

Affordable Housing Statement
for planning application

PL/25/0102

Development of new building to provide 2no.2 bedroom and 6no.1 bedroom flats along with the creation of 6 parking spaces and associated landscaping following the demolition of the existing building.

Case officer
Anthony Scholes

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Prepared on behalf of Chesters Place Limited
by Chris Thorpe

20th August 2025

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1.0

The below correspondence was provided to Anthony Scholes by Kris Mitra of Genesis Town Planning, via email on the 18th July in response to council questions.

I refer to the various exchanges with Chris Thorpe in connection with the above scheme. As I understand the situation, the Council has been provided with a detailed viability appraisal which demonstrates that the proposal cannot deliver on-site affordable housing or an off-site financial contribution in lieu because the scheme would not generate sufficient revenue returns to do so. In your email of 17th July you have advised that the failure to deliver affordable housing is not as a result of the Council's policy requirement and therefore essentially the scheme still needs to deliver affordable housing. However, this approach is flawed since viability should consider not only policy compliance, but also the economic viability of the scheme as a whole. An unviable scheme can still be delivered by a developer for various reasons, not only to provide a better development on the site, but to ensure contracted staff remain employed, or on the premise that resale values (and therefore profitability) may materialise at a later stage of the development process.

As you will be aware, viability is a material consideration in the determination process of applications, particularly in relation to affordable housing. In this respect paragraphs 59 and 129 of the Framework are relevant.

It is also relevant to note that the Council's SPD on affordable housing at paragraph 1.5 confirms that the *"...existing use value will form part of any consideration of viability of the development in the negotiation of affordable housing and other planning obligations."* There is no dispute that the affordable housing policy applies in the circumstances, and it is our understanding that the Council has also been offered a S106 Planning Obligation that seeks to provide a deferred financial contribution, with a figure to be agreed, similar to the approach adopted in application 201233. It should be recognised that such an offer goes far beyond what the applicant would normally be expected to provide having regard to the specific financial aspects of the site.

Matters of viability are dealt with in detail within the SDP in Section 6. Paragraph 6.2 recognises that *"...the viability of a residential development will vary from site to site, and that this may in some circumstances affect whether a development can provide a level of affordable housing that complies with policy requirements. Policies H3 and H4 and their supporting text make clear that, where applicants can demonstrate exceptional difficulties in bringing a site to market, the Council will be prepared to consider detailed information on viability to potentially reduce the affordable housing requirement. The onus will be on a developer to clearly demonstrate the circumstances justifying a lower affordable housing contribution."* Paragraph 6.5 reaffirms that *"...the purchase price of the land does not justify deviation from the policy requirements, and that this is also strongly emphasised in the PPG."* As set out in the assessments made by both parties, even at a 'nil' land value the scheme is unable to deliver affordable housing. Whether a scheme can deliver a lower level of affordable housing or none at all has to be considered within the context of the viability appraisal provided.

Paragraph 6.12 is concerned with deferred contributions and recognises that this approach can often resolve viability issues at the application stage, allowing a contribution to be provided following a deferred period triggered by increased profitability.

The applicant has provided a detailed viability assessment, and the outcome has not been disputed by the Council's own advisors. In this respect the applicant has approached matters on an open book basis and clearly demonstrated that in viability terms, the scheme cannot deliver on-site or off-site affordable housing. It is for the decision maker to determine the weight to be attached to the viability assessment as set out in the PPG when making a decision on the application. Furthermore, any such consideration will need to be clearly justified on planning grounds when determining the planning balance in relation to the application.

It is also noted that the Council has questioned the deliverability of the scheme given the financial appraisals presented as part of the viability assessment.

If planning permission is granted the applicant intends to deliver the scheme because it will result in a vast improvement in the quality of accommodation currently on offer. A viability report prepared for the council by Carter Jonas agreed with the appraisal prepared by Sturt and Co, concluding that the site was not sufficiently viable to provide an offsite affordable contribution payment.

Although the inputs in their appraisals differ, the output of the Carter Jonas viability appraisal clearly indicates that the site is unviable. Moreover, it is not a scheme that is marginally unviable, where a small change would result in a material improvement in the outcome. Consequently, there is no justification for any payment to be made or agreed as part of the applications consideration.

There is a request that there should be the inclusion of a late-stage re-valuation review mechanism to deliver a deferred payment option. In our view, the requirement for a review mechanism, whilst offered by the applicant, is unnecessary for the following reasons:

- The Carter Jonas appraisal clearly shows the scheme is unviable and their appraisal is not finely balanced, where a small change in market sentiment would change the outcome.
- The scheme is very small and will be delivered quickly in the current economic cycle so there is no reasonable prospect that the scheme will be delivered in a different financial environment where a revaluation may be justified.
- Any additional viability reviews will increase the cost of development so will risk delivery of the scheme.

The application is to demolish and replace four basic flats converted from an older building that was originally a single house. Due to their age and configuration, the flats provided are less than ideal accommodation, when compared to purpose-built apartments in terms of layout and energy efficiency. The applicant is seeking to deliver eight purpose-built apartments that will be far superior for the occupants by comparison to the existing accommodation and be a permanent improvement of the housing stock on offer. This will represent a significant planning benefit by way of an improvement to what is currently available and provide a long-term solution for the site.

By not accepting the professional advice set out in the viability report and continuing to seek contributions towards affordable housing goes against the clear guidance in both the PPG and NPPF. The insistence of the late-stage revaluation review is also unreasonable and likely to ensure that the site is not delivered and therefore there will be a loss of additional dwellings which are far superior to those that currently exist. This approach is endorsed in paragraph 73 of

the NPPF which confirms that “...small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for Small and Medium Enterprise housebuilders to deliver new homes and are often built out relatively quickly.” The paragraph goes on to advise that to promote the development of a good mix of sites, LPAs should support the development of windfall sites through their policies and decisions, “...giving great weight to the benefits of using suitable sites within existing settlements for homes...”.

For all the reasons set out above we see no justification for the Council to essentially ignore the findings of the two viability appraisals and insist on the delivery of affordable housing provision associated with the proposed development. There is simply no policy support for such an approach at both a local and national level.

Having regard to all of the above comments it is our view that the findings of the viability assessment (and the Council’s response) is a material consideration that carries significant weight in favour of granting planning permission for a scheme that otherwise complies with the remaining relevant policies of the development plan. The viability of the scheme means that affordable housing cannot be delivered either on or off-site, but the development will still deliver a small scheme comprising high quality residential units that will make a meaningful contribution to the Borough’s housing stock. The applicant has indicated a willingness to enter into an arrangement for deferred payment of off-site contributions should the scheme deliver a financial profit. However, in the circumstances we remain of the view that such an approach would be unviable for all the reasons set out.

In the absence of any other harm arising from the application proposal we fail to see how the planning balance would lead other than to a grant of planning permission.

End of email

2.0

Below is a recent appeal case, which sets a precedent whereby a £0 upfront AH contribution is acceptable in planning terms.

Land Adjacent to 300 Kings Road (PI/22/1162)

The application was refused, and a recent appeal was allowed (**APP/E0345/W/23/3335887**) for a £0 upfront AH contribution, and LSR

The following remarks are noted from the Inspectors decision.

*7- Local Plan Policy H3 requires that on sites of 10 or more dwellings, 30% of the total dwellings will be in the form of affordable housing. The policy further establishes that where proposals fall short of the policy target due to viability considerations, **an open-book approach will be taken** and the onus will be on the developer to clearly demonstrate the circumstances justifying a lower affordable housing contribution.*

8- The appellant has engaged in an open-book approach with the Council and its viability consultant during the initial application and this appeal. Through discussions at the hearing

*the **main parties agreed that the consideration of viability under Local Plan Policy H3 was not limited to exceptional or site- specific circumstances.** Consequently, there is no reason for me to discount the appellant's viability arguments due to the factors affecting the scheme's viability relating to economic conditions that may be widespread across the building industry.*

*9- The appellant's viability study (November 2023) provides a detailed residual development appraisal for a scheme with a policy compliant level of affordable housing, as well as a scheme with no affordable housing provision. **The analysis suggest that even when no affordable housing provision is made, the appeal scheme technically remains non-viable with an approximate deficit of £490,000. This deficit significantly worsens when a policy compliant provision of affordable housing is included.** The appellant therefore claims that the proposed development cannot make an affordable housing contribution*

10 - At the hearing the Council also accepted that the findings of the appellant's updated viability study (November 2023), with the Council's viability expert indicating that the updated evidence overcame previously held concerns. Notably, in relation to the proposal's build costs, sensitivity testing, and how the viability analysis had been prepared against the assumptions made against the BPS Viability Assessment² (BPS Assessment) that informed the adopted Local Plan As such, **the Council agreed that the appeal scheme was currently insufficiently viable to provide affordable housing.** From the available evidence, I have no reason to conclude otherwise.

*11- **Main parties also agreed at the hearing that there is no policy requirement to demonstrate the deliverability of the proposed scheme. Additionally, I accept that there are legitimate reasons why a developer may make a commercial decision to proceed with a development even if the scheme's viability is shown to be in deficit.***

13- The completed S.106 would secure an obligation for a **LSR** and, pending its outcome, the need for the developer to provide a deferred contribution towards the provision of affordable housing within the Borough. The obligation put forward conforms to a 'profit share' approach that is set out within the adopted Affordable Housing SPD

15- Accordingly, with the S.106, **the proposed development makes appropriate provision for affordable housing.** It therefore accords with Local Plan Policy H3 and the aims of the Council's Affordable Housing SPD. It would also accord with Local Plan Policy CC9, which seeks to secure infrastructure, and the provisions of the Council's Planning Obligations under Section 106 Supplementary Planning Document (the Planning Obligations SPD) (adopted 2015), which sets out the Council' approach towards seeking planning obligations.

