

Subject:	Former Portslade Brewery, South Street, Portslade		
Date of Meeting:	2 December 2020		
Report of:	Liz Hobden, Head of Planning		
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Ward(s) affected:	South Portslade		

1. PURPOSE OF THE REPORT

- 1.1. To consider a request to vary the Heads of Terms of the Deed of Variation to the Section 106 Agreement dated 3 November 2017 in connection with planning permission BH2018/02373 (original application BH2016/02459) to vary the clause requiring that two shared ownership dwellings are to be provided to instead provide a financial contribution for offsite affordable units in lieu of the on-site provision.

2. RECOMMENDATION

- 2.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** the Deed of Variation to the S106 Agreement dated 3 November 2017 related to planning permission ref: BH2018/02373 (original application BH2016/02459).

3. BACKGROUND INFORMATION

- 3.1. The permission relates to the redevelopment of the former Portslade Brewery site sited off South Street within the Portslade Old Village Conservation Area. Full planning permission was granted for the following development:
- 3.2. **BH2018/02373** - Application for variation of condition 1 of BH2016/02459 (Partial demolition of existing buildings, conversion of remaining buildings from industrial (B2) to a mixed use development comprising 37 self-contained flats (C3), 674 sqm of employment floorspace (B1) (art studios and ancillary galleries, shared community space and café). Erection of 11 new dwellings (C3). Formation of 47 parking spaces, soft and hard landscaping.) to allow amendments to the approved drawings. Variation of conditions 4, 8, 10, 11, 17, 18, 28, 29, 31, 35, 40 and 43 to allow phasing of project. Variation of condition 7 regarding accessibility, 39 regarding surface water maintenance and management and 41 regarding flooding. Granted: 29 October 2019.

Original application

- 3.3. **BH2016/02459** - Partial demolition of existing buildings, conversion of remaining buildings from industrial (B2) to a mixed-use development comprising 37 self-contained flats (C3), 674 sqm of employment floorspace (B1) (art studios and ancillary galleries, shared community space and café). Erection of 11 new dwellings (C3). Formation of 47 parking spaces, soft and hard landscaping. Granted: 3 November 2017.
- 3.4. The permission provides for a mixed used development involving the conversion of the former locally listed brewery buildings to provide 37 self-contained flats and 674sqm of employment space, demolition of the later industrial buildings and the erection of 11 new dwellings.
- 3.5. The new build dwellings are nearing completion with the overall development earmarked to be completed in the summer of 2021.

4. PROPOSAL

- 4.1. The s106 Legal Agreement requires that two of the new build dwellings must be offered up for affordable housing (shared ownership). The proposal is to vary the legal agreement to allow a commuted sum to be paid in lieu of the on-site affordable housing.
- 4.2. The two three-bedroom dwellings that have been offered up as shared ownership affordable units are marked as units 10 and 11 on the approved plans.
- 4.3. The application was deferred from consideration at the 4 November 2020 Planning Committee *“in order to allow the Housing Strategy team to reconsider the options on avoiding the move to a commuted sum, and explore the number of Registered Housing Providers being considered.”*
- 4.4. In response, therefore, a more detailed response from the Housing Strategy team has been provided, as set out in Section 5 below.

5. CONSULTATIONS

- 5.1. **Housing Strategy:** No objection
Policy Position

Planning policy CP20: Affordable Housing - requires developers to provide an element of affordable housing in developments of more than five homes. This is on a sliding scale as follows:

- developments of between 5 and 9 homes to provide a 20% housing contribution (i.e. 20% of the homes being built) as a financial contribution;
- developments of 10 to 14 homes to provide a 30% contribution either onsite or as a financial contribution and
- developments of 15 homes or more to provide a 40% contribution onsite.

- 5.2. The policy outlines that the targets set out above may be applied more flexibly where the council considers this to be justified. In assessing the appropriate level and type of affordable housing provision, consideration will be given to:
1. “local need in respect of the mix of dwelling types and sizes including the city’s need to provide more family-sized affordable housing;
 2. the accessibility of the site to local services and facilities and public transport;
 3. the costs relating to the development; in particular the financial viability of developing the site (using an approved viability model);
 4. the extent to which the provision of affordable housing would prejudice the realisation of other planning objectives; and
 5. the need to achieve a successful housing development.”
- 5.3. Supporting documents for the policy include the council’s Affordable Housing Brief which is provided to developers and includes details such as the preferred unit and tenure mix; and the Developer Contribution Technical Guidance which provides a policy overview on areas for developer contributions, enabling the granting of planning permission. The contributions to be secured as Planning Obligations under Section 106 of the Town and Country Planning Act 1990.
- 5.4. Land and development costs in the city mean that option 3 in the above list regarding viability of developments is often brought forward by developers as justification for reducing the amount of affordable homes provided as provision of affordable housing is often the most expensive contribution required. The council has an agreed policy process regarding this which requires any such viability to be independently assessed.
- 5.5. Affordable housing secured through S106 Agreements have historically been sold to a Registered Provider (RP) at a below market price in order for them to be provided as affordable homes (affordable rent or shared ownership). RPs have to assess the affordability and viability of such purchases, and the factors outlined in the table below are all elements that are included in that assessment, alongside risk regarding sale of shared ownership homes. The council has a number of partner RPs based on presence in, and commitment to the city, as confirmed via rent levels agreements etc.
- 5.6. If an RP purchaser is not found among the Council’s partners, the developer can bring forward an alternative provider, but they will need will to meet the conditions of the council’s proposed S106 Agreement. Developers may seek to pay a commuted sum to the council in lieu of providing the housing onsite (which also accords with planning policy), with such funds used towards providing affordable housing elsewhere in the city through the council’s own programmes such as New Homes for Neighbourhoods and Home Purchase.
- 5.7. Consideration is now also given as to whether the council could purchase S106 homes directly. Any risk and suitability assessment of the homes on offer would be undertaken along the same lines as that of the RPs, with viability then assessed through the Home Purchase model based on cost of purchase and projected rent levels.

Portslade Brewery

- 5.8. August 2017 – original planning application approved. Scheme of 48 homes to include 2 houses to be provided as shared ownership as the affordable housing element. This affordable housing level was agreed via a viability assessment provided by the developer which was then independently assessed for the council as part of the planning process and determined to be in accordance with policy CP20. Housing did not object as the proposal was policy compliant. Council purchase was not a consideration at this time as the Home Purchase Policy was expanded to look at S106 sites and other purchases from September 2018.
- 5.9. May 2020 – the developers approached the council with confirmation that all of the council’s partner RPs had rejected the homes proposed, as confirmed by the developer’s agent (Calford Seaden) who were employed to identify a suitable RP. The reasons for this were confirmed two homes not being viable for them, plus the high risk associated with the shared liability for the locally listed chimney in place on the site. The developer brought forward a private housing provider who had expressed an interest in a ‘leaseback’ arrangement with the council. This was not an affordable housing policy position at this time, with commuted sum recognised as a ‘fallback’ position providing affordable homes.
- 5.10. The S106 conditions required the affordable housing to be sold to an RP ahead of the developer selling the private homes and this created some urgency. The two matters of: allowing them to continue the sales process; and looking at the affordable housing; were considered as separate matters.
- 5.11. The possibility of purchasing S106 homes, where viable, was being considered by BHCC, and the opportunity to consider the houses for council purchase was recognised.
- 5.12. In November 2020, the Planning Committee agreed to defer approval of the commuted sum payment in order for Housing to consider whether purchase by the council was possible. The above table outlines the steps and matters that were considered in assessing this property for purchase and the final conclusion of this process.

Action	Detailed consideration	Outcome
Change of tenure (as currently shared ownership)	Developer confirmed they would consider this	Positive – although would require Deed of Variation to amend tenure type

Action	Detailed consideration	Outcome
Valuation was commissioned – same basis (and valuer) as those undertaken for the council’s Home Purchase Policy buy back scheme	Valuer was able to attend (using lockdown protocol). Some concerns raised regarding layout and finish of the homes. Undercroft parking considered higher risk Rear yards very small	Negative – in terms of the housing provision
Information on properties forwarded to maintenance and management teams for comment	No issue raised by Housing Management at preliminary stage Asset management raised a number of issues around: Flooring Heating Lighting Decking	Positive in principle Negative – concerns raised regarding some aspects and long term maintenance around this. Elements would have to be replaced which could affect build guarantees etc
Any other identified risks	Maintenance and emergency repair liability for listed chimney on the site	Negative - Additional cost and potentially high risk element
Viability of purchase run through the Home Purchase assessment process	Based on the market values of the homes with a projected S106 discount applied	Neutral Viability borderline at the higher preferred BHCC rent level ie 37.5% Living Wage and not viable at social rent or 27.5% Living Wage. This was assessed before the chimney liability costs were clarified
Conclusion	Weighing up factors around the build finish, maintenance costs and rent levels, plus the chimney issue, the overall conclusion was that receipt of a commuted sum allowing purchase of additional homes through the Home Purchase Policy was the best outcome in this instance and more beneficial to BHCC and meeting the demand for affordable housing.	

