

PLANNING APPLICATIONS COMMITTEE 17 OCTOBER 2019

APPLICATION NO.
18/P2926

DATE VALID
31/07/18

Address/Site: Chenab Court, 176A London Road, Morden SM4 5AN
Ward: Merton Park

Proposal: Application to vary S106 agreement linked to outline planning permission for the demolition of the existing motor vehicle repair workshop [use class B2 - 500 square metres] and the construction of a part two, part three storey building providing 12 residential units [8 two bedroom flats, 3 one bedroom flats and 1 two bedroom maisonette] with one off street disability car parking space with vehicle and pedestrian access provided along the existing access road to London Road.

Drawing No's: Site location plan.
Contact Officer: Jonathan Lewis (020 8545 3287)

RECOMMENDATION
Grant variation of S106 agreement.

CHECKLIST INFORMATION

- S106: Yes
- Is a screening opinion required: No
- Is an Environmental Statement required: No
- Has an Environmental Statement been submitted: No
- Press notice: No
- Site notice: No
- Design Review Panel consulted: No
- Number of neighbours consulted: None
- External consultations: Independent financial review conducted by surveyors.
- Controlled Parking Zone: No - Zone M1 located to the north and west of the site.
- Area at risk from flooding: No
- Conservation Area: No
- Listed buildings: No.
- Protected Trees: Adjoining land. Trees to the rear of 'The Holt' protected by a Tree Preservation Order]
- Public Transport Access Level: 5

1. INTRODUCTION

- 1.1 This application is brought to the Planning Applications Committee for determination as the proposed variation of the S106 would materially alter the terms of the agreement which formed the basis of the planning approval and

which was endorsed by the Planning Applications Committee in 2014.

2. SITE AND SURROUNDINGS

- 2.1 An irregular shaped application site (0.09 hectares) located to the rear of the three storey residential building called 'Homefield' at 170 London Road that provides 24 flats. The site is located on the north west side of London Road between Morden Town Centre and the junction with Goodwood Close. London Road is a classified road [A24] which forms part of the Transport for London Road Network (TLRN or 'Red Route') and carries a large quantity of traffic as a busy arterial thoroughfare.
- 2.2 To the west of the application site is a two storey end of terrace building in Queen Elizabeth Gardens that provides two maisonettes [numbers 11 and 12] and an end of terrace house [number 14]. There are two, storey buildings in Queen Elizabeth Gardens located to the north of the site, with the first building providing two maisonettes [numbers 15 and 16] and the second a three bedroom house [number 17]. To the north and east of the site are two storey semi-detached 1930's residential properties in Cedars Road.
- 2.3 To the south of the application site is a three block of flats called 'Homefield' with this building separated from the application site by a rear external amenity area containing a mature Sycamore tree. The three storey block of flats called 'The Holt' is also located to the south and also separated from the application site by an external amenity area. The area of open space around the Holt contains a number of trees. Tree Preservation Orders have been placed on ten of these nearby trees [MER 296] that include two London Plan trees, three cedars, two yews, a holly, a pine and an oak tree.
- 2.4 The site is occupied by a recently erected three storey block of 12 flats.
- 2.5 The site is located in an archaeological priority zone. The site is not located in an area at risk from flooding. The site is not in a conservation area and there are no buildings either on the site or nearby that are on the statutory or local list of historically important buildings. The site is not located in a controlled parking zone however areas to the north east in London Road and to the north west are in Zone M1.
- 2.6 A bus lane running pass the site operates between 7am to 10am Monday to Saturday. Single red line parking restrictions operate outside the application site between Monday and Saturday 7am to 7pm with a car parking bay for four cars allowing restricted parking after 10am. The site has a public transport accessibility level of 5 with Morden South mainline station located 420 metres to the south west and Morden Underground station 570 metres to the north east.

3. CURRENT PROPOSAL

- 3.1 The proposal is to vary the terms of the existing S106 planning agreement to replace on site provision with an off-site financial contribution.

- 3.2 The legal agreement signed in March 2015 requires the following to be provided on site:

Intermediate housing.

1 two bedroom and 1 one bedroom flat.

Affordable rented housing.

2 two bedroom and 1 one bedroom flat.

- 3.3 The applicant is offering an off-site financial contribution of £500,000 towards affordable housing with the contribution to be paid in two stages. In support of the applicant's proposals evidence has been provided of communications with various housing associations regarding the purchase of the affordable units. The submission is also accompanied by a Financial Viability Analysis which has been the subject of an independent review to inform this report.

