

- iv) Integrated public art provision element within the scheme equates to the value of £55,000;
- v) Financial contribution of £6,000 to moving the existing bus stop on the north side of Pankhurst Avenue to facilitate the construction of the proposed access;
- vi) Construction Environmental Management Plan;
- vii) Management program to be agreed for the use of the community facility hereby approved which shall be made available for use within 6 months of first occupation of the residential element; and
- viii) Detailed methodology for translocation of slow worms to suitable receptor site within Brighton & Hove – maintenance for at least 10 years to be provided if on Brighton & Hove City Council receptor site.

4. PROPOSAL

4.1 Development has commenced on site. The applicant has requested a Variation of the s106 attached to application BH2010/01054 to ensure that the scheme remains viable throughout the build.

4.2 It is proposed to vary the Heads of Terms as set out below:

- Affordable housing from 80% to 40%;
- Integrating a public art provision element within the scheme to equate to the value of £55,000 (rather than a stand alone contribution);
- Introducing phased payments; and
- Introducing a new Head of Terms requiring a minimum of 20% of the workforce during the construction phase to be local employment.

5. CONSULTATION:

5.1 **Public Art:** Were the scheme to provide for 100% affordable housing we could apply a further reduction to the public art contribution to reflect that as this is one of the issues we consider when it comes to reducing the standard sqm rate for a particular development within a particular area.

5.2 It is suggested however, that it does not go down beyond £42.5k as a reduction was negotiated at the time of the original approved application (the suggested contribution prior to negotiations taking place at the time of the previously approved application was £85k).

5.3 **Planning Strategy:**

The move away from the Local Plan HO1 policy with indicative requirement for 80% can be justified given the viability problems that we have on key sites in the city. In this particular case a provision to 40% affordable housing provision is supported. It is understood that Housing Strategy will also accept the proposal to 40% provision and providing they confirm the same then I can advise we support the pragmatic approach to policy to see this site being developed.

5.4 The requirement for on site local employment and training with a minimum target figure in accordance with approved Developer Contributions Technical Guidance is welcomed.

5.5 **Housing Strategy:** Comments awaited.

6. COMMENT:

6.1 **Affordable housing:** The applicant has requested a reduction in the affordable housing contribution from 80% to 40%.

6.2 The previous s106 secured 80% affordable housing in accordance with the indicative percentage in Policy HO1. However, this is an indicative aspiration in policy terms and the more general policy situation across the City is to secure 40% affordable housing on sites such as this, in accordance with Policy HO2 of the Brighton & Hove Local Plan.

6.3 The applicants have provided a viability assessment with their request, which confirms that with a higher level of affordable housing, and payment of the financial contributions, that the scheme would be unviable.

6.4 Therefore, to ensure that the scheme can move forward, a flexible approach needs to be considered. The LPA have taken the view that the financial contributions are required to mitigate against the impact of the development, and thus reviewing the policy requirements of the scheme, such as the level of affordable housing secured is entirely appropriate, and in accordance with best practice for cases where viability issues may be a cause for concern.

6.5 In addition, the site has a complex history, and the original allocation, with the indicative 80% affordable housing requirement relates to a wider site across a larger part of the hospital where the yield had been forecast at 200 units. The remainder of this site is not coming forward for redevelopment at the current time, with no indication of when this is likely to occur, if at all. Larger development sites can accommodate higher proportions of affordable housing, as the costs of this can be mitigated against the remainder of the development.

6.6 The application site is much smaller than the original Local Plan allocation site, and as such it is considered that there is less scope for high proportions of affordable housing.

6.7 Therefore, based on the viability issues, site history and reduction in size of the site, it is considered that a lower proportion of affordable housing is acceptable in this particular instance. The level recommended is in accordance with Policy HO2 of the Local Plan, and would not compromise the provision of affordable housing elsewhere in the city.

- 6.8 **Type and Tenure of Affordable Housing:** The existing s106 agreement stipulates that 42% of the affordable housing units are to be for Social Rent and the remainder be Intermediate affordable housing.
- 6.9 In accordance with best practice, it is proposed to remove this clause and allow the application to determine the split between tenure types.
- 6.10 This is considered to be entirely appropriate as the appropriate level of affordable housing is to be secured and there is no policy basis within the 2005 Brighton & Hove Local Plan to secure any breakdown between the tenures. As such this amendment will bring the proposal in line with the current policy framework.
- 6.11 **Public Art:** The comments from the Public Art Officer are clear and outline the history in relation to the education contributions and demonstrate the significant reductions have already taken place.
- 6.12 That said, there is additional scope to be more flexible in the way we approach the public art contribution. As such it is recommended that the agreement be amended to allow a scheme of public art to be incorporated within the development itself, to a value of £55,000.
- 6.13 This will ensure that the development provides an acceptable level of public art, without placing any undue burden on the applicant.
- 6.14 **Phased payments:** The phasing of payments is an accepted method of ensuring that the monies required to mitigate against the impact of the development are made, however within a timeframe which allows for this to be paid when it is appropriate, rather than all being prior to the commencement of development.
- 6.15 The principle of phased payments also forms part of the agreed measure to assist the development in these times of economic downturn and as such is acceptable.
- 6.16 **Local Employment Scheme:** Since the application was determined, there is now a new requirement on all major sites to secure that a proportion of the workforce during the development stage comes from the local area. As such, the applicants have offered to meet a minimum level of 20% in this regard in mitigation.
- 6.17 This is to be welcomed and goes some way to secure compliance with the new position in relation to local employment.

7. **FINANCIAL & OTHER IMPLICATIONS:**

- 7.1 Financial Implications:
None identified.

7.2 Legal Implications:

Lawyer Consulted: Hilary Woodward

Section s106A of the Town and Country Planning Act 1990 provides that an agreement under s106 of that Act may be varied by agreement between the local planning authority and the person against whom the agreement is enforceable.

7.3 Equalities Implications:

None identified

7.4 Sustainability Implications:

None identified

7.5 Crime & Disorder Implications:

None identified

7.6 Risk and Opportunity Management Implications:

None identified

7.7 Corporate / Citywide Implications:

None identified.

8. CONCLUSION

8.1 The applicant has applied to vary the signed s106 agreement as set out at 4.2 of this report.

8.2 The proposed amendments are considered to be acceptable for the reasons as detailed above.

8.3 Therefore, the recommendation is for the heads of terms of the s106 agreement be amended to read as follows:

- i) 40% of the units as affordable;
- ii) A financial contribution towards adult / youth outdoor sports facilities towards open space improvements of £26,782.48 – as a result of negotiation provision for children’s equipped play space (LEAP) and casual / informal play space (LAP) on site which will be maintained by the applicant;
- iii) A financial contribution of £135,796 for primary and secondary education;
- iv) Integrated public art provision element within the scheme equates to the value of £55,000;
- v) Financial contribution of £6,000 to moving the existing bus stop on the north side of Pankhurst Avenue to facilitate the construction of the proposed access;
- vi) Construction Environmental Management Plan;

- vii) Management program to be agreed for the use of the community facility hereby approved which shall be made available for use within 6 months of first occupation of the residential element;
- viii) Detailed methodology for translocation of slow worms to suitable receptor site within Brighton & Hove – maintenance for at least 10 years to be provided if on Brighton & Hove City Council receptor site; and
- ix) The provision of an Employment and Training Strategy with the developer committing to using a minimum of 20% local employment during the construction phase.

In addition to the above, amendments are also required to introduce phased payments of the financial contributions.