COMMITTEE REPORT

Date:	5 October 2022	**Ward:**	Guildhall
Team:	East Area	**Parish:**	Guildhall Planning Panel

Reference:	19/01467/FULM
Application at:	Vacant Site Eboracum Way York
For:	Erection of 5 storey apartment building with basement comprising 62 residential units (Use Class C3), associated car parking and landscaping works.
By:	Tiger Developments Limited
Application Type:	Major Full Application
Recommendation:	Approve variation to Section 106 Agreement

1.0 Introduction

1.1 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 20th May 2020 (as varied by the Deed of Variation dated 1st December 2020) contained a policy compliant affordable housing obligation of 20% (in accordance with policy H100 of the Publication Draft Local Plan 2018). The contributions were as follows –

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)

Open space
£7,138 to be used at Monk Bridge Gardens to improve accessibility

Off-site sports provision
£19,383 to be used at Glen Gardens to improve tennis, basketball and bowling green facilities.

Car club
First occupants to be offered £200 towards membership/use (£12,400)

Affordable housing contribution
£1,940,302

Total contribution:
£2,058,921

1.2 The site was sold by applicants following the granting of permission.

1.3 This report is brought to planning committee due to viability issues in delivering the scheme. The scheme is under construction however construction has stalled.

1.4 The construction period has become prolonged, initially due to a lack of agreement over the preferred method of construction using the land to the north. Abnormal costs have increased significantly to the extent that the scheme is no longer viable.

1.5 The developer is still willing and able to offer a contribution of £1m towards planning obligations. The initial S106 agreement had a planning obligation of an overall value of £2,058,921.

1.6 The construction and abnormal costs have been independently reviewed by Quantity Surveyors and a fresh viability appraisal undertaken by the District Valuer. The viability appraisal, by the District Valuer, concludes that the scheme is not viable and recommends to the Council that the £1m contribution offered is reasonable.

1.7 The officer recommendation to members is that delegated authority be granted to officers for the s106 agreement to be varied accordingly. This would secure £1m in planning obligations. The recommendation is the affordable housing obligation be reduced accordingly; to £881,471.

2.0 Assessment

Policy context

2.1 The NPPG advice is that planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation is over 5 years old, an application may be made to the local planning authority to change the obligation

2.2 The weight to be given to a viability assessment is a matter for the decision maker. In respect of a review following planning, which is unusual, the NPPG advises that as the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate a further viability assessment or trigger a review mechanism.

2.3 The NPPG acknowledges that in considering viability in decision-making changes in site circumstances are relevant including abnormal costs, which include those associated with treatment for contaminated sites, or costs associated with brownfield, phased or complex sites. Also, relevant is circumstances where a recession or similar significant economic changes have occurred.

Appraisal

2.4 Viability discussions initially commenced in late 2020 as the developer was unable to gain access to the land to the north of the site, meaning only the application site and the highway could be used for construction. This has had a significant impact on the programme of works, leading to a prolonged construction period and subsequently increased costs. The delay to the construction period now stands at 14 months. Subject to no further delays completion could be May / June 2023.

2.5 During the construction period materials costs have increased, to the extent which independent quantity surveyors have advised are reasonable in the current market. Two major sub-contractors have gone into liquidation, renegotiations with others has increased costs. There has also been dispute between developer and main contractor. This has lead to a revised (higher) contract sum. Costs have increased although not to the extent that would have occurred if different contractors were engaged.

2.6 There have been various other extra costs incurred, related to the stability of the boundary wall, unexpected contamination and consultant fees. However, the significant items relate to the delay in construction and costs for materials and contractors. It is also noted that car parking for the residential scheme (which is to be provided in the building at lower ground level), deemed necessary by Highway Network Management, is detrimental to viability.

2.7 As a consequence, the increased costs, referred to as abnormal costs in the viability review, are approximately £3m in excess of the construction costs when the viability of the scheme was first reviewed. These costs have actually been incurred and evidenced by the developer.

Land value

2.8 The NPPG advises that under no circumstances will the price paid for land be relevant justification for failing to accord with relevant policies. The land value used by the District Valuer for the viability appraisal acknowledges the complexity of the site and is significantly less than what the developer paid for the site. The viability appraisal is on the basis of a nominal value for the site.

2.9 The NPPG guidance advises that land value – benchmark land value should -

- be based upon existing use value
- allow for a premium to landowners (including equity resulting from those building their own homes)
- reflect the implications of abnormal costs; site-specific infrastructure costs; and professional site fees

2.10 The viability appraisal applies a benchmark land value of £250k.

Developer profit

2.11 The NPPG guidance advises a profit of 15-20% of gross development value (GDV) may be considered a suitable return to developers. The increased construction costs mean the developer profit is at around 8% if the planning obligation is reduced to £1m. Developer profit is now below the normal threshold i.e. under the viability guidance in the NPPG the scheme is unviable if planning obligations are required. The previous viability assessments undertaken (prior to increased construction costs) had showed the scheme was able to provide the requested planning obligation and still make a reasonable profit of 17.5%.

3.0 Recommendation

3.1 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.

Broken down as follows:

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)

Open space
£7,138 to be used at Monk Bridge Gardens to improve accessibility

Off-site sports provision
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Car club
First occupants to be offered £200 towards membership/use (£12,400)

Affordable housing
£881,381

The total loss off affordable housing contribution would be £1,058,921

3.2 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.

3.3 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.

Contact details:

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