

**Report of Director of Planning and Regeneration**

**450-452 Nottingham Road, Nottingham**

**1 Summary**

Application No: 20/01868/VS106A

Application by: Jackson Design Associates on behalf of Federici Brothers

Proposal: Variation of Section 106 agreement dated 27th December 2019 to reduce contributions due to commercial viability constraints

The application is brought to Committee because it relates to the discharge of an existing planning obligation and therefore waiver of obligations normally required by adopted planning policies. The application was due to be determined by 21/10/20 and an extension of time for determination has been agreed in principle with the applicant.

**2 Recommendations**

**2.1 To GRANT authority to enter into a Deed under section 106A(2) of the Town and Country Planning Act 1990, to discharge by agreement the planning obligation dated 27 December 2019, subject to which planning permission (ref 18/01382/PFUL3) was previously granted.**

**3 Background**

3.1 Planning permission (ref 18/01382/PFUL - Proposed residential development with an element of retail/commercial at ground floor (amended scheme to include retention of existing building)) subject to conditions and the prior completion of a planning obligation was granted in December 2019 for a largely residential development situated on the corner of Nottingham Road and Lincoln Street within Basford.

The area is mixed use and the development site composed of a mix of buildings, the most prominent on the corner is a former Midland bank. Following prolonged negotiations a scheme was approved which saw the demolition of existing buildings with the exception of the former bank which would be retained and integrated as part of the redevelopment of the site. Three floors of new contemporary accommodation sit alongside the former bank providing 30 new units (20 x 2 bed and 10 x 1 bed) with ground floor retail/commercial space on the corner of Nottingham Road and Lincoln Street. The bank itself is converted into 2 apartments. Car parking for the development and to support the retail element is positioned to the rear of the building.

3.2 The planning obligation entered into sought to provide the following contributions:

- Affordable Housing - £234,000

- Open Space - £22,773
- Employment and training - £6,736

3.3 The applicant has now undertaken a viability assessment which concludes that the development is unviable with the burden of the contributions as outlined above.

#### **4 Details of the proposal**

4.1 As stated above the applicant has undertaken a viability assessment which concludes that the development is unviable with the burden of the contributions as outlined above. The applicant is seeking to discharge the approved agreement by virtue of s106A of the Town and Country Planning Act 1990 so that development can occur with no contributions provided.

#### **5 Consultations and observations of other officers**

None. (This is not a formal application under s106A3 and so is not subject to statutory requirements with regard to consultation/publicity.)

#### **6 Relevant policies and guidance**

**NPPF – para 57** - Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

##### **Aligned Core Strategies (2014):**

Policy 19 – Developer Contributions

##### **Local Plan Part 2 - Land and Planning Policies (January 2020)**

Policy EE4: Local employment and training opportunities

Policy EN2 - Open Space in New Development

Policy HO3 - Affordable Housing

Policy IN4 - Developer Contributions

##### **Other relevant guidance**

The government has produced comprehensive guidance advising how viability should be considered in planning decisions- <https://www.gov.uk/guidance/viability> and published this, alongside the Planning Practice Guidance entitled the Use of planning obligations and process for changing obligations – updated 01.09.2019

Both confirm that planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so.

