

**3/11/2137/SV – Modification of s.106 agreement in respect of the commercial buildings approved under ref: 3/04/0657/OP by the removal of a £125,000 Highways Contribution at 95-97 London Road, Bishop's Stortford, CM23 3DU for Tanners Wharf Ltd**

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**Date of Receipt:** 20.12.2011

**Type:** Variation of S106 – Major

**Parish:** BISHOP'S STORTFORD

**Ward:** BISHOP'S STORTFORD ALL SAINTS, BISHOP'S STORTFORD CENTRAL AND BISHOP'S STORTFORD SOUTH

**RECOMMENDATION:**

That East Herts Council agree a variation of the Section 106 agreement pursuant to application 3/04/0657/OP, to remove the following financial contribution:

- A highways contribution of £125,000 towards the Bishop's Stortford Transportation Plan.

**Directive:**

1. Notwithstanding the above, the applicant is advised that the legal agreement cannot, however, be varied without the agreement of Hertfordshire County Council as co-signatory to the agreement.

\_\_\_\_\_ (213711SV.MP)

**1.0 Background:**

- 1.1 The application site is shown on the attached OS extract. It is located in-between the railway line and the River Stort with access gained off London Road close to the public house known as The Tanners Arms.
- 1.2 The site comprises a number of buildings, some which have not been completed. The buildings were originally granted outline planning permission within LPA reference 3/04/0657/OP for 'The erection of 130 Apartment Dwellings, Erection of 2no. Commercial (B1) Office Buildings, Undercroft Car Park, Sub-station and Domestic Refuse Enclosure". Subsequent reserved matters applications (as set out in section 2 below), granted full consent for the development.
- 1.3 The approved development commenced on site but ceased in

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December 2008 when the developer, Herts and Essex Homes Ltd and Bishop's Stortford Development Ltd went into receivership.

- 1.4 The approved commercial office buildings lie to the far north of the site but only one building is partially constructed – office building A. Office building B (which lies to the south of A), has been started in terms of piled foundations only.
- 1.5 The residential element, comprising of 130 apartments is split into two areas – the open market housing (90 residential units) and the affordable units comprising of 40 residential units being owned and developed by Paradigm Housing Association. The affordable units have been completed and some of the open market residential units have also been completed. The access road/junction into the site has now been implemented.
- 1.6 The applicant seeks consent to vary the S106 agreement by removing the financial contribution relating to the office development. This involves a contribution of £125,000 towards works contained in the Bishop's Stortford Transportation Plan. This amendment would require the agreement of both this Council and also the County Council as signatories to the agreement. The applicant therefore needs to obtain permission from both Authorities before the agreement can be modified and this application seeks this Council's agreement.
- 1.7 The applicant hopes to complete the construction of the office buildings on the site and has submitted justification for the removal of this financial contribution in the form of viability appraisals.
- 1.8 That information was submitted at the 'pre-application' stage and has been considered by an independent surveyor from DVS, which is the commercial arm of the Valuation Office Agency. A further viability assessment has also been carried out by Lambert Smith Hampton. The full considerations of those viability assessments are explained within section 7.0 of this report.

## **2.0 Site History:**

- 2.1 The following is the relevant planning history relating to the site.

<b><u>LPA reference</u></b>	<b><u>Description of development</u></b>	<b><u>Decision</u></b>
<u>3/11/0688/SV</u>	To remove commuted sums apart from £125,000 Commercial Highways contribution	Approved

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<u>3/07/2675/FP</u>	Erection of 4 storey office for B1 Office Use	Approved
<u>3/07/1220/RP</u>	Erection of a 4 storey office for B1 Office Use	Approved
<u>3/06/2304/FP</u>	Change of use of part existing undercroft car park for residents fitness suite and external alterations to form door and window openings	Approved
<u>3/05/0824/RP</u>	Approval of reserved matters for the erection of 130no. apartments	Approved
<u>3/04/0657/OP</u>	Erection of 130 Apartment Dwellings, Erection of 2 no. Commercial (B1) Office Buildings, undercroft Car Park, Sub-station and Domestic Refuse Enclosure	Approved

