

Meeting	Planning Committee A
Date	5 October 2022
Present	Councillors Cullwick (Chair), Pavlovic (Vice-Chair), Ayre, D'Agorne, Doughty, Kilbane, Fisher, Looker, Melly, Waudby and Fenton (Substitute for Cllr Barker)
In Attendance	Becky Eades (Head of Planning and Development Services) Ruhina Choudhury (Senior Solicitor) Jonathan Kenyon (Development Management Officer)
Apologies	Councillor Barker

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## **25. Declarations of Interest [19:46]**

Members were asked to declare, at this point in the meeting, any personal interests, not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests they may have in respect of business on the agenda. None were declared.

## **26. Public Participation [19:46]**

It was reported that there had been one registration to speak at the meeting under the Council's Public Participation Scheme on general matters within the remit of the Planning Committee A. Johnny Hayes explained that when CYC developed its own projects there had been serious public concern about how these were handled in the planning process. He added that the ombudsman had expressed concern regarding planning. He noted his concerns regarding a number of aspects in the determination of planning applications. In respect of the National Railway Museum central hall application on bring considered at the meeting, he noted that flaws in the planning system that were behind the public outrage to the application.

## **27. Plans List [19:46]**

Members considered a schedule of reports of the Head of Planning and Development Services, relating to the following planning applications,

outlining the proposals and relevant policy considerations and setting out the views of consultees and officers.

## **28. Vacant Site, Eboracum Way, York [19/01467/FULM] [19:46]**

Members considered a report on viability issues in delivering the scheme for the erection of 5 storey apartment building with basement comprising 62 residential units (Use Class C3), associated car parking and landscaping works at Vacant Site, Eboracum Way, York. The scheme, for residential development of the site was considered at planning committee 11 February 2020 and approved in May 2020. The S106 Agreement dated 20 May 2020 (as varied by the Deed of Variation dated 1 December 2020) contained a policy compliant affordable housing obligation of 20% (in accordance with policy H100 of the Publication Draft Local Plan 2018). The Development Management Officer explained that there were now viability issues in delivering the scheme and the construction and abnormal costs had been independently reviewed by Quantity Surveyors and a fresh viability appraisal undertaken by the District Valuer. The viability appraisal, by the District Valuer, concluded that the scheme was not viable and recommended to the Council that the £1m contribution offered was reasonable. As such, Members were asked to consider delegating authority to Officers to vary the S106 agreement accordingly. This would secure £1m in planning obligations. The recommendation was for the affordable housing obligation to be reduced accordingly to £881,471.

The Chair invited the Applicant to the table. The Applicant explained the viability issues to Members. In response to Member questions, he explained that:

- He was not the original applicant and had not been made aware of the £600k costs for access to the site via the delivery track
- Risks were considered, however, there were unforeseen circumstances with the site due to Coronavirus
- Should the affordable housing contribution not be reduced, the development would become unviable
- The Applicant was to get their equity out of the development.
- It was a residential development with dwellings available to buy
- There have been various difficulties in securing funding

In response to questions from Members, Officers clarified that

- The legal agreement as signed currently, including the affordable contribution would stand if the affordable housing contribution was not agreed by Members.

- It was not usual to have a sequence of events leading to a request for a reduction in the affordable housing contribution.
- Under the current s106 there is no opportunity for the council to claw any money back should the price of the units increase.
- The reduction in S106 contributions came from the affordable housing contribution because of obligations within the legal agreement.
- How the viability appraisal was approached.
- The dialogue regarding the scenario of the bank taking the site back. The information given from the bank as part of the preapplication process was that it would be developed into an aparthotel or student accommodation.
- All affordable housing could potentially be lost if an application for an aparthotel was brought back to the Committee for determination.
- The original permission stood and the Committee was considering a deed of variation.
- The extra costs for the boundary wall were included in the development costs. This was not a significant cost.
- The developer was not in full agreement of the valuers costs, including the land value. The 8% profit was based on a land value of £250k.
- Why it was not possible to have parking on the site.
- There could be an overage clause added into the S106 agreement to look at the profit made and a subsequent contribution to affordable housing.

Following debate, Cllr Ayre proposed the Officer recommendation to vary the S106 with the addition of an overage clause into the S106 agreement to look at the profit made and contribution to affordable housing. This was seconded by Cllr Fisher. Nine Members voted for the motion and two voted against. It was therefore,

Resolved: That delegated authority be granted to Officers for the S106 agreement to be varied accordingly to secure £1m in planning obligations including the affordable housing obligation be reduced accordingly; to £881,471 and for the addition of an overage clause into the S106 agreement to look at the profit made and contribution to affordable housing.

Reason:

- i. The developer can afford to provide £1m in planning obligations, although, based on the viability, developer profit is below the normal threshold. In reality the profit is lower,

because of the price paid for the site. This compromise would allow for retention of the current contractor and finance to complete the scheme. Officer recommendation is to vary the s106 agreement to secure a £1m planning obligation, rather than the original £2,058,921. This is broken down as follows:

- a) Education - £54,711 to be used at Tang Hall Primary (reconfiguration to increase capacity) & £24,987 to be used at Archbishop Holgate (extension to increase capacity)
  - b) Open space - £7,138 to be used at Monk Bridge Gardens to improve accessibility
  - c) Off-site sports provision - £19,383 to be used at Glen Gardens to improve tennis, basketball and bowling green facilities.
  - d) Car club - First occupants to be offered £200 towards membership/use (£12,400)
  - e) Affordable housing - £881,381
  - f) The total loss off affordable housing contribution would be £1,058,921
- ii. This follows the recommendation from the district valuer who has carried out an independent viability review on the scheme based on verified incurred construction costs.
- iii. The risk associated with not proceeding with the s106 variation is that the residential development scheme stalls for an unknown period of time. The banks would likely repossess the site and pursue a more profitable scheme i.e. student accommodation or an apartment type hotel (which would fit within the approved building envelope). This scenario has been confirmed by the applicant. These alternatives would not make the same contribution to local housing need and would incorporate zero affordable housing contribution.

Cllr Cullwick, Chair

[The meeting started at 7.44 pm and finished at 8.54 pm].