

Location 11 -13 Approach Road Barnet EN4 8FG

Reference: 20/0587/MDL Received: 31st January 2020
Accepted: 27th March 2020

Ward: East Barnet Expiry 22nd May 2020

Case Officer: Kie Farrell

Applicant: Dr Bastami

Proposal: Variation to S106 Legal Agreement pursuant to planning permission B/02366/13 dated 20/01/14 for 'Erection of 5 storey building and basement floor level to facilitate 15no. self-contained residential units, 15no. car parking spaces and cycle store at basement level. Provision of solar panels at roof level. Hard and soft landscaping.' Changes to include removal of affordable housing obligation

OFFICER'S RECOMMENDATION

Approve

AND the Committee grants delegated authority to the Service Director – Planning and Building Control to make any minor alterations, additions or deletions to the recommended conditions/obligations or reasons for refusal as set out in this report and addendum provided this authority shall be exercised after consultation with the Chairman (or in their absence the Vice- Chairman) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

Informative(s):

In accordance with paragraphs 38-57 of the NPPF, the Local Planning Authority (LPA) takes a positive and proactive approach to development proposals, focused on solutions. The LPA has produced planning policies and written guidance to assist applicants when submitting applications. These are all available on the Council's website. The LPA has negotiated with the applicant/agent where necessary during the application process to ensure that the proposed development is in accordance with the Development Plan.

OFFICER'S ASSESSMENT

This application was called-in to Planning Committee by Councillor Laurie Williams on 8th September 2020 for the following reason:

"The owner of the block of flats at this site is requesting a variation to section 106 alleging that it is no longer viable, although it is virtually finished.

As there is no planning reason to consider a Viability Study on an already built application, If the Officers are minded to allow this, I wish to call it in for Determination by the Committee.

The loss of nominations for Social Housing that are available to the Council the more it has to pay for placing Residents in Private Lettings."

1. Site Description

The application site is accessed from Approach Road and is on the junction between Approach Road and the access to Sainsbury's supermarket car park. To the north is a five storey residential building, with a three storey building to the south of the site on the other side from the access road. Railway lines are to the west of the site.

The development approved under planning permission B/02366/13 is described as:

"Erection of 5 storey building and basement floor level to facilitate 15no. self-contained residential units, 15no. car parking spaces and cycle store at basement level. Provision of solar panels at roof level. Hard and soft landscaping."

This development is very well advanced in terms of its construction and appears to be close to practical completion.

2. Site History

Reference: B/02366/13

Address: 11-13 Approach Road, Barnet, Herts, EN4 8FG

Decision: Approved following legal agreement

Decision Date: 20th January 2014 (Legal agreement signed 9th Jan 2014)

Description: Erection of 5 storey building and basement floor level to facilitate 15no. self-contained residential units, 15no. car parking spaces and cycle store at basement level. Provision of solar panels at roof level. Hard and soft landscaping.

3. Proposal

"Variation to S106 Legal Agreement pursuant to planning permission B/02366/13 dated 20/01/14 for 'Erection of 5 storey building and basement floor level to facilitate 15no. self-contained residential units, 15no. car parking spaces and cycle store at basement level."

The submitted application form (dated 27th March 2020) states that the applicant is seeking to modify/change Schedule 2 of the S106 attached to Planning Permission B/02366/13.

The Supporting Statement, Planning Insight, received 27th March 2020 sets out in the 'Proposal' section that the application proposes affordable housing in the form of 6 units as Discounted Market Rent tenure, capped at 80% of market rate in perpetuity.

Following receipt of the application, the applicant was advised by Officers that the proposed amount and tenure of affordable housing was not considered acceptable and that a Viability exercise would need to be carried out in order to determine the amount of Affordable Housing that should be provided in accordance with Policy DM10.

A Viability Assessment was received from the applicant on 8th June 2020. An independent Viability Consultant (BNP Paribas) was then instructed by the Local Planning Authority to review the submitted Viability Assessment. Viability negotiations took place between June and November 2020.

4. Public Consultation

A site notice was erected on 10th December 2020.

No comments have been received from neighbouring residents or members of the public.

The application was called in to Planning Committee by Councillor Laurie Williams on 8th September 2020.

Councillor Geoffrey Cooke requested additional information about the application via a Members Enquiry in December 2020.

5. Planning Considerations

5.1 S106 legal agreements

The statutory framework covering Planning obligations, also known as Section 106 agreements (are set out in that section of The 1990 Town & Country Planning Act) are private agreements made between local authorities and developers and can be attached to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms. The land itself, rather than the person or organisation that develops the land, is bound by a Section 106 Agreement.

Legal Agreements are used for three purposes:

- Prescribe the nature of development
- Compensate for loss or damage created by a development
- Mitigate a development's impact

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. These tests are set out as statutory tests in the Community Infrastructure Levy Regulations 2010 and as policy tests in the National Planning Policy Framework.

A planning obligation may only constitute a reason for granting planning permission for the

development if the obligation is—

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

5.3 Assessment of proposals

Proposal

This is an application made under S106A to vary/modify the existing legal agreement attached to planning permission B/02366/13.

The existing legal agreement currently requires all 15 flats in the development to be provided as affordable housing.

The current owner of the building/applicant now intends to provide the development as market/private housing with affordable housing provided in accordance with the requirements of Policy DM10.

Planning Practice Guidance

Central Government Planning Practice Guidance states:

"Can an agreed planning obligation be changed?"

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 predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it "no longer serves a useful purpose" or would continue to serve a useful purpose in a modified way (see section 106A of the Town and Country Planning Act 1990).

Paragraph: 020 Reference ID: 23b-020-20190315
Revision date: 15 03 2019."

