

PART A	
Report of: DEVELOPMENT MANAGEMENT SECTION HEAD	
Date of Committee:	7th January 2016
Site address:	35-37 Marlborough Road, Watford
Reference Number :	12/01263/EXT
Description of Development:	Application to modify Section 106 planning obligations pursuant to planning permission 12/01263/EXT
Applicant:	Mr N Hussein (Gatsby Lodge Ltd)
Date received:	11th December 2015
Ward:	Central

SUMMARY

Planning permission was granted on 9th April 2013 for the renewal of planning permission ref. 09/00540/FULM for the demolition of the existing dwellinghouses and the construction of a new development of 17 flats. This planning permission was accompanied by a Section 106 Unilateral Undertaking which contained various obligations. One of these was the provision of 6 no. 1 bed flats on the site for affordable housing. The applicant has requested that the clauses relating to the provision of the affordable housing units be deleted as no Registered Provider is willing to purchase the units. This is due to the fact that the units are too small and do not meet the minimum floor areas required by the Homes and Communities Agency. In place of the on-site provision of affordable housing, the applicant has agreed to make a financial payment to the Council of £177,200 towards the provision of affordable housing or other housing to meet identified needs within the Borough. This is considered acceptable.

The Development Management Section Head recommends that the Section 106 Unilateral Undertaking be modified, as set out in the report.

BACKGROUND

Planning permission was granted on 9th April 2013 for the renewal of planning permission ref. 09/00540/FULM for the demolition of the existing dwellinghouses and the construction of a new development of 17 flats. This planning permission was accompanied by a Section 106 Unilateral Undertaking which contained the following obligations:

- £6,180 towards the provision or improvement to open space
- £1,875 towards sustainable transport measures
- £860 towards education facilities
- £40 towards childcare facilities
- £15 towards youth facilities
- £385 towards library facilities
- £2,000 to exclude the development from the controlled parking zone
- £500 monitoring fee
- Provision of fire hydrants to serve the development
- Provision of 6 no. 1 bed units for affordable housing (1 x social rent, 4 x affordable rent and 1 x shared equity by tenure)

The planning permission has not been implemented and will expire on 9th April 2016.

Under Section 106A (1)(a) of the Town and Country Act 1990 (as amended), a planning obligation may be modified or discharged by agreement between the local planning authority and the person against whom the obligation is enforceable. If the application is refused then the applicant has the right to appeal.

Site and surroundings

The site is located at the junction of Marlborough Road and Francis Road and comprises a semi-detached pair of 2 storey, late Victorian houses sited facing Marlborough Road. These are of a substantial size, incorporating accommodation in the roof served by

dormer windows and are currently in multiple occupation. Crossovers exist on Marlborough Road and Francis Road leading to small, on-site parking areas. The surrounding area is characterised by two storey, terraced, Victorian houses although the northern side of Marlborough Road comprises larger, semi-detached houses, similar to those on the application site.

Proposal

An application under Section 106A(1)(a) of the Town & Country Planning Act 1990 (as amended) to modify the affordable housing obligations set out in the Unilateral Undertaking forming part of planning permission ref. 12/01263/EXT.

It is proposed to remove the requirement to provide 6 units of affordable housing on the site and to pay the Council a sum of £177,200 towards the provision of affordable housing or other housing to meet identified housing needs in the Borough.

Planning History

08/00246/FULM – Application for the demolition of the existing houses and the erection of 16 studio flats and 4 one bed flats withdrawn in April 2008.

08/01411/FULM – Planning permission refused in February 2009 for the demolition of the existing houses and the erection of 18 flats for 3 reasons. No appeal was made against this decision.

09/00540/FULM – Planning permission was refused on 22nd September 2009 for the demolition of the existing pair of semi-detached houses and the erection of 17 flats in a three storey building for a single reason. An appeal against this decision was allowed and planning permission granted in April 2010.

