

Report to Planning applications committee
Date 2 October 2014
Report of Head of planning services
Subject Application no 12/02046/O Enterprise Garage Starling
Road Norwich NR3 3EB - application under Section 106BA

Item
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SUMMARY

Description:	Application under Section 106BA. Previous scheme for demolition of existing light industrial premises, erection of 6 No. one bedroom flats and 8 No. two bedroom houses with associated bin and cycle stores and car parking.
Reason for consideration at Committee:	Obligation Requirements
Recommendation:	Refuse
Ward:	Sewell
Contact Officer:	Mr Lee Cook Senior Planner 01603 212536
Valid Date:	20th October 2012
Applicant:	Mr Kevin Webb
Agent:	Mr David Webb

INTRODUCTION

- Members will recall that the decision to approve the above application 12/02046/O subject to a S106 agreement was agreed at their meeting on 6th December 2012. Copies of the report and s106 agreement can be found in public access at the following link:
<http://planning.norwich.gov.uk/online-applications/applicationDetails.do?activeTab=externalDocuments&keyVal=MC584HLX0J300>
- The S106 agreement required provision of a transport contribution; street tree contribution; and 4 affordable housing units. These units are to be provided on site or by way of an off-site contribution subject to evidence that despite best efforts the owner has been unable to obtain a contract with a Registered Provider to enter into a transfer or lease in respect of the affordable housing units.
- The site owner has now submitted an application under Section 106BA . This and sections BB and BC are new provisions inserted by the Growth and Infrastructure Act into the 1990 Town and Country Planning Act. These provide a new application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing.
- An application may be made to the local planning authority for a revised affordable housing obligation. This application should 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.

5. 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.
6. 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.
7. 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.

The Proposal

8. Application under Section 106BA to remove the requirement for any provision of affordable housing under the existing agreement due to the applicant's contention that the scheme would be economically unviable with the affordable housing requirements.

Planning History

10/01774/O - Demolition of existing light industrial premises, erection of 6 No. one bedroom flats and 8 No. two bedroom houses with associated bin and cycle stores and car parking. Refused - 26/03/2012 due to lack of S106 agreement for site related contributions and affordable housing.

12/02046/O - Demolition of existing light industrial premises, erection of 6 No. one bedroom flats and 8 No. two bedroom houses with associated bin and cycle stores and car parking. Approved - 29/05/2013.

ASSESSMENT OF VIABILITY CONSIDERATIONS

9. With the Section 106BA application the applicant has provided a valuation of the existing commercial use of approximately £345,000.00 and residual reports for development complying with the S106 agreement giving a residual site value of £203,045.00 and without complying with the S106 agreement giving a residual site value of £324,603.00. Development value complying with the S106 is shown as £1,160,000.00 with a build profit of £193,324.00 (approximately 16.7%) and without complying with the S106 of £1,560,000.00 with profit of £259,992.00 (again approximately 16.7%).
10. A requirement of the application is to propose a revised affordable housing

proposal based on prevailing viability and supported by relevant evidence. Initially no clear indication of a viable affordable housing provision had been proposed. This should aim to deliver the maximum level of affordable housing consistent with viability and the optimum mix of provision. Some reference to a commuted sum towards off-site provision is provided within the current S106 and again it would be useful within any offer of viable affordable housing provision to respond to this suggested requirement or any variation of, e.g. such as use of an overage clause within the S106. Following further correspondence with the applicant they have confirmed that they do not intend to provide any affordable housing or off-site contribution.

11. The emphasis of S106BA and the associated guidance it is considered is on assessing viability when the site is ready and, for example, detailed site investigations have been undertaken to inform costs, construction methods are known and there are detailed plans etc. on which to base cost analysis. At present no status report on the progress of development has been provided. It appears that the owner is seeking removal of any affordable housing requirement before marketing the site.
12. The information to support this case appears deficient. The assessment made is based on estimates and layout information indicatively approved under the permission for outline consent. At this time in this particular case the reserved matters consent has yet to be applied for and the site is not in the hands of a developer. This means that the development could still be some time away before final details and reserved matters are agreed and a start made on site.
13. It is also worth noting that if affordable housing is reduced under S106BA we should impose a condition requiring completion in 3 years under the guidance. Given that the above timeline for final approval of all matters is not known and that the submitted reports indicate that the site is occupied for commercial uses at reasonable rental values the actual delivery of the development is clouded. The owner may wish to continue with the current commercial return for the foreseeable future by way of securing income from the site.
14. From the information submitted and given the above uncertainty as to whether the owner is willing to actively dispose of the land for development it is also not clear if assessment is based on delivery in the "current market" or at a point when the scheme is construction ready or assesses future increases in profitability. There has been some indication that the owner wishes to dispose of the site but whether this is as a willing landowner, given that the estimates show that residential value is below commercial value, is not clear. In our own estimates for 5 year housing land supply delivery of this site is not expected until 2017/2018.
15. It is therefore not entirely clear whether the review makes an unviable scheme less unviable either now or in the future and whether disposal would occur with a residual value below the quoted commercial value.
16. No indication of the type of appraisal (e.g. Argus or Three Dragons type model) or a fully detailed open book appraisal or detailed QS build cost analysis appears to have been undertaken which normally indicates what a viable amount of affordable housing could be. There is also no market evidence on how sales values have been reached. An indication is given that the floor space from the outline consent layout drawing has been used to calculate likely sales values and this figure lowered based on the units appearing to be small for this type of accommodation.
17. The sales values appear exceptionally low especially for new build dwellings (2-bed house @ £120k and 1-bed flat @ £100k). Comments from housing officers suggest

a potential to achieve at least £150k for a 2-bed house and £110k for a 1-bed flat. It would however also be necessary to review market sales for comparable market schemes (also having regard to construction timing) and greater levels of evidence should be provided by the applicant. Information on how the existing land value has been calculated would also potentially need further evidence and assessment.