4. PLANNING HISTORY

- 4.1 14/P2917 – Outline planning permission granted for the erection of a part two, part three storey building providing 12 residential units [8 two bedroom flats, 3 one bedroom flats and 1 two bedroom maisonette] with one off street disability car parking space with vehicle and pedestrian access provided along the existing access road to London Road. An associated S106 planning agreement requires the provision of 40% affordable housing (3 rented and 2 shared ownership units).
- 4.2 16/P4675 – Approval of reserved matters (external appearance) in connection with outline planning permission.
- 4.3 16/P3767, 16/P4081, 17/P0398 and 17/P1052 - Approval of various conditions including pre-commencement conditions linked to outline planning permission 14/P2917.
- 4.4 19/P2199 – Application under S73 to vary a condition (approved plans) on the outline planning permission and to vary the legal agreement by substituting the 5 affordable units on site with a financial contribution. Application currently undetermined and under consideration.

5. CONSULTATION

Internal.

- 5.1 Housing Development Officer. No objection raised.

6. POLICY CONTEXT

- 6.1 NPPF - National Planning Policy Framework (2019)
4. Decision making: Planning Conditions and obligations (paragraph 57)
5. Delivering a sufficient supply of homes.
- 6.2 London Plan (2016)
3.11 Affordable housing targets.
3.12 Negotiating affordable housing on individual private residential and

mixed uses schemes.
3.14 Affordable housing thresholds
8.2 Planning obligations

6.3 Merton Local Development Framework Core Strategy – 2011 (Core Strategy)
CS.8 Housing choice.

6.4 Supplementary planning considerations
Mayor of London - Affordable Housing and viability. SPG 2017
Merton - Development viability supplementary planning document. May 2018.

7. PLANNING CONSIDERATIONS

7.1 The key planning considerations are whether in this particular instance the provision of affordable housing on site may reasonably be waived in favour of an off-site contribution and whether the contribution is reasonable.

On site provision and cash in lieu contributions.

7.2 The London Plan sets out a detailed policy framework for delivering affordable housing. London Plan policy 3.11 states that the Mayor will, and boroughs and other relevant agencies and partners should, seek to maximise affordable housing provision and ensure an average of at least 17,000 more affordable homes per year in London over the term of this Plan. In order to give impetus to a strong and diverse intermediate housing sector, 60% of the affordable housing provision should be for social and affordable rent and 40% for intermediate rent or sale.

7.3 The objectives are given further impetus by Policy 3.12 which states that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use schemes.

7.4 The policy provides further criteria against which proposals should be assessed noting that negotiations on sites should take account of their individual circumstances including development viability, and the availability of public subsidy.

7.5 On the matter of financial contributions the London Plan asserts that a cash in lieu contribution should only be accepted where this would have demonstrable benefits in furthering the affordable housing and other policies in this Plan and should be ring-fenced and, if appropriate, pooled to secure additional affordable housing either on identified sites elsewhere or as part of an agreed programme for provision of affordable housing.

7.6 At the time of submitting the outline application the submission did not include a viability assessment. The offer of 40% affordable housing with a tenure split of 60% rented and 40% shared ownership was in accordance with adopted policy and did not warrant further scrutiny. Whether or not the scheme was in fact viable to deliver the 5 affordable housing units was therefore not scrutinised.

- 7.7 The current owner purchased the site with the benefit of planning permission and the S106 in 2016. In October 2016 the owner set about marketing the units. The owner contacted the Council's Housing Strategy Team who provided contacts to 9 registered providers active in the Merton area. The owner also contacted an agent specialising in marketing affordable housing which in turn mailed out details via their data base to 19 registered providers on Merton's preferred provider list.
- 7.8 Evidence has been submitted indicating a failure to agree on price, between the developer and a Registered Provider, where there had been an interest to purchase all or some of the units to provide affordable housing. Communications forwarded by the applicant would also suggest that the low number of affordable units may have proved unattractive to a registered provider as the units are valued at lower than the market rate and with the provider asserting that they would be unable to claim grant on the S106 units alone.
- 7.9 As implementation of the scheme commenced further intervention by planning officers prompted the referral of another registered provider to the owner but, following inspection of the site by the registered provider, this too proved unsuccessful and the purchase of the 5 units was not pursued.
- 7.10 In early 2019 planning officers explored with the owner the potential for discounted market sales units rather than pursue an off-site contribution. Discounted market sales (DMS) is a low cost home ownership product where a new build property is purchased at a discounted price directly from the developer. The discount is usually around 20%, and the scheme is to help low and middle income earners get onto the property ladder. The discount is written into a covenant on the property and will remain in perpetuity through all subsequent sales. Unlike shared ownership, the purchaser does not have to pay rent on the remaining share of the property, as there is no remaining share. A purchaser buys the percentage of the property available after the discount and when the property is sold, it has to be sold at the same percentage of the market value at the time of sale. The applicant's viability advisor provided a template S106 based on a scheme in a Cornish authority.
- 7.11 To determine the appropriate discount the purchase price should be attractive to those on incomes that would otherwise qualify for affordable housing including rented accommodation. Analysis of available data by planning officers indicated that discounts would need to be in the order of 74% and not 20% and, in light of the independent viability analysis that had been undertaken, this would impact adversely on the potential number of affordable units that could be provided on site. The process also generated internal resourcing issues and costs in terms of scrutiny of applications by purchasers and subsequent purchasers which the Council would need to undertake in perpetuity.
- 7.12 Whether the purchase price by the current owner properly reflected a rigorous analysis of the implications of delivering not only the development but the affordable units has been the subject of discussion between the developer

