

<b>Committee(s)</b>	<b>Dated:</b>
Planning & Transportation	<b>24 February 2015</b>
<b>Subject:</b> Sugar Quay, Lower Thames Street  Affordable Housing contribution from proposed residential development.	<b>Public</b>
<b>Report of:</b> Director of the Built Environment	<b>For Decision</b>

### **Summary**

A Section 106 Agreement associated with the planning permission for residential development at Sugar Quay requires the developer to make an affordable housing payment of £15,006,816 in lieu of affordable housing on-site.

Under the Agreement the developer agreed to pay 50% (£7,503,408) as a first instalment and the remainder as a second instalment or to submit an updated viability assessment demonstrating why they are unable to make the full second instalment.

In 2014 the developer submitted an updated viability assessment which concluded that the scheme could not afford to make any second instalment towards the affordable housing payment. Consultants appointed by the City to review the updated viability assessment were of the view that the scheme could afford the full second instalment of £7,503,408.

In view of the City's consultant's advice your Committee took the decision that the full amount should be sought and, in accordance with the Section 106 agreement, that the matter should be referred to an Expert for independent advice on the value of the second instalment.

The independent Expert has considered viability information provided by the developer and the City's consultant, held a hearing with the parties and reported on his findings.

Having taken into account relevant factors the Expert has determined the amount it is viable for the scheme to pay as the second affordable housing payment is £3,699,592. This produces a total affordable housing payment of £11,203,000.

The Expert's decision is not binding on either party. The developer has accepted the Expert's findings and agreed to pay the amount he has determined it to be.

### **Recommendation**

Members are recommended to agree that the value of the second instalment of the affordable housing payment should be £3,699,593.

## Main Report

### Background

1. On 22nd March 2013 your Committee resolved to grant planning permission for redevelopment of Sugar Quay with a new building containing 165 residential units with associated residential facilities and 658sq.m of retail / cafe and restaurant (A1-A4) use at ground floor (Application number 12/01104/FULMAJ).
2. The planning permission was issued on 16<sup>th</sup> September 2013 following receipt of no objection from the Mayor and completion of the Section 106 Agreement.
3. Under the policies of the Core Strategy (the plan in force at the time of the application) the development would provide an off-site affordable housing contribution of £15,006,816. The applicants considered that the development would not support a payment of that amount, whereas the consultants appointed by the City to appraise the financial viability of the scheme considered the scheme could pay the full amount. You agreed that officers continue to negotiate with a view to obtaining either the full policy compliant payment or an initial cash-in-lieu payment of at least 50% of the policy compliant payment, subject to an upwards only review of the viability prior to implementation of the scheme.
4. In making the decision your Committee instructed that any S.106 affordable housing contribution resulting in a final total contribution (following a viability review) of less than the £15,006,816 policy compliant sum be referred back to the Committee for approval.
5. The applicant and City did not agree on the amount to be paid and consequently the Section 106 Agreement included the requirement for an initial payment of £7,503,408 (being 50% of the policy compliant contribution) and an upward only review for the second payment. The Section 106 Agreement requires:
  - a) The developer to submit an updated viability assessment and for this to be reviewed by the City's consultants if the proposed second payment remained less than £7,503,408;
  - b) Your Committee to decide what you are minded to accept as the second payment, having regard to the updated viability assessment and City's consultant's review.
6. In addition it provides for you to agree that the matter be referred to an independent expert if the developer does not agree with your decision. The expert's conclusions are not binding on either party and the expert's views would be reported to your Committee for a decision.
7. In 2014 the developer submitted an updated viability assessment. They had reviewed the development economics of the redevelopment, having updated a number of key inputs and relevant information. They advised that there had been increases in the site value, residential values and build costs which had been factored into their revised appraisal.
8. Their conclusion was that the residual profit for the scheme was below the developer's target rate of return and as such the scheme could not afford to make any additional affordable housing payment.

9. The City's consultants' reviewed the updated viability assessment and they concluded that the scheme could afford the full amount of the second payment as set out in the S106 agreement. They had assessed the updated financial information for the scheme and varied a number of inputs in light of their research, knowledge and experience in appraising the viability of London Residential schemes. They did not agree with all of the inputs used by the developers and consequently arrived at a different conclusion to the applicant. Of particular note was the City's consultant's view that there is significant potential for the flats fronting the river to sell at prices in excess of the pricing put forward by the developer and that the commercial rent and yield was lower than they would anticipate.
10. In view of the difference in the findings your Committee agreed that you should not accept the applicant's conclusion. You asked for the full amount of the second payment of £7,503,408, providing a full policy compliant contribution of £15,006,816 and that, if the developer did not agree, that the matter be referred to an independent expert.

### **Current Position**

11. By common consent, A M Leahy of Bespoke Property Consultants was appointed as the independent expert. He was provided with the cases made by each side and took advice from a firm of experienced selling agents in the City to obtain advice on sales prices. He held a hearing to investigate the cases in greater detail and has issued his report and recommendation.
12. The Expert's report containing his recommendation is confidential as it contains sensitive market information and there is a requirement to protect a legitimate economic interest. His report comprises the appendix to this report and is attached in the Non-Public part of the agenda. The Expert's report contains a large number of confidential technical appendices which are available for Members to review in the Members Room at Guildhall.
13. With regard to the significance of the location in the City, Mr Leahy has considered carefully the submissions of both parties and discussed the same with the agents advising on sales prices.
14. He says, "*It is clear the site's location close to world renowned attractions will be of interest in particular to foreign buyers. This will set the pricing tone for the scheme. However the pricing of individual units will centre on the amenity value of each unit and in particular the views to the river and adjacent landmarks.*

*The pricing put forward by (the City) accepts the prices proposed by the applicant for those units without a river view or an oblique river view. The main issue they have identified in evidence, is their opinion that the units with a river view and the penthouses should achieve (higher) prices than those quoted by (the applicants).*

*I believe (the selling agents has) adopted the right approach taking account of the amenity issues and in particular using comparable evidence from One Tower Bridge to determine a schedule priced per individual unit. They have also made reference to other schemes along the Thames which clearly have similar views but variable amenity value in terms of other issues such as proximity to the City and West End facilities as well as businesses in the City.*

*I am acutely aware that with the benefits of the site being in a unique location, which is attractive to foreign buyers from across the world, the pricing of the scheme is very much subject to the vagaries of the world economy, rather than just the UK economy. This makes the outturn values very volatile.”*

15. In order to see the effect of the variation in sales prices he carried out two appraisals for the scheme, one using the average asking prices recommended by his appointed selling agent and the second reducing those prices by 5% to determine a worst case scenario. One demonstrated that the scheme could not afford the full amount of the second affordable housing payment, and the other that it could. He says, *“This shows the volatility of the residual land value to minor changes in residential sales prices.”* and, *“Alongside this, I have to consider the issue of the benchmark land value which is also a matter which is volatile, and subject to positive pressures derived from the site’s location, being one of world interest.”*
16. His conclusion is that *“taking into account my views set out above on the benchmark land value and the potential to achieve the prices set out by (the selling agents), I determine that the amount of the second affordable housing payment due as at July 2014 is £ 3,699,592. This being the sum which is viable whilst maintaining (the agreed) land value and return on cost...”*

### **Considerations**

17. To be fully compliant with policy the second affordable housing payment would be £7,503,408. It has been shown that this could be achieved if the market conditions were right but the Expert has determined that this may not be achievable because of market volatility. He has determined the figure at £3,699,592, which would produce a total affordable housing payment of £11,203,000.
18. The developer has confirmed that they accept the findings and would make this payment.
19. The City’s consultants have expressed the view that although the Expert has not recommended the full policy compliant payment, the City’s decision to go to arbitration is vindicated by the amount of the second payment award.
20. In your officers’ opinion the amount recommended by the Expert should be accepted. It assures that the City would receive a substantial affordable housing payment, albeit less that would be achieved if the full policy compliant payment were to be made. The fact that the Expert has determined the development can make a much greater payment than the applicants were originally prepared to agree justifies your previous decision not to accept the first payment only.

### **Corporate & Strategic Implications**

21. The affordable housing payment would be used by the City to provide affordable housing units and comply with the Local Plan and the London Plan.

### **Conclusion**

22. In your officers opinion the amount recommended by the Expert should be accepted. It assures that the City would receive a substantial affordable housing payment, albeit less that would be achieved if the full policy compliant payment were to be made.

## **Appendices**

Appendix 1 – Sugar Quay Expert Determination. Report by A M Leahy, dated 16 January 2015. This report contains confidential information and is with the papers on the Non-public Agenda. The technical appendices referred to in the appendix are available for Members to review in the Members' Room at Guildhall.

## **Background Papers**

### **Public**

Report to P&TC and Minutes      22 March 2013

Report to P&TC and Minutes      17 July 2014

### **Non-Public [Exempt information by virtue of paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972]**

Expert Determination      16 January 2015      A M Leahy, Bespoke Property  
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