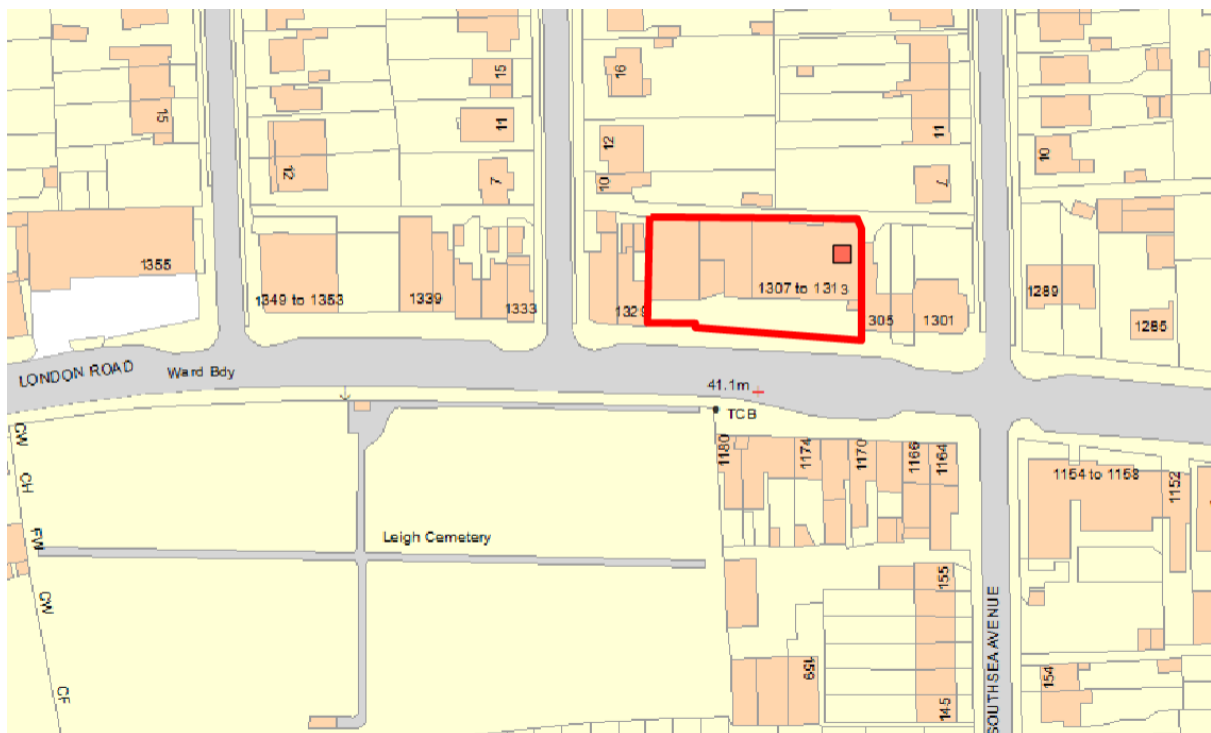


Reference:	17/01426/DOV5	
Application Type:	Deed of Variation within 5 years	
Ward:	Belfairs	
Proposal:	Modification of planning obligation (Section 106 agreement) dated 13th July 2017 pursuant to application 16/01780/FULM to vary the requirement to provide affordable housing.	
Address:	1307 London Road, Leigh-On-Sea, Essex	
Applicant:	Mr James Dove	
Agent:	Michael Calder of Phase 2 Planning Ltd	
Consultation Expiry:	7 th September 2017	
Expiry Date:	22 nd September 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 13th July 2017 pursuant to application 16/01780/FULM	



