

<b>Application Number</b>	15/6002/S106BA	<b>Agenda Item</b>	
<b>Date Received</b>	11th May 2015	<b>Officer</b>	Mr Tony Collins
<b>Target Date</b>	8th June 2015		
<b>Ward</b>	Abbey		
<b>Site</b>	9 - 15 Harvest Way Cambridge Cambridgeshire CB1 2RA		
<b>Proposal</b>	Application under s106BA to vary the existing s106 Affordable Housing provision from 30 units to 27 units.		
<b>Applicant</b>	Caroline Wilberforce Swan Court Worples Road London SW19 4JS		

<p>SUMMARY</p>	<p>The application is the second of its kind to be submitted to the City Council. The previous such application was at the former Cambridge Water Company site in Rustat Road. This type of application was made possible by arrangements approved under the Growth and Infrastructure Act 2013, allowing applicants to ask for relief from affordable housing requirements where sites are not viable. These arrangements were introduced for a limited period, with a 'sunset' of 30<sup>th</sup> April 2016. The present application must be determined in accordance with these arrangements, because it was submitted in May 2015, but new applications of this type cannot now be made.</p> <p>If approved the application would result in a variation of the s106 Agreement to</p>
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	<p>reduce the affordable housing provision to 36% (27 units out of 75).</p> <p>If the application is refused, the applicant has a right of appeal to the Secretary of State.</p>
RECOMMENDATION	<p>Based on the viability evidence submitted and independently reviewed on behalf of the Council, to APPROVE a variation of the s106 Agreement (and thus permit a reduction in the amount of affordable housing provided from 30 units to 27.)</p>

## 1.0 THE SITE

- 1.1 The application site is an area between Newmarket Road and Harvest Way. It occupies the central portion of the block between Coldhams Lane and Abbey Street. It is given in the application form as being 0.35 hectares in area and measures 85m from east to west, tapering from 42m deep at the eastern end to 37m deep at the western end. It was previously in Class B8 warehouse use, but following the approval of the planning application 11/0219/FUL for residential development, the site was cleared and construction of the approved scheme commenced.
- 1.2 The site forms a part of allocated site 7.01 in the proposals schedule of the Cambridge Local Plan (2006). This wider site includes all the land between Newmarket Road and Harvest Way from Occupation Road to Coldhams Lane (except for the Halfway House site at the corner of Harvest Way and New Street), as well as additional plots on the east side of Occupation Road, and the Mackay's site to the east of the Crown Court building on East Road. The site is allocated for employment, Class B1 use (offices, research and light industry), housing, and student hostels.
- 1.3 Both sides of Newmarket Road in this area are primarily commercial. There is a mix of shops, offices and other commercial activities, but there are also a few residential uses

at first-floor level, and occasionally at ground floor level too. The church of St Andrew-the-Less lies opposite the site on the north side of Newmarket Road. Behind the commercial premises on the north side of Newmarket Road are two-storey terraced houses in Godesdone Road, Beche Road and Beche Court. To the south of the site in the island between Harvest Way and New Street are a small open space and allotments, and to the south-west, two- and three-storey housing on the former Simperts ropeworks site. Beyond the allotments are two-storey houses on the south side of New Street. East of the site in, between it and Coldham's Lane, stands the recently-constructed 219-bedroom Travelodge hotel. West of the site between Harvest Way and Newmarket Road is Cambridge Refrigeration Technology (CRT)

- 1.4 The site is not within any conservation area, but the Riverside part of the City of Cambridge Conservation Area No.1 (Central) lies approximately 50m to the north on the far side of Newmarket Road. The site is outside the controlled parking zone (CPZ).
- 1.5 There are no trees on the site.

