

SECTION '2' – Applications meriting special consideration

Application No : 15/04641/FULL4

Ward:
Bromley Town

Address : 165 Masons Hill Bromley BR2 9HW

OS Grid Ref: E: 541030 N: 168240

Applicant :

Objections : YES

Description of Development:

Section 106 B A application to remove the requirement for affordable housing in the S106 agreement in respect of 14/04199/FULL1

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
London City Airport Safeguarding
London City Airport Safeguarding Birds
London Distributor Roads
Smoke Control SCA 5
Stat Routes

Proposal

This application was previously considered by Members of Plans Sub-Committee No. 3 on 4th February 2016. The application was deferred to seek a second opinion on the independent financial assessment and also clarification on whether it would be reasonable to reduce the time limit for the obligation to twelve months. Since the previous Committee meeting the Applicants have submitted an appeal against the non-determination of the application. The Council's submissions in respect of the appeal are due imminently. This means that the Council is no longer able to determine the application but must decide whether to contest the appeal.

In response to the deferral a further independent financial assessment has been commissioned to review the economic viability of the proposed development. It concludes that the development proposal as originally approved is not financially viable and confirms the view of the previous independent financial appraisal in this regard.

In response to the second point of clarification, there could be scope to reduce the time limit of the obligation if the Council still had jurisdiction in respect of the determination of this application but this is now a matter to be considered by the Planning Inspectorate.

On the basis of the independent financial assessments carried out, both of which confirm that the development is not able to support any affordable housing, it is recommended that the Council does not contest the appeal.

The original report is repeated below, updated where necessary.

Proposal:

The application, the subject of this report, is an application to modify or discharge the obligation to provide affordable housing on the site. Section 106 BA of the Town and Country Planning Act 1990 (as amended) allows the submission of such an application, where only the financial viability of providing the approved affordable housing can be considered. No other planning matters or material considerations can form part of the assessment of this application.

This process is a 28 day procedure but an extension of time has been agreed with the applicant. A financial viability report and covering letter have been submitted in support of the application.

The original application sought the demolition of the existing buildings at 165-169 Masons Hill and Nos 1 and 3 Homesdale Road and the erection of a part 3/4/5 storey mixed-use development comprising:

- o 328sqm ground floor Class A1 (retail) unit
- o 29 flats (20x2 bed and 9x1 bed) over three cores
- o Car park for 24 cars (19 for residential use including 2 disabled bays and 5 spaces including 1 disabled bay for commercial use)
- o Storage for 37 cycles and refuse storage
- o Associated landscaping
- o Height of between 7.2m and 16.1m

This was approved at Plans Sub-Committee on 19th March 2015, subject to conditions and the completion of a s106 Legal Agreement in respect of the provision of affordable units, education and health contributions and the decision notice was issued on 18th September 2015.

The approved scheme was for 11 affordable residential units, providing 9 x 2 bed and 2 x 1 bed units, with 6 identified for affordable rent and 5 intermediate dwellings. The applicant now submits that the affordable housing secured as part of the permitted scheme cannot be delivered on viability grounds, and has applied to remove this obligation from the S106 agreement.

Location:

The application site is located to the north-eastern junction of Masons Hill and Homesdale Road. No. 165-169 comprises a part one, part two storey building with roof dormers occupying the corner plot of the junction and is currently in use as a Class A1 retail premises with parking accessed to the rear from Homesdale Road. Nos. 1-3 Homesdale Road comprises a pair of two storey semi-detached residential properties.

The junction is characterised by the three storey development at Archers Court at the junction of Masons Hill and Hayes Lane to the west of the site (formerly Class B1 offices, but with consent for conversion to Class C3 flats); the four/five storey flatted development at Gainsborough Court (52 flats) to south of the site; and the two storey detached and semi-detached dwellings to the southern edge of Bromley Common commencing with No.2 at the junction with Bromley Common and Hayes Lane.

To the west of the site on the western edge of Masons Hill are the five storey block of flats at 16-56 Fletcher's Close and the four/five storey office building at Rutland House. To the west of the north of the site at the eastern edge of Masons Hill are the two/three storey buildings of Nos. 161, 163 and 163a before the six storey office buildings of Nos.153-159 Masons Hill.

To the east of the site is the three storey terrace comprising Nos.5-9 Homesdale Road and feature commercial premises at ground floor level and residential units to the upper floors, before the two/three storey semi-detached residential properties at No.11-13. Beyond this are: the four storey office block of Tourama House (No.17); the three storey office block of Prospect House (Nos.19-21); the Currys retail unit at No.27; the five/six storey flatted block at Rosing Apartments (No.45); and the four storey flatted block at Cavendish House (No.47).

