

Reference: 16/01115/DVOB	Site: Former St Chad's School site St Chads Road Tilbury
Ward: Tilbury St. Chads	Proposal: Application for a Deed of Modification to the s106 legal agreement for planning permission reference 14/01274/FUL (Residential re-development of former St. Chads School site for 128 units, comprising two, three and four-bed houses plus new associated landscaping and infrastructure). Proposed removal of the requirement to deliver affordable housing units.

Plan Number(s):		
Reference N/A	Name N/A	Received N/A

<p>The application is also accompanied by:</p> <ul style="list-style-type: none"> • Financial Viability Assessment 	
Applicant: Gloriana Thurrock Limited	Validated: 9 August 2016 Date of expiry: 31 December 2016 (Agreed Extension of Time)
Recommendation: That the existing s106 agreement be varied to delete the obligation to the provision of on-site affordable housing.	

This application is scheduled for determination by the Council's Planning Committee because the original planning application [14/01274/FUL] was determined by the Council's Planning Committee.

1.0 DESCRIPTION OF PROPOSAL

- 1.1 This application is made under s106A of the Town and Country Planning Act 1990 (and in accordance with the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992)) and seeks to modify the s106 planning obligation attached to application reference 14/01274/FUL.
- 1.2 By way of background, planning application reference 14/01274/FUL (residential re-development of 128 dwellings) was submitted in November 2014. At that time

the Council owned the site and was the applicant. A report assessing the application was presented to Planning Committee in February 2015 where the Committee resolved to grant planning permission subject to:

- completion of a s106 agreement relating to the heads of terms set out in the report to Committee; and
- planning conditions.

1.3 Because at the time when the Planning Committee considered the application the land was within the ownership of the Council, it was not possible for the Council to enter into a s106 legal agreement with itself. Therefore, a transfer of the site to Gloriana Thurrock Limited was arranged and completed.

1.4 The s106 agreement between the Council and Gloriana Thurrock Limited (the owner) for the development was completed in June 2015. The principal obligations upon Gloriana within the agreement comprise:

1. Affordable housing:

- Affordable Units (34no. two-bed, 9 no. three-bed and 2 no. four-bed dwellings – Total 45 no. units = 35% affordable provision) developed in accordance with the planning permission;
- construction of Affordable Units prior to completion / occupation of 60% of Full Market Value dwellings;
- Affordable Units to be occupied only by a Qualifying Person and / or a person with Housing Need;
- Affordable Units to be used as affordable housing in perpetuity;
- Affordable Units only to be let at the Affordable Rent;
- Affordable Rent not to increase without Council agreement.

2. Education and recreation contributions (total £640,000):

- payment of 25% of both the education and recreation contributions prior to commencement of development;
- remaining 75% of contributions payable per calendar quarter based on dwellings completed;
- level of payments may be varied prior to commencement subject to viability review and any material change in circumstances.

3. Management and maintenance of open space and SUDS:

- submission and approval of details for the provision and maintenance of on-site open space, SUDS and equipped play space.

4. Highways works:

- prior to commencement of development submission of a scheme (including costings and timetable for implementation) for the following highways works-
 - alterations to Central Avenue / St. Chad's Road junction;
 - reduction in width of Northview Avenue;
 - relocation of bus shelter to south of access;
 - parking restrictions and traffic regulation orders;
 - highway works within St. Chad's Road.

- 1.5 The current application seeks consent to vary the s106 agreement to remove the requirement to deliver the "Affordable Units" within the development, as defined within the obligation. The applicant's reason for seeking this change is that it is considered *"unviable to deliver the requested levels of affordable housing within current market conditions"*. The applicant further advises that:

"Gloriana is bringing forward a deliberately high quality scheme of 128 new homes on a site which has lain vacant for some time. We have consciously set the bar in terms of design, sustainability and materials well above what is currently being delivered by the wider private sector in the area and are keen to support the broader regeneration and growth ambitions in Tilbury ... delivering this level of quality comes at a cost. At the time of our original submission we had taken account of the likely costs of the project but these have subsequently been significantly increased following the discovery of contamination on site which has cost more than £3.3 million to remediate. Whilst the housing market has improved over the lifetime of the scheme it has not translated into sufficiently high values to account for this level of additional costs. On this basis, the scheme is no longer financially viable for Gloriana and, based upon the financial viability analysis, is likely to generate a loss to the company. We are very keen not to dilute the quality of the project which we believe will be counter-productive to what we are collectively trying to achieve in the area. As the viability analysis demonstrates, the existing s106 requirements in respect of 35% affordable housing have a significant impact on the overall financial viability of the project. We have examined the potential to provide reduced levels of affordable housing but have been unable to find a viable way forward. Removing the affordable housing commitment completely puts the project into profit, but only just. The figures suggest that with no affordable housing Gloriana can expect to generate 5% profit on cost. Whilst this is well below standard benchmark it is a level which Gloriana would find acceptable and would allow the quality of the project to be retained."

1.6 Officers have raised the issue of unforeseen ground contamination with the applicant and have referred to the ground investigation report which accompanied the 2014 planning application. In response, the applicant has stated that, although the initial investigations found no contamination on the site, contamination “*was discovered as we started groundworks and is at a depth that suggests that it was contained within the material historically used to reclaim the marshes*”.

1.7 In support of the application the applicant has provided a financial viability report produced by Gloriana’s retained advisors.

2.0 SITE DESCRIPTION

2.1 The former St Chads Secondary School is located in the northern part of Tilbury. The original school buildings were developed in the 1930s and subsequently extended. The 3.25ha site is situated approximately 1km to the north-east of Tilbury Town rail station. The site, which is accessed via Northview Avenue to the south, lies adjacent to St Chads Road (A126) which joins the A1089(T) to the west.

2.2 Secondary education provision for the area is now provided by The Gateway Academy. Following the opening of The Gateway Academy, the former school buildings on the St Chads site were demolished between 2008 and 2010.

2.3 Existing vehicular access to the site is from Northview Avenue at the south-western corner. A track within the site adjoins the full length of the northern boundary and links St Chads Road with Tilbury Marshes. It is understood that this is a private access which affords access to both the Environment Agency and Thurrock Council land at Tilbury Marshes.

2.4 The area in which the site is located is characterised by a variety of differing uses. There is a mixture of semi-detached, two storey housing to the south and east and 3 no. sixteen storey residential tower blocks to the south-west. A travelling show person’s site abuts the site’s northern boundary and to the north of that is the Tilbury Football Club ground. Land to the west of the site also includes the Hobart Road community allotments, the Jack Loble County Primary School and informal green space with marshland beyond. Adjacent to the south west corner of the site is the Little Pirates children’s nursery and Sea Scout’s meeting hall. The residential properties and shops at 157-161 St Chads Road do not form part of the development site.

3.0 RELEVANT HISTORY

3.1 The relevant planning history for the former school site is set out in the table below:

Reference	Description	Decision
11/50321/TTGOUT	Development of up to 133 residential dwellings with associated car parking, landscaping and access	Approved subject to conditions and following completion of s106 unilateral undertaking
14/01274/OUT	Residential re-development of former St. Chad's School site for 128 units, comprising two, three and four-bed houses, plus new associated landscaping and infrastructure	Approved subject to conditions and following completion of s106 agreement
15/00854/CONDC	Application for the approval of details reserved by condition nos. 2 (landscaping), 3 (play equipment), 5 (remediation), 15 (lighting), 15 (materials), 20 (flood management), 21 (flood resistance), 22 (surface water), 23 (CEMP), and 32 (road layout) of planning permission ref. 14/01274/FUL	Advice Given
15/00893/NMA	Non-material amendment to planning permission ref. 14/01274/FUL – amendments to sub-station, re-siting of plots, amended boundary treatments, amended door and window patterns and amended house types	Approved
15/00930/DVOB	Application for the modification of planning obligations: proposed removal of obligations requiring education and recreation financial contributions regarding planning permission ref. 14/01274/FUL	Withdrawn
16/00444/CV	Application for the removal of condition no. 28 (Code for Sustainable Homes) and no. 29 (provision of solar PV arrays) of planning permission ref. 14/01274/FUL	Withdrawn
16/01076/NMA	Non-material amendment to planning permission ref. 14/01274/FUL: change bi-fold refuse storage doors to type F1 and F2 properties to single leaf paired doors	Approved

4.0 CONSULTATIONS AND REPRESENTATIONS

4.1 A site notice publicising the application has been displayed. No replies have been received.

5.0 POLICY CONTEXT

5.1 National Planning Guidance

National Planning Policy Framework

The NPPF was published on 27th March 2012. Paragraph 13 of the Framework sets out a presumption in favour of sustainable development. Paragraph 196 of the Framework confirms the tests in s.38 (6) of the Planning and Compulsory Purchase Act 2004 and s.70 of the Town and Country Planning Act 1990 and that the Framework is a material consideration in planning decisions. Paragraph 197 states that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.

5.2 The following headings and content of the NPPF are relevant to the consideration of the current proposals.

- *delivering a wide choice of high quality homes* – under this heading paragraph 50 of the NPPF states that in order to deliver a wide choice of high quality home, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should (inter-alia) *“where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time”*.

5.3 Planning Practice Guidance (PPG)

In March 2014 the Department for Communities and Local Government (DCLG) launched its planning practice guidance web-based resource. This was accompanied by a Written Ministerial Statement which includes a list of the

previous planning policy guidance documents cancelled when the NPPF was launched. PPG contains 48 subject areas, with each area containing several sub-topics. The topic of particular relevance to the determination of this planning application comprises

- *Viability* – under the heading of the consideration of viability for brownfield sites paragraph 026 (ref. ID 10-026-20140306) refers to the NPPF core planning principle that in decision-taking local planning authorities should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value. To incentivise the bringing back into use of brownfield sites, local planning authorities should (inter-alia) take a flexible approach in seeking levels of planning obligations and other contributions to ensure that the combined total impact does not make a site unviable.

5.4 Local Planning Policy

Thurrock Local Development Framework (2011)

The Council adopted the “Core Strategy and Policies for the Management of Development Plan Document” in December 2011. The Adopted Interim Proposals Map shows the site as ‘white land’ i.e. land without a specific policy allocation. Nevertheless, residential redevelopment has been found acceptable via the grant of planning permission. The following Core Strategy policies apply to the proposals:

Spatial Policies:

- CSSP1 (Sustainable Housing and Locations); and
- OSDP1 (Promotion of Sustainable Growth and Regeneration in Thurrock)¹

Thematic Policies:

- CSTP1 (Strategic Housing Provision); and
- CSTP2 (The Provision of Affordable Housing)

[Footnote: ¹New Policy inserted by the Focused Review of the LDF Core Strategy.]

6.0 ASSESSMENT

6.1 The background to the case is set out above. The extant s106 agreement places obligations on the owner in relation to the provision of affordable housing on-site. For reference, the details of the obligations are set out in the table below:

Ref	Obligation
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1.1	Affordable units (34 no. two-bed, 9 no. three-bed and 2 no. four bed houses – total 45 dwellings (35%)) to be developed and built in accordance with the planning permission
1.2	Not to allow disposal or occupation of more than 60% of the full market value units until the affordable units have been constructed and made ready for occupation
1.3	Any owner of an affordable unit shall reside in the unit as a main residence and shall not allow any other person (other than a household member) to live in the unit.
1.4	The affordable units shall only be occupied by a qualifying person and / or a person with housing need and members of their household.
1.5	Affordable units to be used as affordable housing in perpetuity.
1.6	Not to allow disposal of any affordable unit other than by letting or other terms approved by the Council at the affordable rent.
1.7	Not to increase the affordable rent without Council agreement
2.1	Prior to marketing an affordable unit for letting to confirm that the Council's lettings policy will be used
2.2	Whenever an affordable unit is marketed for letting to advise potential applicants to register with the Council and join the housing register
2.3	On the initial letting of an affordable unit to give the Council 13 weeks' notice of the letting availability and provide a rental valuation
2.4	On subsequent lettings to give the Council 4 weeks' notice of the letting availability
2.5	To accept the Council's nomination of a qualifying person and / or person with housing need for occupation save where there is a legitimate commercial or legal reason
2.6	Affordable units to be first offered to persons at least one of whom is a qualifying person and / or person with a housing need in the locality (Tilbury / Chadwell / Grays)
2.7	If no qualifying person and/or person with housing need in the locality has agreed terms for letting, affordable units to be offered to persons at least one of whom is a qualifying person and / or person with a housing need in the borough of Thurrock
2.8	If no qualifying person and/or person with housing need in the borough has agreed terms for letting, affordable units to be offered to persons at least one of whom is a qualifying person and / or person with a housing need in adjoining boroughs within Essex
3	The owner may transfer the affordable units to a registered provider, in which case 3.1, 3.2, 3.3 and 3.4 (below) apply
3.1	No more than 49 full market value units to be completed until the owner has contracted to dispose of the affordable units to a registered provider

