

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	ZAZEN DEVELOPMENTS LTD - ROEBUCK HOUSE 24-28 BEDFORD PLACE
DATE OF DECISION:	14 FEBRUARY 2012

REPORT OF: HEAD OF PLANNING AND SUSTAINABILITY

STATEMENT OF CONFIDENTIALITY

None.

SUMMARY

This report is seeking authorisation to vary the terms of the previous Decision Report dated the 20th July 2010 to postpone the payment of the affordable housing contribution for up to 3 years provided that the administrator makes monthly payments to the council of £3,000 from the rental income obtained from letting the flats.

Unfortunately due to the current commercial environment these payments were not made and the Deed of Variation was not entered into, for which the Administrator takes full responsibility.

In an attempt to rectify this situation and the continued inability to clear the total debt, which now equals £205,891, the Administrator, in their letter dated the 18th January 2012 attached (see Appendix 1), initially proposed that they pay a lump sum of £48,000 to bring themselves up to date with the original payment arrangement and continue to pay the £3000 per month thereafter. The debt is to be crystallised at £205,891 which means that no further interest will be added during the further 3 year period.

This offer was deemed to be unacceptable because with the index-linked increases that had accrued, £3000 per month would not clear the debt within the three year timeframe. It was, however, felt that we should accept the principle of this arrangement but it was thought to be reasonable to keep within the three year payment arrangement after payment of the lump sum, so a revised proposal was put to the Administrator that the £48,000 should be paid on completion of the Deed of Variation with subsequent 36 monthly instalments of £4,386 per month, until either the debt was cleared or if the Administrator sells the property within this 3 year period then the deed of variation will provide that the remaining balance of the affordable housing contribution will be paid in full.

RECOMMENDATIONS:

- (i) To delegate authority to the Head of Legal, HR and Democratic Services to enter into a Deed of Variation of the Section 106 agreement crystallising the debt at £205,891, and postponing the payment of the affordable housing contribution for a period of up to 3 years provided a lump sum of £48,000 is paid on completion of the Deed of Variation to bring the Administrator in line with the previous payment arrangement of £3000 per month, and then a monthly payment of £4386 per month is made by the administrator until the debt is repaid, with provision that should a sale take place within the 3 year period then the entire outstanding affordable housing contribution shall be discharged.

REASONS FOR REPORT RECOMMENDATIONS

1. Currently the obligation remains outstanding with no prospect of the obligation being discharged in the near future, so a monthly payment

arrangement would reduce the debt liability and provide the Council with a commitment that the discharge of the obligation is being addressed.

The report is brought to you as the revised payment arrangement will extend over the initial three year timeframe granted in July 2010.

CONSULTATION

2. The offer has been reviewed with Legal Services (Ann Greaves) and Housing Enabling (Sherree Stanley) and is supported by both.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3.
 1. Reject the offer and await a sale of the site
OR
 2. The affordable housing money could be recovered as a debt but given that the developer is in administration, and it is known that the Administrator does not have sufficient funds to pay the Affordable Housing contribution without selling the property, this is not recommended.

DETAIL

4. The original application referenced 04/00286/FUL and related Section 106 Agreement was completed and determined in February 2006, which gained consent for the:
“conversion of the existing retail/office block to provide 47 no. residential units with an extended retail unit at ground floor level and 2 no. restaurants at ground/first floor level. The extension of the 3rd floor level and the addition of a 4th floor with associated car parking and amenity space, including alterations to the external appearance of the building”
The build-out of the scheme was the subject of elevational alterations by planning application 08/00153/FUL and related section 106 completed and determined in June 2008.
5. The financial obligations within the section 106 Agreements required all contributions, save for the Affordable Housing contribution, to be paid prior to implementation. The Affordable Housing payment (£193,434 as at July 2010) was agreed to be paid prior to occupation. Occupation commenced but a cheque that was to pay the affordable housing contribution was dishonoured and unfortunately before the Affordable Housing contribution was paid, on the 19th December 2008 Zazen Developments Ltd went into administration.
6. Subsequently the Council acting through its officers agreed to allow the Administrator time to sell the development on the understanding that the Council would receive full payment of the Affordable Housing obligation from the proceeds of the sale of the development site.
7. Following a meeting with the Administrator on the 25th March 2010, it was understood that they had been unable to secure a sale of the property on terms that could be recommended and the council was asked to vary the terms of the section 106 agreement to allow for a further extension of time of up to three years to allow the property to be sold and the outstanding obligations repaid. Subsequent to this meeting the offer of £3000 per month, to reduce the amount of Affordable Housing contribution outstanding, was made by the Administrator to the Council from the rental income to reduce

the level of debt to the Council, until such time as the development site can be sold.

8. The Deed of Variation has not been entered into by the Administrator and the property still remains unsold but the Administrator now seeks to rectify the situation with the Council by means of now entering into a Deed of Variation, which will require payment of a lump sum of £48,000, to bring them in line with the previous payment arrangement and a further three year payment arrangement, of £4386 per month to clear the current level of Affordable Housing contribution. The administrator has asked that the debt crystallise so that no further interest will be added to the sum due over the remaining payment period. Officers recommend that this is agreed as this arrangement represents the best and least resource intensive way to recover the debt owed to the council.
9. The offer is recommended upon the basis that it is a pragmatic approach in an insolvency situation where the Administrator has a duty to ensure the best possible terms for the sale of the property, so that as many as possible of the insolvent companies debts can be discharged from the proceeds of sale.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

10. None

Revenue

11. The implication of accepting proposals in the report would be to accept a payment arrangement, in lieu of the immediate and full Affordable Housing Contribution, which would not be forthcoming in the short-term.

Property

12. None

Other

13. None

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

14. S106A gives the Council power to modify a planning obligation by agreement

Other Legal Implications:

15. The applicant will be required to meet the Council's legal costs

POLICY FRAMEWORK IMPLICATIONS

16. Affordable Housing provision agreed with Housing Enabling Team to be met by a financial contribution, in accordance with Local Plan Policy of the time, which still accords with the Council's current Core Strategy (Adopted 2010).

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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Grant Thornton Letter from Trevor O'Sullivan dated the 18 th January 2012
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Documents In Members' Rooms

1.	None
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Background Documents

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
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Background documents available for inspection at: N/A

WARDS/COMMUNITIES AFFECTED:	Bevois
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