## **2.0 THE PROPOSAL**

- 2.1 The application is made under s106BA of the Town and Country Planning Act 1990. This section, introduced in 2013, enables developers to apply to the Local Planning Authority to modify affordable housing requirements set out in existing S106 agreements where the requirements have made the development economically unviable. The developer is required to provide a revised affordable housing proposal based on prevailing viability which is to be supported by relevant viability analysis. The developer also needs to demonstrate that the previously agreed provision will make the scheme unviable in current market conditions and suggest a revised proposal which will deliver the maximum level of affordable housing consistent with viability and the optimum mix of provision. The revised proposal can be based on adjustments to the tenure or mix of affordable housing, or the phasing of delivery as well as the overall level of affordable housing.
- 2.2 In this case, the developer seeks to vary the s106 Agreement that was entered into as part of the consideration of the

planning application ref. 11/0219/FUL. The application seeks to reduce the affordable housing provision from 40% to 36%. (30 units to 27 units).

2.3 The application was originally accompanied by the following supporting information:

1. Valuation Appraisal and Report prepared by Januarys (now Carter Jonas) dated 19<sup>th</sup> December 2014.
2. Contract Sum Analysis dated July 2013
3. Aspen New Homes enabling works package
4. Luminus Developments letter of commencement January 2014
5. Amended appraisal summary
6. Copy of original S106 Agreement for 11/0219/FUL
7. Cambridge City Council invoice for Section 106 contributions
8. Lease contracts

2.4 On 13<sup>th</sup> November 2015 Carter Jonas submitted on behalf of the applicants:

9. Revised costs assumptions indicating increased archaeology costs

2.5 On 4<sup>th</sup> March 2016, the applicants submitted:

10. Responses to four key points raised by the council's consultants
11. Revised appraisal statement

2.6 On 14<sup>th</sup> March 2016, the applicant submitted:

12. Email from Carter Jonas responding to three further questions raised by the case officer

2.7 On 16<sup>th</sup> June 2016, the applicant submitted:

13. Revised appraisal statement

2.8 The application is brought before Planning Committee because this type of application is not included in the Scheme of Delegation.

2.9 Some sections of the applicants' submissions, and the reports from the Council's consultants are in the public domain only in redacted form, but the applicants' appraisal of 3<sup>rd</sup> May 2016 and the BPS report on this appraisal, dated 18<sup>th</sup> July 2016, which are the two documents on which this report is based, have been shared with the Leader of the Council, the Executive Councillors for Housing and Planning, and all members of Planning Committee on a confidential basis.

### 3.0 SITE HISTORY

3.1

Reference	Description	Outcome
00/0751/FP	Redevelopment of existing commercial uses to provide 120 private flats, 107 student rooms, and 495m <sup>2</sup> of retail space, (all in four blocks up to a maximum of 10 storeys in height) including 135 car parking spaces, 207 cycle parking spaces and residential landscaping and amenity areas	Withdrawn
02/0739/OP	Outline application for demolition of existing buildings and erection of residential units (max 123), Class B1(a) offices (max 6780m <sup>2</sup> ), Class B1 (b) or B1(c) managed workspaces (max 360m <sup>2</sup> ), Class D2 community centre (max 466m <sup>2</sup> ), basement and surface car parking	Approved with conditions. This permission lapsed on the 16 <sup>th</sup> March 2011.
09/0382/FUL	Erection of 112 residential apartments, comprising 44 affordable units and 68 private flats, provision of a commercial space at ground floor level comprising 217m <sup>2</sup> to be used for A1, A2, A3, B1(a) or D1(in the alternative); and associated infrastructure (following the demolition of the existing building).	Refused: appeal dismissed

11/0219	Erection of 75 residential apartments, comprising 30 affordable units and 45 private flats, provision of a commercial space at ground floor level comprising 174m <sup>2</sup> to be used for A1, A2, B1(a) or D1 (in the alternative); and associated infrastructure (following demolition of the existing building).	Approved subject to conditions and a Section 106 Agreement
15/1756/AD V	Advertisement on existing site hoarding, displaying details of the new development taking place at the site	Approved subject to conditions
15/1803/NM A	Amendments to windows, timber accents, privacy screens, downpipes gabion wall, and railings. Addition of pv panels, satellite dishes, roller shutter, ballusters, roof maintenance door and smoke extract fan. Relocation of affordable units.	Approved
15/1804/NM A	Addition of a condition requiring adherence to the approved drawings.	Approved
16/0965/S73	Minor material amendments: inclusion of boiler flue; two car park extract vents in timber-clad turrets with sedum roofs; removal of juliet balconies; reconfiguration of cycle ramp; addition of rendered areas to north elevation; and inclusion of Public Art.	Under consideration

#### 4.0 PUBLICITY

4.1	Advertisement:	Yes
	Adjoining Owners:	No
	Site Notice Displayed:	Yes

4.2 The legislation does not prescribe the level or type of publicity that is given to this type of application. Officers consider that the publication of the application online (Public Access), its

inclusion on the Weekly List, a Press and Site Notice is an appropriate level of publicity.