and Council officers. Documents submitted with the application indicate different financial regimes come into play for registered providers when bidding for the whole development as affordable rather than as part of a larger development. Whether the price paid by developer for the site was unduly optimistic may be open to question but whether or not this was the case does not resolve the current impasse.

- 7.13 Paragraph 2.56 of the Mayor's SPG sets out that: "Viability alone is insufficient justification for off-site affordable housing provision or a cash in lieu payment.". Officers are of the view that the applicant has demonstrated they cannot sell the homes to a Registered Provider. Given the above, officers consider that it would be reasonable to consider an off-site contribution in lieu of on-site provision.

Assessment of off-site contribution.

- 7.14 The Mayor of London has published (2017) detailed guidance for assessing affordable housing and viability. This SPG does not and cannot set a fixed affordable housing requirement. Instead it provides a framework for delivering the maximum reasonable amount of affordable housing in the context of current London Plan Policies

- 7.15 All schemes which propose off-site affordable housing or cash in lieu payments are required to provide a detailed viability assessment as part of the justification that off-site or cash in lieu is acceptable, in-line with the London Plan and relevant local policies. Viability alone is insufficient justification for off-site affordable housing provision or a cash in lieu payment. The preceding section of this report has sought to highlight the challenges faced in terms of securing the delivery of affordable housing on site.

- 7.16 The SPG states that to avoid incentivising off-site provision or in-lieu contributions, agreements for this should provide no financial benefit to the applicant relative to on-site provision.

- 7.17 The methodology recommended by the SPG is as follows:

The starting point for determining in-lieu contributions should be the maximum reasonable amount of affordable housing that could be provided on-site as assessed through the Viability Tested Route. The value of the in-lieu contribution should be based on the difference in Gross Development Value arising when the affordable units are changed to market units within the appraisal. This is to ensure that where the on-site component of market housing is increased as a result of the affordable contribution being provided as a cash in-lieu payment, this does not result in a higher assumed profit level for the market homes within the assessment which would have the effect of reducing the affordable housing contribution.

- 7.18 The applicant follows the approach of reviewing the maximum reasonable amount of affordable housing by comparing the Residual Value of a 100% open market scheme with the residual value of the consented scheme in

accordance with Section 3 of the SPG. The applicant contends that “It is inappropriate to make the calculation of the Commuted Sum by reference to the GDV of the two schemes because the provision of affordable housing is made possible by the uplift in value generated by the grant of planning consent, and the suggestion is a contradiction to the detailed guidance on the Viability Tested Route in section 3 of the SPD”.

- 7.19 The differing methodologies therefore produce different outcomes. The methodology followed by the applicant’s advisor had as its starting point an estimated market value for the units rather than a sum based on the limited offers made by Registered Providers for the units. This produced an outcome of £172,513. The independent review follows the approach that it considers to be appropriate and advocated by the Mayor’s SPG and produced an outcome of £924,000 as a viable commuted sum.
- 7.20 The applicant contested the outcome of the independent review and the inputs used by the assessor. Further modelling was undertaken by the applicant using the Viability Tested Route that produced a significantly lower outcome of £74,000. However, without prejudice to the viability assessment conducted by his assessor, the applicant made an improved offer of £450,000.
- 7.22 On the basis of the improved offer officers instructed a further review of inputs to be undertaken by the independent assessor.
- 7.23 The £450,000 offer from the applicant was following an initial offer/assessment of the payment-in-lieu at £172,513. This was based on the viability of the scheme as they saw it (bearing in mind there is an existing s106 in place committing the applicant to 5 x affordable homes).
- 7.24 The applicant’s viability assessor suggested the Council should analyse the viability before agreeing the commuted sum based on guidance (Mayors SPG), but the affordable housing quantum is already agreed and secured on this site so we are of the view that just the payment-in-lieu (PiL) calculation is up for discussion and should be that in the draft London Plan and Mayor’s Viability SPG.
- 7.25 Based on further research, officers were advised that the open market sale figure of £1,755,000 the applicant has stated for the 5 affordable housing flats is reasonable and fair. This leaves the affordable housing value part of the equation, which recognising some of the applicant’s argument and without prejudice, the independent advisor has taken the higher affordable housing value to a Registered Provider from viability stage of £1,136,000 which gives a payment in lieu of £639,000 as opposed to the highest Registered Provider offer the applicant received of £851,600 which gives a payment in lieu of £923,400.
- 7.26 On the basis of the conclusions of the revised assessment advice set out by the independent assessor indicates that they consider £639,000 as a robust, fair and reasonable payment in lieu figure based on policy and guidance. In

