

<u>No:</u>	BH2020/01403	<u>Ward:</u>	Goldsmid Ward
<u>App Type:</u>	Heads of Terms for S106 to be tabled to Planning Inspectorate for Appeal.		
<u>Address:</u>	64 - 68 Palmeira Avenue & 72 - 73 Cromwell Road Hove		
<u>Proposal:</u>	Redevelopment of land on the corner of Palmeira Avenue & Cromwell Road for the erection of 94 flats (C3) with basement parking, landscaping & associated works. (Revised design including additional balconies, revised elevational materials & design, revised layout to ground & lower ground floor residential units & supporting information)		
<u>Officer:</u>	Mick Anson, Tel: 292354	<u>Valid Date:</u>	N/A
<u>Con Area:</u>	N/A	<u>Expiry Date:</u>	N/A
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	
<u>Agent:</u>	SF Planning Limited 12 Royal Crescent Cheltenham GL50 3DA		
<u>Applicant:</u>	RKO Developments Ltd C/O SF Planning Ltd 12 Royal Crescent Cheltenham GL50 3DA		

1. PREAMBLE

- 1.1. At a meeting on 2 September 2020, the Planning Committee resolved, contrary to officer recommendation, to refuse planning permission for the redevelopment of 64 – 68 Palmeira Avenue and 72-73 Cromwell Road in Hove to provide 94 flats and associated works. An appeal has been lodged against that refusal.
- 1.2. The following report seeks the Committee’s agreement to draft Heads of Terms for a s106 legal agreement, should the Inspector allow the appeal. This makes no assumption about the decision the Inspector will make but will ensure that the Council secures the necessary mitigation if the scheme is approved.

2. RECOMMENDATION

- 2.1. That the Committee has taken into consideration and agrees with the Heads of Terms set out below for a draft S106 agreement to be tabled to the Planning Inspectorate for the forthcoming Appeal Hearing, in the event that the appeal is allowed by the Secretary of State.

S106 Heads of Terms

- Affordable Housing: Review mechanism to require Viability Assessment prior to occupation to reassess ability to provide affordable housing;
- A contribution of £26,100 to the Council's Local Employment and Training Strategy including a commitment to using 20% local employment during the

demolition and construction phases of the development/maintenance of green technologies installed in the development.

- An artistic component / element / public realm improvements as part of the proposed scheme and on the site or in the immediate vicinity to the value of £32,300.
- A scheme to secure 3 replacement street trees for every street tree lost within five years of commencement of development.
- A s278 in order to secure:
 - Closure of 3 x existing site accesses on Cromwell Rd and 1x existing access on Palmeira Ave;
 - Amendments to on-street parking and the proposed re-location of the solo motorcycle bay;
 - Creation of a new pedestrian-priority vehicular cross-over on Palmeira Ave, which will serve as the basement car park access for the site; and.
 - Removal/relocation of bus stop and shelter and creation of new loading bay.

3. SITE LOCATION & APPLICATION DESCRIPTION

- 3.1. The site, subject of an appeal against the refusal of the above residential redevelopment proposal, comprises a 0.3ha plot located to the west of the junction of Palmeira Avenue and Cromwell Road.
- 3.2. The site contains five, two-storey detached buildings, namely numbers 64 (currently vacant), 66 (two flats) and 68 Palmeira Avenue (single dwelling), and 72 (two flats) and 73 Cromwell Road (single dwelling).
- 3.3. The building at 64 Palmeira Avenue has previously been used as a nursery at ground floor level with flat above.
- 3.4. The application sought permission for the demolition of all of the buildings on site, and the erection of a residential block of 94 flats, in addition to a landscaped rear communal garden area and a basement carpark containing 47 car parking spaces. The block would be a maximum of seven storeys above ground with a lower ground floor level of accommodation.

4. REPRESENTATIONS

Not applicable

5. CONSULTATIONS

- 5.1. **District Valuation Service:** agree that appellant's reassessment of viability is sound and that no affordable housing can viably be provided with scheme.

6. RELEVANT POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

CP7	Infrastructure and developer contributions
CP20	Affordable housing

Brighton and Hove Local Plan (retained policies March 2016):

TR4	Travel plans
QD16	Trees and hedgerows

Supplementary Planning Documents:

SPD06	Trees & Development Sites
-------	---------------------------

7. CONSIDERATIONS & ASSESSMENT

- 7.1. The main considerations are to agree that, in the event of the appeal being allowed by the Secretary of State, a s106 agreement should be secured on the Heads of Terms set out in the recommendation,

Background

- 7.2. At its meeting on 2nd September 2020, the Planning Committee voted to refuse planning permission for the above proposed development against officer recommendation for the following reasons:

Reason 1.

- 7.3. The proposed development would result in the demolition of existing dwellings that make a positive contribution to the character of the area and the loss of the dwellings is considered to result in harm. The proposed redevelopment, by reason of its excessive layout, scale and density would result in an inappropriate addition that would harm the character, appearance and visual amenity of the area. For this reason the development is contrary to policy CP12 of the Brighton & Hove City Plan Part One.

Reason 2.