Conclusion

- 5.13. The council is keen to look at the purchase of homes provided through s106 agreements. Consideration is now given to this at an earlier stage of the planning process. This is assessed against a standard set of risks, checked for viability based on the cost of the homes against the rent levels the council intends to charge, and any subsidy required.
- 5.14. Achieving the homes on site is always the preferred option but when this is not possible a commuted sum remains a policy compliant position because a commuted sum will lead to an increase of affordable homes in the city.
- 5.15. In this instance, with all factors above taken into consideration commuted sum remains the most practical and beneficial outcome for this scheme.

6. COMMENT

- 6.1. The main considerations in the determination of this application relate to the principle of varying the legal agreement to allow for the payment of a commuted sum in lieu of the on-site provision of two three-bedroom dwellings in shared ownership.
- 6.2. City Plan Part One policy CP20 and the Affordable Housing Brief indicates that the Council's preference is for on-site affordable housing provision to help achieve balanced and mixed communities. However, the supporting text to the policy notes that this is not always possible, and that a commuted sum may be acceptable in 'exceptional circumstances':
"Only in exceptional circumstances, will the council accept a commuted sum or free serviced land in lieu of onsite provision on larger sites. These circumstances might include, for example, where the Registered Provider finds it uneconomic or impractical to provide the units agreed." (paragraph 4.244).
- 6.3. This is expanded on in the Developer Contributions Technical Guidance (2017) which notes that circumstances which might justify offsite provision or payment in lieu of affordable housing could include, in summary, where mixed community objectives/housing priorities could be better met in an alternative location; where there are high housing costs for occupiers associated with the development; or where a RP finds it uneconomic or impractical to provide the affordable units provided. With regards to the latter, the Guidance notes *"An example could be where on some sites it is not practical, from a management perspective, to provide and manage a small number of on-site affordable housing units."*
- 6.4. The final point is of particular relevance to this proposal as it includes two housing units, which RPs have indicated would not be practical to manage, a view supported by the Housing Strategy team.
- 6.5. The applicant has provided evidence that they have been unable to find a Registered Provider to take on the two affordable units. The key issues in the unwillingness of RPs to take on the units was the very limited number of units (only two) and the potential maintenance liabilities relating to the locally listed chimney.

- 6.6. As noted in their response above, the Housing Strategy Team confirms that RPs are generally seeking to purchase a larger volume of units when they are making investment decisions as this will improve the viability of any scheme. They also note that they are satisfied that every effort has been made to achieve the sale of the two shared ownership units to a Registered Provider and that this approach is not possible at this time.
- 6.7. As noted in their response above, the Housing Strategy team has also explored whether the Council could purchase the units as part of its affordable housing portfolio. However, they conclude that *“Weighing up factors around the build finish, maintenance costs and rent levels, plus the chimney issue, the overall conclusion was that receipt of a commuted sum allowing purchase of additional homes through the Home Purchase Policy was the best outcome in this instance.”*
- 6.8. On this basis, it is concluded that a commuted sum in lieu of on-site provision is acceptable and in accordance with planning policy and guidance. The commuted sum would be put towards the Council’s affordable housing programme within the City which includes homes for affordable rent, which has the benefit of providing homes with greater levels of affordability than the two shared ownership units that were to be provided on-site.
- 6.9. The commuted sum has been arrived at in accordance with the formula set out within the Developer Contributions Technical Guidance (March 2017). The resulting figure is £140,000 for each shared ownership unit and thus an overall total of £280,000. The Housing Strategy Team have confirmed that the total offered by the applicant is in accordance with the guidance.
- 6.10. In conclusion, it is considered that the applicant’s proposal to vary the legal agreement to provide a commuted sum, in lieu of onsite affordable housing, is acceptable and would accord with the thrust of relevant planning policy and the aims of the Council. It is therefore recommended that the Deed of Variation is permitted.

7. BACKGROUND DOCUMENTS:

Planning Applications BH2018/02373 and the original application - BH2016/02459.

