

Planning Committee

Item

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Date 20 January 2022

Report of	Place and Client Services	Author	Chris Harden 07908 452381
Title	Amendment to the Legal Agreement format/Conditions for Planning Application 190665 Land Between Via Urbis Romanae & Mill Road, Land South of, Axial Way, Colchester		
Wards affected	Highwoods		

This report seeks a proposed amendment to the legal agreement process and also requests additional conditions as required for this hybrid application that was considered by the Planning Committee on 29 July 2021 when it was resolved to Approve subject to a s.106 agreement and conditions

1. Decision(s) Required

- 1.1 Members are asked to endorse the proposed amendment to the Legal Agreement process and to agree additional conditions as required for this application. The report is put to members to ensure complete transparency of the decision process. The Borough Council is the applicant for the proposal and the application relates to the following:

“190665: Hybrid planning application

- Outline application for healthcare campus (5ha) of up to 300 older people's homes (C3), 4,300sqm private acute surgical hospital (C2), (1,200sqm.) medical centre (D1), 3,600sqm, 75-bed care home (C2), up to 45,100 sqm offices (B1a); up to 350 homes (C3), with ancillary retail & food & drink of up to 1000m2 of retail (A1), up to 500m2 of food and drink (A3), digital network of ultra-fast broadband; 2 points of vehicular access from public highway, pedestrian boulevard & community green (4.5ha). All matters apart from access to be reserved in relation to outline elements of proposals.

- Detailed consent for a 1st phase of infrastructure to include the creation of a pedestrian boulevard and associated landscaping, and a renewable energy centre & heat distribution network.

Land Between Via Urbis Romanae & Mill Road, Land South of, Axial Way, Colchester”

- 1.2 The recommendation previously agreed by the planning Committee was as follows: “Authority to Approve subject to completion of a Section 106 Legal Agreement following conclusion of the viability assessment review and agreement concerning quantum of contributions required/viable and authority for minor alterations to conditions if required.”

2. Reasons for Decision(s)

- 2.1 On 29 July 2021 Members resolved to grant planning permission for 190665, subject to the prior completion of a Section 106 Agreement to secure affordable housing (30%), a

£2.3 million financial contribution (to be allocated in accordance with the committee report, as amended) and the carrying out of a reassessment of viability in the scheme at some stages during the construction of the development.

- 2.2 Solicitors have been appointed to progress the Section 106 Agreement, with Holmes & Hills acting for the Borough Council as the local planning authority and Pinsent Masons acting for Colchester Amphora Housing Limited (CAHL) (on behalf of the council as landowner), which is a development/trading company wholly owned the Borough Council.
- 2.3 At the present time, it is not possible for the Council to complete a Section 106 Agreement, as the Council is both the local planning authority and the landowner. The Council cannot enter into a bilateral contract with itself, and there are currently no third parties (including CAHL, who intend to develop the housing development, excluding the over 55's) who can enter into a Section 106 Agreement and covenant to deliver the planning obligations.
- 2.4 The legal advice that your officers have received is that the only way for the planning permission to be issued is if the Council (as landowner) enters into a Section 106 unilateral undertaking (the "106 UU") to:
 - (a) commit to complying with an agreed form of Section 106 bilateral Agreement (the "Agreed Form 106"), the draft of which will be appended to the 106 UU, and
 - (b) commit to not disposing of its freehold interest (whether by freehold transfer or grant of a leasehold interest) in the site without first imposing a legally enforceable obligation on the transferee to enter into the Agreed Form S106.
- 2.5 As this process is somewhat different to the process outlined in the authorised recommendation it is considered this needs to be brought to the attention of and agreed by the Planning Committee in the interests of the transparency of the decision process.
- 2.6 In addition, there will be extra conditions imposed on the planning permission to prohibit commencement of all or any part of the development unless the appropriate Section 106 Agreement has been completed to secure the planning obligations related to the relevant part of the development.
- 2.7 It is also considered that the restriction on the occupancy of the over 55's housing can be secured by a condition on the planning permission rather than by planning obligations. A condition can also be added with regard to Details of Management arrangements for areas of Public Open Space. Authority is sought for minor alterations to conditions or additional conditions if deemed to be required. It is requested members grant authority for the precise wording of the condition revisions/additions as will be required as detailed above.

3. Alternative Options

- 3.1 If Members decide not to accept the suggested amendments above it is considered the application would be unlikely to be able to be progressed to determination.

4. Supporting Information

- 4.1 The full Committee report relating to the above application 190665 is available online on the Borough Council's website under Planning Committee 29.7.21 if more detail on the case is required.

5. Strategic Plan References

5.1 The scheme remains compliant with the Strategic Plan.

6. Consultation

6.1 The appointed solicitors have advised that the abovementioned amendments to the recommendation and legal agreement process should be agreed by the Planning Committee in the interests of the transparency of the decision process.

7. Publicity Considerations

7.1 None

8. Financial Implications

8.1 As the applicant for the site is Colchester Borough Council, there will be financial implications for the Council if the application cannot progress to a decision via revised Legal Agreement arrangements

9. Equality, Diversity and Human Rights Implications

9.1 None directly arising from this report.

10. Community Safety and Health and Safety Implications

10.1 None directly arising from this report.

11. Risk Management Implications

11.1 None directly arising from this report.