"Can there be an appeal against a refusal to change a planning obligation (Section 106 agreement)?"

An appeal to the Planning Inspectorate under section 106B of the Town and Country Planning Act 1990 must be made within 6 months of a decision by the local authority not to amend the obligation, or within 6 months starting at the 8 weeks from the date of request to amend if no decision is issued. The Secretary of State also has the power to allow appeals that are out of time.

Paragraph: 022 Reference ID: 23b-022-20190315
Revision date: 15 03 2019"

S106A

Where an application to modify a legal agreement is submitted to the LPA on the basis that the legal agreement is over 5 years old (which is the case here) S106A subsection (6) gives the LPA three determination options as follows:

"(6) Where an application is made to an authority under subsection (3), the authority may determine—

- (a) that the planning obligation shall continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications."

Subsection 8 states:

"(8) Where an authority determine that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant."

DM10 - Affordable Housing Contributions

Policy DM10 states:

"Having regard to the borough-wide target that 40% of housing provision should be affordable, the maximum reasonable amount of affordable housing will be required on site, subject to viability, from all new sites providing 10 or more units gross or covering an area of 0.4 hectares or more."

As part of this application, Officers requested that a Viability Assessment be provided by the applicant to ensure that the maximum reasonable amount of affordable housing is provided as required by policy DM10.

Viability Negotiations June - November 2020

The applicant's Viability Assessment (by ULL Property (ULL)) was received on 8th June 2020. This concluded that the approved 100% Affordable Housing scheme is not viable. It also concluded that a 100% private housing scheme is not sufficiently viable to provide any affordable housing.

BNP Paribas (BNP) reviewed the applicant's Viability Assessment (First Appraisal, 17.7.20) on behalf of the LPA and this review accepted that the approved 100% affordable housing scheme is not viable. This was on the basis that BNP's appraisal of the approved scheme generates a negative residual land value of £0.43m and when benchmarked against BNP's site value of £0.35m the approved scheme generates a deficit of £0.78m.

However, BNP's First Appraisal also concluded that the proposed 100% market housing scheme could reasonable provide an affordable housing contribution of £590K. This was on the basis that BNP's appraisal of the proposed scheme generates a positive residual land value of £0.94m and when benchmarked against BNP's site value of £0.35m the proposed scheme generates a surplus of £0.59m.

BNP's First Appraisal was provided to ULL and on 2nd September a further letter was received from ULL Property on behalf of the applicant. The letter provided further information on Benchmark Land Values, Sales values, construction costs, profit margin and sales and marketing costs. A Cost Plan prepared by Stace was also provided to substantiate the construction costs figures used in the ULL appraisal.

These documents were reviewed by BNP Paribas (Second Appraisal, 14.9.20) and this second appraisal concluded that an affordable housing contribution of £680K would be reasonable. The increase from £590K to £680K was as a result of a correction on the developers profit on value input amended from 20% to 17.5%.

BNP Paribas also recommended that an independent cost consultant should be instructed to review the Stace cost plan.

Stockdale were instructed by BNP Paribas to review the Stace cost plan and this work was completed on 19.10.20. The Stockdale cost review essentially agreed with the Stace cost plan with only £5,000 between them.

Following receipt of the Stockdale cost plan review, on 20.10.20, BNP issued their Third appraisal based on the Stockdale cost figures. This concluded that an affordable housing payment of £190K would be reasonable. This was on the basis that the proposed scheme generates a residual land value of £0.59m with a Benchmark land value of £0.4m, leaving a surplus of £0.19m.

At this stage, BNP recommended that, as this £190K surplus would equate to a small number of affordable units (which it is unlikely a Registered Provider would acquire) a payment in lieu towards off site affordable housing provision would be appropriate.

On 31.10.20 an updated version of the Stace Cost Plan (V1 dated 29.10.20) was received from the applicant which sought to increase build costs by £400K. BNP Paribas reviewed this further cost plan and expressed surprise and concern that there appeared to be an attempt by the applicant to increase construction costs in order to avoid payment of an affordable housing contribution. Given Stace and Stockdale had previously agreed on costs there appeared to be no good reason to accept a further amended cost plan at this stage.

On 6.11.20 Officers wrote to the applicant to advise that the further amended cost plan would not be accepted and that the applicant should agree to pay the required affordable housing contribution of £190K in order to conclude matters.

On 7.11.20 an email was received from the applicant proposing some minor adjustments and corrections to the Gross Development Value and Cost figures used in BNP's appraisal. The letter was reviewed by BNP who agreed that the suggested minor variance and corrections were reasonable.

On 9.11.20 BNP issued their fourth and final appraisal (adjusted to include the aforementioned minor variances and corrections) and this concluded that a payment of £150K towards affordable housing would be reasonable. This was on the basis of Residual Land Value of £0.55m, with a Benchmark land Value of £0.4m, leaving a surplus of £0.15m.

On 9.11.20 the applicant agreed to pay a financial contribution of £150K towards the provision of off-site affordable housing.

Assessment Conclusion

The viability exercise has demonstrated that the maximum reasonable amount of affordable housing that can be provided is a financial contribution of £150,000 towards off

site provision.

It is considered that the planning obligation, as modified, would continue to serve a useful purpose in that it would secure the maximum reasonable amount of affordable housing in accordance with the requirements of policy DM10.

Therefore, this application is recommended for approval subject to a Deed of Variation to the existing legal agreement requiring an affordable housing contribution of £150,000.

5.4 Response to Public Consultation

N/A

6. Equality and Diversity Issues

The proposal does not conflict with either Barnet Council's Equalities Policy or the commitments set in the Equality Scheme and supports the Council in meeting its statutory equality responsibilities.

7. Conclusion

A recommendation to approve the Deed of Variation is duly set forward.

