

Agenda item: **Decision maker:** Planning Committee**Subject:** 16/02047/PAMOD- Request to modify legal agreements attached to planning permissions 10/01247/FUL and 08/01941/FUL, being land adjacent to Queens Hotel Clarence Parade and Osborne Southsea.**Report by:** Assistant Director of Culture & City Development**Wards affected:** St Jude**Key decision (over £250k):** No

The Local Planning Authority is in receipt of an application to modify two legal agreements which relate to extant planning permissions at the Queens Hotel. The planning permissions are detailed below. At the time when the planning applications were made the intention was for the development to cross subsidise or help to fund the renovation and conversion of the Hotel.

The proposal was for upper floors of the Hotel to be the subject to residential conversion, and that the Hotel to be refurbished. Between 2008 and 2010 the second scheme emerged which was to deliver a stand-alone apartment building fronting Clarence Parade with the intention being for the scheme to better help with the development economics for the site.

The PAMOD was initially submitted with a single viability appraisal which brought together both of the permissions and undertook a comprehensive approach.

However as this matter relates to two separate planning permissions the applicant was requested to undertake a separate appraisal for each of the permissions as they can be separately delivered, and the applicant has requested both section 106 agreements be amended suspending the affordable housing requirements.

The two permissions are as follows:

08/01941/FUL - Construction of 7-storey building comprising health centre/retail unit at ground floor with 30 flats at 1st to 6th floor levels and associated cycle/refuse stores (after demolition of no.s 12-16 Osborne Road); conversion of 2nd,3rd and 4th floors of hotel to form 30 flats; construction of podium and two conservatories with undercroft parking to south elevation (Amended Plans).

The demolition of the former nightclub on the site was lawful commencement and constituted implementation of the planning permission. This has been recognised and as such the site continues to benefit from the permission.

10/01247/FUL - Construction of eight-storey building comprising 38 apartments above extended landscaped podium level and associated car parking facilities.

Earthworks which were undertaken on the site were also of a degree and scale to constitute implementation of the planning permission. This has been recognised and as such the site continues to benefit from the permission.

Each planning permission is accompanied by an associated s106 Agreement, and each agreement has a set of planning obligations which the applicant makes the case limit the ability for the site to come forward due to development viability.

Connection between both Schemes

The 2008 planning permission was to secure 18 affordable housing units through the section 106. The planning permission if delivered in isolation would require the 18 affordable housing units be provided.

When the planning application was made in 2010, the opportunity was taken to connect the affordable housing requirement of the 2008 permission along with the new development, and as such the 2010 section 106 secured a total of 30 affordable housing units, 18 of which were actually those required by virtue of the 2008 permission.

This was considered at the time to be the best way of securing all of the affordable housing for the site in a single building which fronted Osborne Road.

The following report undertakes a review of the viability information which has been submitted with this application and the conclusions of the District Valuer in terms of the scheme viability given the affordable housing requirement. The viability information has assessed each application on its own, as each development should be able to stand alone in terms of its planning obligations.

This application is accompanied by financial information which is commercially sensitive. In addition to the detailed commercial information a statement prepared by Savills accompanies the application setting out the findings and proposing that both applications suspend the obligation for affordable housing on the grounds that the renovation of the Queens Hotel should be secured prior to the occupation of any residential units and that in the event the renovation is not secured a payment of £119,987 be made.

1 Application Proposal

The purpose of the report is to seek the agreement of the Planning Committee to vary the terms of the section 106 so as to suspend the requirement for affordable housing.

The applicant proposes that this suspension of affordable housing be linked to the refurbishment of the Queens Hotel, thereby requiring the refurbishment be secured, and that in the event occupation of the first unit in the development takes place prior to the refurbishment being secured the owner shall pay Portsmouth City Council a sum.

The application has been accompanied by a viability appraisal for both of the proposals with the 08/01941/FUL demonstrating that the hotel conversion and renovation consent which develops out 60 units and retains the hotel returns a deficit from the development of £1,408,336 without the provision of affordable housing on or off the site.

The second viability appraisal demonstrates that the 10/01247/FUL proposal for 38 apartments provides a value of £119,987 with no affordable housing. This is the sum

which the development viability indicates could be provided in the form of an off-site affordable housing commuted sum in the event that the Queens Hotel refurbishment is not secured prior to the occupation of the first unit.

2 Recommendation

Having regard for the DV appraisal and the applicant's submission the following recommendation is the preferred approach of the Local Planning Authority:

Agree to vary both of the s106 agreements suspending the requirement for affordable housing on the 2008 permission and securing an off-site affordable housing contribution of £332,043 for the 2010 permission.

The following assessment sets out the DV appraisal findings and the LPA key facts to be considered.

