

SLOUGH BOROUGH COUNCIL

REPORT TO: PLANNING COMMITTEE **DATE:** 17th May 2011

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WARD(S): Central.

PART I
FOR DECISION

Variation of Section 106 Agreement for Railway Terrace / Mill Street

1.0 Purpose of Report

To seek authority to vary an existing Section 106 Agreement in connection with a new developer wishing to restart a part completed building and reduce the total financial contributions currently due.

2.0 Recommendation

The Committee is requested to resolve to agree a reduction of the financial contributions in the existing Section 106 Agreement by 15% and forego contributions for 20 additional homes as set out in the report and for Officers to negotiate further details of the variation.

3.0 Community Strategy Priorities

A Cleaner, Greener place to live, Work and Play

If a developer does not recommence work the unsightly half built structure will remain for an uncertain period. Being in a prominent position this will affect the image of the town and regeneration opportunities. The effect on housing, transport and education services are referred to below.

Prosperity for All

If the proposal is agreed the development can be completed contributing to regeneration of the area in terms of let commercial space, occupied homes and financial contribution for affordable housing elsewhere in the town.

4.0 Other Implications

(a) Financial

If Section 106 financial contributions are less than originally expected the Council will have to forego some affordable housing. It may have to help fund new school places itself dependent upon the number of children that come from the new flats.

(b) Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
The Committee is requested to resolve to agree a reduction of the financial contributions in the existing Section 106 Agreement and those in a draft variation of it	<p>If not agreed regeneration objectives likely to be delayed and uncertain if original contributions will ever be received.</p> <p>If agreed the building is likely to be completed and some contributions received. But the Council may have to fund some school places as indicated under financial implications and accept reduced transport benefits. There is a small risk of the development restarting and then stopping again before contributions are paid.</p>	<p>Agree the variation to the existing Agreement but with a time limit for restarting development.</p> <p>Education Section to be aware of type of occupants re numbers of children.</p> <p>Discussions on going to see if this can be mitigated.</p>

(c) Human Rights Act and Other Legal Implications

No implications.

(d) Equalities Impact Assessment

No Impact

5.0 **Supporting Information**

5.1 Southeast Limited, the developer of two large buildings north of the station, went into administration in late 2008. The site was called Metropolis or Slough Central. The buildings are just over half complete but not yet fully clad. The site is now under the control of NAMA the Irish bad property debt organisation. The approved development is on a prominent site and comprises 229 flats and commercial units on the ground floor. This large scheme was originally agreed to help regenerate the area north of the station and involved some compromises in terms of size, design and Section 106 package to reach agreement with the previous owner. Part of the Section 106 affordable housing contribution has already been paid. An application for a further 20 flats and other changes was agreed by the Planning Committee in July 2008. The application is outstanding as the developer went into administration before signing an associated Section 106 variation for additional contributions.

5.2 One Housing Group wish to purchase the site and with partner Kingstreet Ltd. to restart development. They have made contact with original suppliers and project consultants; assessed the state of the incomplete buildings and said they could restart work in June. They have supplied a financial viability study and said that

the scheme is not viable with the scale of existing Section 106 contributions. The market for flats and development values have obviously changed significantly since the original scheme was devised between 2004 and 2007.

- 5.3 As a result of negotiations between the developer and Council officers the current proposal to vary the Section 106 etc. is that the remaining financial contributions of the existing agreement, at today's value, be reduced by 15%. However the new developer is prepared to pay the contributions earlier than the thresholds in the existing agreement. The new proposal is for 25% of the total financial contribution to be paid on the first occupation of a home and the remainder on the 58th occupation. These sums would not be indexed linked. The existing agreement had a small highways payment on the first occupation, a major housing payment at 58 occupations and the remainder at 76 and 152 occupations. The new proposal allows a much larger affordable housing payment at the first occupation and advances payment of education and transport sums.
- 5.4 The financial contributions are for the Council to spend on affordable housing, education and transport/ highway (including station north forecourt enhancement). The affordable housing contribution is 85% of the total. The intention is that the reduction in payments is applied to each of the contributions equally. The proposal includes a provision for the original Section 106 package to still apply if the development has not started within 4 months of the variation agreement.
- 5.5 Regarding the 2008 outstanding planning application for 20 additional flats etc. the new variation proposal has been negotiated on the basis that no additional contributions are paid for the extra homes (unless more than 4 months passes without a restart). If this new Section 106 variation proposal is approved it will in part supersede the Section 106 package referred to at the 31st July 2008 Planning Committee (item 6) re the extra 20 homes application. That planning application can be approved alongside the variation to the existing Section 106 agreement. The previous developer had prematurely started some work on the extra homes.
- 5.6 As a result of the economic down turn and developer requests to vary Section 106 agreements Cabinet considered this issue at its January 2009 meeting. Furthermore the February 2009 Planning Committee considered this matter in relation to this site. The relevant resolutions are appended. In brief the Cabinet agreed the principle of variations for half-built 'eye sore' schemes if there are regeneration benefits. The Planning Committee agreed the principle of a variation. The Government has also recently announced that Council's should review existing agreements where development is not proceeding because of the downturn.
- 5.7 In relation to the Cabinet decision point (b) and request to explore options (listed at point 6) these are considered impractical or too risky for the Council or, judged against the viability of the scheme with the full 106 package, of less benefit to the Council than the reasonable certainty of receiving payments early in the development period.
- 5.8 Bearing in mind the background and the special circumstances of this site the current proposal to vary the Section 106 package is reasonable in principle. The

