

5b 3/11/0688/SV – Removal of all commuted sums except £125,000 towards Commercial Highways Contribution at 95-97 London Road, Bishop’s Stortford, CM23 3DU for Cala Homes Limited

Date of Receipt: 13.05.2011

Type: Variation of S106 - Major

Parish: BISHOP’S STORTFORD

Ward: BISHOP’S STORTFORD CENTRAL, SOUTH AND ALL SAINTS

RECOMMENDATION:

That the S106 legal agreement be varied to remove the following financial contributions:

- A residential transport contribution of £75,000 payable on implementation of the residential element towards the Bishop’s Stortford Transportation Plan;
- Highways contribution of £80,000 towards the future Goods Yard/London Road Bishop’s Stortford signalisation scheme and/or other highway improvements in the vicinity of the application site;
- Primary education contribution of £26,883;
- Secondary Education contribution of £57,470;
- Library contribution of £20,424;
- Youth and Child Care contribution of £17,223;
- Community contribution of £10,000;
- CCTV contribution of £7,500;

_____ (068811SV.MP)

1.0 Background:

- 1.1 The application site is shown on the attached OS extract. The site is located in-between the railway line and the River Stort with access gained off London Road by the public house known as The Tanners Arms.
- 1.2 The site comprises a number of partially constructed buildings. Those buildings were 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.

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- 1.3 The approved development commenced on site but ceased in 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.
- 1.6 The affordable units have more or less been completed. However, they are not occupied as they are unable to be accessed as the access road/junction into the site has not been implemented.
- 1.7 The open market housing makes up the most significant part of the development and is in varying stages of completeness. Those units comprise of four 'blocks', A, B, C and D. The applicant for this application, Cala Homes, interest lies with that part of the development only as they are project managers charged by the banks involved with the receivership, with completing that part of the scheme.
- 1.8 A S106 agreement was entered into within the original outline planning application (LPA reference 3/04/0657/OP), which included provision for the following:
 - A residential contribution of £75,000 payable on implementation of the residential element towards the Bishop's Stortford Transportation Plan;
 - A commercial contribution of £125,000 on the implementation of the office development towards the Bishop's Stortford Transportation Plan;
 - Highways contribution of £80,000 towards the future Goods Yard/London Road Bishop's Stortford signalisation scheme and/or other highway improvements in the vicinity of the application site;
 - Primary education contribution of £26,883;
 - Secondary Education contribution of £57,470;
 - Library contribution of £20,424;
 - Youth and Child Care contribution of £17,223;
 - Community contribution of £10,000;

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- CCTV contribution of £7,500;
- Monitoring costs of £1,000 and;
- Legal costs of £1,000.

1.9 The applicant seeks consent to vary the S106, removing all of the above financial contributions, except £125,000 transport contribution relating to the office development.

1.10 Cala Homes seek to complete the open market residential development of the site only and have submitted justification in the form of viability appraisal to support the application.

1.11 That information was submitted 'pre-application' and has been considered by an independent surveyor from DVS, which is the commercial arm of the Valuation Office Agency. The full considerations of that viability assessment 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.

<u>LPA reference</u>	<u>Description of development</u>	<u>Decision</u>
<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 Planning Obligations Officer comments that the County Council agree to reduce the contributions originally sought on this occasion, based on current local Service need, taking into account the

particular circumstances of the case.

- 3.2 The Officer comments that the County Council are in agreement that the "Highway Contribution" of £80,000 can be removed and the contribution towards "Youth and Childcare" can be reduced by 50% from £17,223 to £8611.50 by removing the Childcare element. This results in an overall reduction of £88,611.50. However, they consider that the remaining contributions are still required to address the impact of this development on local service provision.

4.0 Town Council Representations:

- 4.1 No consultation responses have been received from Bishop's Stortford Town Council at the time of writing this report.

5.0 Other Representations:

- 5.1 The application has been advertised by way of press notice, site notice and neighbour notification.
- 5.2 3 letters of representation have been received which raise concern that the loss of the contributions will unreasonably disadvantage the local community and infrastructure.

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. An S106 legal agreement was signed requiring the provision of various monies 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 As existing, the development site is considered by Officers to be of a poor appearance as the buildings, being only partially implemented

have been open to the elements for the last two years. The applicant, Cala Homes, is now instructed by the receiver to complete the residential element of the scheme and is reviewing financial contributions in order to make the development more viable to complete. As part of their role, Cala Homes are also involved with ensuring that access arrangements into the site are completed. This would ensure access to all parts of the residential development of the site, including the affordable homes.

- 7.3 The guidance in 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.
- 7.4 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 if the development were started again in the current market with all the S106 contributions mentioned above and with a profit level of 20% (which is considered by DVS to be a reasonable level), the residual land value would be approximately £330,000 or £100,000 per acre. This, in the view of the independent assessor, would not therefore be a financially viable scheme.
- 7.5 On the basis of a partially completed scheme, DVS comment that the site would show a residual land value of £5million with a potential profit of 20% to the purchaser. If the development is completed by the applicant, Cala Homes, on behalf of the Receiver, the overall surplus would be in the region of £10million. Such a development would, in that case therefore be viable.
- 7.6 However, DVS set out that the scenario of completing the partially implemented scheme does not take into account the current losses incurred as a result of the developer going into receivership. The applicant indicates that the site has incurred losses which are in the region of £18million. When that figure is taken into account, the completion of the partially implemented development is not, in the view of DVS, financially viable.
- 7.7 The advice from DVS essentially sets out that the site as existing has incurred very significant debts which the receiver must absorb to complete the development. Taking into account that very significant debt (£18 million), to complete the development, even without the

financial contributions, will still make the completion of the development unviable. However, in the view of DVS, the removal of the financial contributions will help give some confidence for the receiver to proceed in completing the development, which will allow the development to be completed.

- 7.8 The applicant relies on the viability information to support their application to vary the S106 contributions. In addition, the applicant also refers to advice from The Rt. Hon Greg Clark MP in a written statement which set out that:-

“To further ensure that development can go ahead, all local authorities should reconsider, at developers' request, existing section 106 agreements that currently render schemes unviable, and where possible modify those obligations to allow development to proceed; provided this continues to ensure that the development remains acceptable in planning terms.”

- 7.9 The applicant has provided such advice which has been reviewed independently by DVS. That advice from DVS is that the development is unviable, even without S106 contributions. Having regard to those considerations and the statement released by Central Government, as noted above, Officers consider that there is therefore reasonable grounds to remove S106 contributions, in this particular case.
- 7.10 It is however considered reasonable to only remove the S106 contributions relating to the residential element of the scheme. There is assurance that Cala Homes seek to complete this part of the scheme. As previously set out the residential buildings, A, B, C and D are in a poor condition which is considered to be harmful to the visual amenity of the site and the surroundings. The release of S106 contributions relating to this element of the development will give impetus for the applicant to complete that element of the development site which, in the view of Officers, will improve the visual aesthetics of the site and locality. In addition, completion of the site will also allow the access road/junctions to be implemented which will enable the affordable housing units to be accessed and occupied. Officers consider that significant weight should be attached to those considerations, in determining this application.
- 7.11 Officers do recognise that the S106 contributions were put in place to offset the impact of the development on local infrastructure and acknowledge the concerns in respect of this issue, as raised by letters of representation. The removal of the S106 contributions will clearly

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therefore have some degree of impact on infrastructure serving Bishop's Stortford, including education, transportation, local services and community facilities.

- 7.12 The County Council have been consulted on this application and have commented that they are in agreement for the S106 contributions to be varied, having regard to the particular circumstances of this case. However, they are only in agreement for a proportion of the contributions to be removed – resulting in the reduction of contributions by £88,611.50. They state that the remaining contributions are still required to address the impact of this development on local service provision.
- 7.13 However, balanced against this, Officers are mindful that it is unviable to complete the development and, the completion of the development will have added benefits of enhancing the existing visual amenity of the site, allowing the affordable units to be provided and, in the short term, will provide employment in the construction of the units. Those considerations are not, in the view of Officers fully acknowledged by the County Council.
- 7.14 The alternative to not removing the S106 contributions may potentially mean that the site remains in its current semi-constructed state which, in the view of Officers is visually harmful to the amenity of the site and surroundings.

8.0 Conclusion:

- 8.1 The site as existing is mid construction and is of poor visual appearance, having being left uncompleted since December 2008. If the development were to be started again this scheme would be unviable and to complete the development from its current state is also unviable, when the existing debt of £18million is taken into account.
- 8.2 The removal of the S106 contributions will not make the development viable, but will provide some confidence and impetus for the applicant to complete the development. This, in the view of Officers, will improve the visual amenity of the site and its surroundings and will enable the affordable housing to be occupied.
- 8.3 The applicant has provided adequate justification that the S106 contributions are unviable, in line with the requirements of the Planning Obligations SPD. There are added benefits of removing the financial contributions which, in the view of Officers, outweigh the impact of the development on local infrastructure, in this case.