## 7. Appraisal

- 7.1 This is an application to discharge the Section 106 planning obligation entered into as a prerequisite to the grant of planning permission ref18/01382/PFUL3. As such, the planning merits of the development are not under consideration, and the council is only considering the question of whether or not the development should proceed without the Section 106 obligations previously agreed. The application is submitted on the basis of a viability assessment by Innes England to establish the level of Section 106 contribution that the development can support.
- 7.2 The Planning Practice Guidance recommends that an executive summary be provided and made publically available relating to matters of viability. The viability assessment can be summarised as:
- 7.3 Gross Development Value: £4,887,160  
Construction costs and fees (excluding S106, profit and land costs): £4,046,111  
Balance: £841,049
- 7.4 The outstanding balance even without S106 contributions is insufficient to cover land costs and a reasonable developer profit (with an industry standard of around 15%). The National Planning Policy Framework advises that an assumption of 15 to 20% of Gross Development Value may be considered as a suitable return in order to establish the viability of planned policies. A figure at the lower end of this range of 15% has been adopted for the purposes of the viability assessment.
- 7.5 The applicant has stated that there is interest in the site from developers and the potential for a Joint Venture (JV) development. This would enable the applicant; who is the land owner and a brownfield site developer to share the development risk. By undertaking a JV development, risk and cash flow would be shared and an acceptance of a lower rate of return; anticipated to be 7-8%. The applicant sees this as the only way to allow the scheme to progress, which could have the benefit of stimulating further development in the area and providing further homes within the city.
- 7.6 The submitted viability appraisal has been reviewed independently by CP Viability on behalf of the Planning Authority and the same conclusions reached that the scheme is now unviable with any S106 contribution. CP Viability have commented further that based on the proposed land value and anticipated build costs that the development financially would be unlikely to appear attractive to a future developer given the relatively low rate of potential profit and level of risk. This has been discussed with the applicant to get a better understanding of how they see the site being developed. They have stated that there is interest in the site from developers and the potential for a Joint Venture between the applicant and a brownfield site developer is being explored, which would share the risk. This has been considered by CP Viability who states that a joint venture development could be plausible, however profit levels would appear to be relatively low and risk relatively high. Whilst the comments from our assessor are noted officers consider that formally how a development is brought forward sits outside the planning process. Fundamentally an assessment has been provided which demonstrates that policy compliant S106 contributions cannot be supported and this is not disputed.
- 7.7 Approval is therefore sought for the authority to enter into a deed of discharge of the S106 obligation as outlined in the recommendation above.

**8. Sustainability / Biodiversity**

The proposal raises no such issues to be considered at this time.

**9 Financial Implications**

Approval will remove all previously sought policy compliant contributions (Affordable Housing, Open Space, Employment and Training). A completed, occupied development has the potential to contribute to the vitality of the area and positively contribute by way of council tax and business rates.

**10 Legal Implications**

Under s106A (1) of the Town and Country Planning Act 1990, a local planning authority has a general discretion to entertain an application and reach an agreement to modify or discharge a planning obligation, prior to the expiry of the five year period (specified under s106A (3) of the Town and Country Planning Act 1990) before a formal application to discharge or modify can be submitted, This discretion is not unfettered and must be exercised to further the aims of the statutory scheme in section 106A, that is to say for planning purposes, and must not be exercised in a manner that is unreasonable. An unreasonable decision or an irrational failure to make a determination would be amenable to judicial review.

**11 Equality and Diversity Implications**

None.

**12 Risk Management Issues**

None.

**13 Strategic Priorities**

Neighbourhood Nottingham – Providing a high quality and sustainable residential development, particularly promoting housing for families

Safer Nottingham – Providing a residential development with secure property boundaries and well surveilled streets, routes and open spaces

**14 Crime and Disorder Act implications**

None.

**15 Value for money**

None.

**16 List of background papers other than published works or those disclosing confidential or exempt information**

Section 106 Agreement, 27/12/19

## **17 Published documents referred to in compiling this report**

18/01382/PFUL3 - Proposed residential development with an element of retail/commercial at ground floor (amended scheme to include retention of existing building). Approved December 2019

Aligned Core Strategies (2014)

Local Plan Part 2 - Land and Planning Policies (January 2020)

s106A of the Town and Country Planning Act 1990

PPG - Planning obligations - Use of planning obligations and process for changing obligations. -01.09.2019

Government guidance advising how viability should be considered in planning decisions- <https://www.gov.uk/guidance/viability>

### **Contact Officer:**

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# NOMAD printed map



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## Key

 City Boundary

## Description

No description provided