3.2	<p>The affordable units shall be rented by the registered provider to qualifying persons and / or persons with a housing need as follows</p> <p>3.2.1 affordable units to be initially offered to qualifying persons and / or persons with a housing need in the locality</p> <p>3.2.2 If no qualifying person and/or person with housing need in the locality is identified, affordable units to be offered to qualifying persons and / or persons with a housing need in the borough of Thurrock</p> <p>3.2.3 If no qualifying person and/or person with housing need in the borough is identified, affordable units to be offered to qualifying persons and / or persons with a housing need in the adjoining boroughs within Essex</p> <p>3.2.4 In the first instance the Council shall be invited to nominate a qualifying person and / or person with a housing need for occupation</p>
3.3	<p>In the event that an affordable unit could be occupied by either a qualifying person and / or person with a housing need, the person with housing need shall take priority</p>
3.4	<p>If the owner agrees the transfer of the affordable units to a registered provider but the agreement terminates the owner shall use best endeavours to secure a second or further agreements</p>
4	<p>The owner agrees to provide, on request, information to determine whether the affordable housing obligations are being observed.</p>

6.2 The extant obligations therefore establish comprehensive provisions for the provision of affordable housing on-site and the long term management and occupation of the affordable housing units.

6.3 At the time when the application for full planning permission (ref. 14/01274/FUL) was presented to Planning Committee in February 2015 the Officer’s report noted (at paragraph 6.29) that: *“LDF-CS Policy CSTP2: (The Provision of Affordable Housing) seeks the minimum provision of 35% of the total number of residential units built to be provided as Affordable Housing. The applicant has agreed to meet these standards.”* However later in the same report it is noted at paragraph 6.34, under the heading of financial contributions towards education and recreation facilities that: *“The applicant has requested that a clause be inserted into the legal agreement that would allow the quantum of developer contribution to be flexed in the event that the developments viability is threatened as demonstrated by a viability assessment.”*

6.4 Therefore, at the time when the Planning Committee considered the full planning application there was an assumption that the scheme would deliver policy-compliant affordable housing, but that there may be some flexibility in the level of infrastructure contribution dependent on viability. The current proposals involve the retention of the infrastructure contribution (c.£640,000 index-linked), however the obligation to provide affordable housing would be removed.

