

Report to Planning applications committee
Date 6 November 2014
Report of Head of planning services
Subject 12/00143/ET Depository Building Part Lion House and Part Seymour House, Muspole Street, Norwich

Item

4F

SUMMARY

Description:	Application under Section 106BA Previous scheme for redevelopment of site to provide 47 No. apartments and 10 No. houses with associated works including enhancement of external areas and provision of formal parking areas (originally granted by 08/00866/F and extended by 12/00143/ET).
Reason for consideration at Committee:	Planning Obligation Requirements
Recommendation:	Approve the changes to the S106 agreement
Ward:	Thorpe Hamlet
Contact Officer:	Mark Brown Planning Team Leader 01603 212505
Valid Date:	29 August 2014
Applicant:	MAHB Capital
Agent:	Lanpro

INTRODUCTION

The Site and Background

- The application site is located to the north of the Woolpack public house and comprises offices fronting onto Muspole Street, and the former Hadley and Ottaway depot which is dominated by the depository building, a former shoe factory. Consent was granted for the redevelopment of the site to provide 57 dwellings on 27 March 2009 under reference 08/00866/F. This consent was extended for a further three years on 21 December 2014 under reference 12/00143/ET.
- The consent provides for the erection of 10 houses fronting onto Muspole Street, 24 flats in the converted depository building and 23 new build flats in two blocks on to the north of the depository building and the other adjacent to the south boundary with the Woolpack public house.
- The consent was subject to a S106 agreement which secured the following:
 - 33 per cent affordable housing being 19 affordable housing units (of which 16 would be social rented and 3 intermediate tenure dwellings);
 - An education contribution of £46,576;
 - A play space contribution of £71,760;
 - A public open space contribution of £26,847;

- A transport contribution of £16,082.95.
4. The committee report and minutes as well as the former signed S106 agreement are available at the link below: <http://planning.norwich.gov.uk/online-applications/applicationDetails.do?activeTab=externalDocuments&keyVal=LY92Y0LX0J300>
 5. The site owner has submitted an application under Section 106BA of the Town and Country Planning Act. This relatively new provision provides a new application and appeal procedure for the review of affordable housing planning obligations. Such applications must contain a revised affordable housing proposal, based on prevailing viability, and should be supported by relevant viability evidence. Guidance has been produced giving an overview of what evidence may be required to support applications and appeals under Sections 106BA and 106BC.
 6. The new application and appeal procedures do not, in any way, replace existing powers to renegotiate Section 106 agreements on a voluntary basis. The application and appeal procedure should assess the viability of affordable housing requirements only and not reopen any other planning policy considerations or review the merits of the permitted scheme. Unrealistic Section 106 agreements negotiated in differing economic conditions can be an obstacle to house building. The guidance also reiterates the Government encouragement for a positive approach to planning to enable appropriate, sustainable development to come forward wherever possible, to provide more homes to meet a growing population and to promote construction and economic growth. The guidance outlines that stalled schemes due to economically unviable affordable housing requirements can result in no development, no regeneration and no community benefit. Reviewing such agreements could result in more housing and more affordable housing than would otherwise be the case.
 7. The National Planning Policy Framework establishes that the planning system ought to proactively drive and support sustainable economic development. It also requires that local planning authorities should positively seek to meet the development needs of their area.

The Proposal

8. The application under S106BA seeks to remove all on site affordable housing from the scheme and replace it with a £150,000 off-site commuted sum towards affordable housing.

Equality and Diversity Issues

9. It is not considered that the proposed revision to the S106 agreement raises any equality or diversity issues.

ASSESSMENT OF PLANNING CONSIDERATIONS

Relevant Planning Policies

The policies listed below are solely those relating to planning obligations and the delivery of affordable housing.

National Planning Policy Framework (NPPF):

Section 6 Delivering a wide choice of high quality homes.

Relevant policies of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk 2011 (JCS)

Policy 4 Housing Delivery

Other Material Considerations

Emerging Local Plan Policies

The Council submitted the Development Plan Policies local plan and Site Allocations and Site Specific Policies local plan for examination in April 2013. The examination process is now complete with the publication of the Inspector's report for each plan, dated 13th October, 2014 (available at <http://www.norwich.gov.uk/Planning/Pages/DMAAndSAPoliciesPlans.aspx>). Significant weight must now be given to all the following policies, as proposed to be modified by the Inspector's reports, pending formal adoption.

