

**3/09/1930/SV - Removal of financial obligations as set out within the S106 agreement relating to LPA reference 3/07/2607/FP at Emery House, 3 Chantry Road, Bishops Stortford for The Door London Ltd**

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**Date of Receipt:** 17.12.2009

**Type:** Variation of S106 - Major

**Parish:** BISHOP'S STORTFORD

**Ward:** BISHOP'S STORTFORD - MEADS

**RECOMMENDATION**

That permission for the variation of the Section 106 agreement be **REFUSED** for the following reason:

Insufficient justification has been submitted to assess whether there is any justification for the removal or variation of the previously agreed financial contributions. The existing contributions are considered to be necessary in order to make acceptable the development which would otherwise be unacceptable in planning terms, having regard to the potential impact on local infrastructure. The existing contributions have been set by Hertfordshire County Council having regard to the 'Planning Obligations Guidance – Toolkit for Hertfordshire (2008)' and in all respects are considered to meet the tests set out in Circular 05/2005. The proposal fails to meet the requirements of Policy IMP1 of the East Herts Local Plan Second Review April 2007.

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**1.0 Background**

- 1.1 The application site is shown on the attached OS extract. The application site is some 0.2727 hectares in size with a frontage of some 28 metres onto Chantry Road.
- 1.2 Members may recall that a resolution to grant permission for the conversion and extension of the existing buildings on the site to provide 13 apartments and the conversion of the Coach House to form 1 dwelling (LPA reference 3/07/2607/FP) was given by the Development Control Committee on the 12 March 2008, subject to the applicant entering into a S106 agreement to secure financial contributions. That S106 has since been signed and the development was granted permission on 08 September 2008.
- 1.3 This application seeks to remove the financial contributions agreed within the signed S106 agreement. The applicant's justification for this application and Officers considerations are outlined below.

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## **2.0 Site History**

2.1 This site has been the subject of a number of relevant planning applications, noted below:-

3/91/0236/FN	Renewal of permission reference 3/0034/86/FP (conversion of coach house into dwelling)	Approved with conditions
3/91/0385/FP	Extension and conversion to 11 flats	Refused
3/91/1881/FP	Erection of two dwellings, with associated landscaping and access	Refused
3/96/0064/FN	Change of use of coach house	Approved with conditions
3/97/0035/FP	Erection of new dwelling	Approved with conditions
3/97/0128/LC	Demolition of existing coach house	Approved with conditions
3/01/0854/FP	Demolition of all conservatories, green house, two storey rear extension. Construction of rear and side extensions, dormers to front and rear elevations, subdivide building into two units	Approved with conditions
3/01/0864/LC	Demolition of all conservatories, green house, two storey rear extension. Construction of rear and side extensions, dormers to front and rear elevations, subdivide building into two units	Approved with conditions
3/01/0943/FP	New access off Chantry Road	Approved with conditions
3/01/0944/LC	New access off Chantry Road	Approved with conditions
3/01/2001/LC	Demolition of existing coach house	Approved with conditions
3/01/2000/FP	Demolition of coach house and erection of two storey dwelling	Refused
3/06/0492/LC	Demolition of coach house	Approved with conditions
3/06/0493/LC	Demolition of all conservatories, green houses, two storey rear projection and other minor elements of the building	Approved with conditions
3/06/0515/FN	Demolition of all conservatories, green house, two storey rear extension. Construction of rear and side extensions, dormers to front and rear elevations, subdivide building into two units	Approved with conditions
3/07/1877/FP	Conversion and extension of existing building and construction of new building at the rear to provide 14 units	Withdrawn

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3/07/1970/LC	Demolition of various buildings	Withdrawn
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### **3.0 Consultation Responses**

3.1 The County Council Planning Obligations Officer has commented that they would expect to see a viability assessment as part of the case put forward by the applicant, which would need to be assessed by a third party.

