

Committee Report

Item No: 6F

Reference: DC/21/02810

Case Officer: Rose Wolton

Ward: Brantham.

Ward Member/s: Cllr Alastair McCraw.

RECOMMENDATION – AGREE DEED OF VARIATION TO S106 OBLIGATION

Description of Development

Application to Modify or Discharge a S106 planning obligation for B/15/00263

Location

Brantham Industrial Estate And Land To The North And Peninsula, Factory Lane, Brantham,

Expiry Date: 06/08/2021

Application Type: N/A – Deed of Variation

Applicant: St Francis Group (Brantham) Ltd

Agent: Boyer

Parish: Brantham

Site Area: 88.82 Acres

Details of Previous Committee / Resolutions and any member site visit: Application B/15/00263 was presented to committee and permission granted in November 2016.

Has a Committee Call In request been received from a Council Member: No

Has the application been subject to Pre-Application Advice: No

PART ONE – REASON FOR REFERENCE TO COMMITTEE

The application is referred to committee for the following reason/s:

The Monitoring Officer advises this application for a Deed of Variation to be presented to committee.

PART TWO – CONSULTATION SUMMARY

Internal Consultee Responses

Strategic Housing – Received 16th June 2021

“Strategic Housing support the application proposal for the overage payment and amendments to the S106...”.

CLASSIFICATION: Official

PLANNING HISTORY

B/15/00263 – Hybrid application for regeneration of existing industrial estate and development of adjoining land. Outline: Mixed use development to comprise approximately 320 dwellings; approximately 44,123 sqm of Class B1, B2 and B8 employment uses; approximately 720sqm of Class A1, A3, A4 and A5 retail uses and Class D1 community uses; provision of public open space and new playing pitches (Class D2). Full: Proposed new access from Brooklands Road; improvements to Factory Lane; new on-site road network and structural landscaping; and foul and storm water drainage infrastructure (As amplified by Transport Assessment (Rev B dated April 2015) received on 7 May 2015).

The application was granted in November 2016, pursuant to an allocation in the Babergh Core Strategy. Due to the outcome of a viability assessment undertaken at the time, no affordable housing contribution could be secured save for a clause to enable further reviews to take place as development progressed. This is explained further, below.

PART THREE – ASSESSMENT OF PROPOSAL

The Proposal

The proposal seeks an amendment to the Section 106 Agreement associated with the previously approved application B/15/00263. This is by way of Deed of Variation (DoV).

The amendments to the Section 106 Agreement sought are in relation to the paying of a Fixed Sum as an Overage Contribution to the District Council and subject thereto the removal of Schedule 3 from the original Agreement. It should be noted that this application does not involve any amendments to the development itself only to the Section 106 Agreement.

Schedule 3 of the current Section 106 Agreement contains an overage provision. The overage proportion due to the District Council is 45% of any Gross Development Value (GDV) surplus generated over a period from consent to the final review. The review periods are:

- a) Date of 1st sale to the sale of 100th dwelling
- b) Date of 101st sale to 200th dwelling
- c) Date of 201st sale to the sale of 288th dwelling

The residential development is being undertaken by Taylor Wimpey. It is not expected to be completed for several years; hence, it will be a long time before the final outcome of the overall viability of the development is certain, as the housing market is liable to change.

The applicant is wishing to negotiate the surplus to be paid with a one-off payment to be made now, should Members agree to the variation. The payment offered has been calculated on the basis of the consented residential scheme that has commenced. In June 2020, a Viability Appraisal showed that the scheme was calculated to generate an anticipated surplus of £3,316,971. Since this initial Viability Appraisal, an updated appraisal has been undertaken and now shows that the scheme has been calculated to generate an anticipated surplus of £3,509,251.

Clause 4, Schedule 3 of the current Section 106 Agreement states that the owner will pay to the District Council 45% of the surplus by way of overage contribution capped at the maximum payment of £4,927,362.

From the results of the first Viability Appraisal, on the basis of a surplus of £3,316.971 (as detailed within the viability appraisal) the due amount to the District Council was £1,492,637, which the developer was prepared to round up to £1,500,000.

Since an updated Viability Appraisal has been undertaken, on the basis of a surplus of £3,509,251 (as detailed within the updated Viability Appraisal) the due amount to the District Council is £1,579,251. The developer is prepared to match this, offering the full £1,579,163.

That assessment has been reviewed and confirmed with the District Valuer.

Agreeing to the DoV has distinct advantages for three reasons:

Firstly, it is a guaranteed sum payable now. The risk associated with potential future fluctuation in the housing market will be removed. Whilst there is, as a corollary, some potential loss of opportunity of further surplus it is considered that this is unlikely to be significant.

Secondly, and related to that, the outcomes of the currently agreed viability reviews in the s106 are some way off, and the outcomes unknown. Put another way, there is no guarantee that the Council will receive the same sum offered now. The surplus might increase but, equally, it may go down. Agreeing the DoV brings certainty to all parties.

Thirdly, the settlement of this surplus at this point would enable the Council to access the funds without delay and to programme its spending plans using that now rather than later. This brings forward the opportunity to deliver with those funds at an earlier time.

Members should be aware that in relation to these that the Council faces an acute affordable housing shortfall unrelated to its overall housing land supply (HLS) position. That shortfall relates to genuine need and real families, in need of homes now. If the DoV is agreed, the Council will receive a substantial sum to put toward immediate affordable housing projects. This is a consideration that officers would afford significant weight to.

PART FOUR – CONCLUSION

Planning Balance and Conclusion

The provision of a one-off fixed sum payment of £1,579,163, rather than a staged period of review over several years and with unspecified outcome (the currently projected surplus may go up and it may go down) has benefits which your Officers consider persuasive.

The sum offered has been reviewed and accepted as credible by the District Valuer.

In light of the current affordable housing shortage in the District, the DoV provides a distinct benefit and would ensure that the current obligation serves its purpose equally well, but on terms more preferable given the context.

RECOMMENDATION

That Members delegate authority to the Chief Planning Officer to agree to the Deed of Variation on terms to his satisfaction as follows:

- Amendment to the current S106 Agreement to remove Schedule 3 and include a fixed Sum Overage Payment of £1,579,163 to be paid within six months of the deed being entered into.