

Middleton House S106 Agreement

Purpose

- 1.1 To outline a revised package of S106 contributions from the Middleton House development arising from issues on the site after planning permission was granted.

Recommendation(s)

- 2.1 To accept the revised S106 offer and enter into a Deed of Variation to amend the existing S106 Agreement.

Reason(s)

- 3.1 To allow for an increased initial contribution and allow the development to proceed to facilitate the redevelopment of a city centre brownfield site and to provide 53 residential units.

Supporting information

- 4.1 Members may recall that planning permission was granted in February 2020 for the conversion of Middleton House to 53 apartments. A S106 Agreement was attached to that planning permission which secured an initial contribution of £49,000 and an overage clause to recoup up to a further £187,305 if profits increased over the life of the development.
- 4.2 The developers of the site have approached the Council to renegotiate that agreement to increase the initial payment but also remove the overage clause. This would mean that the Council would receive £99,000 initially, but there would be no ability for the Council to claw back any further contributions at the end of the development if profits had increased.
- 4.3 The developers have cited a number of reasons for this proposed change, including increased build costs. However, the main issue is cited as the Covid-19 pandemic. The developers feel that the current pandemic has the potential to change the housing market with a shift away from apartment schemes to larger units with private outdoor space. They are concerned that this development is now a much higher risk project for them to undertake. Removing the overage clause would give the developers more certainty over their actual costs. Whilst no one really knows what the impact of the pandemic will be in the longer term, there is certainly a risk that apartments will become less popular.

- 4.4 The overage clause in the existing S106 is there for precisely these reasons as it allows for unforeseen problems by assessing the costs and values at the end of the scheme. If a scheme becomes less profitable at the end, it does not pay any additional contributions. However, the developers are concerned that due to the way that they are proposing to sell the units, the assessment at the end will be confusing and difficult to agree. They therefore feel that it would be beneficial for all parties if an enhanced contribution was payable within the life of the development and no overage assessment is made. They have also indicated that if this cannot be agreed they will not be able to start work on the development in the current climate.
- 4.5 There are risks here of both accepting the revised offer and not accepting it. If the offer is accepted, the development should go ahead and an enhanced initial contribution of £99,000 would be received, but the Council risks losing up to, possibly, £134,745 if the overage review showed an increased profit at the end of the development. There is no guarantee of how much may be clawed back through overage and it could in fact be nothing. However, if the offer is not accepted then the development may not go ahead and the Council would not receive the initial £99,000. This would also mean the loss of 53 units on a prominent city centre brownfield site and an important listed building standing empty and potentially deteriorating.
- 4.6 The decision as to whether to accept the revised offer is a delicate balance. However, when weighing up the risks it is felt that the revised offer brings a number of benefits in terms of an increased and certain contribution of £99,000, helps to bring forward a city centre brownfield site, helps towards the city's housing numbers bringing footfall into the city centre just at the time when we need to see more footfall and purchasing giving confidence back to the retail sector and of course it brings a listed building back into beneficial use.

Public/stakeholder engagement

- 5.1 None.

Other options

- 6.1 The offer could be refused and the existing S106 Agreement would remain valid. However this runs the risk of stalling the site.

Financial and value for money issues

- 7.1 The revised offer would generate £99,000 for the Council to spend on open space, health facilities or sports facilities. It would however, potentially lose out on up to £134,745 in lost overage contributions at the end of the scheme if profits on the development increased by the end of the development.

Legal implications

- 8.1 A deed of Variation would need to be entered into to formalise the proposal.

Climate Change implications

9.1 None.

Other significant implications

10.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal		
Finance		
Service Director(s)		
Report sponsor	Paul Clarke	09/11/2020
Other(s)	Rosie Watson	09/11/2020

Background papers:
List of appendices: