

MC/25/0454

Date Received: 6 March 2025

Location: 89 Ingram Road, Gillingham, Medway, Kent

Proposal: Deed of variation to the S106 entered into as part of planning permissions MC/17/3455 and MC/19/2588.

Applicant Brachers LLP

Agent

Ward: Gillingham North

Case Officer: Nick Roberts

Contact Number: 01634 331700

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 7 May 2025.

Recommendation:

That a deed of variation be agreed to the S106 entered into as part of Planning Consents MC/17/3455 and MC/19/2588 to modify the S106 agreement to reflect the findings of a jointly commissioned Viability Appraisal and subsequent Addendum produced by Pathfinder Development Consultancy.

For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.

Proposal

The applicant seeks a deed of variation to the section 106 agreement entered into in relation to the original planning permission MC/17/3455 and subsequent deed of variation secured as part of MC/19/2588. This modification reflects the findings of a jointly commissioned Viability Appraisal and Addendum produced by Pathfinder Development Consultancy.

Relevant Planning History

MC/24/2046 Details pursuant to condition 1 i(a) (Parking Management Plan) 1 i(b) (Secure Cycle Parking) 1 i(c) (Refuse Storage) 1 i(d) (Site Layout floor plans external Materials Ecological Enhancements and Boundary Treatments) 1 i(e) (External Lighting) and 1 i(f) (Acoustic Protection) of Appeal A Ref APP/A2280/21/C3280974 and conditions 5 i(a) Parking Management Plan 5 i(b) Secure Cycle Parking and 5 i(c) Refuse Storage of Appeal B Ref APP/A2280/W/21-3280975 on planning permission MC/20/1180 - Construction of a block comprising of three 1-bedroom and six 2-bedroom flats with associated parking cycle and refuse store.
Decision: Conditions Discharged
Decided: 3 January 2025

MC/21/0504	<p>Application for a Non-material amendment to planning application MC/19/2588 For the re-wording of these conditions 11 (Parking), 12 (cycle store), 14 (Refuse) and 17 (Parking Management Plan) to allow a phased occupation of the development.</p> <p>Decision: Approved with conditions</p> <p>Decided 7 April 2021</p>
MC/20/1180	<p>Construction of a block comprising of three 1-bedroom and six 2-bedroom flats with associated parking, cycle and refuse store.</p> <p>Decision: Refused but Allowed at Appeal</p> <p>Decided: 12 September 2024</p>
MC/19/2588	<p>Variation of condition 2 (drawing numbers) on planning permission MC/17/3455 (demolition of existing buildings and re-development of the site to provide 22 residential apartments alongside associated parking, access and infrastructure works) to allow a minor material amendment for additional 2 flats to block A, re-siting of bin/cycle store, reduction of 2 flats to block B, provision of communal lounge with Wi-Fi to ground floor, amendments to undercroft parking, re-positioning of parking spaces, retention of garage walls to boundary and provision of sub station.</p> <p>Decision: Approved with conditions</p> <p>Decided: 5 June 2020</p>
MC/17/3455	<p>Demolition of existing buildings and redevelopment of the site to provide 22 residential apartments alongside associated parking, access and infrastructure works.</p> <p>Decision: Approved with conditions</p> <p>Decided: 2 May 2019</p>

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this proposed deed of variation have been assessed against the National Planning Policy Framework 2024 (NPPF) and are considered to conform.

Background

The original S106 agreement was entered into in connection with planning application MC/17/3455 granted on 2 May 2019. The site was subsequently sold to Windmill Construction (Ingram Road) Limited who then submitted an application to vary condition 2 of the MC/17/3455 permission which was approved on 5 June 2020 under MC/19/2588. The original S106 agreement was varied so that it was also binding against the site if developed pursuant to the revised planning permission. This was given effect by a deed dated 21 May 2020 made between the Council and Windmill Construction (Ingram Road) Limited. In all other respects the original agreement was unaltered.

Schedule 1 of the original agreement (as amended by the deed of variation) provides for the following financial contributions to be made to the Council:

- £10,294.90 towards improvements to Railway Street Surgery.
- £4,243.20 for nursery education towards improvements at Saxon Way Primary School.
- £12,729.60 for primary education towards improvements at Saxon Way Primary School.
- £12,199.20 for secondary education towards improvements at Chatham Girls Grammar School.
- £4,066.40 for sixth form education towards improvements at Chatham Girls Grammar School.
- £37,397.01 towards improvements to Queen Elizabeth Fields and/or Hillyfields.
- £4,918.76 towards bird mitigation.

The applicant paid the SAMMS contribution prior to the commencement of development as required by the original agreement. Medway Council and the applicant then jointly commissioned a viability appraisal of the development from Pathfinder Development Consultancy. On the 30 September 2021 a report was issued by Martin Aust at Pathfinders which concluded that a viable scheme was one which contained 22 homes including £4,918.76 of SAMMS contributions. This rendered the remaining contributions as unviable. Although an application was made to the Council in December 2021 to modify the original agreement to reflect the viability position this was not advanced by the case officer at that time.

Medway Council purchased the front block (Block A) which contained 17 flats, and it is understood that the sale price agreed reflected the discussions on viability, the content of the jointly instructed viability report at that time, and the expectation that the figure was to be reduced as had been agreed between the parties and applied for. Given the age of the original viability appraisal (September 2021) Pathfinders have subsequently undertaken an updated review taking account of updated build costs and property values. This addendum, dated 7 April 2025, concludes that as house prices have increased over the past 3.5 years more slowly than build costs the overall viability of the scheme will have worsened from when it was originally appraised. Having considered that the increases in build costs outweigh sales values and having reappraised the scheme accordingly, it therefore remains Pathfinders' judgment that a viable scheme is one which contains 22 homes including £4,918.76 of s106 contributions as per the previous conclusions.

Planning Appraisal

Paragraph 59 of the NPPF states that it is for the applicant to demonstrate whether circumstances justify the need for a viability assessment. In this case, and as summarised above, an original financial viability appraisal was submitted by the applicant back in September 2021. The viability appraisal was assessed by an independent viability consultant (Pathfinder) as part of a joint instruction and concluded that a viable scheme was one which contained 22 homes including £4,918.76 of SAMMS contributions. This rendered the remaining contributions secured as unviable. Given the age of the original viability appraisal (September 2021) Pathfinders have subsequently undertaken an updated review taking into account updated build costs and property values. This addendum concludes that the overall viability of the scheme has worsened from when it was originally appraised in 2021.

Consequently, and based on the evidence submitted, it is considered that the proposed deed of variation can be agreed and the accords with the NPPF.

Conclusions and Reasons for Approval

Based on the evidence submitted, it is considered that the proposed deed of variation accords with the NPPF and therefore can be agreed. With the exception of the SAMMS contribution which has been paid this would render the remaining S106 contributions as unviable.

The deed of variation proposal is being referred to the Planning Committee for determination, as the original planning application(s) for this site were determined by the Planning Committee.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess1.medway.gov.uk/online-applications/>