

Report of the Chief Executive

**VARIATION TO SECTION 106 AGREEMENT
KIMBERLEY BREWERY, KIMBERLEY**

Variations are proposed to the Section 106 Agreement which deviate from the decision taken by members of Planning Committee and therefore require the approval of the Members.

1 History and details of the Application

- 1.1 In December 2015 planning permission and Listed Building Consent was granted for a hybrid application at Kimberley Brewery (13/00570/FUL and 13/00571/LBC). This application related to the construction of 78 dwellings, including details of access and scale, all other matters reserved (outline) and a full application for change of use of Maltings No. 1 to 18 apartments and the tower to 2 apartments and the construction of a 3-storey building to comprise 24 new apartments. These applications were granted at Planning Committee, subject to the signing of a Section 106 legal agreement.
- 1.2 This legal agreement was worded to ensure that the historical buildings within the Brewery yard were repaired and converted prior to the completion of more than 10 new build properties (part of the 78 dwellings making up the outline part of the permission) within 'Area 3' of the site. This area is located within the woodland. The agreement was required to be worded in such a way so to ensure that the historical buildings within the site were bought back into beneficial use, rather than left to deteriorate further, in favour of the more easy to construct new build properties.
- 1.3 Members will recall approving planning applications for amended schemes within the brewery yard in March of 2018. These were approved subject to the prior signing of a Section 106 Agreement which was required to ensure that the requirements of the original agreement still 'bite'.

2 Original requirements and proposed variations

2.1 The original Section 106 Agreement secures the following main obligations:

- Not to permit the practical completion of any dwellings within Area 1 until the initial repair works have been completed
 - Not to permit any site clearance within Area 3 until the owner has completed all repair works.
 - Not to permit the commencement of more than 10 dwellings within Area 3 until the units within the tower and maltings have achieved practical completion and been fitted out for conversation and the new build apartments are completed to first floor level.
 - Not to permit practical completion of more than 10 dwellings within Areas 3 until the new build apartments have been constructed to watertight level.
- 2.2 The permissions approved by Planning Committee in March 2018 have resulted in the need to complete a new Section 106 agreement to ensure that the

obligations will continue to bind development carried out pursuant to these latter permissions and also reflect the altered development i.e. the changes from new build apartments to the 14 town houses approved under planning reference 17/00701/FUL.

2.3 Fairgrove Homes now also want to be able to sell the tower off as a separate project and do not want to be bound by a restrictive obligation requiring them to undertake works to the tower before building the remaining dwellings that make up the 78 approved under the outline permission. They therefore wish to make the following main amendments to the Section 106 Agreement:

- Removal of the need to undertake repair works to the tower prior to the practical completion of 10 or more dwellings within Area 3, instead proposing to undertake the initial repair works within 3 years and all the repair works within 5 years.
- Removal of the need to fit out for conversion the tower building.

Following a meeting involving Cllrs, representatives of Fairgrove Homes their Lawyers, Planners and lawyers from BBC the issue of the tower was discussed in detail on Friday 14 December. The fundamental concern is that if the tower is separated from the remainder of the site in the S106 then the Council's ability to enforce any required works to the tower is diminished. The applicants solicitor sent an email on 17 December with an alternative proposal in an effort to allay these concerns. This states that, in order to provide the council with the enforceability they require in respect of the tower, Fairgrove Homes Limited will also enter into the Section 106 Agreement to provide a covenant. Fairgrove Homes Limited would covenant with the council to undertake all internal and external repair works and it was proposed that this would be a S106 obligation which would bind the tower in any ownership, and that Fairgrove Homes Limited would not be released from its obligation until all the repair works are completed. They still however wish to remove any requirement to fit out the tower, either within a given timeframe or completion of a number of dwellings.

2.4 Other less significant amendments relate to a change in the wording relating to the new build building within the Brewery Yard and the trigger points for this building.

3. Legal advice

3.1 The Council has received legal advice on the proposed changes to the section 106 agreement. This is set out in the exempt report elsewhere in the agenda and this should be considered in the context of securing housing delivery in Kimberley and the whole borough.

3.2 The recommendation below takes account of this legal advice. The essential questions for the Committee are whether they have sufficient assurance that the works to the tower will be carried out and that there are adequate mechanisms, though contractual commitments, access rights and guarantee / bonding arrangements to secure this.

4. Housing Delivery

- 4.1 The risks of securing the works to the Tower need to be viewed in the context of housing delivery overall.
- 4.2 The required housing delivery in Kimberley is set in the Aligned Core Strategy at 'up to 600 homes' between 2011 and 2028. Evidence in the SHLAA is that 532 new homes will be completed during this time. This includes 118 on the site comprising the Council's depot and Kimberley Caravans, both of which need alternative sites, and 122 on the whole of the Kimberley Brewery site.
- 4.3 As at March 2018 10 of the dwellings on the Brewery site were complete leaving a further 112 to be built, all of which are in the Council's 'Five Year Housing Land Supply'.

Recommendation

The Committee is asked to consider the legal advice and RESOLVE accordingly.

Background papers
Application case file