Policy 33 – Planning Obligations

Interim Statement on off-site provision of affordable housing in Norwich, December 2011

DCLG Section 106 affordable housing requirements review and appeal April 2013

Viability and Planning Obligations

10. JCS policy 4 provides that developments of this scale should provide 33 per cent affordable housing with an 85:15 split between social rented and intermediate tenures. The policy allows for the proportion of affordable housing sought to be reduced and the balance of tenures amended where it can be demonstrated that site characteristics, including infrastructure provision, together with the requirement for affordable housing would render the site unviable in prevailing market conditions, taking account of the availability of public subsidy to support affordable housing.
11. The Councils also has an interim statement on affordable housing which details where off-site commuted sums may be payable and how such commuted sums would be calculated.
12. At the national level since the granting of consent for this development, the government has introduced new measures to make it easier for developers to renegotiate the level of affordable housing under S106BA. The new associated guidance focuses on the delivery of viable developments and requires local

authorities to re-negotiate affordable housing provision to achieve a viable development.

13. The applicant has submitted a viability assessment of the approved scheme which indicates a loss of approximately £500k. They have also submitted a viability assessment of what they consider to be viable in the current market being a £150k off site contribution to affordable housing which in their appraisal delivers profit of 15.3% against gross development cost.
14. The viability of the scheme has been independently and externally verified by the District Valuer Service (DVS) on behalf of the Council. The DVS provides guidance on each major input into the viability assessment of the scheme and the results are summarised below.

Development value

15. The DVS have conducted research into current private values in the area and have adopted higher sales values than in the applicant's model. This has resulted in a private sales value for the development being approximately £0.49m higher in the case of the approved scheme and £540k higher in the case of an all private scheme.
16. For the purposes of the affordable values the DVS have agreed with the applicant's use of a blended rate for the affordable dwellings at 50 per cent of market.
17. The applicant has not taken into account ground rents in their appraisal. On schemes such as this the flats will normally be sold on a long leasehold basis with a ground rent payable which will have a capital value. The DVS have assumed ground rents of £250 per annum and have capitalised this at 6 per cent yield with deducted purchaser's costs of 5.75 per cent.
18. The above results in a higher gross development value than indicated in the applicant's appraisal being approximately £590k higher in the case of the approved scheme and £720k higher in the case of an all private scheme.

Development costs

Build costs

19. DVS have considered BCIS build cost data and concluded that the build costs would be slightly lower (approx. £300k) than indicated in the applicant's appraisal. The DVS have agreed with the applicant's detailed abnormal costs as well as a 5 per cent contingency.

Fees

20. DVS have agreed with the applicant's allowance of 10% for professional fees as well as 3 per cent for sales and marketing fees. The DVS have however allowed a higher 0.5 per cent for legal fees (compared to the applicants 0.3 per cent) and 0.5 per cent RSL (registered social landlord) fees for the approved policy compliant

scheme.

Finance

21. The DVS have considered the applicants finance costs to be slightly low and have adopted a higher figure also allowing for an arrangement fee.

Section 106 costs

22. The section 106 includes other obligations for commuted sum payments as outlined at paragraph three above, these total just over £161k. The applicant's appraisal allowed £208k however this figure appears to be based on the original 2009 S106 agreement relating to 08/00866/F. In the current live consent 12/00143/ET, the deed of variation halved the education contribution revising the total commuted payments to £161k.

Profit

23. The applicants appraisal indicates that their all private scheme with a £150k affordable housing contribution shows a developers profit of 15.3 per cent on cost. For private, flatted residential schemes a normal developer's profit level of 20 per cent would be reasonable, with 6 per cent for the affordable element. The proposed scheme is predominantly flatted and while not disagreeing with the applicant's submission, in view of the size and the nature of this scheme DVS have adopted a profit level of 17.5 per cent on gross development value. This is considered appropriate in considering a revision which provides for a viable scheme to come forward which is the objective of section 106BA.

Development programme

24. The DVS appraisal includes a cash flow model which assumes a four month lead in with a start of construction after 4 months to take remediation into account. The build period for the residential units is assumed at 13 months with sales starting after 13 months of construction. Sales are estimated to conclude nine months after practical completion of the scheme in the case of the approved scheme and 13 months in the case of the all private scheme. This works on an approximate sales completion rate of 4 dwellings per month.