### **3.0 Consultation Responses:**

- 3.1 The County Highways Authority originally objected to the removal of the highways contribution. The Highways Officer commented that, from the information submitted, there was no suggestion that the development is unviable because of the highways contribution or that removal of that contribution would make the scheme viable. The Highways Officer commented that the viability of the development has been based on residual land value of this development only and not on comparison developments for the site which may be more viable development options. The Highways Officer further commented that the matter has been carefully considered and reported to Members who resolved that there were insufficient grounds to justify removal or reduction of the financial contributions.
- 3.2 Since that response from the Highways Authority, additional work has been undertaken by the applicant (discussed in more detail below) which the Highways Authority has now responded to.
- 3.3 The Highway Authority's latest position is that, after reporting the matter to the County Councils 'Key Issues Panel', it was decided to agree to reduce the required financial contribution to £88,590, index linked from 01 November 2011 and that car parking on the site be reduced to 60 spaces.

### **4.0 Town Council Representations:**

- 4.1 No consultation responses 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. No response has been received however.

**6.0 Policy:**

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

IMP1 Planning Conditions and Obligations

6.2 The Councils 'Planning Obligations SPD' is also of relevance, as is the Hertfordshire County Council 'Planning Obligations Toolkit'.

**7.0 Considerations:**

7.1 As has been set out above, the site has been granted planning permission for the provision of 130 residential units and 2 office buildings. A s.106 agreement was signed requiring the provision of various financial contributions to offset the impact of the development on local infrastructure. The development has, however, not been fully implemented as the previous developer went into receivership in 2008.

7.2 Members will note that consent has previously been granted by the Committee to vary the financial contributions relating to the residential element of the scheme within LPA reference 3/11/0688/SV. That application was reported to Members on 20 July 2011. A viability assessment was submitted with that application, which showed that the residential element of the scheme was unviable. Despite the viability appraisal, however, the County Council maintained a requirement for some reduced financial contributions and Members agreed to a variation on that basis.

7.3 The remaining clause of the agreement which relates to the commercial element of the scheme is the financial contribution to Highways works and it is this obligation that the applicant seeks to have removed from the agreement.

7.4 Officers have considered this request carefully since of course it will have implications for the provision of infrastructure improvements related to the development. However, this should be balanced against the existing poor, unfinished appearance of the site. The buildings,

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being only partially implemented, have been open to the elements for the last two years and have, in Officers view, a significant adverse impact on the appearance of the site and its surroundings.

- 7.5 The applicant indicates that it is their express intention to complete the two buildings, making them available for commercial use which in turn would achieve the Council's aspirations of providing building for employment purposes in the town and would also greatly improve the appearance of the site and surroundings.
- 7.6 The guidance in the Council's Supplementary Planning Document (SPD), 'Planning Obligations' sets out that, where a developer considers that financial contributions will make a development unviable, the onus will be on the developer to demonstrate this and, where necessary, this will be independently reviewed. The applicant also refers the Council to recent written ministerial statements from the Rt. Hon Greg Clark MP which sets out that Local Authorities should reconsider, at a developers request, existing section 106 agreements that currently render schemes unviable and, where possible, modify those obligations to allow development to proceed, provided that this continues to ensure that the development remains acceptable in planning terms.
- 7.7 In this case, a financial appraisal has been submitted by the applicant which has been reviewed independently by DVS, in line with the requirements of the Planning Obligations SPD. DVS comment that, following their own research and assessment of the development, a policy compliant scheme with a transport contribution of £125,000 shows a residual land value of £250,000. This is, however, less than would be expected for a site of this type and does not reflect the fact that the Banks involved in the site will have to write off around £10million in debt that has already been incurred at this site. DVS advise the Council that the scheme is not viable in the current market and would suggest that consideration be given to a reduction in financial contributions which may assist in the site coming forward for completion.
- 7.8 This independent advice was considered initially by the Highway Authority and their preliminary comments on the application are set out above. To address the Highways Authorities concerns, however, the applicant sought a further review on the matter by Lambert Smith Hampton (LSH).
- 7.9 The LSH report concurred with the methodology undertaken by DVS. They commented that the comparison method is only reliable if full and