4.3 Ward Councillors and the Chairs of Riverside Area Residents Association and Petersfield Area Community Trust have also been advised of the submission of the application.

## 5.0 POLICY

5.1 See Appendix 1 for full details of Central Government Guidance, Cambridge Local Plan 2006 policies, Supplementary Planning Documents and Material Considerations.

5.2 Relevant Development Plan policies

PLAN		POLICY NUMBER
Cambridge Plan 2006	Local	5/5

5.3 Relevant Central Government Guidance, Supplementary Planning Documents and Material Considerations

Central Government Guidance	National Planning Policy Framework March 2012  Community Infrastructure Levy Regulations 2010
Supplementary Planning Documents	Affordable Housing

## 6.0 CONSULTATIONS

### Housing Development Manager

6.1 Strategic Housing cannot support a variation to reduce the number of affordable units on this development, but in view of the most recent BPS review, and provided a clawback provision

is inserted in the Deed of Variation, Strategic Housing accepts that this a reasonable outcome in the circumstances.

## 7.0 REPRESENTATIONS

7.1 Councillor Johnson has commented on this application. His comment is as follows: 'I very strongly support the response made by RARA and its contents' (see below) 'Any loss of affordable units in new developments that are proposed by developers, following planning assent given, I strongly object to.'

7.2 Representations have been received from Riverside Area Residents Association (RARA).

7.3 The representations can be summarised as follows.

7.4 Difficult for residents to make specific comment when the relevant financial document is not available for scrutiny. Hope members of Planning Committee will have full access to the applicant's viability report. Note that a Tribunal recently ruled that such reports are not exempt from the Freedom of Information Act

7.5 Sceptical of the methodologies used by developers for post-consent 'viability' assessments. Hope independent scrutiny of this application is more thorough than that provided to the Council for the Rustat Road site, which resulted in the loss of almost 50 affordable units

7.6 Urge rejection of this application. RARA notes that:

- Planning permission for the Harvest Way site was granted in February 2011, since when the price of flats in Cambridge has risen by around 40%
- The Cambridge housing market is still rising strongly. Weston Homes' marketing for the Rustat Road development states: "*The percentage house price growth is set to out-perform London over the next five years*". There is also news of a post-election house price boom which should also be taken into account.

- Due diligence carried out by the developer at the time of purchase would have provided a range of future scenarios, including a worst case scenario, which should have highlighted any concerns about profitability and been factored into the purchase price of the land.
- While construction costs have also risen since February 2011, provision for rising costs would also have been factored into the developer's worst case due diligence calculations. The viability calculations at the time of planning consent would have been based on these.

7.7 Unless there are extraordinary, exceptional local reasons why development costs on Harvest Way have risen beyond anything possibly foreseeable, RARA sees no reason why the affordable housing provision considered viable in February 2011 should be reduced.

7.8 Residents are concerned that development in the area is being skewed away from permanent residential uses which create strong, diverse sustainable communities. Budget hotels and student accommodation are essentially transient uses. Reducing the affordable provision for genuinely residential developments reduces diversity in what remains.

7.9 In a city as economically buoyant as Cambridge, where property prices are soaring and rents have risen by 52% over the past five years and the draft Local Plan is being questioned on the grounds of insufficient affordable housing, RARA feels it is vital that the City Council resists spurious claims.

## **8.0 ASSESSMENT**

8.1 It is necessary to consider whether the applicants have provided evidence which demonstrates that the scheme would not be financially viable if it provided affordable housing at the 40% level set in the existing Section 106 Agreement (30 units).

