

Report to Planning applications committee

Item

29 October 2015

Report of Head of planning services

Subject Application no 11/02236/F - Land adjacent to Novi Sad Bridge, Wherry Road, Norwich

Applicant Generator (Wherry Road) LLP

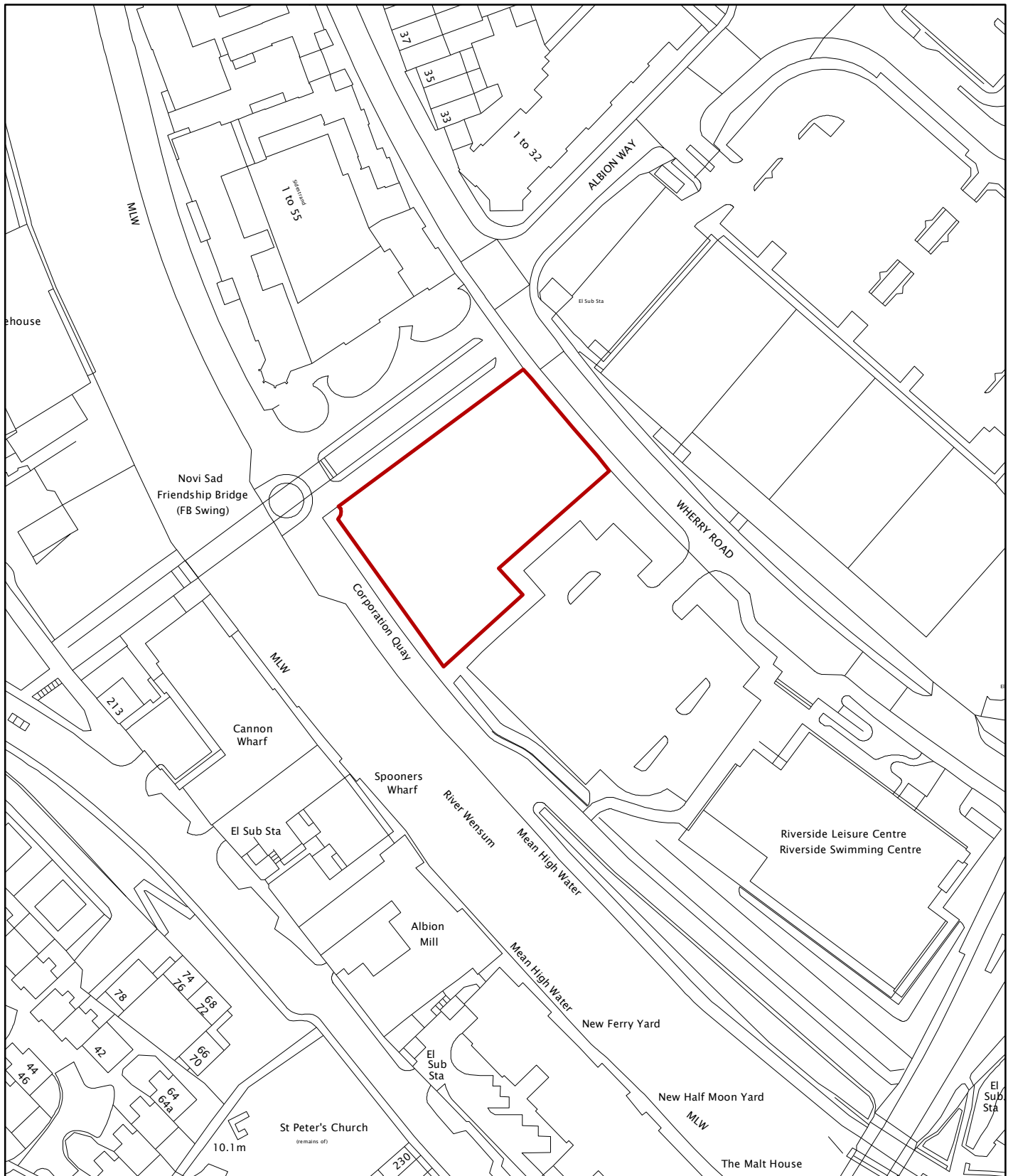
Reason for referral Planning obligation requirement which varies a former committee decision.

4(H)

Ward:	Thorpe Hamlet
Case officer	James Bonner – jamesbonner@norwich.gov.uk

Development proposal
Variation of S106 agreement to change the trigger point where a review of viability is required from occupation within 30 months of implementation to occupation within 35 months of implementation.

