

REPORT TO PLANNING COMMITTEE – 11 MARCH 2010**PROPOSED AMENDMENTS TO THE UNILATERAL UNDERTAKING ASSOCIATED WITH THE RE-DEVELOPMENT OF ATHENA HOUSE, 112 STATION ROAD, SIDCUP (PLANNING REFERENCE: 08/07622/FULM)****SUMMARY**

Proposed variations sought by The Cathedral Group to the existing Unilateral Undertaking to amend the planning obligations associated with the re-development at Athena House, 112 Station Road, Sidcup (Planning Reference: 08/07622/FULM).

RECOMMENDATION

To seek the Committee's approval to vary the Unilateral Undertaking associated with the re-development of Athena House at 112 Station Road, Sidcup which was granted planning permission at appeal on 31 March 2009.

1. BACKGROUND

An application for Planning Permission was submitted on 11 July 2008 (ref: 08/07622/FULM) in relation to Athena House, 112 Station Road, Sidcup for the re-development of the site for a mixed use development varying in height up to nine storeys comprising commercial uses on the ground floor within Use Classes A3 and A1/B1(a), 98 residential units above plus amenity space, landscaping, car parking and a bus drivers waiting area. The application was supported by a Statement of Planning Obligations when the application was lodged which initially proposed; Affordable Housing (35%), Transport (£206,000), Public Realm (£4,650), Education (£100,019), Employment Training (£17,158), Health Services (£144,148), Open Space (£6,586), Community Facilities (£44,017) equating to £522,578 in monetary planning obligations.

This application was considered at Planning Committee on 9 October 2008 and was refused on 10 October 2008 being considered an over-development and out of character with the local area. An appeal was subsequently lodged by the applicant and the Planning Inspectorate allowed the appeal as supported by a Section 106 Unilateral Undertaking on 31 March 2009. The planning obligations were in the process of being negotiated within a Section 106 Agreement up until the planning inquiry at which point the applicant provided a Unilateral Undertaking which had been largely agreed with the Council.

The first main issue considered by the inspector during the appeal included the impact of the proposed development on the character and appearance of the surrounding area including the higher density of development proposed which differed from that suggested within the density matrix at Table 3A.2 of the London Plan (pg12). The

Inspector concluded on this matter that *“the proposal would respect the character of the surrounding area whilst enhancing its appearance”*.

The second main issue considered by the Inspector was whether the proposed amenity space would be of appropriate type and quality to enable adequate living conditions for future occupiers. On this matter the Inspector noted that *“with some additional safeguarding of the communal roof terraces, the quantum and quality of amenity space in the appeal scheme, together with the existing public open space nearby (enhanced if necessary by the S106 contribution) would satisfy the requirements of the relevant UDP policies and guidance and would enable adequate living conditions to be created for future occupiers of the flats”*.

A number of other concerns raised by interested parties were also considered including the adequacy of car parking, traffic generation, adequacy of public transport, impacts on privacy and daylighting of surrounding properties and the internal arrangement of the proposed building which were all either dismissed or overcome by appropriate conditions.

The Unilateral Undertaking that was submitted at the inquiry and which was subsequently accepted by the Inspector proposed the following monetary planning obligations:

i.	Affordable Housing	35% in-kind provision
ii.	CPZ Contribution	£21,000
iii.	Transport/Highways	£190,000
iv.	Education	£100,019
v.	Health	£144,148
vi.	Open Space	£22,346
vii.	Sports and Leisure	£0
viii.	Employment Training	£1,698
ix.	Public Realm in-kind provision between	£8,800 and £20,000
x.	Community Facilities	£32,316
xi.	Monitoring Fee	£31,066
xii.	TOTAL	£542,593 plus in-kind provisions

2. CURRENT APPROACH FROM DEVELOPER

The applicant (The Cathedral Group) is now looking to progress the development. A review of the financial viability appraisal based on the current construction costs and other financial costs including planning obligations in accordance with the Unilateral Undertaking for this development has identified that the proposal is presently financially unviable.

The applicant has submitted a formal letter dated 18 January 2010 requesting the Council review a proposal to reduce the contributions within the current Unilateral Undertaking. The amended planning obligations have been proposed by the applicant in order to make the development financially viable.