### **Viability**

8.2 The Procedural Note which accompanies the 2013 changes to Section 106 of the Town and Country Planning Act 1990 states that the local planning authority may prepare its own viability

evidence or provide commentary on the evidence submitted in support of the application.

- 8.3 Council policy on the viability of residential schemes is that appraisals must be submitted on a Residual Land Value (RLV) basis. This means that the soundness of a viability case is judged on whether the residual land value of the site is a reasonable one. The RLV is calculated by subtracting the costs of the project (excluding the land cost), and a normal level of profit, from the total expected revenue from sales. This method of assessing the viability of a scheme ensures that the actual price paid for the site by developers is eliminated from the equation, so that Council policy on provision of affordable housing is not undermined by a developer having overpaid for a site.
- 8.4 The applicants' most recent appraisal statement, produced in May 2016 indicates that were the scheme to be completed as approved, the Residual Land Value would fall below the appropriate benchmark land value by a substantial amount. Only by achieving full market value for three of the units earmarked as affordable, rather than the 29% of market value which they would achieve in the present scheme, could this shortfall be made up.
- 8.5 There are five key elements of the applicants' appraisal which require particularly close scrutiny:
- Assumptions on reasonable profit levels
  - Sales values for market units
  - Value of affordable housing component
  - Build costs
  - Site value

#### Profit assumptions

- 8.6 The applicants' original appraisal suggested that a 20% rate of profit on Gross Development Value (GDV) is a reasonable aim for a developer in present circumstances. In their earlier advice, BPS, the Council's consultants, accepted that 20% of GDV is a reasonable expectation for a developer on market residential units, but suggested that 6% is a more appropriate guideline for affordable units, and 15% for a commercial unit. BPS suggested

that a 'blended' profit guideline of 17.2% should therefore be used for this development.

- 8.7 In their most recent appraisal, the applicants have inserted a 17.5% 'blended' profit guideline for the market component of the development (market residential units + commercial unit), and 6% for the affordable component. In my view, this is in line with the advice of the Council's consultants, and it is reasonable to accept the applicants' profit assumptions.

#### Sales values

- 8.8 In their updated appraisal of May 2016, the applicants provide an average sales price per ft<sup>2</sup> based on the actual asking prices used by Bradshaws now that marketing has commenced. This figure is a 13% increase above the revised valuation submitted by the applicants in February 2016.
- 8.9 The Council's consultants, BPS, have analysed the asking prices of units available at present, and calculate that the average asking price per ft<sup>2</sup> is at a level 2% higher than the figure quoted by the applicants. However, BPS believe it is reasonable for the applicants' figure to be accepted, as it may be based on a slightly different sample of units, and BPS would in any event expect the actual prices realised to be slightly lower than asking prices.
- 8.10 Given the advice of the Council's consultants, I am of the view that it is reasonable to accept the applicants' submission on sales prices.

#### Affordable housing value

- 8.11 The scheme as approved contains seven shared ownership dwellings and 23 affordable rented units. The applicants' appraisal ascribes an expected revenue to each of these components on the basis that the shared ownership units would produce a revenue at 66% of market unit values and the affordable units would produce a revenue of 29% of the market unit value.
- 8.12 BPS ran the details of the shared ownership units through a bespoke model which adopts the assumptions which have recently been used by leading Registered Providers. This

suggests a revenue 18% higher than the figure in the applicants' appraisal.

- 8.13 In respect of the affordable rented units, BPS state that their latest checks, which take into account the reduced optimism of Registered Providers on rental growth as a result of recent government actions on rents, suggest that the applicant's appraisal figures are reasonable.
- 8.14 On the basis of the advice of the report produced in July by the Council's consultants, I was of the view that the applicants' expectations of revenue from affordable rented units were reasonable, but their expectations of revenue from shared ownership units might be slightly pessimistic. However, it appears that since the BPS report was completed, evidence suggests that Registered Providers have become still more cautious about future rental income. BPS believe that the applicants' appraisal figure may now reflect likely outcomes more closely than the consultants' report suggested in July. I am therefore now of the view that the applicants' estimates of the value of the affordable units are reasonable.

#### Build costs

- 8.15 The applicants' appraisal provides a build cost/ft<sup>2</sup> figure. BPS state that this figure is 25% higher than the up-to-date Royal Institution of Chartered Surveyors Building Costs Information Service (BCIS) estimate for 3-5 storey flatted housing developments in Cambridge, but indicate that since the BCIS figure excludes external costs, for which a 20%-25% addition should be allowed, this figure is reasonable.
- 8.16 In my view, given the advice of the Council's consultants, it is reasonable to accept the applicants' estimate of build costs.

#### Site value

- 8.17 There was no agreement about a benchmark land value for this site at the time of the decision on this application. (There were no discussions about viability at this stage.) The Council's consultants, BPS, highlight the fact that government guidance states that if no benchmark land value was agreed at the time of the application the benchmark should be the market value at the time of the consent. This is a difficult benchmark to fix, since

there are only a limited number of nearby sites whose sale value near to the consent date can be used for comparison, and it is hard to say exactly how comparable any of them is with the application site.

- 8.18 The applicants have previously stated that the rateable value of the warehouses which still occupied the site at the time of consent, based on the 2010 Rating Assessment, was J159,000. 10 x rateable value is sometimes used to produce an estimate of existing use value, and the applicants observed at the time of their previous appraisal submission that this formula would produce a total of approximately J1.6m. BPS have agreed that an existing use value (EUV) based on ten times the rateable value would be reasonable and that adding a typical landowner premium of 30% would give a reasonable benchmark land value of J2.08m, a figure considerably in excess of the RLV in the applicants' May appraisal. In the covering letter to their most recent appraisal, the applicants suggested that the real EUV would be much higher than J1.6m, but BPS conclude that the development would be unviable, even if the J2.08m benchmark figure is used.
- 8.19 On the basis of BPS' advice, I am of the view that J2.08m is at the lower end of the range of values at which a benchmark land value might be set.

#### Appraisal: conclusion

- 8.20 There are several elements in any viability appraisal, especially on the expected revenues side, which are subject to uncertainty. The Council's consultants, BPS, have warned that precision in these matters is not possible. However, in the light of the applicants' most recent appraisal, using figures for both build costs and expected sales values which BPS consider to be realistic, I am of the view that a clear case has been made that the approved scheme would not be viable with 30 units of affordable housing.
- 8.21 There remains some disagreement about the benchmark land value. The applicants are of the view that the true EUV is much higher than J2.08m figure generated by multiplying the 2010 rateable value by 10 and adding a 30% landowner premium, because actual rental values for the warehouse buildings would be much higher than 2010 rating values, and the 10x multiplier

is too low for the Cambridge context and near-city-centre location of this site. BPS' advice is that determining a realistic benchmark land value on this site is very difficult. They suggest that it might be higher than J2.08m and it would be very difficult to argue that it should be lower than this.

8.22 DCLG guidance requires that applications under Section 106BA must be accompanied by sufficient up-to-date evidence to justify any reduction in affordable housing provision. I concur with the advice of BPS that this application provides such evidence. In my view, the available evidence suggests that the scheme would not be viable as approved, and I recommend that the application be approved on this basis, subject to a Deed of Variation which would enable the Council to recoup a sum if actual sales values exceed those expected in the appraisal.

## **9.0 DEED OF VARIATION**

9.1 If the application is approved then a deed of variation will be prepared and agreed by the Council and the developer stating that 27 units of affordable housing are to be provided in the development. This modification would be valid for a period of 3 years from the date of the agreement (this time period is recommended by s106BA to incentivise the development). After three years, the position would revert to the current s106 requirements.

9.2 The Deed of Variation will also include an overage (or 'clawback') clause, to recoup an additional sum for the Council if actual gains for the developer are more than those predicted in the most recent appraisal.

9.3 The principle of the overage clause is that if the applicants' net revenue from the development increases over the level shown in the appraisal as the development is built out and sold, the validity of the viability case is diminished and eventually eliminated. The Council will therefore seek to recoup a sum based on any increase in net revenue from the development. Increased net revenue will be calculated on the basis of the difference between additional Gross Development Value and additional development costs.

