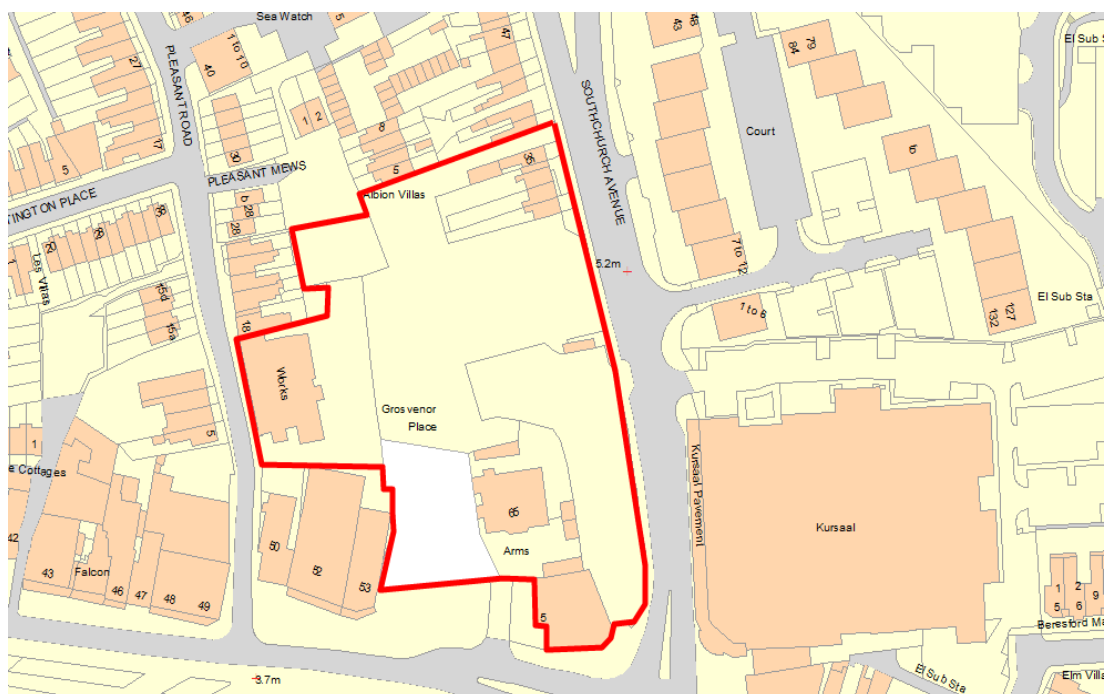


Reference:	18/01060/DOV5	
Application Type:	Deed of Variation within 5 years	
Ward:	Kursaal	
Proposal:	Modification of planning obligation (Section 106 agreement) dated 22nd July 2015 pursuant to application 14/01462/FULM to allow variations to Clauses 1.1, 6.1, 6.2, 7.1 & 7.2 of the Second Schedule so that the obligations set out in these clauses do not apply prior to commencement but are triggered at a later phase of the construction process.	
Address:	Marine Plaza Land between Southchurch Avenue and Pleasant Road fronting Marine Parade, Southend-on-Sea	
Applicant:	Mr Larry Fentiman of Goldfield Developments Ltd	
Agent:	Christopher Wickham of Christopher Wickham Associates	
Consultation Expiry:	n/a	
Expiry Date:	22 nd June 2018	
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 to be carried out under a Section 38 / 278 agreement
 - 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 has requested variations to Clauses 1.1, 6.1, 6.2, 7.1 & 7.2 of the Second Schedule of the S.106 agreement dated 22nd July 2015 so that the obligations set out in these clauses do not apply prior to commencement but are triggered at a later phase of the Construction Programme (see paragraph 4.2 for details). On submission, the proposed variations were stated as follows:
- a) education contribution – proposed to pay £75,000.00 on completion of phase 3, £45,000.00 on completion of phase 4, £40,334.00 on completion of phase 5
 - b) relocation of existing CCTV – to be completed prior to commencement of Phase 2
 - c) other monetary contributions as set out in the Sixth Schedule of the S.106:
 - i. £10,000 off site planting – proposed to pay on completion of phase 2
 - ii. £40,000 pedestrian signage – proposed to pay on completion of phase 2
 - iii. £2,000 changes to signal timings – proposed to pay on completion of phase 2
 - iv. £36,000 4 x AVL displays, real time information – proposed to pay on completion of phase 2
 - v. £10,000 2 x bus shelters – proposed to pay on completion of phase 2
 - vi. £1,000 taxi rank layout – proposed to pay on completion of phase 2
 - vii. £10,000 traffic regulation orders – proposed to pay on completion of phase 2
 - viii. £30,000 relocate traffic speed system – proposed to pay on completion of phase 2
 - ix. £25,000 car parking signs – proposed to pay on completion of phase 2