The applicant is keen to bring forward this re-development. As a result, informal negotiations have taken place informed by the revised financial viability assessment relating to the planning obligations within the existing Unilateral Undertaking. In accordance with the Council's protocol the obligations have been re-visited at the request of the applicant. This has involved investigating the current identified infrastructure schemes within the locality which the planning obligations would be used to fund. Noting the original Statement of Planning Obligations and subsequent initial assessment was undertaken approximately one and a half years ago many of the infrastructure schemes have been updated periodically over this time.

3. POLICY

In line with Bexley's Planning Obligations Supplementary Planning Document (SPD), this type of qualifying development triggers obligations for Affordable Housing, Transport and Access, Education, Health, Open Space, Sports and Leisure and Community Facilities & Services. The SPD further identifies both Affordable Housing and Transport & Access as high priorities within residential developments containing 10+ dwellings such as this development. No contributions are triggered for the retail component within the development due to the floor space falling below the minimum 500sqm threshold as identified within Table 3.1 of the SPD (pg13) 'Qualifying development and planning obligations sought'.

Obligations can only be secured where all of the key tests detailed within Government Circular 05/2005 'Planning Obligations' are met. They cannot be used to compensate for a lack of existing facilities nor can they be used as a 'betterment levy'. All contributions received shall be invested in established forward programmes for investment within each of the identified service areas. As such, Circular 05/2005 states that any planning obligations must be:

- a. Relevant to planning;
- b. Necessary to make the proposed development acceptable in planning terms;
- c. Directly related to the proposed development;
- d. Fairly and reasonably related in scale and kind to the proposed development; and
- e. Reasonable in all other aspects.

Following the receipt of the applicant's letter to review the planning obligations for this development, a review was undertaken in line with Bexley's SPD: Planning Obligations Guidance (2008), Government Circular 05/2005 and the established infrastructure schemes (forward programmes) currently in place for each of the identified service areas. Based on this review it was apparent that there is scope to reduce the current level of planning obligations sought whilst not compromising the delivery of identified infrastructure schemes for the local area. The Homes and Communities Agency (HCA)

has released a Good Practice Note (GPN), 'Investment and Planning Obligations: Responding to the Downturn' (July 2009) and more recently a Topic Paper Practice Note titled 'Responsive Planning Practices for Changing Economic Times'. Whilst these are not planning policy documents and are therefore not material consideration, officers do consider that they reflect good practice and identify ways in which Local Authorities can work with developers to enable a more responsive and flexible approach to planning obligations during the current economic downturn while still delivering successful outcomes. The re-negotiation of unviable planning permissions was identified within both documents as good practice provided any re-negotiation did not compromise the integrity of the planning permission and is in accordance with local policies.

4. ASSESSMENT OF REVISED UNDERTAKING

It was therefore considered that the following revised monetary planning obligations would be fair and reasonable with identified infrastructure schemes within the local area to justify the expenditure of these contributions and aid in mitigating the potential impacts of the development:

a.	Affordable Housing	35%
b.	CPZ Contribution	£21,000
c.	Transport / Highways	£190,000
d.	Health	£95,000
e.	Open Space	£22,346
f.	Sports and Leisure	£5,045
g.	Public Realm	(In-kind up to £10,000)
h.	Monitoring Fee	£20,003
i.	TOTAL	£353,394 plus in-kind provisions

Any request to vary the planning obligations within a legal agreement must be supported by a financial viability appraisal in accordance with Bexley's Planning Obligations SPD. This appraisal is then reviewed by Council's Property Services who provide feedback on whether they agree with the details and outcome identified within the viability report. In support of the applicant's request for Bexley to review the existing Unilateral Undertaking and justify why reduced contributions are being sought, the developer submitted a financial viability appraisal for consideration. Property Services have confirmed that without any amendment to the current level of planning obligations, the development would not be economically viable in the present market.

For background, the initial Statement of Planning Obligations was submitted in August 2008. Property Services have commented that in past 18 months there has been a crisis in the banking sector leading to significant reduction in the amount of bank lending taking place, particularly where property is concerned which has resulted in falling prices. The economy has been officially confirmed by the Government as being in 'recession' and as such it is estimated that the value of land suitable for residential development has dropped at least 30% from its peak in late 2007 therefore having a detrimental effect on property values.

To safeguard the planning obligations in the future should the Deed of Variation be agreed officers recommend that a deferred payments clause be included within any such Deed of Variation. This deferred payment clause will require the submission of an updated financial viability document if the development has not commenced within two years with the result that should the economy improve the updated financial viability appraisal will reflect this and have a knock on effect for increased levels of planning obligations to be provided. This has been agreed in principle with the applicant though the Committee is asked to leave the detail of this clause to be negotiated by the Deputy Director (Legal Services) in consultation with the Head of Development Control and Head of Property Services.