Land value

25. Following various appeal cases it is well established that viability assessments are carried out in order to calculate the residual land value that the scheme can afford which is then compared to the Market Value of the site in accordance with the RICS guidance note September 2012.
26. The applicants have put forward a benchmark land value. In arriving at this figure the applicant has referred to the acquisition price paid by the developer on the open market for the overall site. However part of the overall site which has been purchased includes offices fronting onto Muspole Street to the north of the site, some of which are unaffected by the proposal. The rental value of this office space

has been capitalised based on a 10 per cent yield and subtracted from the land value.

27. The DVS have advised that they do not consider this approach to be unreasonable. They have also reviewed land values in the area and consider the land value which equates to just under £3m per hectare is reasonable. This is also consistent with the benchmark land values used to assess the viability of the local plans which recently went through examination.
28. In addition to the land value stamp duty is allowed for at 4 per cent as well as agent/legal fees at 1.75 per cent and a survey fee of £10k.

Appraisal Results

29. Based on the DVS assessment the approved scheme shows a residual land value of £55,230, which is far from viable when compared to a benchmark land value.
30. In assessing what is viable in terms of a commuted sum payment an all private scheme has been modelled with a 17.5 per cent profit on gross development value and using the benchmark land value. This would provide for a £150,000 commuted sum towards affordable housing with a surplus of £547.
31. The applicant has not provided an assessment demonstrating what can be provided viably on site. They have suggested that registered providers would be unlikely to take on small numbers of units on sites such as this, albeit they have not evidenced this with any supporting documentation (such as details of approaches to registered providers relating to this site). Officers are aware that some registered providers have shown interest in small numbers of units in other not dissimilar schemes in the City Centre. Officers therefore consider that on-site provision may well be feasible on this site.
32. As such officers in conjunction with the DVS have made an assessment of what could viably be provided on site. This assessment is based on the same assumptions as above with the exception that:
- a) the total cash flow period has been reduced by one month given that there will be fewer private units to sell;
 - b) completion of the sale of the affordable units is assumed at month 20 in the cash flow;
 - c) rather than a blended rate for affordable unit values of 50% of market value used for the policy compliant scheme to take this matter forward a 45% of market value has been assumed for the social units and 61% for intermediate tenure units.
 - d) it has been assumed in taking this forward that the affordable units would be new build flats in the first phase of the development.
- This indicates that either 2 social rented units could be provided on site or 4 intermediate tenure dwellings resulting in surpluses of £24k and £1k respectively.

Review Mechanism

33. The guidance on section 106BA applications advises that the intention of the new mechanism is to ensure development is progressed quickly. As such the guidance outlines that any modifications should be valid for three years only after such time

the obligations should revert back to the former obligations. If the development is not completed in that time, the original affordable housing obligations will apply to those parts of the scheme which have not been commenced. The guidance outlines that any new obligation should include provisions to reapply the requirements of the original agreement for the part of the site that remains un-commenced.

34. In this case the current consent expires in December 2015 and therefore a start on at least part of the scheme by that date is necessary to avoid the consent expiring. However it is necessary to ensure that the consent is not implemented by some minor works on site and then not taken forward to completion for some considerable time. It is therefore recommended that the section 106 agreement be revised to provide a mechanism for the original obligations to apply where no part of the development has been completed within 3 years of the date of the agreement and to parts of the development which have not been substantially commenced where only one part of the development has been completed. The detailed wording of such clauses will need to be negotiated with the applicants in conjunction with the Council's solicitors.

