line with the principles in this guidance.” (Paragraph: 019 Reference ID: 10-019-20140306)

4.3 Specifically in relation to incentivising the bringing back into use of brownfield sites, which Marine Plaza is, the NPPG also requires local planning authorities *“...to take a flexible approach in seeking levels of planning obligations and other contributions to ensure that the combined total impact does not make a site unviable.”* (NPPG Paragraph: 026 Reference ID: 10-026-20140306).

4.4 The NPPG also addresses the need to review the viability of schemes that are delivered in the medium to longer term:

“Viability assessment in decision-taking should be based on current costs and values... However, where a scheme requires phased delivery over the medium or longer term, changes in the value of development and changes in costs of delivery may be considered.” (NPPG Paragraph: 017 Reference ID: 10-017-20140306)

4.5 The need for negotiation with developers, and a degree of flexibility in applying affordable housing policy, is echoed in Core Strategy policy CP8 that states the following:

“The Borough Council will:

...enter into negotiations with developers to ensure that:

...all residential proposals of 50 dwellings or 2 hectares or more make and affordable housing or key worker provision of not less than 30% of the total number of units on the site;

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 in affordable housing.”

4.6 Furthermore, the responsibility for the Council to adopt a reasonable and balanced approach to affordable housing provision, which takes into account financial viability and how planning obligations affect the delivery of a development, is reiterated in the supporting text at paragraph 10.17 of the Core Strategy and paragraph 2.7 of

“Supplementary Planning Document: Planning Obligations”.

- 4.7 The clear preference in terms of affordable housing provision in this instance would be for 30% of the dwellings on-site to be affordable. However, it is acknowledged that national and local planning policy requires this to be adjusted if necessary on viability grounds.
- 4.8 The applicant’s viability assessment has been independently appraised on the Council’s behalf by Deloitte Real Estate, experts in providing town planning and viability advice. The conclusions of this advice are set out below:
- There were three key areas where Deloitte disagreed with Savills’ approach to the viability of the scheme; namely, Gross Development Value (GDV), build costs and site value/Benchmark Land Value (BLV).
 - Deloitte Real Estate has investigated each of these areas of dispute to conclude that the scheme is likely to continue to be unviable even if adjustments were to be made in a manner that was deemed acceptable to Deloitte Real Estate.
 - A payment in lieu offer of £300,000 towards affordable housing is considered to represent a reasonable and maximum viable amount at the present time.

Deloitte Real Estate has also reviewed the proposed terms of the viability review mechanism set out below.

- 4.9 In accordance with the policies and guidance set out above, and on the basis of the advice given to the Council by Deloitte Real Estate, it is considered that in principle it would be appropriate in this instance to modify the S106 agreement dated 22nd July 2015 to accept a financial contribution of £300,000 (index linked) in lieu of on-site provision. The funding could 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. This development is a complex phased scheme including four phases and a total 85 month construction period (based on the applicant’s September 2016 Viability Assessment). However, a Phasing Plan is yet to be approved by the Council, and the applicant does not have a draft Phasing Plan or any specific phasing options currently in place. Reflective of this, it is recommended that any financial contribution towards affordable housing should be payable prior to first occupation of any dwelling in the development.
- 4.10 The on-site affordable housing contribution currently secured is 84 flats including 58 rented and 26 shared ownership units (32x1bed, 27x2bed, 25x3bed). If this affordable housing requirement were to be provided as a financial contribution, in-lieu of on-site provision, then this would equate to approximately £9.4million (calculated in accordance with the Council’s Corporate Policy: Interim Affordable Housing Policy – September 2016). During the course of this application the applicant has also made an offer of a single £600,000 affordable housing contribution (equating to approximately 6.36% of £9.4m and 1.91% of a policy affordable housing provision). However, this was on the basis that no viability review mechanism would be required and officers have rejected this offer as it was not considered reasonable and would prevent the Council’s ability to obtain further contributions to affordable housing should the viability of the scheme improve.

