

Subject:	BH2022/02689: 126 Gloucester Road - Amendment to Head of Terms Change of use of part of ground floor and of first floor from commercial (E) to residential (C3) and raising of roof ridge height to facilitate second floor accommodation to form 5no residential units, incorporating a single dormer to the south elevation and a single rooflight to the west elevation, revised fenestration and associated alterations.		
Date of Meeting:	7 May 2025		
Report of:	Jane Moseley, Planning Manager		
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Ward affected:	St. Peter's and North Laine Ward		

1. PURPOSE OF THE REPORT

- 1.1. The purpose of this report is to consider a request to vary one of the Heads of Terms proposed for a Section 106 legal agreement relating to a planning application for the following:
“Change of use of part of ground floor and of first floor from commercial (E) to residential (C3) and raising of roof ridge height to facilitate second floor accommodation to form 5no residential units, incorporating a single dormer to the south elevation and a single rooflight to the west elevation, revised fenestration and associated alterations.”
- 1.2. Planning Committee agreed on 8 March 2023 that they were minded to grant planning permission, subject to conditions and a s106 agreement being secured on various Heads of Terms, including:
 - *“provision of a commuted sum of £254,300 in lieu of on-site provision of affordable housing.”*
- 1.3. The applicant is seeking to remove this Head of Term so that no commuted sum would be required.

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 agree they are **MINDED TO GRANT** the application, excluding the Head of Term requiring an affordable housing commuted sum, subject to the conditions set out in the original Officer Report and Heads of Term relating to a late stage viability review to confirm whether a commuted sum amount can be paid towards affordable housing, and a contribution towards Highway Works.

3. BACKGROUND INFORMATION

Relevant History

- 3.1. Members were minded to grant full planning permission at Planning Committee on 8 March 2023 for the following application:

“BH2022/02689: Change of use of part of ground floor and of first floor from commercial (E) to residential (C3) and raising of roof ridge height to facilitate second floor accommodation to form 5no residential units, incorporating a single dormer to the south elevation and a single rooflight to the west elevation, revised fenestration and associated alterations.”

- 3.2. As noted above, the granting of permission was subject to the completion of a S106 Agreement requiring a commuted sum of £254,300 in lieu of the provision of affordable housing on site.

4. PROPOSAL

- 4.1. The applicant has provided an updated Viability Appraisal to demonstrate that the scheme would not be viable with a £254,300 contribution towards affordable housing.
- 4.2. This follows an initial updated Viability Assessment of October 2023 which also concluded the scheme could not support an affordable housing contribution. However, this was disputed by the District Valuer Service (DVS) acting as the Council's viability consultancy which concluded in December 2023 that the scheme was viable with the full contribution. The applicant submitted a rebuttal in January 2024 which was again reviewed by DVS, concluding that a slightly reduced contribution of £231,840 could be supported.
- 4.3. The applicant again challenged this conclusion, requesting a review specifically of an itemised cost plan (April 2024), build cost and benchmark land value, and providing an updated appraisal (May 2024).

5. CONSULTATION

- 5.1. Viability Consultants: No objection. All of the information has again been reviewed by an independent viability consultancy working for the Council, this time Dixon Searle Partnership (DSP)). DSP have had input from quantity surveyors in relation to the scheme costs. Their review concludes that the approach taken to assessing viability is appropriate, and that the scheme will not support a contribution to affordable housing, based on current costs and values (January 2025).

- 5.2. Strategic Housing & Development: No objection. Does not actively support an application where the affordable housing contribution has been removed or reduced. However it is accepted that this is within the council's current policy position regarding viability of sites. The developer has agreed to a later stage viability reassessment which will assess if any funds can then be provided – which is welcomed.
- 5.3. Note that policy requires the developer to justify any reduced or alternative housing offer. The council's newly adopted Housing Strategy – Homes for Everyone - has the stated aim of increasing the supply of affordable homes in the city, based on the city's housing needs.
- 5.4. Council adopted planning policy CP20: Affordable Housing requires an affordable housing contribution on all developments that create 5 homes or more. This policy position is justified by the high housing need in the city as outlined below combined with the physical restraints of developing in the city. Commuted sums provided at smaller developments are used to expedite affordable homes elsewhere in the city through a range of initiatives.
- 5.5. Housing Need Brighton and Hove is a large city with a population of over 277,000 people (2021 census). Our Affordable Housing Brief reflects the very pressing need for affordable homes in the city. Currently the city's private sector housing is unaffordable for many local residents both in terms of renting and home ownership. In January 2025 there were 4606 people listed on the joint housing register seeking rented accommodation, and 1,934 households living in temporary or emergency accommodation.
- 5.6. Policy requires this development of five flats to provide a commuted sum equivalent to 20% of the homes (1 x 2 bed), as calculated through the council's published commuted sums information. This was originally agreed by the developer and granted planning approval but they have subsequently returned stating that this provision is no longer viable. The council's current policy outlines that where it can be shown that provision of affordable housing / affordable housing contribution is not viable within the development, the provision can be reduced or removed, subject to a later stage viability assessment. The developer's viability has been assessed by an independent assessor commissioned by the council and their position is agreed.

6. COMMENT

- 6.1. Policy CP20 of City Plan Part One requires developments of between 5 and 9 (net) residential units to provide 20% affordable housing as an equivalent financial contribution. However, it also notes 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:

- i. *local need in respect of the mix of dwelling types and sizes including the city's need to provide more family-sized affordable housing;*
 - ii. *the accessibility of the site to local services and facilities and public transport;*
 - iii. *the costs relating to the development; in particular the financial viability of developing the site (using an approved viability model);*
 - iv. *the extent to which the provision of affordable housing would prejudice the realisation of other planning objectives; and*
 - v. *the need to achieve a successful housing development."*
- 6.2. In accordance with (iii), the costs of the development have been explored through a Viability Assessment which has been reviewed by the Council's specialists, as noted above.
- 6.3. At the time the application was determined (March 2023) a £243,500 contribution was sought for the five residential units to be provided, based on the standard methodology set out in the Developer Contributions Technical Guidance Paper and the updated Schedule of Commuted Sum payments. This was to be secured through a s106 legal agreement, as per a Head of Term on the Officer Report to Committee.
- 6.4. As set out above, information has been submitted by the applicant demonstrating that the scheme would not be viable with the £243,500 contribution. This conclusion has been confirmed by DSP who have reviewed the submitted information and disagreed with some of the calculations but conclude that the scheme could not viably support a contribution towards affordable housing. They had quantity surveyors review the costs, confirming that these were suitably estimated. The benchmark land value was considered to be appropriate, and while they noted there was scope for higher rents and lower consultant fees, this would not change their conclusion that a commuted sum would render the scheme unviable.
- 6.5. They also note that a late stage review should be undertaken:
"Of course, no viability report or assessment can accurately reflect costs and values until a scheme is built and sold – this is the nature of the viability process and the reason for local authorities needing to also consider later stage review mechanisms when developments fall short of policy provision. In this sense, the applicant and their agents are in a similar position to us in estimating positions at this stage – it is not an exact science by any means, and we find that opinions can vary. We note that the applicant has indicated they would be prepared to include a review mechanism in the S106 agreement to allow revisiting of the viability position to capture improvements in the market."
- 6.6. This being the case, it is considered that the removal of the Head of Term requiring a commuted sum has been justified because with the affordable housing contribution, the scheme would not be viable. Given the need to deliver housing in the city and the increased weight that must be given to that, it is recommended that the removal of the Head of Term is agreed.

7. Background Documents

Planning Application: **BH2022/02689**.