I would like to bring you attention to **point 11**

This provides some clarity on the council's question around the commercial rationale behind proceeding with a development that is not viable. This is a question which has been asked on more than one occasion.

The inspectors report should provide some indisputable clarity that a zero upfront contribution with a LSR is fully compliant with the Councils Affordable Housing SPD and not a reason for refusal.

3- Offers

In the interest of concluding the AH contribution aspect prior to your implied refusal. The below 3 offers are provided for your consideration.

They are time limited for acceptance and will expire on **3rd September 2025**. At which point, we will continue with your refusal and head to appeal.

Offer 1

Upfront Payment plus Late stage review

- Signed S106
- £25,000 upfront (not subject to review but included within the total amount which could become due, £150,000)
- **Late stage review**
- Residual with the supplies above BLV payable as an affordable contribution subject to a Cap £150,000 (total payable which is inclusive of the upfront payment)
- Cap being paid upon surplus being reached at a split of 50/50
- Residual based on the following defined inputs
 - BLV - £744.000 plus Fees and SDLT
 - Profit – 17.5% on GDV
 - Finance Rate – 8.5 %
 - All fees, **build costs*** the development and planning process (open book basis)
- Review Triggered by completion on First Fix
- Payment due within 90 days of building completion. **(Completion defined by building control signoff)**
- Any dispute either party can apply at any time to the RICS for the appointment of an independent surveyor

Offer 2

Late stage review

- Signed S106
- £0 upfront
- **Late stage review**
- Residual with the supplies above BLV payable as an affordable contribution subject to a Cap £220,000
- Cap being paid upon surplus being reached at a split of 50/50
- Residual based on the following defined inputs
 - BLV - £620.000 plus Fees and SDLT
 - Profit – 17.5% on GDV
 - Finance Rate – 8.5 %
 - All fees, **build costs*** the development and planning process (open book basis)
- Review Triggered by completion on First Fix
- Payment due within 90 days of building completion. **(Completion defined by building control signoff)**

- Any dispute either party can apply at any time to the RICS for the appointment of an independent surveyor

Offer 3

- Upfront payment of £45,000
- Due within 90 days of building completion. **(Completion defined by building control signoff)**
- Indexed linked from completion of S106
- No review
- No LSR

***Build costs**

means the reasonable costs, expenses and other sums which are commensurate with prevailing market rates and are reasonably and properly incurred by the owner in connection with the acquisition, disposal, construction, marketing and management of the Development including without limitation the following:

- 1- all reasonable and relevant construction costs to include any site remediation, demolition, stripping out and site clearance Works);
- 2- stamp duty land tax and land registry fees;
- 3- the cost of obtaining any statutory approvals, consents or licences or permissions required from any local or competent authority to enable the Owner to carry out and complete the Development;
- 4- any community Infrastructure Levy (excluding, for the avoidance of any doubt, any surcharges and/or late payment interest) that is payable;
- 5- the sums paid to the council pursuant to this Agreement (including legal fees incurred in connection with this Agreement) other than the Deferred Contribution;
- 6- Finance Costs;
- 7- any reasonable costs (commensurate with prevailing rates) relating to the sale, lease of other disposal of the Development (including structural warranties) and all legal, surveyors and other professional fees, agency fees, advertising, marketing, promotional expenses and other costs in connection with any of the items referred to in this definition; and
- 8- the fees of all professional consultants appointed in relation to the Development;
- 9- BNG contributions

as at the Relevant Date PROVIDED THAT:

- i. where contracts have been let and/or expenditure committed or incurred with unconnected third parties on an arm's length basis such costs shall represent actual agreed tender prices or expenditure committed or incurred but where the final costs under any such contracts are not known then such final costs shall represent a reasonable estimate of such final costs;
- ii. where contracts have been let and/or expenditure committed or incurred with connected third parties or otherwise than on an arm's length basis then such costs shall

represent reasonable estimates on the assumption that they are procured from unconnected third parties and on an arm's length basis;

- iii. where contracts have not been let and/or other items of expenditure have not yet been committed or incurred then such costs shall represent reasonable estimates on the assumption that they are procured from unconnected third parties on an arm's length basis; and
- iv. (IV) no items shall be counted more than once

Kind Regards

A handwritten signature in black ink, appearing to read 'Chris Thorpe', with a stylized flourish at the end.

Chris Thorpe
For and on behalf of Chesters Place Limited