Main issues	Key considerations
1 Viability and planning obligations	If the period between commencement and occupation of the development should be extended before a viability review is triggered.
Recommendation	Approve the proposed changes to the S106 agreement.



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Planning Application No 11/02236/F

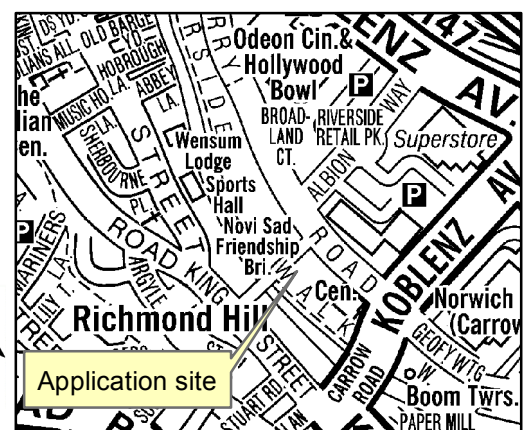
Site Address Land adjacent to Novi Sad Bridge
Wherry Road

Scale 1:1,250



NORWICH
City Council

PLANNING SERVICES



The site and surroundings

1. The application site is located on Wherry Road adjacent to the Novi Sad Bridge and fronting onto the River Wensum. Consent was granted for the redevelopment of the site to provide a block of 66 flats on 27 February 2013 following the completion of a S106 agreement and member's resolution to approve the application at their meeting on 01 March 2012. The committee report and minutes as well as the former signed S106 agreement are available at the link below by entering reference 11/02236/F: <http://www.planning.norwich.gov.uk/online-applications/>
2. The consent was approved subject to a S106 agreement which required the provision of 5 affordable housing units on the site, or an off-site commuted sum of £546,000 if difficulties arise in finding a registered provider to take on the units. The S106 included an overage clause which requires the applicant to pay 50% of any profit exceeding 20% of gross development value to the Council up to a maximum. In addition a review mechanism was included requiring implementation to commence within 18 months of permission and first occupation to take place within 30 months of implementation to avoid a review of the viability
3. The S106 agreement also included a transport and public open space contribution as the consent pre-dated the community infrastructure levy. The developer has commenced onsite within the 18 month review period. This start has been made using the developer's equity and the developer is in the process of negotiating funding for the rest of the development.
4. In October 2014 members agreed changes to the S106 agreement to remove the overage clause in exchange for an additional affordable unit on site, taking the total of on-site affordable units to six. The review mechanism was retained and as the extant permission was implemented on 11 July 2014, occupation will currently need to take place within 30 months of that date to avoid a further review of viability. The report and signed S106 agreement are also attached to the 11/02236/F case.
5. A S73 application (15/00464/VC) making amendments to the design of the scheme was approved by committee in May 2015. A subsequent S73 application (15/01104/VC) proposing changes to the energy efficiency proposals is currently pending consideration and is likely to be approved under delegated powers once a deed of variation has been successfully signed.
6. With regards this particular proposal the developer has approached the Council and is seeking to amend the S106 agreement under S106A(1)(a) which is by agreement between the persons against whom the obligation is enforceable. This is not a formal application under S106A(3) or S106BA to which there is a right of appeal.

Constraints

7. A full site description can be found on the committee reports for 15/00464/VC and 11/02236/F.

Relevant planning history

- 8.

Ref	Proposal	Decision	Date
4/2000/0100	Construction of a swing bridge over the River Wensum for combined pedestrian and cycle usage.	Approved	16/03/2000
4/1999/0948	Erection of pedestrian swing bridge over River Wensum.	Approved	16/03/2000
08/01226/F	Temporary use as a short stay car park for six months.	Refused	13/01/2009
11/02236/F	Erection of residential development to provide 66 No. apartments, with associated amenity areas, car and cycle parking and pedestrian and vehicular access.	Approved	27/02/2013
14/00739/D	Details of Condition 3a) external renders, Condition 3b) external cladding panels, Condition 3c) external brick work, Condition 3d) external materials of side walls of inset balconies, Condition 3g) external windows, Condition 3i) external balconies, Condition 8) cycle racks, Condition 11) surface water strategy, Condition 12) fire hydrants and Condition 13) vehicle crossover to the southeast corner of the site of previous planning permission 11/02236/F 'Erection of residential development to provide 66 No. apartments, with associated amenity areas, car and cycle parking and pedestrian and vehicular access'.	Withdrawn	17/07/2014
14/00863/D	Details of condition 3: materials samples; condition 4: landscaping scheme; condition 8: cycle racks; condition 10: flood warning and evacuation plans; condition 11: surface water strategy; condition 12: fire hydrants, and condition 13: vehicle crossover of previous permission 11/02236/F 'Erection of residential development to provide 66 No. apartments, with associated amenity areas, car and cycle parking and pedestrian and vehicular access.'	Approved	10/11/2014
15/00015/F	Relocation of emergency generator.	Withdrawn	31/03/2015
15/00464/VC	Amendments to approved plans by variation of condition 2 of permission	Approved	10/09/2015

