

UPDATE

Application Number: 15/00913/FUL

Demolition of existing Agora building, re-instatement of Radcliffe Street, reconfiguration of existing car park (total car parking spaces 207) and construction of a new mixed-use development including 100 residential units, 8 x ground floor retail units with retail storage (GIA 3276.3sqm), associated hardstanding and landscaping work

AT Land At The Agora Centre, Church Street, Wolverton

FOR Brickhill Properties (MK) Ltd

Target: 24th July 2015

Ward: Wolverton

Parish: Wolverton & Greenleys Town Council

Report Author: Andrew Horner

Contact Details: 01908 252609 andrew.horner@milton-keynes.gov.uk

Case Officer: Sarah Hine

Contact Details: 01908 252283 sarah.hine@milton-keynes.gov.uk

Team Leader: Nicola Wheatcroft Team Leader Strategic Applications Team

Contact Details: 01908 252274 nicola.wheatcroft@milton-keynes.gov.uk

1.0 INTRODUCTION

- 1.1 Following the publication of the agenda, a viability statement (VS) has been received from the applicant indicating that the scheme is not viable with the full section 106 contributions and level of Affordable housing as set out and proposed in the report. The published report to DCC is based on the understanding that the applicant was willing and able to deliver a contribution of £1,668,296.39 in substantial accordance with the requirements of the Council's Supplementary Planning Documents as detailed at paragraph 5.65 (page 57) of the written report. The proposal was also assessed on the understanding it would provide 32% affordable housing.
- 1.2 The viability information sets out a number of options that involve a reduction in affordable housing levels and/or reduced section 106 contributions. The proposed reductions are significant and require a major reduction in financial contributions and/or level of affordable housing.
- 1.3 This information is being reviewed by officers and an independent external consultant is being engaged to assess the information submitted. This is a complex piece of work and cannot be completed ahead of the meeting. There is also no time for the necessary consultations on the significantly reduced affordable housing/ s106 contributions to take place.

1.4 In addition to the viability statement being submitted abnormally late, officers did not expect to receive any viability information for this application. Up until the publication of the report, the Applicant has consistently advised officers that it had no viability issues with development, and officers recommended that planning permission be granted on this basis. The VS was received by Planning officers the day after the report was published, and no prior notice of the proposals was given to Planning officers

2.0 Considerations

2.1 The introduction of the VS at this stage, by the Applicant, represents a significant change to the Planning Application, which should be the subject of further review and discussion with interested parties and the Council Service Departments affected. There should also be an opportunity for interested parties to make submissions on the VS and the revised proposals, so these can be considered as part of the decision making process.

2.2 The introduction of viability as an issue at this stage in the consideration of the application also represents a significant material change in circumstances in what is a finely balanced decision.

2.3 Officers need to fully review and assess the VS, the evidence which supports it, and its potential impact on the affordable housing and s106 mitigation measures, in order to provide full advice and a clear recommendation to DCC. The current report is based on substantially full section 106 financial contributions and full affordable housing contributions being made; this has a significant impact on the interpretation of current planning policies and the emerging policies of the Wolverton Neighbourhood Plan which have been given significant weight in the formulation of the officer recommendation.

2.4 Reduced section 106 contributions would mean that not all the impacts of the development could be mitigated and ultimately any shortfall would have to be made good through public funds. This is an important material consideration that must be justified by evidence and weighed in the planning balance at the time the decision on the application is made. A reduction in affordable housing would also impact adversely on the availability of housing to accommodate those identified as being in housing need.

2.5 Given this significant change of circumstance introduced by the Applicant officers need to:

- Fully review the application and the advice in the circulated report is out of date and the recommendation must be reviewed.
- Carry out appropriate consultations

To ensure that the Council can demonstrate it has followed the required consultation and publicity procedures; also to ensure that DCC has the necessary information available to it to make an informed and sound decision, which is not vulnerable to legal challenge.

- 2.6 Without the full information and evaluation of the additional information on viability, and without following the required consultation and publicity requirements (and taking such responses into account) it is not possible for Officers to recommend either grant or refusal of the application.
- 2.7 Making a decision at this time in the absence of full information and assessment of material factors, and without following the necessary procedural requirements, would leave any decision that DCC may make open to challenge through Judicial review by interested third parties, which the Council may find difficult to successfully defend. It would also mean that the Council could find it difficult to defend a refusal on grounds of failure to provide policy compliant affordable housing or financial contributions, and also put the council at risk of an adverse costs award at such appeal. Such a decision would also set an unfortunate precedent for how the Council is prepared to deal with viability information and proposed reductions to s106 contributions and affordable housing for future applications.
- 2.8 Although the Applicant is entitled to appeal after 24 July 2015, and so there is a risk of non-determination from that date, officers believe that the Applicants late submission of the VS and late amendment to the Application will justify the Council's reasons in seeking additional time to determine the Application. In order to mitigate this risk a written request would be made to the applicant to extend the determination period of the application to allow time for the VS to be assessed and a new report to be presented to a future DCC meeting. If a non-determination appeal is lodged, a report would be brought back to DCC in any event, with a full update report on the VS and other material considerations, for Members to consider whether they wish to defend the Appeal and if so on what grounds.

3.0 Revised Recommendation

- 3.1 In the light of the serious issues outlined above it is strongly recommended that consideration of the application be **deferred** to the 3 September 2015 meeting of DCC. Such deferral will allow time for the independent technical review of the viability information to be completed, the usual consultation and publicity requirements to be complied with, including discussion with the applicant and a fully revised and updated officer report to be prepared.