4.11 Critically, for a significantly reduced contribution towards affordable housing to be acceptable it is considered that an appropriate viability review mechanism would need to be applied to the scheme. This is recommended for all major phased schemes that do not meet the threshold for affordable housing provision, in order to ensure that affordable housing contributions are increased if viability improves over time. This way, the Council can seek to recoup anything up to £9.4million worth of affordable housing should the scheme make a surplus when sales and costs have been taken into consideration. The requirement for a Viability Review will allow consideration of on-site affordable housing being provided in later phases of the Development or provision of an equivalent financial contribution (up to a policy compliant 30% of the total dwellings in the development), as set out in adopted planning policy and in accordance with the Council's Corporate Policy: Interim Affordable Housing Policy – September 2016). In drafting a Deed of Variation, officers have given consideration to examples of good practice used elsewhere. However, it has predominantly been the terms of the viability review mechanism that has led to protracted negotiations with the applicant for over 18 months.

4.12 The terms of the viability review mechanism have now been provisionally agreed with the applicant including the following trigger points for the two Viability Reviews:

- On the date on which the completion of the sale of 52 market housing units has taken place (First Viability Review Date)
- On the date on which the completion of the sale of 254 market housing units has taken place (Second Viability Review Date)

The Council wishes to protect its position in respect of potentially delivering any affordable housing found to be viable on-site. Therefore, so that the phasing of the development does not prejudice the potential for on-site delivery of affordable housing, at least 84 dwellings (i.e. 30% of total as set out in paragraph 4.10 above) need to be remaining at the point of the First Viability Review. The proposed approach achieves this. The Second Viability Review taking place on completion of the sale of 254 units equates to 90% of the total dwellings. This is sufficiently late in the development to recoup the maximum potential value from the scheme should there be any surplus, whilst ensuring an adequate number of dwellings remain unsold such that their unrealised value will assist with the enforceability of the agreement.

4.13 Continued officer negotiations have also recently resulted in the following review framework put forward by the Council being provisionally agreed with the applicant:

- Any affordable housing contribution (either on-site provision or as a financial contribution) will not exceed £9.4million (equivalent to a policy compliant affordable housing provision).
- Where the First or Second Viability Review shows a surplus, the owner of the site would be required to provide 60% of any such surplus as either on-site affordable housing provision (equivalent value) or as a financial contribution towards affordable housing.
- At both the First and Second Viability Review, all assumptions will be fixed

except for two variables:- **build costs** will be adjusted in accordance with the BCIS All-In Tender Price Index; and **gross development value** will be adjusted according to actual and estimated sales values at the time of each review.

- Although the applicant contends that the scheme is deliverable with only the £300,000 affordable housing contribution, a residual valuation of the scheme still shows a deficit of £1.65m after deduction of all expenditure from the scheme's income. This deficit would therefore need to be recouped (by either increased values or reduced costs) before any surplus would be payable in any Viability Review.

5 Conclusion

- 5.1 On the basis of the above, it is considered that sufficient viability evidence has been provided to justify a modification of the S106 affordable housing requirement to allow payment of a financial contribution of £300,000 (index-linked) in lieu of on-site provision. This contribution would be payable prior to first occupation of any dwelling and subject to a viability review mechanism as set out above.

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 KP1 (Spatial Strategy), 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 financial contribution of £300,000 (index-linked) in lieu of providing affordable housing units on site subject to the inclusion of a viability review mechanism. 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 Member Comments

- 9.1 Councillor Walker: *"This has to be refused as it is sheer greed. We need the money to provide affordable housing. What is it that they do not understand about the word "requirement"?"*

9.2 Councillor Davies:

“My thoughts are starting simply removing the affordable homes elements shows a disregard of the original agreement.”

“Two years ago I opposed this scheme on both parking and conservation grounds. These objections were never honestly addressed yet application was granted. Here we find yet another example of how this lucrative seafront site is being exploited for greed without even the token goodwill gesture of affordable homes for the community. I am and remain opposed to the development as it is.”

10 Relevant Planning History

- 10.1 22nd July 2015 (14/01462/FULM): Conditional planning permission granted to *“Demolish existing building and erect 282 self-contained flats in six blocks (comprising: one 14 storey block, one 9 storey block, one 5/6 storey block, one 4/6 storey block, two 2/4 storey block), erect 2717sqm of commercial floorspace (A1, A3 and D2 uses), layout 318 underground parking spaces, landscaping, cycle/motorcycle/refuse storage, formation of vehicular access from Southchurch Avenue and Pleasant Road”*.

11 Recommendation

- 11.1 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 22nd July 2015 pursuant to planning application 14/01462/FULM to provide a financial contribution for affordable housing of £300,000 (index-linked) in lieu of on-site provision. This contribution would be payable prior to first occupation of any dwelling and subject to a viability review mechanism.