Officers further recommend that the Committee allow them to review the timing of the payment of all the monetary planning obligations in order to ensure that the Council is able to adopt a responsive and flexible approach. Should any such amendments be required to the Unilateral Undertaking the Committee is asked to leave the detail to be negotiated by the Deputy Director (Legal Services) in consultation with the Head of Development Control and Head of Property Services.

In regards to the specific obligations proposed, no changes are being sought to the Affordable Housing component or the Transport and Controlled Parking Zone (CPZ) monetary contribution both of which are considered as the two high priorities within the SPD for this type of development. However, noting the original Statement of Planning Obligations an subsequent initial assessment was undertaken approximately one and a half years ago and that many of the infrastructure schemes have been updated periodically over this time, the Committee is asked to note that it may be appropriate to reviset the scope and timing of the Transport and Controlled Parking Zone (CPZ) monetary contribution in order to reflect this. The Committee is asked to leave the detail of any such changes to the Unilateral Undertaking to be negotiated by the Deputy Director (Legal Services) in consultation with the Head of Development Control.

In addition, having regard to the Inspectors comments within the appeal decision, the open space contribution which was identified to enhance the nearby open space, has similarly been retained within the current proposal with no proposed reduction.

Having consideration to Government Circular 05/2005, contributions are not now being sought for either Education or Community Facilities and Services. Following a review of the identified infrastructure schemes, it was noted that presently there are no proposals in the local area that would justify the expenditure of this money in line with the Circular. As such, it is considered reasonable that these contributions be amended as set out in this report in order to improve the financial viability of the development.

The Health contribution is also proportionally reduced in line with the estimated costs of the identified infrastructure scheme from £144,148 down to £95,000. This was considered reasonable and fair taking into consideration the cost of the local health scheme and the revised contribution which would still facilitate the construction of this facility.

The applicant has proposed a new Sports and Leisure contribution for inclusion in the revised planning obligations being put forward for consideration. Following the review

of the existing planning obligations and identified infrastructure schemes within the local area, it was highlighted that there is a current Sports and Leisure scheme to which any money secured could be committed. The identified scheme is cross-cutting and would not only improve Sports and Leisure Facilities within the area but also provide valuable benefits to both health and open space service areas.

5. RECOMMENDATIONS

It is therefore recommended that authority be given to the Deputy Director (Legal Services) in consultation with the Head of Development Control and the Head of Property Services to enter into a Deed of Variation to amend the Unilateral Undertaking as proposed in this report. This will enable the Council to secure locally identified infrastructure with the proposed planning obligations and assist in the regeneration of Sidcup. The applicant does have the option of submitting a fresh planning application proposing revised planning obligations which would then be considered on its merits.

6. SUMMARY OF LEGAL IMPLICATIONS

The variations to the existing Section 106 Unilateral Undertaking sought by the Cathedral Group fall to be considered by the Council as local planning authority in accordance with Section 106A(1) of the Town and Country Planning Act 1990. This specifies that the Section 106 Unilateral Undertaking may be varied only with the agreement of the Council and that any such variation must be entered into as a deed. Whilst there is no right of appeal in this case should the Council refuse the requested Deed of Variation, the Committee must take into account its overarching legal duty to act reasonably in its consideration of the requested Deed of Variation and that the usual public law remedies apply in respect of this decision.

7. SUMMARY OF FINANCIAL IMPLICATIONS

Contributions secured within planning obligations provide funding for capital works projects where it has been identified that a proposed development will have an impact upon. As such, the proposed variation to the Unilateral Undertaking will reduce the amount of contributions provided to the Council and therefore the extent of any capital works which has been discussed in more detail above.

8. SUMMARY OF OTHER IMPLICATIONS

(a) Environmental Impact

None

(b) Community Safety

None

(c) Equal Opportunities

None

(d) Human Rights

None

LOCAL GOVERNMENT ACT 1972 – SECTION 100D

List of Background Documents

1.	Unitary Development Plan 2004 (UDP)		
2.	Planning Control Committee – 9 October 2008		
3.	The London Plan		
4.	Planning Obligations Supplementary Planning Document (SPD)		
5.	Government Circular 05/2005 'Planning Obligations'		
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