1 The Proposal

- 1.1 Planning permission was granted on 13th July 2017 to *“Demolish existing building and erect three storey building comprising of 16 self-contained flats on first and second floor with balconies and roof terrace with retail unit on ground floor, lay out parking bin store and alter vehicular access at 1307-1313 London Road”*.
- 1.2 This permission was subject to a Section 106 (S.106) agreement dated 13th July 2017 to secure the following:
- Provision of affordable housing including 2 x 1 bedroom affordable units (Affordable Rented) and 1 x 2 bedroom affordable units (Shared Ownership)
- 1.3 Under section 106A of The Town and Country Planning Act 1990 (as amended) (TCPA) the applicant originally sought to remove the requirement to provide affordable housing on viability grounds. However, following submission and independent assessment of a Viability Report, the applicant is now offering a financial contribution in lieu of on-site provision.
- 1.4 The following evidence has been submitted in support of the application:
- Affordable Housing Viability Report undertaken by S106 Affordable Housing dated 8th June 2017
 - Additional letter from S106 Affordable Housing dated 20th November 2017 addressing concerns raised in BNP Paribas’ draft Viability Review dated October 2017
 - Confirmed offer of an in-lieu affordable housing contribution of £80,000 (index-linked) payable prior to occupation of the 5th dwelling

2 Site and Surroundings

- 2.1 The application site currently contains two storey and single storey buildings used for car sales and repairs. Vehicular access is currently provided directly from London Road.
- 2.2 The site is located within an area of mixed uses and buildings built to a mix of architectural styles and different scale. To the North of the site is a residential area that consists of rows of two storey residential buildings that front Kingswood Chase and Tankerville Drive. To the east of the site is a group of three buildings that include a hot-food takeaway restaurant, a retail premises and an accountants office. To the west of the site is a two storey building that appears to be used as a dwelling and a two storey building that is used as a dry cleaners at ground floor and a residential property at first floor. Opposite the site to the south is Leigh Cemetery and a row of commercial properties with a similar mix as set out above.
- 2.3 The site is not the subject of any site specific policy designations.

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, 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 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 Paragraph: 019 Reference ID: 10-019-20140306 of 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.

4.3 Specifically in relation to incentivising the bringing back into use of brownfield sites, which this site 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 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.

4.5 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” (SPD2).

4.6 The clear preference in terms of affordable housing provision in this instance would be for 20% 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.

4.7 The applicant’s Viability Report has been independently appraised on the Council’s behalf by BNP Paribas Real Estate, experts in providing town planning and viability advice. The conclusions of this advice are set out below:

- Agreement has been reached with the applicant in respect of the gross development value (GDV), build costs, site value and a profit level of 18% of GDV.
- The site value has been based on the Existing Use Value plus a reasonable 20% landowner’s premium to release the site for development.

- It is likely that the proposed scheme will generate a surplus of £80,000 and consequently the proposed scheme can support a payment in lieu of c. £80,000

4.8 A financial contribution considered equivalent to the on-site provision of 3 affordable housing units on site would be £290,998 (calculated in accordance with the Council's adopted Corporate Policy:- "Interim Affordable Housing Policy" – September 2016). However, in accordance with the policies and guidance set out above, and on the basis of the advice given to the Council by BNP Paribas Real Estate, it is considered appropriate in this instance to modify the S106 agreement dated 13th July 2017 to accept a financial contribution of **£80,000** (index-linked) in lieu of on-site provision to ensure the regeneration of this site through the delivery of this scheme. 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 of **£80,000** in lieu of on-site provision.
- 5.2 The affordable housing contribution would be payable prior to occupation of the 5th dwelling, consistent with the original affordable housing transfer terms set out in the 13th July 2017 S106 agreement.

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 strategic objective SO7, 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 supports the proposition of accepting the commuted sum of £80,000 in lieu of providing 3 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.
- 7.2 **Members:** One councillor objection received stating that the application represented greed.

7.3 **Leigh Town Council:** Object to application as they recorded no objection to the original application based on affordable housing being included in the development.

8 Public Consultation

8.1 Although none formally required (see paragraph 3.4 above), site notice posted 17th August 2017.

9 Relevant Planning History

9.1 13th July 2017 (16/01780/FULM): Conditional planning permission granted to *“Demolish existing building and erect three storey building comprising of 16 self-contained flats on first and second floor with balconies and roof terrace with retail unit on ground floor, lay out parking bin store and alter vehicular access at 1307-1313 London 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 13th July 2017 pursuant to planning application 16/01780/FULM to provide a financial contribution for affordable housing of £80,000 (index-linked) in lieu of on-site provision payable prior to occupation of the 5th dwelling.