- 6.5 Policy CSTP2 of the LDF Core Strategy (as amended) 2015 sets out the Council's planning policy for the provision of affordable housing. Those elements of the policy relevant to the current case are:
1. In order to address the current and future need for Affordable Housing in Thurrock, the Council will seek the minimum provision of 35% of the total number of residential units built to be provided as Affordable Housing;
 2. The Council will seek Affordable Housing to meet local needs on qualifying sites subject to (inter-alia):
 - ii. the economics of providing affordable housing;
 3. The Council recognises that the majority of Thurrock's identified housing land supply is on Previously Developed Land often subject to a variety of physical constraints. The capacity of a site to deliver a level of Affordable Housing that can be supported financially will be determined by individual site 'open book' economic viability analysis where deemed appropriate. This analysis will take into consideration existing use values, as well as other site-specific factors.
- 6.6 Policy CSTP2 therefore clearly recognises that financial viability and the associated physical constraints which may affect a site (e.g. remediation / land-raising etc.) are factors which will affect the ability of a development to deliver affordable housing. In this regard "abnormal" site development costs can be taken into consideration when assessing the financial viability of development. Paragraph 022 of the national Planning Policy Guidance document (PPG) (ref ID: 10-022-20140306) provides guidance on development costs and notes that abnormal costs include *"those associated with treatment for contaminated sites or listed buildings, or historic costs associated with brownfield, phased or complex sites"*.
- 6.7 National guidance within PPG provides specific advice on the matter of viability and decision taking. Paragraph: 016 (ref. ID: 10-016-20140306) notes that *"where the deliverability of the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary. This should be informed by the particular circumstances of the site and proposed development in question"*. Paragraph 026 (ref. ID 10-026-20140306) refers specifically to viability issues for brownfield sites and notes that the *"National Planning Policy Framework sets out a core planning principle that in decision-taking local planning authorities should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value ... To incentivise the bringing back into use of brownfield sites, local planning authorities should take a flexible approach in seeking levels of*

planning obligations and other contributions to ensure that the combined total impact does not make a site unviable”.

6.8 Both local and national planning policies therefore generally link the deliverability of brownfield redevelopment with financial viability and Policy CSTP2, in particular, states that it is legitimate for the level of affordable housing to be determined via viability analysis.

6.9 In this case a financial viability analysis has been prepared by the applicant's retained advisors. Although the detailed content of this analysis is commercially sensitive, the headline conclusions are:

- development costs exceed the income generated from the development;
- development loss based on Gross Development Value is -10% (benchmark profit values = +12 to +20%);
- development loss based on cost is -9.1% (benchmark profit values = +15% to +25%);
- project Internal Rate of Return is negative (benchmark values +10% to +15%).

The development is therefore modelled as financially unviable with the level of contributions set out in the s106 planning obligations.

6.10 The applicant's analysis models an alternative scenario where no affordable housing is delivered and the financial contribution towards education and recreation infrastructure is retained by the owner. The headline conclusions of this 'no affordable housing and no financial contributions' scenario are:

- the income generated from the development exceeds development costs;
- development profit on based Gross Development Value is +4.8% (benchmark profit values = +12 to +20%);
- development profit based on cost is +5% (benchmark profit values = +15% to +25%);
- project Internal Rate of Return is +2.35% (benchmark values +10% to +15%).

This alternative scenario models a profit, albeit below the 'normal' commercial returns which a developer would target. It should be noted that the applicant is only seeking to remove the affordable housing obligations and the education and recreation contribution would remain unaffected by the current proposal. The alternative scenario summarised above assumes no affordable housing and no financial contributions and therefore the actual level of 'profit' is likely to be below the figures given above.

- 6.11 As is normal practice, Officers have instructed an independent consultant to appraise the applicant's viability analysis on behalf of the local planning authority. The conclusions of the independent appraisal are:
- the site is currently unable to viably deliver affordable housing at a policy compliant level on the basis of the applicant's analysis.
 - whilst the original contingency allowance on the evidence of the applicant's figures would be totally used up, the scheme would not be loss-making if it were all open market sale
- 6.12 A key element of the applicant's submission is the reference to *"the discovery of contamination on site which has cost more than £3.3 million to remediate"* and the statement that this contamination *"was discovered as we started groundworks and is at a depth that suggests that it was contained within the material historically used to reclaim the marshes"*. The applicant's viability analysis confirms that this contamination comprised asbestos which was not encountered by the initial ground investigation of the site.
- 6.13 The application for full planning permission (14/01274/FUL) was accompanied by a 'Phase I & II Geoenvironmental and Geotechnical Ground Investigation Report'. This report confirmed that intrusive investigation of ground conditions (both made ground and natural soils), comprising a series of boreholes and pits, was undertaken in 2014. The soil and groundwater assessment results recorded elevated concentrations of vanadium and some PAH (polycyclic aromatic hydrocarbons), however asbestos was absent from the samples obtained in 2014. The investigation report recommended mitigation measures to deal with the encountered contamination and these measures were secured by condition no. 5 of the full planning permission.
- 6.14 Documentary evidence has been provided to verify the existence of the unforeseen asbestos contamination encountered on the site. It is apparent from documentation provided by the applicant that construction works commenced on-site in summer 2015. During a ground penetration test to establish the mechanical strength of ground beneath the proposed carriageways (a CBR test) asbestos was encountered. The occurrence of asbestos required the appointment of a specialist contractor to deal with the asbestos, the preparation of a plan of works for asbestos removal, notification to the Health and Safety Executive, a revised remediation strategy for the site and post-remediation validation. Evidence suggests that two areas of asbestos contaminated soils on-site and the presence of asbestos insulating board and sheeting located below the floor slab of the former school buildings and around floor ducts.