The affordable housing, highway works to be carried out under a Section 38 / 278 agreement, public art and Travel Packs/Travel Plan requirements set out in the S.106 and above remain unchanged.

1.4 The following information has been submitted in support of the application:

- Schedule of section 106 costs and proposed phasing of payments
- Construction Programme

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 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 S.106 contributions set out in paragraph 1.3 can be paid at a later date whilst still allowing the Council sufficient time to deliver the infrastructure required to support the development.

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) policies KP1, KP2, KP3, CP3, CP4 and CP6; Development Management Document (2015) policy DM1, DM3 and DM15; 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 Construction Programme submitted in support of this application sets out the following proposed phasing of the development:

Phase 1 Enabling Works

6 months

16th July 2018 to 31st December 2018

Phase 2 Car Park and Commercial Units

20 months

1st January 2019 to 31st August 2020

Phase 3 Residential Block A and B, and Commercial Units

30 months

1st September 2020 to 28th February 2023

Phase 4 Residential Block C, D and E

15 months

1st January 2023 to 31st March 2024

Phase 5 Residential Block F and Commercial Units

15 months

1st February 2024 to 30th April 2025 (Project Completion)

The applicant has agreed to the phasing forming part of the modified S.106 agreement albeit may be in a simpler and less detailed form than the Construction Programme submitted. In principle this is acceptable providing the Construction Programme/Phasing Plan included in any Deed of Variation is sufficiently detailed to ensure S.106 contributions are made at an appropriate time to ensure infrastructure delivery.

4.3 Consideration needs to be given to whether the proposed changes in the S.106 contribution payment arrangements would prejudice the Council's ability to deliver the supporting infrastructure for this development. It is considered reasonable to negotiate triggers to suit both the Council's requirement to have time to deliver supporting infrastructure and the applicant's need to ensure the scheme's cashflow allows for payment of the sums at the specified time.

- 4.4 Since submission, the applicant has now made a more favourable proposal in respect of the education contribution in the interests of simplicity. This to make the education payment in its entirety prior to completion of Phase 3. In this instance, on the basis of comments from the School Development Manager and Parks, it is considered reasonable to accept the education contribution prior to completion of Phase 3 and the off-site planting contribution prior to completion of Phase 2. It is also considered reasonable to require the relocation of the CCTV camera on the highway prior to commencement of Phase 2 (i.e. after the enabling works and at the same time as the highway works are due to commence). However, the proposal to make the remaining Traffic/Highway related contributions on completion of Phase 2 was not considered acceptable. Sufficient time must be allowed after payment for the Council to coordinate and advertise any highway changes that maybe required (Traffic Regulation Orders, Taxi Ranks, Bus Stops etc). This is to ensure that all infrastructure is in place in order for members of the public to access when the commercial units are complete and ready for occupation at the end of Phase 2. Therefore, officers have renegotiated on this point and the applicant has agreed to payment of the Traffic/Highway related contributions prior to commencement of works in Phase 2.
- 4.5 The affordable housing, highway works to be carried out under a Section 38 / 278 agreement, public art and Travel Packs/Travel Plan requirements remain unchanged from the original S.106 agreement.