response the applicant has subsequently made a final offer of £500,000 as a payment in lieu.

- 7.27 Officers consider that the approach to undertaking the calculation by the independent assessor is robust in this instance but highlights the grey area of the affordable units' value because the Mayor's guidance does not deal with that in this scenario, the circumstances of which are somewhat unusual.
- 7.28 The NPPF states that "the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in circumstances since the plan was brought into force."
- 7.29 As a matter of judgement members may reach the view that given potential variations in outcomes for the viability assessments greater weight may be accorded to the delivery of housing in this instance and, given the purpose of the contribution would remain to deliver affordable housing, the off-site contribution may be accepted.

Options in the event of not agreeing to vary the S106 to a commuted sum.

- 7.30 The Council has in the past used accumulated Council funds for affordable housing to provide financial assistance to a Registered Providers to deliver affordable housing. Officers would question whether this would be fruitful in this instance given the low level of interest in the site and the small number of units involved.
- 7.31 In the event that variation is not agreed and the matter were to be contested through the courts the applicant may conduct more rigorous financial appraisals which in turn would require scrutiny by the Council. Officers submit that the outcomes pertaining to the sum of any contribution that might result from such detailed are unknown and that it is not possible to advise members at this moment that the sum currently offered would be achieved.

8. ENVIRONMENTAL IMPACT ASSESSMENT

- 8.1 The proposal is not a planning application and the proposed changes do not impact on the environmental criteria which formed the basis of the earlier assessment. The proposals do not fall to be considered under the Environmental Impact Assessment Regulations.

9. LOCAL FINANCIAL CONSIDERATIONS

Mayor of London Community Infrastructure Levy and London Borough of Merton Community Infrastructure Levy

- 9.1 The development is liable to pay the Mayoral Community Infrastructure Levy [CIL], and the Merton Community Infrastructure Levy. CIL contributions have already been made by the applicant and the proposals do not alter this.

10. CONCLUSION

- 10.1 Adopted planning policies consider cash in lieu contributions as only to be accepted where they would have demonstrable benefits in furthering the affordable housing and other policies of the London Plan.
- 10.2 Given the protracted negotiations with the applicant, the failure to secure a registered provider, the potential shortcomings of other “affordable” housing models on site including discounted market sales, members may consider that the offer broadly fulfills the wider objectives of London Plan policy insofar as it delivers the potential to deliver affordable housing elsewhere in the Borough. The contribution may reasonably be pooled with other financial contributions to help deliver affordable housing on other sites.
- 10.3 It is open to question as to whether using accumulated Council funds for affordable housing to provide financial assistance to a Registered Provider in this instance would be fruitful given the low level of interest in the site and the small number of units involved.
- 10.3 Officers acknowledge that there remains a shortfall between the off-site contribution that independent assessors consider the scheme could deliver (£639,000) and the developer’s offer (£500,000). The offer is however significantly greater than that derived from the developer’s own financial analysis (£172,000). Viability inputs are not static and are sensitive to numerous factors including changes in lending rates and property prices. Economic commentators such as Price Waterhouse Coopers have observed that UK house price inflation has been weakening steadily since mid-2016. Weak house price growth in England has been driven by falling prices in London and surrounding areas. Annual house price inflation in the capital turned negative in July 2018 and (as at July 2019) has remained so in every month since then. Given a fall of approaching 4% in the average price for flat sales in Morden in the last 12 months a pragmatic solution to the current impasse may be to endorse the proposed variation to the S106 agreement.

RECOMMENDATION

Grant variation of S106 agreement subject to the following:

- a) That in place of the provision of 5 affordable units on site the amended S106 provides for the payment to Merton Council of a financial contribution of not less than £500,000 to be paid in two instalments with trigger date for the second payment to be no greater than 12 months from the date of the Deed of Variation.**
- b) The applicant agrees to meet the Council’s costs of preparing (including legal fees) the amended S106 agreement; and**
- c) The developer agreeing to meet the Council’s costs of monitoring the S106 obligations.**

[Click here](#) for full plans and documents related to this application

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