

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL		
SUBJECT:	ZAZEN DEVELOPMENTS LTD - ROEBUCK HOUSE, 24-28 BEDFORD PLACE		
DATE OF DECISION:	20 JULY 2010		
REPORT OF:	HEAD OF PLANNING AND SUSTAINABILITY		
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STATEMENT OF CONFIDENTIALITY

NONE

SUMMARY

This report is seeking authorisation to vary the terms of the section 106 agreement on the land 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. 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 Solicitor to the Council to enter into a Deed of Variation of the section 106 agreement, postponing the payment of the affordable housing contribution for a period of up to 3 years provided £3000 per month is paid by the administrator, with provision that a sale within the 3 year period shall discharge the entire outstanding affordable housing contribution.

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.

CONSULTATION

- 2 The offer has been reviewed with Legal Services and Housing Enabling and is supported by both.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3
 - (i) Reject the offer and await a sale of the site
OR
 - (ii) 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, which is confirmed in an email from Natasha Hart on the 30th March 2005.
- 6 Implementation of the planning consent was confirmed in an email from Stephen Smith (Zazen Developments) dated the 13th December 2006, with an intention to start on site on the 8th January 2007. After confirming the amounts due on implementation, a cheque for £78,683 was paid on the 6th February 2007, which discharged the following obligations
- Off-Site Highway Works
 - Play Space
 - Open Space
- 7 Subsequent to this a further cheque for £187,291, representing the Affordable Housing contribution was banked by the Council on the 29th August 2008 but this cheque did not clear and was therefore returned, as being “not signed in accordance with the mandate”. Despite confirming the non-payment of the cheque, no replacement was provided and in an email dated the 13th November 2008 from Stephen Smith (Zazen Developments) it was confirmed that occupation of the development had not taken place and therefore the Affordable Housing Obligation was not due to be discharged.
- 8 Based on this information, it was assumed that the residential element of the development had not reached occupation so a site visit was diarised for the 8th December 2008, when it was identified that the site was completed and was at least partially occupied and individual units had been rented out. Unfortunately, before the Affordable Housing contribution was paid, on the 19th December 2008 Zazen Developments Ltd went into administration.
- 9 Since this time the Council has been in regular correspondence with Chris Wright of Edward Symmons, acting as agent for the administrator in this matter. 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.

- 10 Following a meeting with the Administrator on the 25th March 2010, it is now understood that they have been unable to secure a sale of the property on terms that could be recommended and the council have been 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, has been 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.
- 11 If for any reason the property still could not be sold within this three year period then the Administrator would have to apply to the council with a further proposal for payment which would then need to be the subject of a further Deed of Variation.
- 12 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

- 13 None

Revenue

- 14 The implication of accepting this proposal 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

- 15 None

Other

- 16 None

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

- 17 S106A gives the Council power to modify a planning obligation by agreement

Other Legal Implications:

- 18 The applicant will be required to meet the Council's legal costs

POLICY FRAMEWORK IMPLICATIONS

- 19 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).

SUPPORTING DOCUMENTATION

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

Appendices

1.	None
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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

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	Bargate
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