5 Conclusion

- 5.1 On the basis of the above, it is considered that sufficient justification has been provided to allow the following modifications to the Second Schedule of the Section 106 agreement dated 22nd July 2015 pursuant to application 14/01462/FULM:
- a) Clause 7.1 and 7.2 – education contribution – £160,334 payable **prior to completion of Phase 3**
 - b) Clause 1.1 – relocation of existing CCTV complete – to be completed **prior to commencement of Phase 2**
 - c) Clause 6.1 and 6.2 – other monetary contributions as set out in the Sixth Schedule of the S.106:
 - i. £10,000 off site planting – payable **prior to completion of Phase 2**
 - ii. £40,000 pedestrian signage – payable **prior to commencement of Phase 2**
 - iii. £2,000 changes to signal timings – payable **prior to commencement of Phase 2**
 - iv. £36,000 4 x AVL displays, real time information – payable **prior to commencement of Phase 2**
 - v. £10,000 2 x bus shelters – payable **prior to commencement of Phase 2**
 - vi. £1,000 taxi rank layout – payable **prior to commencement of Phase 2**
 - vii. £10,000 traffic regulation orders – payable **prior to commencement of Phase 2**
 - viii. £30,000 relocate traffic speed system – payable **prior to commencement of Phase 2**
 - ix. £25,000 car parking signs – payable **prior to commencement of Phase 2**

- 5.2 The applicant has agreed to the following additional terms of any Deed of Variation in that it would need:- (i) to refer to the details for each phase as set out in the programme, (ii) to secure the sequential implementation of each phase, and (iii) to require that each subsequent phase could not commence until the previous phase was complete. These requirements would only need to apply to the phases where particular obligations are triggered.

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), KP2 (Development Principles), KP3 (Implementation and Resources), CP3 (Transport and Accessibility), CP4 (The Environment and Urban Renaissance) and CP6 (Community Infrastructure).
- 6.3 Development Management Document (July 2015): Policy DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM15 (Sustainable Transport Management).
- 6.4 Supplementary Planning Document 2: A Guide to Section 106 & Developer Contributions (2015).

7 Representation Summary

- 7.1 **School Development Manager:** No objection to the proposed changes in payment schedule.
- 7.2 **Traffic & Highways:** Objection as Section 106 monies for the highway works will be required before commencement of works in phase 2. This is necessary to allow time to co-ordinate and advertise any highway changes that maybe required (Traffic Regulation Orders, Taxi Ranks, Bus Stops etc). This is to ensure that all infrastructure is in place in order for members of the public to access.
- 7.3 **Parks:** No objection to off-site planting taking place after completion of Phase 2.

8 Public Consultation

- 8.1 None required (see paragraph 3.4 above).

9 Member Comments

- 9.1 Councillor D Norman: Request for application to be referred to Development Control Committee for determination.

10 Relevant Planning History

- 10.1 6th June 2018 (16/01723/DOV5): Modification of planning obligation **refused** for the following reason:- *“Council policies require residential development proposals to make sustainable use of land and resources, and are expected to contribute to local housing needs including affordable housing provision. The proposed modification fails to make optimum and sustainable use of the land, which would have a significantly detrimental effect in terms of the delivery of affordable housing, for which there is a recognised need in the Borough. This is unacceptable and contrary to the National Planning Policy Framework (March 2012) and the objectives of policy KP2, KP3, and CP8 of the Council’s Core Strategy (December 2007).”*
- 10.2 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 allow variations to Clauses 1.1, 6.1, 6.2, 7.1 & 7.2 of the Second Schedule so that the obligations set out in these clauses do not apply prior to commencement but are triggered at a later phase of the construction process (including education payment, relocation of CCTV, off-site planting payment and payments relating to traffic/highway works – see paragraph 5.1 for details).