6.15 In addition to the documentation to demonstrate the presence of unforeseen asbestos contamination, the applicant has been asked to provide evidence of the provenance of costs associated with dealing with the asbestos. In response, the applicant has provided a detailed breakdown of the remediation costs, including the costs involved in the following activities:

- air monitoring;
- soil sampling and testing;
- soil stripping and removal of contaminated soils to licensed landfill;
- break-up and removal of asbestos boards and sheeting;
- importation of clean top-soil.

6.16 The removal and remediation programme associated with asbestos ran for a period of 24 weeks between September 2015 and February 2016. The details provided by the applicant's contractor confirm a total cost of c.£3.35 million for dealing with the asbestos on-site.

6.17 It is concluded on this point that the applicant has provided detailed evidence to firstly confirm the presence of unforeseen asbestos contamination on the site and secondly justify the provenance of the asbestos remediation costs.

6.18 As noted above, the applicant's viability assessment models a 5% profit on development cost if the requirement for provision of affordable housing is deleted as proposed. As noted in paragraph 6.10 above, this modelled 5% profit assumes that the s106 financial contribution towards education and recreation infrastructure is not provided. The applicant does not intend any changes to the obligation for this payment and therefore the modelled 5% profit will be lower. It is also the case that tax and interest payments will be likely to further reduce the profit on development cost still further. Therefore, although the development with no affordable housing provision provides a small profit, this profit is not sufficient (after payment of tax, interest and s106 financial contributions) to provide any affordable housing provision on-site.

7.0 CONCLUSIONS AND REASONS FOR RECOMMENDATION

7.1 The extant s106 agreement includes obligations, inter-alia, for the provision of on-site affordable housing and a financial contribution towards education and recreation infrastructure. Construction activities commenced in the summer of 2015 and at this time unforeseen asbestos contamination was encountered below ground level, despite an investigation of the site in 2014. The presence of asbestos on the site required a variation to the already agreed remediation strategy and the appointment of a specialist contractor. The applicant has been requested to provide evidence of the previously un-encountered asbestos and the provenance of

the additional costs associated with dealing with the asbestos. Satisfactory documentation has been provided as requested and it is apparent that the asbestos contamination has added considerable cost and delay to the construction programme.

- 7.2 Both national and local planning policies generally link the deliverability of brownfield redevelopment with financial viability and Core Strategy Policy CSTP2, in particular, states that it is legitimate for the level of affordable housing to be determined via viability analysis. The applicant's viability analysis (which has been independently appraised) confirms that, due to the costs associated with the remediation of asbestos, it is not viable to provide the on-site affordable as originally intended. Indeed, it is not financially viable to provide any level of affordable housing on-site. Although it is unfortunate that no affordable housing will be provided, the applicant's submission confirms that it is no financially viable to do so.
- 7.3 This application is submitted under s106a of the Town and Country Planning Act 1990 which provides that planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Whether the local planning authority wishes to vary the planning obligations as proposed is at their discretion. However, on the basis of the information provided by the applicant and with regard to planning policy, no objections are raised to the proposal.
- 7.1 In light of the above considerations, the proposed variation to the s106 is considered to be acceptable.
- 8.0 RECOMMENDATION
- 8.1 That the existing s106 agreement be varied to delete the obligation to the provision of on-site affordable housing.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

www.thurrock.gov.uk/planning/16.01115.DVOB