Ref	Proposal	Decision	Date
	11/02236/F.		
15/01104/VC	Variation of Condition 5 of planning permission 11/02236/F from PV panels as the carbon saving method to CHP.	Pending Consideration	

The proposal

9. The applicant seeks to formally amend the wording of the S106 agreement to change the date at which the formal review of the scheme's viability is required. The current legal agreement requires this review to take place if occupation has not occurred within 30 months of implementation. Implementation was confirmed as 22 July 2014. The applicant seeks permission for this to be changed to 35 months, meaning the currently agreed trigger date is to change from 23 January 2017 to 23 June 2017.

Representations

10. As this is not a planning application and is a technical change to a clause of the S106 agreement this does not require public consultation.

Consultation responses

11. No consultations have been undertaken.

Assessment of planning considerations

Relevant development plan policies

12. **Joint Core Strategy for Broadland, Norwich and South Norfolk adopted March 2011 amendments adopted Jan. 2014 (JCS)**
 - JCS4 Housing delivery
13. **Norwich Development Management Policies Local Plan adopted Dec. 2014 (DM Plan)**
 - DM33 Planning obligations and development viability

Other material considerations

14. **Relevant sections of the National Planning Policy Framework March 2012 (NPPF):**
 - NPPF6 Delivering a wide choice of high quality homes
15. Supplementary Planning Documents (SPD)
 - Affordable housing SPD adopted 11 March 2015
16. DCLG Section 106 affordable housing requirements review and appeal April 2013

Case Assessment

Main issue: Viability and planning obligations

17. Key policies as listed above.
18. The applicant's case for extending the viability review trigger point is based on the issues that they have faced with funding the development. As a means of context the developer has cited viability issues with the scheme when the main building contract went to tender in September 2014. This is principally due to the pace of build cost inflation significantly outstripping improvements in the market. This was highlighted during the tender process and the scheme underwent a value engineering exercise to try and address this, subsequently approved by members in May 2015 (15/00464/VC).
19. Following this, instruction was given to the contractor to re-start works on site funded from the developer's equity while negotiations continued to secure the remaining finance for the scheme from the senior debt lender (i.e. at a lower interest rate). It is claimed that major lenders have a reluctance to finance development schemes in Norwich following the recession, particularly when schemes have perceived barriers to viability. One such barrier was the overage clause which added uncertainty. Members agreed a previous S106a proposal to replace this mechanism with an additional affordable unit.
20. The review mechanism is the supposed final barrier to securing the remaining finance for the scheme. The contractors are on-site and the works are underway with the scheduled completion date for the development being 16 December 2016. Despite this being within the 30 month period, the bank are requiring that a condition of the finance is having 6 months buffer between the projected completion date and the cut-off date for the review mechanism, hence the 5 months requested.
21. In the previous S106a request (to replace the overage clause with an additional affordable unit) updated viability information was provided which was reviewed by the District Valuer in September 2014. The DV concluded that their viability information was accurate and that the overage clause did indeed affect the ability to finance the scheme, which in turn affected its viability – the project showed a deficit either way, indicating that it would reduce the developer's profit below 20%, itself a reasonable figure for a relatively risky development. This assessment by the DV included consideration of the BCIS build cost, which accepted that these costs had increased from the time at when the original application assessed the viability of the scheme. Since last year the RICS have stated (as of August 2015) that:

Tender prices rose by 0.8% in 1st quarter 2015 compared with the final quarter of 2014, and by 4.5% compared with the same quarter in 2014.

The General Building Cost Index fell by 0.3% in 1st quarter 2015 compared with the final quarter of 2014, but rose by 0.6% compared with 1st quarter 2014.

Materials prices remained unchanged in 1st quarter 2015 and nationally agreed wage rates rose by 2.5%. General inflation rose by 1.1% over this period.

Little movement is expected in materials prices in the remainder of 2015, with domestic and Eurozone inflation very low. However, it is anticipated that prices will

start to rise again in 2016, with an increase in the year to 2nd quarter 2016 of 2.3%; the increase being exaggerated by a fall in prices in 2nd quarter 2015. Over the following years, as both the construction and wider economies improve, upward pressure on materials prices will take increases from 2.6% in the year to 2nd quarter 2017 to 4.1% in the year to 2nd quarter 2019.

