

Agenda item:

Decision maker: Planning Committee

Subject: 15/00787/PAMOD
Request to modify legal agreement attached to planning permission ref 11/00961/FUL relating to land at 61 Earlsdon Street Southsea

Report by: City Development Manager

Wards affected: St Thomas

Key decision: No

Full Council decision: No

1 Purpose

The purpose of the report is for Members to consider the applicants request to modify the planning obligation associated with planning permission ref 11/00961/FUL, and completed on 27th March 2012, in relation to the period of the summer vacation during which only students may occupy the accommodation (in accordance with the current terms of the planning agreement).

2 Recommendations

That the agreement be varied (within three months of the date of the Committee's decision) so that during academic terms only students may occupy the accommodation (as now) and at all other times the accommodation must be used as temporary residential accommodation for periods not exceeding two months in the case of any individual resident so occupying any of the accommodation at such times.

3 Background

The owners/operators of two sites for halls of residence branded 'Unilife' providing term-time accommodation at 61 Earlsdon Street and 10 St James's Street implemented permissions in March 2012 and December 2009 respectively. Both permissions were subject to legal agreements containing, amongst other things, clauses restricting the use and occupation in the halls of residence for no purpose other than as residential accommodation for students during their period of study.

In the adopted Student Halls of Residence Supplementary Planning Document the standard provisions seek to secure that "*During University of Portsmouth Academic Terms not to use nor permit or allow the use of any of the <specified number> study/bedrooms in*

the Halls of Residence for any purpose other than as temporary residential accommodation for a Student during his or her period of study".

The same 'Unilife' developer secured planning permission on 22 Middle Street for a proposed halls of residence, in 2013. The development is restricted to use as specialist residential accommodation for students by legal agreement but includes provision for limited and temporary 'unrestricted' (non-student) occupation outside of term time.

The applicants' agent accompanying letter includes the following comments: *"The ability to make student accommodation at Earlsdon Street available to provide temporary accommodation for non-students and use out of term time to support events such as conferences, seminars and a whole range of cultural attractions would (as at Middle Street) contribute to the wider local economy of the City and business community (through investment and spend), including leisure and tourism. This could include events hosted or operated by the University."*

4 City Development Managers comments

The request to modify the legal agreement at 61 Earlsdon Street is considered consistent with the Student Halls of Residence SPD and more recent S106 provisions for students halls of residence; unrestricted use outside of term time, additional to the principal occupation as a halls of residence for students during the academic term, is also considered to offer some potential contribution to the local economy.

5 Highways comments

The Highways Authority comment that the site falls within a highly sustainable location, where reliance on the private car is not necessary and having regard to permit controls there is no available on-street car parking (but ample cycle parking should this be required). The Highways team raise no objection to these premises being used outside of term time, although suggest an advisory: 'The web site and any information communicated to enquiries for the use of this accommodation includes information on the fact that there is no available car parking within the near vicinity of the site, and any cars would need to be parked in public car parks'.

6 Equality impact assessment (EIA)

The document is a consultation document and therefore there is no significant impact.

7 Legal services' comments

The statutory provisions of Section 106A (S1096A) regulate the modification and discharge of planning agreements made pursuant to Section 106 Town and Country Planning Act, 1990 ("the Act"). An agreement may only be modified by deed undertaken in accordance with the provisions of S106A. The effect of the provisions is that where an agreement (which does not relate to affordable housing provision) has been completed for any period less than five years, it may only be modified by agreement with the local

planning authority responsible for its enforcement. The consent of all parties against whom the modified agreement is enforceable is required.

Having been completed only in March 2012, the developer must refer to the Council in accordance with the statutory provisions which make the Council's decision in such a case the final decision (subject to the requirement to make the decision reasonably, or be susceptible to successful judicial review). In determining the issue before them, Members must take account of relevant considerations, disregard considerations that are not material and avoid making a decision which might be regarded as perverse (i.e. a decision that no decision-maker, rightly advised and being aware of all the relevant facts could reasonably be expected to make).

If the recommendation of the City Development Manager to modify the agreement is approved by Members, it will be necessary to prepare a Deed of Variation. It is not open to parties to an agreement to vary it by unilateral undertaking.

8 Finance comments

None.

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 Signed by:

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

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

| Title of document | Location |
|---|----------|
| National Planning Policy Framework (March 2012) Student Halls of Residence SPD (October 2014) 15/00787/PAMOD - includes <ul style="list-style-type: none"> • Agent's letter dated 8 May 2015 • Copy of the S106 Agreement dated 27 March 2012 | |