building has sat unfinished for nearly 2 and a half years with little prospect of the market for flats returning quickly enough such that the original contributions could be paid soon if at all. Other developers have looked at the scheme but not wished to progress it even with the option of revising contributions. One Housing Group and their partner appear to have researched restarting more than any other developer. Consequently the reasonable certainty of getting a specified sum soon compared to an unknown sum some time in the future is better.

- 5.9 Some other points to note follow. The proposal has the benefit of gaining contributions early in the development period including a substantial sum for affordable housing. The first contributions could potentially come in early in 2012. The variation proposal is time limited such that there is an incentive for the developer to restart the development. If there is no restart the original Section 106 will still apply. In addition the Council will gain greater influence over station forecourt works without the developer being involved. A point to note but not part of the Section 106 proposal is that One Housing Group is in discussion with the Housing Section about affordable housing on the site. One Housing Group Limited was formed from a grouping of Housing Associations and remains a Register Provider of affordable housing but is involved with housing for sale also.
- 5.10 Any further detail available will be reported at the Committee meeting. The main negotiations were concluded the day before the report was written and some detail or associated matters is still being clarified or confirmed.

6.0 **Conclusion**

- 6.1 Foregoing 15% of the expected financial contributions plus those linked to the additional 20 homes is clearly a big step for the Council to take. However the value of development has clearly dropped since the site was purchased and Government policy indicates Council's should consider reviewing earlier Section 106 agreements. For this scheme there are special circumstances namely the regeneration benefits; its prominent position in the town and the affect on the towns image if it remains as it is. Furthermore a very substantial sum for affordable housing elsewhere in the town will be available early in the development period. The time limited proposal ensures that the original contributions will remain if the development is not restarted within 4 months. Overall gaining a certain, but reduced, financial contribution soon is better than waiting for an unknown period in the hope that the original contributions will be affordable to another developer

7.0 **Appendix**

Resolutions from Cabinet Report 19th January 2009 and Planning Committee 18th February 2009.

8.0 **Background Papers**

- '1' Section 106 Agreement 6/11/07 re planning application P/11508/003
- '2' Draft 106 agreement for 249 flats etc 2008 re planning app. P/11508/004
- '3' Statement and viability study from King Street 4th and 25th March.
- '4' Planning Committee report P/11508/003 Oct 2007

- '5' Cabinet Report and Minutes 19th January 2009.
- '6' Planning Committee Minutes 18th February 2009.

Cabinet – 19.01.09.

82. Section 106 Agreements and the Economic Downturn

Resolved-

(a) that the implications of the current position both for the development of the town and for service departments be considered;

(b) that the proposed response in Appendix A of the report be agreed as the broad basis for responding to requests to vary S.106 requirements subject to the following amendment, that the options outlined in point 6 be explored before any reduction in S.106 contributions is proposed.

Extract of Appendix A of report

6. Areas to explore to achieve a satisfactory relaxation can include the following:

- splitting payments over time
- deferring payments to a later date, e.g. when units are sold
- SBC considering taking an investment stake in developments
- linking contributions to sale values above agreed levels
- taking ownership of units rather than cash payments.

Planning Committee - 18.02.09

66. Variation of Section 106 Agreement for Railway Terrace/ Mill Street

Resolved - That the Committee approves in principle the variation of the Section 106 Agreement and authorises Officers to negotiate a suitable variation, on condition that the detail of the amended contribution be referred to and approved by the Planning Committee.