

Reference:	18/00942/DOV	
Application Type:	Deed of Variation	
Ward:	Milton	
Proposal:	Modification of Section 106 agreement dated 30/06/2011 (as amended by Deed of Variation dated 22/06/2016) pursuant to planning permission 10/02012/EXTM, to extend the payment provisions in relation to the Education, Bus Infrastructure and Warrior Square Contributions.	
Address:	Part Of Former Keddies Building And Maitland House, Chichester Road, Southend-On-Sea, Essex	
Applicant:	Mr D Samuels of Broadway Estates Ltd	
Agent:	Mr D Jarman of Hobbs Parker Property Consultants LLP	
Consultation Expiry:	14 th June 2018	
Expiry Date:	20 th 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 30th June 2011 (as amended by Deed of Variation dated 22nd June 2016) pursuant to application 10/02012/EXTM	



1 The Proposal

1.1 Planning permission was granted on 30th June 2011 (10/02012/EXTM) to extend the time limit for permission 07/01276/FULM, to erect an 11 storey extension over the existing 4 storey building, erect 2 floors over the existing 11 storey building and convert the extended building into 98 self-contained flats.

1.2 This permission was subject to a Section 106 (S.106) agreement 30th June 2011 (as amended by Deed of Variation dated 22nd June 2016) to secure the following:

- **Bus Infrastructure Contribution** – outstanding invoice for £29,241 dated 16th November 2017 (interest to be added at 4% above base lending rate of Barclays Bank Plc from date due to date of payment)
- **Education Contribution** – outstanding invoice for £25,841 dated 16th November 2017 (interest to be added at 4% above base lending rate of Barclays Bank Plc from date due to date of payment)
- **Warrior Square Contribution** – outstanding invoice for £38,988 dated 16th November 2017 (interest to be added at 4% above base lending rate of Barclays Bank Plc from date due to date of payment)
- Affordable Housing (12x1bed flats, 5x2bed flats)
- Public art to the value of £16,321
- Travel Plan
- Travel Plan monitoring contribution of £3,000
- S106 monitoring fee £4,607 paid 16/07/2014

In the case of financial contributions these are all subject to inflation as set out in the S.106. Those highlighted in **bold** are the subject of this application. The affordable housing, public art, Travel Plan, Travel Plan monitoring contribution and S.106 monitoring fee requirements set out in the S.106 and above remain unchanged.

1.3 Under section 106A of The Town and Country Planning Act 1990 (as amended) (TCPA) the applicant has requested the following variations:

- Clause 3.1 of the Second Schedule of the S.106 – Education Contribution payable within 60 months of Commencement of Development (as opposed to 28 days from the date of Commencement of Development previously agreed)
- Clause 6.1 of the Second Schedule of the S.106 – Bus Infrastructure Contribution payable within 60 months of Commencement of Development (as opposed to 24 months previously agreed)
- Clause 7.1 of the Second Schedule of the S.106 – Warrior Square Contribution payable within 14 days of completion of any Deed of Variation pursuant to this application (as opposed to 24 months previously agreed)
- Clause 5.2 of the Deed of Variation dated 22nd June 2016 – the construction of the structural frame of the 11 storey extension comprised within the Development shall not commence before 1st June 2019 (as opposed to 1st June 2016 previously agreed)

2 Site and Surroundings

- 2.1 The application site is within the town centre and includes offices, a hotel and other commercial floorspace.
- 2.2 A technical start was made on the development following approval of pre-commencement conditions on 27th June 2014, in that preparation works were undertaken to allow installation of a canopy over the ground floor entrance, thus development is considered to have commenced. It is on this basis that an invoice has been issued seeking payment of the Education, Bus Infrastructure and Warrior Square Contributions as the S.106 payment triggers have passed.

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).
- 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.

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 In support of the submission, the applicant has submitted a detailed covering letter and provisional viability information setting out how the scheme is currently considered unviable to deliver. Due to financial concerns relating to the deliverability of the approved scheme, the applicant has requested until 1st June 2019 (60 months from Commencement of the Development) to make the Education and Bus Infrastructure Contributions. As a compromise offer, mindful of the fact that the debt has now been outstanding for some time, the applicant has also stated that the Warrior Square Contribution would be paid within 14 days of the completion of any Deed of Variation agreed. This proposal is to allow the applicant time to resolve financial matters.
- 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 In this instance, it is considered reasonable to agree the proposed changes to the S.106 agreement as the development will not go ahead until at least 1st June 2019 and therefore the infrastructure need to support the development has not yet arisen. If the S.106 contributions towards education and bus infrastructure are paid before works commence on the structural frame of the extension, ample time will be available to the Council to deliver this supporting infrastructure for the development.
- 4.5 The affordable housing, public art, Travel Plan, Travel Plan monitoring contribution and S.106 monitoring fee 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 Section 106 agreement dated 30th June 2011 (as amended by Deed of Variation dated 22nd June 2016) pursuant to planning permission 10/02012/EXTM:
- Clause 3.1 of the Second Schedule of the S.106 – Education Contribution payable within 60 months of Commencement of Development
 - Clause 6.1 of the Second Schedule of the S.106 – Bus Infrastructure Contribution payable within 60 months of Commencement of Development
 - Clause 7.1 of the Second Schedule of the S.106 – Warrior Square Contribution payable within 14 days of completion of any Deed of Variation pursuant to this application
 - Clause 5.2 of the Deed of Variation dated 22nd June 2016 – the construction of the structural frame of the 11 storey extension comprised within the Development shall not commence before 1st June 2019

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 None received.

8 Public Consultation

- 8.1 Site notice posted.

9 Relevant Planning History

- 9.1 22nd June 2016 (14/01054/DOV): Modification of planning obligation dated 30th June 2011 pursuant to application 10/02012/EXTM to allow payments to be made within 24 months of commencement of development – **agreed**.
- 9.2 30th June 2011 (10/02012/EXTM): Conditional planning permission granted to *“Erect 11 storey extension over existing 4 storey building, erect 2 floors over existing 11 storey building, convert extended building into 98 flats (application to extend the time limit for implementation following planning permission 07/01276/FULM granted 31/03/2008)”*.
- 9.3 31st March 2008 (07/01276/FULM): Conditional planning permission granted to *“Erect 11 storey extension over existing 4 storey building, erect 2 floors over existing 11 storey building, convert extended building into 98 flats (Amended Proposal)”*.

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 30th June 2011 (as amended by Deed of Variation dated 22nd June 2016) pursuant to planning permission 10/02012/EXTM to secure the following provisions:
- Clause 3.1 of the Second Schedule of the S.106 – Education Contribution payable within 60 months of Commencement of Development
 - Clause 6.1 of the Second Schedule of the S.106 – Bus Infrastructure Contribution payable within 60 months of Commencement of Development
 - Clause 7.1 of the Second Schedule of the S.106 – Warrior Square Contribution payable within 14 days of completion of any Deed of Variation

pursuant to this application

- Clause 5.2 of the Deed of Variation dated 22nd June 2016 – the construction of the structural frame of the 11 storey extension comprised within the Development shall not commence before 1st June 2019