The southern edge of Homesdale Road also features the five storey flatted block at Iconia House (69 flats) and the adjoining block of Azuria House (33 flats) before the four storey flatted block at Sheridan Lodge.

Consultations

Comments from Local Residents:

None

Comments from Consultees:

None

Planning Considerations

Section 106 BA of the Town and Country Planning Act 1990 (as amended) is a procedure for the review of planning obligations on planning permissions, which relate to the provision of affordable housing. An application submitted under Section 106 BA requires the developer to demonstrate that the affordable housing obligation as currently agreed makes the scheme unviable in current market conditions, through the submission of clear, up-to-date and appropriate evidence. In cases where an original viability appraisal was not prepared prior to planning permission being granted, the developer must clearly demonstrate through evidence why the existing scheme is not viable. A proposal to bring the scheme into viability should be submitted.

The viability of the development is therefore the only matter that can be considered through this process.

The following development plan policies and guidance are relevant to this application:

Unitary Development Plan (2006):

H2 Affordable Housing
IMP1 Planning Obligations

In addition to:

Affordable Housing Supplementary Planning Document (SPD)
Planning Obligations Supplementary Planning Document (SPD)

Draft Local Plan:

5.4 Provision of affordable housing

The London Plan (2015):

3.11 Affordable Housing Targets
3.12 Negotiating Affordable Housing on Individual Private Residential and Mixed Use Schemes
3.13 Affordable Housing Thresholds

Financial Contributions

In accordance with the adopted Planning Obligations SPD, the Council sought the following contributions based upon the mix proposed in the application:

- o £154,431.62 for local education infrastructure
- o £57,996 for local health infrastructure

The National Planning Policy Framework 2012 (NPPF) is relevant, including paragraphs:

- o 47 - 50: Delivering a wide choice of high quality homes
- o 203-206: Planning conditions and obligations
- o 211 - 216: Status of adopted and emerging policies

Planning History:

14/04199/FULL1 - Demolition of existing buildings at 165-169 Masons Hill and 1-3 Homesdale Road and erection of part 3/4/5 storey mixed-use development comprising 328sqm ground floor Class A1 (retail) unit, 29 flats (20x2 bed and 9x1 bed) with car park for 24 cars (19 residential and 5 retail), cycle and refuse storage and associated landscaping - Approved, subject to conditions and s106 Legal Agreement dated 18th September 2015

Conclusions

Summary

The financial viability of the provision of affordable housing is the only consideration in respect of this application. All other matters including the principle of development, design, layout, appearance, highway matters, car parking etc. cannot form part of the consideration of this type of application and these issues and the layout of the units are not affected by this proposed amendment.

At the planning application stage, no viability information was required in support of the proposal as the applicant committed to providing a policy compliant level of affordable housing on-site. This was secured through the Section 106 agreement.

Analysis

In support of this application, the applicants have now submitted a Financial Viability Report to seek to demonstrate that the scheme as granted planning permission is not viable in current market conditions, and cannot therefore be delivered in its permitted form with the level of affordable housing as originally secured. The submitted report concludes that the development would not achieve the required level of profit to enable the developer to bring the scheme forward with any affordable housing on site.

The Council have appointed an Independent Consultant to assess the applicant's viability report and undertake their own financial appraisal of the development in current market conditions. They have also concluded that it is not financially viable to provide any affordable housing on site, on the basis that the required level of profit would not be achieved to enable the development to be brought forward.

A further independent assessment was subsequently carried out, which concluded that the development would not be financially viable and would therefore be unable to support the delivery of any affordable housing.

Contributions

The applicant agreed to contribute the full calculation of health and education contributions in order to mitigate the impact of the development upon these services by way of a legal agreement, this complied with Policy IMP1. This proposal to discharge the requirement for affordable housing does not affect these contributions or the sums involved which will still form part of the amended Section 106 Legal Agreement.

This proposal also does not affect the Mayoral CIL requirements and contributions that are still payable.

Conclusion

The submitted viability report and the Council's own commissioned reports confirm that the proposal cannot support the provision of affordable housing as secured in the original planning permission and S106 agreement. Accordingly it is considered that the affordable housing obligation as secured in the original S106 agreement

should be removed. Consequently, it is recommended that the Council does not contest the pending appeal against non-determination.

Background papers referred to during the production of this report comprise all correspondence on file ref: 15/04641/FULL4, excluding exempt information.

RECOMMENDATION: RESOLVE NOT TO CONTEST APPEAL