### **4.0 Town Council Representations**

4.1 At the time of writing this report no comments have been received from Bishop's Stortford Town Council.

### **5.0 Other Representations**

5.1 The application has been advertised by way of press notice, site notice and neighbour notification.

5.2 Two letters of representation have been received, one which objects to the proposal for reasons relating generally to an insufficient justification, and one which comments that they do not believe that it is appropriate to request payments and they do not consider that the type of development is appropriate in this part of the town.

### **6.0 Policy**

6.1 The relevant Local Plan policies in this application include the following:-

- IMP1 Planning Obligations

### **7.0 Considerations**

7.1 As described above, the permission for the conversion of the existing dwelling into 13 apartments and the conversion of the existing coach house into a dwelling was granted within LPA reference 3/07/2607/FP. The S106 agreement has been signed by all parties with the following contributions being agreed:-

- £7000 towards Sustainable transport measures
- £7208 towards Secondary education
- £2652 towards libraries and;
- £5330 towards youth and childcare.

- 7.2 The financial contributions amount to a total of £22,190. This current application seeks to remove those financial contributions. The applicant comments that the current economic position means that the financial contributions previously agreed prevent the scheme from taking place. The property was purchased in 2007 and planning permission was granted in March 2008. A letter from the developer indicates that, at that time, the estimated Gross Development Value for the approved development was in the region of £390 per square foot which, after taking out the value of the land, building costs and other miscellaneous costs showed a potential profit in the region of £50 per square foot.
- 7.3 Since that initial valuation however, the applicant comments that the site has been re-appraised as a result of the economic 'downturn' and the estimated Gross Development Value is now at £330 per square foot. The applicant comments that with a reduction in the value of the property, combined with putting the development on hold since the purchase in 2007 and other costs, has resulted in the development not likely to result in a profit and makes it therefore financially unviable. The S106 costs are considered by the applicant to be a burden which draws on the viability of the development and it is based on the above position that the applicant proposes that the financial contributions be reduced or removed. Apart from this communication from the developer, however, no detailed financial assessment or evidence has been submitted with the request.
- 7.4 The aforementioned contributions were recommended by Hertfordshire County Council having regard to the 'Planning Obligations Guidance – Toolkit for Hertfordshire (2008)' and, at the time where considered to be necessary having regard to the wider objectives of Circular 05/2005 to make acceptable development which is otherwise unacceptable in planning terms". The County Council document and aforementioned Circular echo the requirements of Policy IMP1 of the Local Plan which states that developers will be required to make appropriate provision for social, environmental and infrastructure costs associated with development, and minimise the impact of development. What must therefore be assessed within the planning considerations of this application is what has changed since the S106 was signed and whether the justification submitted by the applicant is acceptable.
- 7.5 Comments from the County Council Obligations Officer outline that, without a viability statement that can be tested and corroborated by a third party it is not possible to fully assess the planning merits of removing or varying the financial contributions. The Council's Planning Obligations SPD at paragraph 7.8.1 explains that, where there is a

position where the developer considers that the requirements of a legal agreement will significantly harm the viability of the development, the onus will be on the applicant to demonstrate this. As no viability statement has been submitted with the application, it is not possible for Officers to fully assess the acceptability of the justification submitted by the application. Therefore Officers consider that there is no compelling justification for removing or varying the financial obligations in this case. It remains that the obligations are necessary to mitigate against the developments impacts in accordance with the requirements of Policy IMP1 and Circular 05/2005.

## **8.0 Conclusion**

- 8.1 Whilst Officers recognise the financial position of the applicant and the need to reduce costs to make the development more financially viable, it is considered that the existing financial contributions are necessary, having regard to the requirements of Policy IMP1 of the Local Plan and Circular 05/2005. There is insufficient justification within the application for Officers to determine whether the financial position and viability of the development should allow the variation or removal of the financial contributions. Officer can only therefore recommend that the application be refused for the reason outlined above.