- 7.4. The proposed development would provide an insufficient level of affordable housing and is therefore contrary to policy CP20 of the Brighton & Hove City Plan Part One.

Reason 3.

- 7.5. The proposed development by reason of its excessive height and scale would result in overlooking, loss of privacy, overshadowing and loss of outlook to neighbouring occupiers and is therefore contrary to policy QD27 of the Brighton & Hove Local Plan.

- 7.6. A date has been set for the appeal hearing of 14th December 2021. In preparation, the Council is required to indicate, without prejudice to the outcome

of the appeal, the Heads of Terms of any S106 Agreement to be considered by the planning Inspector.

Community Infrastructure Levy

- 7.7. Under the Community Infrastructure Levy Regulations 2010 (as amended) (CIL), Brighton & Hove City Council adopted its CIL on 23 July 2020 and began charging on all CIL liable planning permissions on and from the 5 October 2020 i.e. after the decision to refuse planning permission the subject of the appeal.
- 7.8. If this appeal were to be allowed, the developer would be liable for a CIL payment on commencement of the development. Following CIL, some of the commuted sums recommended to the committee when the application was determined could not now be sought because they would be funded through CIL, namely:
- A contribution of £57,589.40 towards education – now covered by CIL.
 - A contribution of £250,065.24 towards open space and recreation provision – now covered by CIL.
 - A contribution of £82,500 towards sustainable transport improvements in the vicinity – now covered by CIL.

Draft 106 Heads of Terms

- 7.9. City Plan Part One Policy CP20 seeks a target contribution of 40% affordable housing for schemes of more than 15 units, which for this scheme would equate to 37 units. However, the planning application was accompanied by a Viability Assessment which concluded that affordable housing provision on site was not viable. This was independently reviewed by the District Valuation Service (DVS) which found that the equivalent of between 4-5 affordable units would be viable, following which an off-site contribution of £354,503 was negotiated with the case officer. Notwithstanding the negotiated contribution the Committee considered that the proposed development would provide insufficient affordable housing (reason for refusal 2).
- 7.10. As part of the appeal submission, the appellants have submitted an updated Viability Report. This takes account of CIL, which was not considered in the previous Viability Assessment, and again concludes that no affordable housing would be viable. This report was reviewed by the DVS, on behalf of the LPA, using up-to-date site valuations and cost estimates, concluding that the assessment in the Viability Report is correct and no affordable housing could viably be provided. The CIL payment due to the council is estimated at this stage to be £1.05m which, along with the increased cost of the site, have reduced the viability of the scheme. This is £305,343 more than what would have been secured under the scheme that was presented to committee in September 2020. In addition, the appellant's costs in the updated Viability Report were underestimated due to the on-going requirement for S106 commuted sums for employment and public art which had not been taken into account by the appellants. Please see below table to show the differences pre and post CIL:

Element	Pre-CIL	Post Cil
Affordable Housing	£ 354,503	£ -
Local Employment & Training	£ 26,100	£ 26,100
Artistic Component	£ 32,300	£ 32,300
Education	£ 57,589	£ -
Open Space & Recreation	£ 250,065	£ -
Sustainable Transport	£ 82,500	£ -
CIL	£ -	£ 1,050,000
TOTAL	£ 803,057	£ 1,108,400
Variance		£ 305,343

- 7.11. Under CIL payment, there would be circa £157,000 to be spent on improvements in the Ward.
- 7.12. The updated Viability Report and the DVS review of the Report can be found on the Planning Register.
- 7.13. It is recommended, therefore, that in the event of the appeal being allowed, the Heads of Terms of the S106 include a clause that allows for a review mechanism of the viability of the development at a key stage of the development process at the time. This would ensure that any additional surplus generated at development stage would be put towards maximising the level of affordable housing contributions that could be secured via the development.

Employment; Public Art; Transport and Tree planting contributions

- 7.14. The report to committee in September 2020 recommended that commuted sums towards an employment training scheme (including at least 20% local employees to be employed on the construction site) as well as public art be secured. These contributions are not covered by CIL and the commuted sums would be as before in the recommendation above.
- 7.15. Commuted sums for sustainable transport are now included within the CIL payment but any S.278 highway works required around or in the vicinity of the site can still be secured by a S106 agreement with the LPA. These requirements are set out above in the recommendation including the removal of existing vehicular crossovers and the creation of new ones, a new loading bay and relocation of a bus stop.
- 7.16. The case report to committee also recommended the replacement of any street trees lost during construction to be replaced at a ratio of 3:1. This is also recommended to be carried over into any s106 Agreement.

8. CONCLUSION

- 8.1. In the event that the appeal against the Planning Committee's refusal of the development proposal is allowed by the Secretary of State, officers consider that the development should be subject to a S106 agreement on the above Heads of

Terms in order to mitigate the impacts of the development and provide the necessary environmental and social infrastructure to make the development acceptable. Should the appellant not agree to the Heads of Terms set out in the recommendation they may instead provide a s106 unilateral undertaking to the Inspector, overriding the need for the Council to be a party. However, the ultimate decision as to whether a s106 planning agreement/undertaking is required, and the terms thereof, is that of the Planning Inspector.

9. EQUALITIES

There are no equalities considerations.