Wage awards are expected to be settled at progressively higher rates during the forecast period, as stronger construction demand gives trade bodies a better wage bargaining position. As a result, it is anticipated that wage awards will rise from 3.0% over the first year of the forecast period to 3.9% over the final two years.

Source: <http://www.rics.org/uk/knowledge/bcis/about-bcis/construction/bcis-construction-briefing/>

22. From this information it is reasonably safe to assume from current trends and these projections that build costs are unlikely to get significantly cheaper and so it is also fairly reasonable to assume that this aspect of the scheme's viability will not change enormously given works are underway on-site.
23. Questions could be raised about the other major input into the scheme's viability: the development value, principally from the sale values of the units. The DV did not raise any concerns with an increase in the review last year. The developer has provided some up-to-date viability information which shows a slight increase in sales values adopted by the DV in September 2014. However this slight uplift in value is offset by the higher interest rate on the equity funding used to start the development, the cost of the previous S73 application and the reduction in net residential area as a result of this value engineering exercise (the DV scheme was assessed at 4725sqm while the current development is 4622sqm). The developer also notes that the highest offer for the six affordable units is some way below the rate adopted by the DV, further impacting the viability of the scheme.
24. Given that last year's updated viability assessment concluded there was a deficit which was further affected by the increased cost of financing the development, a similar conclusion can be reached as a result of the presence of the review mechanism. It would potentially increase the cost of borrowing and reduce the viability of the scheme further. Of course it would be far more desirable if the scheme had not been delayed for so long, which ordinarily would result in the conclusion that the developer ought to just go through the viability review. If the most recent assessment of scheme's viability had suggested a large uplift in profitability from increased development value or decreased costs, then the retention of the review mechanism would certainly be desirable. However from the evidence available it does not seem it would necessarily lead to an increase in the viability of the scheme and therefore potential increase in affordable housing contribution.
25. On the balance of the information available, whilst it is regrettable that development has not progressed as quickly as would be ideal, the viability of the scheme has not improved over this period principally due to increased costs outstripping any uplift in value. The affordable housing supplementary planning document outlines that a review should be triggered if commencement has not taken place within 12 months of permission there has been no occupation within a further 12 month period from commencement, unless the scheme is of such a size and complexity that occupation is unlikely to take place within 12 months of commencement. This is a

more complex scheme which falls under the latter provision and as the development is at an early stage of construction a 20 month time frame is not considered unreasonable.

26. It is therefore recommended that the short extension be permitted as it is unlikely that this delay would increase the scheme's viability to an extent that further affordable housing provision would be achieved on site.

Equalities and diversity issues

27. There are no significant equality or diversity issues.

Local finance considerations

28. Under Section 70(2) of the Town and Country Planning Act 1990 the council is required when determining planning applications to have regard to any local finance considerations, so far as material to the application. Local finance considerations are defined as a government grant or the Community Infrastructure Levy.
29. Whether or not a local finance consideration is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision on the potential for the development to raise money for a local authority.
30. In this case local finance considerations are not considered to be material to the case.

Conclusion

31. This is an important and prominent development site with clear viability issues. This has been confirmed by the District Valuer in September 2014 when the viability of the scheme was re-visited. At this time it was suggested that there was a deficit in its viability which was exacerbated by the issues in securing financing. Alongside other issues this has delayed construction to the point that the projected occupation date occurs a month or two before the date at which a formal review of viability is required. This uncertainty raises issues with cautious lenders, which adds a further burden on the financing of the development.
32. While it is very unfortunate that the scheme has been delayed for so long, work has now started on-site and there is little evidence to suggest that the situation has changed significantly from last year's viability assessment, nor that it is likely to change significantly by the current trigger date for the review (23 January 2017). On the evidence currently available it is considered a review at this date would be unlikely to deliver a scheme viable enough to provide a higher affordable housing contribution. By relaxing a perceived barrier to finance this should allow the scheme to be occupied within the 30 month period.
33. It is therefore recommended that the short extension be permitted as it is unlikely that this delay would increase the scheme's viability to an extent that further affordable housing provision would be achieved on site.

Recommendation

To approve changes to the S106 agreement relating to consent no (11/02236/F Land adjacent to Novi Sad Bridge Wherry Road Norwich) comprising the following:

1. The replacement of the occupation trigger point for the viability review to occur at 35 months instead of 30 months post-implementation.