- 9.4 However, it would not be reasonable for the Council to seek to recoup the whole of such additional net revenue; if it did, the developer would have no incentive to realise a higher price, and consequently, the likelihood is that the Council would not have any opportunity to recoup any additional sum at all. In the previous Section 106BA application, at the Cambridge Water site on Rustat Road, it was agreed that the sum recouped by the Council would be 50% of the increase in net revenue. To be consistent, the Council should adhere to this proportion. This percentage figure does not affect the maximum 'clawback' which can be achieved, for reasons which are explained below.
- 9.5 The maximum sum which the Council could justify 'clawing back' is the difference between the RLV resulting from the May 2016 appraisal of the scheme originally permitted, and the RLV resulting from the applicants' proposed scheme with 27 affordable units. This is the total 'extra value' which the Council would be enabling the applicant to retain by approving the application and accepting a lower level of affordable housing, and would be equivalent to the additional profit (at current prices) from selling three units at market value rather than as affordable units.
- 9.6 Even if sales prices rise sufficiently to allow the Council to 'clawback' the maximum sum, it will necessarily fall a long way short of the cost of creating the three 'lost' affordable units elsewhere. However, the Council cannot seek more than this total, because it would impose a financial cost on the applicant greater than that imposed at the time of the application, which would not be supported by policy.

## **10.0 APPEALS**

- 10.1 If the application is refused (i.e. the Council does not agree with the developer's revised proposal for affordable housing) the Council must give clear reasons for its refusal. In the event of a refusal of the application, or if it is not determined then the developer has the right of appeal to the Secretary of State (under s106BC of the Act).
- 10.2 Interim procedures for appeals under s106BC have been set out by Central Government pending a consultation exercise. These set out the following principles:

1. appeals will only consider the issue of viability; there will be no opportunity for decision-makers (or third parties) to reopen questions around the overall acceptability of development proposals;
2. there will be an expectation that if parties provided evidence at the application stage, they will not seek to rely on new evidence on appeal;
3. there will be an expectation that appellants will set out their case fully at the outset of their appeal, and that no further information should need to be requested from them;
4. only signatories to the existing Section 106 agreement will be involved, except in exceptional circumstances;
5. all parties will communicate by electronic means wherever possible

10.3 The expectation is that the majority of s106BC appeals will be determined following the written representations procedure. Where a hearing is deemed appropriate this is likely to take the form of a simple meeting between the Inspector and the parties and would take place shortly after the appeal is lodged.

10.4 If an appeal is lodged the Council and other signatories to the original s106 will be invited to give evidence within 2 weeks of notification and the Planning Inspectorate will have 28 days to issue a decision notice following receipt of all written representations.

10.5 The arrangements which introduced Section 106BA and Section 106BC of the Act had a 'sunset' of 30<sup>th</sup> April 2016. They have therefore now lapsed. No new application of this type can now be made, either on this site, or any other, but an appeal could still be lodged on the present application if it were refused.

## **11.0 CONCLUSION**

11.1 In the light of the advice given by the Council's independent advisers, BPS, officers are of the view that the evidence provided by the applicants demonstrates that the approved scheme would not be viable with 40% affordable housing, and that the application to reduce affordable housing should therefore be allowed.

## 12.0 RECOMMENDATION

**REFUSE** the application to reduce the affordable housing proportion in the Section 106 Agreement.

1. Because neither the estimated build costs, nor the estimated site value, nor the estimated revenue from sales appear properly to reflect realistic market levels, the application fails to provide clear, up-to-date, and appropriate evidence to demonstrate that the affordable housing obligation as currently agreed (30 units) would make the scheme unviable in current market conditions. For this reason, the application would be contrary to policy 5/5 of the Cambridge Local Plan 2006, the Council's adopted Affordable Housing SPD, and Government guidance in Paragraph 50 of the National Planning Policy Framework 2012 and in Section 106 Affordable Housing Requirements: Review and Appeal 2013.