Report to	Planning applications committee	**Item**
Date	2 October 2014	4J
Report of	Head of planning services	
Subject	11/02236/F Land adjacent to Novi Sad Bridge Wherry Road Norwich	

SUMMARY

Description:	Erection of residential development to provide 66 No. apartments, with associated amenity areas, car and cycle parking and pedestrian and vehicular access.
Reason for consideration at Committee:	Planning Obligation Requirements
Recommendation:	Approve the proposed changes to the S106 agreement
Ward:	Thorpe Hamlet
Contact Officer:	Mark Brown Planning Team Leader 01603 212505
Valid Date:	N/A
Applicant:	Wherry Road Norwich Property Company Limited
Agent:	Generator Real Estate Solutions LLP

INTRODUCTION

The Site, Background and Proposal

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.

2. 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/

3. 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 or permission and first occupation to take place within 30 months of implementation to avoid a review of the viability.

4. The S106 agreement also included a transport and public open space contribution

as the consent pre-dated the community infrastructure levy.

5. 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.

6. However they have indicated that the overage clause is creating issues with negotiating funding from the banks which is likely to either result in higher rate of lending or them being able to borrow less, therefore resulting in them requiring more from their equity backers at a high rate of interest.

7. The developer is therefore seeking that the Council remove the overage clause on the basis that it will lower finance costs and that an additional unit of affordable accommodation is provided resulting in a total of 6 units.

8. 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.

9. The developer is keen to resolve this matter as soon as possible as failure to do so could mean having to put a hold on development on site which would significantly increase the development costs and further reduce viability.

Equality and Diversity Issues

10. 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 Development Management Policies Development Plan Document Regulation 22 Submission Plan
Policy 33 – Planning Obligations
It is considered that significant can be given to the above policy, the plan is at an advanced stage and has been through examination in public. The policy was subject to two objects on the detailed wording which have been resolved by minor

amendments to the wording of the policy.

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

11. JCS policy 4 provides that developments of this scale should provide 33% 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.

12. The council 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.

13. At the national level since the granting of consent for this development, the government have introduced new measures to make it easier for developers to renegotiate the level of affordable housing. Whilst this is not an application under S106BA, the content of the guidance that accompanies this legislation is considered to be a material consideration. Particularly given that the applicant could resort to this procedure should the outcome of current discussions not be favourable. This guidance focuses on the delivery of viable developments and requires local authorities to re-negotiate affordable housing provision to achieve a viable development.

14. The viability of the scheme has been independently and externally verified by the District Valuer Service (DVS). They have advised that overage provisions, due to their uncertainty, are not generally welcomed by lenders and are no longer recommended by the RICS Guidance Note which only suggests review mechanisms. As a result they are likely to either reduce the amount that can be borrowed resulting in the developer needing more finance from their equity provider which would be at a high rate of interest, or lenders are likely to impose higher interest rates where such overage provisions are in place.

15. Based on the assessment of DVS it is unlikely that the Council are going to benefit from the inclusion of an overage provision within the S106 Agreement. The appraisals of DVS suggest that at both finance rates the scheme produces a deficit and therefore the profit received by the developer will be less than 20%. The developer has suggested a 20% profit on gross development value which the DVS has advised in the context of the risk profile of this case (a high density, 5 plus storey brownfield city centre site) is not unreasonable. However building this into the appraisals produces a deficit effectively reducing profit levels to around 15-16%.

16. The applicant has suggested that the council remove the overage provision,

therefore reducing the rate of interest, in exchange for an additional affordable unit on site. This has been modelled by DVS on the basis of an additional social rented unit (totalling 6 social rented units on site which equates to 9% affordable housing) this would again result in profit levels around 15-16% but would make borrowing easier. DVS have advised that the Council is unlikely to receive anything from the overage provision and would therefore recommend removing the clause in exchange for an additional affordable housing unit.

17. It is however recommended that the review mechanisms in the S106 agreement as outlined at paragraph 3 above are retained. The consent has been implemented on 11 July 2014 and therefore occupation will need to take place within 30 months of that date to avoid a further review of viability.

18. The applicant has indicated that their preference is to provide the affordable housing units on site. However the existing S106 agreement does allow for an off-site commuted payment where it has not been possible to identify a registered provider to take on the units.

19. Should members resolve in line with the officer recommendation, officers will need to progress discussions on the specific details of the S106 agreement these include the following key matters:

.19.1. The existing S106 agreement specifically details which units will be affordable and therefore the sixth unit will need to be agreed with the applicant;

.19.2. The affordable housing commuted sum option will either need to be removed or increased in line with the increase in numbers on site. The applicant's preference is to provide affordable dwellings on site and therefore if the applicant is confident that they can secure agreement with a registered provider than the commuted sum option could be removed. However if it is retained it is recommended that it is increased so that attained profit in the viability models is the same as on site provision, this figure will depend on the exact units which would be the affordable dwellings on site.

Conclusions

20. The developer is seeking the removal of the overage provisions in the S106 agreement relating to permission 11/02236/F in exchange for a further affordable housing unit on site. Based on the assessment of viability it is unlikely that the Council are going to benefit from the overage provisions and therefore it is recommended that the clause is removed in exchange for an additional affordable housing unit. The review mechanism which provides for a viability review if occupation does not occur within 30 months of implementation (which took place on 11 July 2014) will be retained and it is recommended that the affordable housing commuted sum option be removed or increased to represent the additional provision.

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. The removal of the overage provisions;
2. The addition of a further social rented affordable unit (totalling six);
3. Either the removal of the affordable housing commuted sum option or the increase of the affordable housing commuted sum, to allow the provision of six units off site.