



## SHEFFIELD CITY COUNCIL Planning & Highways Committee

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**Report of:** Director of Regeneration & Development Services

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**Date:** 14 April 2015

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**Subject** APPLICATION SEEKING REVIEW OF  
AFFORDABLE HOUSING OBLIGATION UNDER  
S106BA OF THE TOWN & COUNTRY PLANNING  
ACT

Site of Denby Street Car Park, Denby Street,  
Sheffield S2 4QH

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**Author of Report:** Chris Heeley

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**Summary:**

Emergency Report on an application submitted under s106BA of the Town and Country Planning Act seeking review (removal) of a planning obligation attached to a previous planning permission.

The report is of an emergency nature owing to the limited time period (28 days) prescribed within the Regulations for determination of the application.

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**Reasons for Recommendations:**

In order for the Council, as Local Planning Authority, to provide the applicant with a determination on the application.

**Recommendations:**

It is recommended that the £425,245.00 originally contained within the planning obligation, is no longer required, and that the Planning Obligation is modified accordingly.

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**Background Papers:**

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**Category of Report:** OPEN

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**APPLICATIONS UNDER VARIOUS ACTS/REGULATIONS  
EMERGENCY REPORT**

APPLICATION SEEKING REVIEW OF AFFORDABLE HOUSING OBLIGATION  
UNDER S106BA OF THE TOWN & COUNTRY PLANNING ACT 1990.

PLANNING APPLICATION 15/00873/MDPO

Site Of Denby Street Car Park Denby Street Sheffield S2 4QH

1.0 INTRODUCTION

1.1 The applicant has made a formal request under Section 106BA of the 1990 Town and Country Planning Act to remove the affordable housing contribution from the planning obligations attached to the previous planning permission for development of the site (14/03597/FUL). Section 106BA was introduced by Government through the Growth and Infrastructure Act, 2013 specifically to allow such a request to be made in a case where the applicant considers that the contribution makes the scheme unviable. The applicant's claim is that the affordable housing obligation as currently agreed makes the scheme non-viable in current market conditions and that the only method of bringing this site forward is to reduce the affordable housing contribution to nil. This request is supported by a viability appraisal.

1.2 The Council has sought independent advice from the District Valuer in relation to the viability appraisal. It is important to note that viability, and the matter of the affordable housing contribution is the only issue that can be considered within this application.

2.0 PLANNING HISTORY

2.1 Members will recall the granting of permission 14/03597/FUL in January of this year for the erection of a mixed use development comprising managed student accommodation (535 beds), private apartments (74) and Class B1 Offices (385sqm) with ancillary facilities and associated landscaping at this site

2.2 The planning obligation secured two specific elements:

1. The provision of a commuted sum of £425,245.00 towards provision of affordable housing in the locality of the site to be paid in line with the specifications set out in the agreement;
2. A contribution towards the provision of off-site open space amounting to £135,831.25 once again to be paid in line with the specifications set out in the agreement.

The payment of the above sums was to be as follows:

- a) 25% of the total on completion of the substructure (piling and foundations) of the student block; and
- b) 25% of the total on completion of the frame of the student block; and
- c) 50% once the student block is wind and watertight.

The site remains undeveloped to date.

### 3.0 RELEVANT GOVERNMENT GUIDANCE

3.1 The Government is keen to encourage development to come forward to promote construction and economic growth. The Growth and Infrastructure Act 2013 inserted a new Section 106BA, BB and BC into the 1990 Town and Country Planning Act. These sections introduce a new application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing.

3.2 The National Planning Policy Framework paragraph 173 states:

'to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking in account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.'

3.3 The Government publication S106 Affordable Housing Requirements Review and Appeal gives guidance on the process for determining applications submitted under s106BA.

3.4 Paragraph 10 of the document states that 'The test for viability is that the evidence indicates that the current cost of building out the entire site (at today's prices) is at a level that would enable the developer to sell all the market units on the site (in today's market) at a rate of build out evidenced by the developer, and make a competitive return to a willing developer and a willing landowner'.

### 4.0 APPLICANT'S CASE FOR THE MODIFICATION OF THE S106 PLANNING OBLIGATION

- 4.1 The applicant has submitted an updated viability appraisal with justification and explanation of increases in costs, to enable review of the original viability appraisal, by the District Valuer.
- 4.2 The key area of additional cost relates to increased build costs based now, on the Contractor's tender cost plan. There are also additional identified abnormal costs for Northern Powergrid connections. Other key variables, as identified in the guidance remain largely unaltered.
- 4.3 The applicant states that the revised components of the appraisal result in a developer profit of 6.8% of gross development value.

## 5.0 REVIEW OF THE VIABILITY APPRAISAL

- 5.1 The District Valuer has independently reviewed the new viability appraisal. The key issue in the outcome of the appraisal is the build costs.
- 5.2 In assessing the original scheme the DV identified build costs and abnormals to equate to £24.05m. The applicant's review evidence indicates costs and abnormals of £27.26m, so an increase of over £3m. The DV assessment of the new viability appraisal accepts that an increase in build costs is justified, over and above that of the Building Costs Information Service (BCIS) data usually, and originally adopted.
- 5.3 The DV view however is that build costs and abnormals should equate to £26.3m, which although approximately £1m less than the applicant has indicated, are still sufficient an increase to undermine viability with a remaining developer profit on Gross Development Value of 12.1%. The DV had identified in the original appraisal that a minimum profit for a viable scheme would be 15%, and this view remains.
- 5.4 The clear recommendation from the DV is therefore that even with a 'nil' affordable housing contribution the developer profit does not exceed the minimum expected, and an affordable housing contribution cannot be sustained.

## 6.0 SUMMARY AND RECOMMENDATION

- 6.1 The applicant has submitted an application under section 106BA of the Town and Country Planning Act to review the affordable housing contribution secured by planning obligation for a mixed use development of the site at Denby Street granted consent under application reference 14/03597/FUL.
- 6.2 After an independent review of the applicant's evidence, the District Valuer has advised that the additional build costs now identified are such that the developer profit would not be sufficient to allow for an affordable housing contribution. It is therefore considered that the current cost of building out the

entire site (at today's prices) is not at a level that would enable a competitive return to a willing developer and a willing landowner as required by the national planning guidance in relation to viability.

- 6.3 As a result, with no other available evidence to the contrary it is recommended that the affordable housing contribution of £425,245.00, contained within the planning obligation dated 7 January 2015 in respect of 14/03597/FUL, can no longer be justified, and that the Planning Obligation is modified accordingly to remove this requirement.

Maria Duffy  
Interim Head of Planning

10 April 2014