12/01263/EXT - Renewal of planning permission ref. 09/00540/FULM granted in April 2013 for the demolition of the existing houses and the erection of 17 flats. This permission has not been implemented.

CONSULTATION

None.

APPRAISAL

Policy HS3 of the Watford Local Plan Core Strategy states that 35% affordable housing will be sought on all major applications. Only in exceptional circumstances will a lower provision be considered, where the developer can demonstrate exceptional planning or other constraints on the development of the site. The mix of affordable housing should be 20% social rent, 65% affordable rent and 15% shared ownership.

In this case, the applicant has been willing to provide the 6 units of affordable housing, however, he has been unable to secure a Registered Provider to purchase the units (the unilateral undertaking requires a lease to be granted of at least 125 years). He has stated that 9 Registered Providers (RPs) have been approached and all have declined to secure the units for the following reasons:

- The size of the units are too small as standards have changed since the planning permission was granted;
- No separate entrance is provided for the affordable units;
- One bedroom and single person units do not meet their demand.

The 1 bed flats within the development have internal floorareas of 32.5-39.7sqm. Advice received from the Council's Housing team states:

“RPs look at a minimum space standard for a one bed of 47-48sqm. No RP will look at one bed one person flats as they always prove hard to let and then, as is typical, the client will move a partner in and they are overcrowded.”

As such, the applicant is unable to meet the requirements of the Unilateral Undertaking and is, therefore, unable to implement the planning permission. This is a matter that is

essentially outside of the applicant's control as neither he (nor the Council) can force a Registered Provider to take a lease on the approved units which do not meet their minimum requirements and for which they would be unable to secure funding. It is therefore considered that this is an exceptional case where an alternative means of affordable housing provision should reasonably be considered by the Council. The most obvious alternative solution would be for the Council to accept a financial payment in lieu of on-site provision. Although this is not policy compliant in respect of Policy HS3, nevertheless, it is a form of provision that many other Councils accept. The difficulty is in establishing what an appropriate payment would be as the Council has no mechanism for calculating this.

The applicant has also submitted a financial viability statement with their request which seeks to demonstrate that, even without any affordable housing provision, the development would only just be viable to develop. This is based upon a number of assumptions, including a 20% uplift on existing use value for the landowner (as an incentive to sell) and a 20% profit on gross development value (GDV) for the developer. In this case, the developer (the applicant) already owns the site and, therefore, there is no need to include a 20% uplift for the landowner as an incentive to sell. This amounts to £177,200 in the viability appraisal, based upon the calculated existing use value of £886,000. Within the viability appraisal, the applicant would benefit from both the landowner uplift and developer profit. In order to off-set the proposed loss of the 6 affordable units from the site, it has been agreed that a payment equivalent to the landowner uplift will be paid to the Council. This is considered to be a reasonable approach to take in the circumstances.

The Council is currently in the process of setting up a joint venture partnership with the Watford Community Housing Trust to deliver affordable housing and other housing to meet identified needs within the Borough. One project that is currently being investigated is the provision of temporary accommodation for homeless persons that the Council has a legal duty to house. The payment proposed as a modification of the Unilateral Undertaking

could be put towards the delivery of this project or another affordable housing project within the Borough.

Human rights implications

The Local Planning Authority is justified in interfering with the applicant's Human Rights in order to achieve a policy compliant scheme that meets housing needs within the Borough. With regard to any infringement of third party Human Rights, these are not considered to be of such a nature and degree as to override the Human Rights of the applicant and therefore warrant refusal of planning permission.

RECOMMENDATION

That the Unilateral Undertaking forming part of planning permission ref. 12/01263/EXT be modified by a Deed of Variation as follows:

1. Deletion of Clauses 3.1(e) and (f).
2. Insertion of a new Clause 3.1(e) with the following wording:

“3.1(e) On commencement of the development to pay to the Council the sum of £177,200 (one hundred and seventy seven thousand and two hundred pounds) towards the provision of Affordable Housing in the Borough of Watford or other housing to meet identified housing needs in the Borough.”

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