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recent information is available. However, they are not aware of any recent office developments of this nature in Bishops Stortford and therefore concur that the residual valuation method is appropriate. In summary, the LSH valuation concurred with the DVS report and they state that “If the planning Authority wish to see the scheme progress then, in the circumstances, this can only be achieved if the s106 requirement is varied.”

- 7.10 The professional advice therefore remains that the scheme is not currently viable with the s106 contribution in place. Having regard to the viability assessments carried out and government advice to seek to bring forward developments which have stalled because of viability issues, Officers consider that there are reasonable grounds to remove the transport contribution in this particular case.
- 7.11 The release of the s106 contribution may not, of itself, render the scheme financially viable but it will, in Officers opinion, give impetus for the applicant to complete the Office development site which will in turn improve the appearance of the site and its surroundings and Officers consider that significant weight should be given to this.
- 7.12 Officers do recognise that the S106 contributions were put in place to offset the impact of the development on local infrastructure. The removal of the contribution will clearly therefore has some degree of impact on infrastructure serving Bishop’s Stortford, including potential measures for sustainable transport measure. However, Officers consider that the benefits of completing the development outweigh the harm that would result in this case.
- 7.13 The County Council have been consulted on this proposed variation of the agreement and, whilst they have agreed to reduce the contribution to £88, 590.00, they are unwilling to remove it altogether. As mentioned previously, the applicant will need the agreement of both Councils before the agreement can be modified and it will therefore be necessary for them to progress negotiations with the County Council in this respect. Your Officers, however are satisfied that there are reasonable and justifiable grounds upon which to vary the agreement as proposed and therefore, it is recommended that East Herts Council, for its part, agrees to the proposal.
- 7.14 In addition to the reduction in the contribution to £88,590.00, the County Council has also suggested a reduction in the level of parking provision on the site. However, no detailed information has been submitted by the Highway Authority as to the reasons behind this. In any event, a reduction in the number of parking spaces cannot be considered within

this application and would require the submission of a revised application for planning permission. Furthermore, Officers consider that the level of parking provision which was granted planning permission originally was considered to be appropriate and, without a robust justification for a reduced provision, it is unlikely that such a suggestion would be acceptable.

- 7.15 The alternative to not removing the s106 contribution may potentially mean that the site remains in its current semi-constructed state or indeed that it deteriorates which would clearly be harmful to the amenity of the site and its surroundings.

## **8.0 Conclusion:**

- 8.1 The current unfinished development is unsightly and visually intrusive in the surrounding area, having being left uncompleted since December 2008. It thereby has a negative impact on the character of the surroundings. It is Officers view that, in the current economic climate, the scheme is no longer financially unviable particularly when the existing and substantial debts associated with the site are taken into account. This view has been supported by two independent financial viability assessments.
- 8.2 The removal of the s.106 contribution would, however, provide some confidence and impetus for the applicant to complete the development. This, in the view of Officers, will significantly improve the visual amenity of the site and its surroundings and will enable the occupation of the office development, which will have the added benefit of providing a modern purpose built development to help support the local economy.
- 8.3 The applicant has provided adequate justification that the s.106 contributions are not viable, in line with the requirements of the Planning Obligations SPD and Officers consider that the benefits of completing the development would outweigh the loss of the transport contribution.
- 8.4 It is therefore recommended that this Council agrees to the variation of the agreement whilst accepting that the applicant will also have to seek the agreement of the County Council separately.