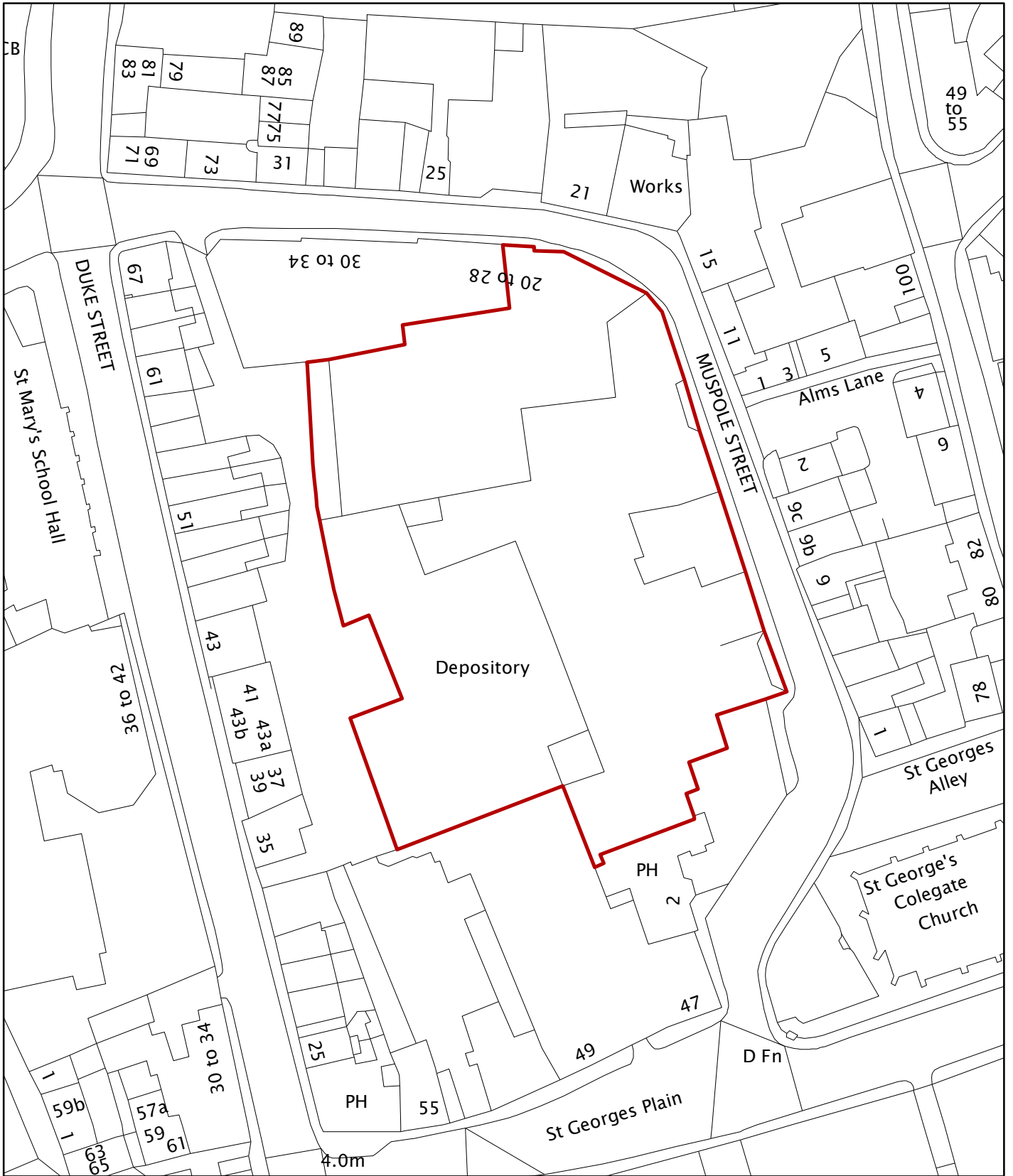
Conclusions

35. The viability of the scheme has been subject to independent review by the district valuer on behalf of the Council. On the basis of this review it is recommended that the S106 agreement is varied to reduce the level of affordable housing on site to either 2 social rented dwellings or 4 intermediate tenure dwellings and allow for a commuted sum of £150k where a registered provider cannot be secured. It is also recommended that the section 106 agreement be revised to provide a mechanism for the original obligations to apply where no part of the development has been completed within 3 years of the date of the agreement and to parts of the development which have not been substantially commenced.

RECOMMENDATIONS

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. reduced affordable housing on site to either 2 social rented dwellings or 4 intermediate tenure dwellings;
2. where it has been demonstrated that it has not been possible to identify a registered provider to take on the on-site units a commuted sum of £150k would be payable;
3. a review mechanism which reverts back to the original obligations where no part of the development has been completed within three years of the date of the agreement and to parts of the development which have not been substantially commenced.



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Planning Application No 12/00143/ET
 Site Address Muspole Street

Scale 1:750



NORWICH
 City Council
 PLANNING SERVICES