18. Such changes in achievable sales values would affect final figures and if leaving questioning of the commercial value to one side, using the submitted figures the development value complying with the S106 might be shown as £1,420,000.00 (for the sale of the private market dwellings only). With the full submitted development cost of £975,405.00 and assumed acceptable site value to a willing landowner of £325,000 the build profit would be £119,595.00 (9.92% of development cost plus site value) requiring a £97,582.00 value from a Registered Provider (RP) for 4 affordable units to give a build profit figure of £217,167.00 at 16.7% or £140,486.00 to give a build profit figure of £260,081.00 at 20% profit.
19. In their assessment the applicant has assumed that they can sell the affordable housing for the build cost. This would require further research with Registered Providers to confirm this. Again using the methodology, submitted figures and increased development value, complying with the S106 with the partial submitted development cost of £763,631.00, assumed acceptable site value to a willing landowner of £325,000 and using the applicants assumption that a RP would cover the 211,774.00 build cost sum to the developer for the 4 affordable units the build profit would be £331,369.00 (30.4% of partial development cost plus site value (£1088631)). Such simple review of the submitted information, building in an accepted site value gives a site which is viable and delivers above average profit levels. However, the robustness of the application submissions are still questioned.
20. The submissions also do not consider alternative forms of affordable housing tenure. The current S106 makes a requirement for properties at social rent. The appraisal assumes that the affordable housing will be rental but gives no clear distinction between variables in social or affordable rent values, and no alternative appraisal has been undertaken to consider alternative forms of tenure such as shared ownership, which could make the scheme more viable, as mentioned in the guidance. The guidance to S106BA also suggests assessment of housing grant availability which whilst not carried out is not essential to inform the application.
21. The development shares access with a scheme approved for residential development on land to the north. The access is under separate ownership but was knowingly pursued by the applicant using the same architect and undertaking discussions at the time of submitting their earlier application. On a technical point the existing S106 agreement requires a further agreement signing by all interested parties along the lines of the content of the signed S106. This was due to difficulties in gaining signatures of all interested parties at the time of final determination of the outline application. The applicant has advised that agreement has been made to gain access to the site over the adjoining land.
22. The applicant has the right to appeal any decision made by the Council. If allowed, the outcome of a successful appeal would be a revised affordable housing requirement in the Section 106 agreement for three years, starting on the date when the appellant is notified of the appeal decision. The submitted Section 106BA application is however essentially against an as yet unsigned full and final agreement and this might add difficulty in agreeing the level of contributions for affordable housing should the current form of application proceed.
23. At some point all other parties would need to sign up to a final S106. The other

parties may themselves have a view on the content of the final s106 and whether they would wish to sign. The applicant has advised that the landowner will not be the developer and that they have a commitment to sign a revised S106 from the other relevant existing parties, this commitment being based on the signed document being accurate in viability terms.

24. The application has a determination period of 28 days and the above points have been made to the applicant within that time period and a request made to extend the period of determination to allow consideration of this matter by members at committee and to see whether the applicant would submit further substantive evidence to support their case. Their response does not really say how they will respond to our concerns other than to open dialogue with the possibility of appeal if the extended time limit on the application is reached.
25. A request to cover the costs of independent review by the DVS has been declined by the applicant and they have suggested that review/costs should be proportionate to the scheme proposed. On that basis the initial assessment made already on the applicants submissions appears to be a reasonable response to the level of information submitted in that the conclusion made is that a case has not been made to allow delivery of no affordable housing or off site contribution for this development.

Conclusions

26. The current permission is for outline consent with reserved matters, details and site disposal yet to take place. In such circumstances there is considerable uncertainty of the timeline for the availability of the site for residential development and as such it is viewed as potentially not being until 2017/2018. Given the potential focussed growth in the Norwich area now and in the future the figures used for review could be considerably different and reflect a different conclusion to site viability and opportunity to deliver affordable housing. The apparent commercial success of the site would also raise questions about at what level a willing disposal would be made. At present this is suggested as being below commercial market value.
27. The detail of the evidence base should therefore be questioned as to its robustness in the current market or at point of delivery to accurately assess viability. There are additional RP queries, sales and land values which are questioned and probable requirement for further negotiation on the S106 with other interested parties and possibly the final developer. There appears to be no reasoned justification at this time as to why the Council should accept the reduction in provision of affordable housing. From the submissions it is considered that it has not been demonstrated that the scheme cannot viably provide affordable housing.

RECOMMENDATIONS

It is recommended that the application is refused for the reasons set out within the council's planning applications committee report dated 2nd October 2014 which concludes that it has not been demonstrated that the scheme cannot viably provide affordable housing and therefore the planning obligation is to continue to have effect without modification.