3 Review of the Development Appraisals

The DV has undertaken an assessment of the Savills submitted appraisals, referring to the 2008 permission as Phase 1 and the 2010 permission as Phase 2. The areas where the DV identified differences between the applicant's submission and their assessment are as follows:

2008 - Phase 1 on all private basis displays a deficit of -£1,237,230

- DV noted the applicants ground rent income of £250,000 however DV adopts a 5% ground rent capitalisation rate arriving at £300,000.
- DV noted the applicants development program however adopts a revised sales period of 18 months, being 3 dwellings per month along with the expectation that some sales will be secured during the construction period.
- DV reviewed the stamp duty land tax fee and while the applicant suggested this should be £200,974, the DV advises it should be £240,717.

2010 - Phase 2 on an all private basis shows a surplus of £332,043

- DV noted the applicants ground rent income of £162,722.91 however DV adopts a 5% ground capitalisation rate arriving at £178,995.20
- DV noted the applicants development program however adopts a revised sales period of 12 months with 3 dwellings sold every month.

Other Key Facts

- At the time of securing planning permission for both schemes the site owners at the time did not look to examine the development viability of the proposals and as a consequence the subsequent owner / developer signed up to obligations which either reflected the policy position or what would have been expected. Development economics would have been left to the delivery stage. Legislation and policy provide the mechanism to enable applicants to seek to amend s106 agreements. The application has been made in accordance with these provisions on the basis that the requirement for affordable housing is unviable.

- While each of the planning permissions may be extant and open for implementation, the owner has indicated that the schemes as approved could not be delivered with the affordable housing. The cost of delivering the approved developments at the site and refurbishment of the hotel are such that affordable housing would not be secured.
- Whether the developer delivers the 2008 or 2010 scheme, or both schemes combined there is not sufficient value in the scheme to provide the policy required affordable housing.
- The application was supported by a professionally prepared viability appraisal, which was independently reviewed by the District Valuer, arriving at the conclusion that an all private scheme for the 2008 permission has a deficit of -£1,237,230 and the 2010 permission has a surplus of £332,043.
- It is on this basis that the Local Planning Authority recommends the s106 agreement for the site be amended to suspend the requirement of affordable housing.
- The applicant is seeking the certainty to invest into the refurbishment and redevelopment of the Hotel. Any obligations which give rise to uncertainty around the site value will prevent the scheme progressing and lead to a stall site.
- In the event the Planning Committee decline to enter into a deed of variation, it is open to the applicant to appeal leading to the viability assessment being further scrutinised.

Options Going Forward

It is open to the Planning Committee to:

- A Agree to vary both of the s106 agreements suspending the requirement for affordable housing on the 2008 permission and securing an off-site affordable housing contribution of £332,043 for the 2010 permission.
- B Decline to enter into a deed of variation for both planning permissions and in so doing accept that (on the basis of the applicants submission) it is unviable to convert the Queens Hotel and construct the new build elements, and undertake the necessary improvements for it to operate at its full capacity.

Recommendation

Agree to vary both of the s106 agreements suspending the requirement for affordable housing on the 2008 permission and securing an off-site affordable housing contribution of £332,043 for the 2010 permission.

4 Representations

No comments have been received.

5 Equality impact assessment (EIA)

This report relates to an application to enter into a deed of variation for a scheme. As this is not a policy matter or decision there is no requirement for an equality impact assessment.

6 Legal services' comments

The City Solicitor is satisfied that it is within the City Council's powers to approve the recommendation as set out.

Duty to act reasonably

Section 106A of the Town and Country Planning Act 1990 provides that the City Council may agree, with the other parties, to a change in the terms of an agreement. Importantly, the Council is bound to consider the request and any decision made is susceptible to judicial review.

Accordingly, the Council is compelled to consider the request, whether the relevant obligation continues to serve a useful planning purpose and - if minded to refuse - to consider and to articulate the planning purpose to be served by such a refusal.

Given that the passage of time since the entering into the planning obligation has exceeded 5 years, the applicant is entitled to seek a discharge or modification of the obligation.

7 Finance comments

There are no finance implications.

.....
Signed by:

Appendices:

Appendix 1 - Applicants covering letter and Output Full Development Appraisals for each scheme.

Appendix 2 - District Valuers Review of applicants viability submission

Background list of documents: Section 100D of the Local Government Act 1972

Title of document	Location
Legal Agreements dated 18 th January 2012 and 21 st April 2010 Planning Obligations SPD (September 2008) National Planning Policy Framework (March 2012)	Planning Services

Providing Affordable Housing in Portsmouth (May 2012) Planning Practice Guidance on viability (March 2015)	
---	--