

Andrew Jones BSc MRICS

PROOF OF EVIDENCE

FOR PUBLIC INQUIRY COMMENCING ON 9 November 2021

APPEAL SITE

100 Avenue Road, London NW3 3HF

APPELLANT

Essential Living (Swiss Cottage) Ltd

APPEAL

Appeal against London Borough of Camden's decision to refuse Section 106A application (ref: 2021/0025/P) on 23rd of March 2021 for:

“Application in accordance with Section 106A, sub-sections (3) and (4), to amend clause 3.2 (and associated definitions) of S106 Agreement relating to 2014/1617/P dated 24/08/2015 (as amended by 2018/4239/P dated 04/08/2020 and 2019/1405/P dated 07/05/19) (for: redevelopment of site including a 24 storey and 7 storey building with a total of 184 residential units, 1,041sqm of retail/financial or professional services/café/restaurant and 1,350sqm of community use (summary)). The AMENDMENTS include REMOVING the requirement to provide 28 Affordable Rent units, 8 Intermediate Housing units and 18 Discounted Market Rent units (for a minimum of 15 years post completion), to be REPLACED with 18 Discounted Market Rent units in perpetuity. Modification of various relevant definitions -

Disposal Viability Assessment, Original Viability Assessment and Surplus - to refer to Gross Development Value figure identified in the Financial Viability Assessment report dated 09/12/2020.”

Planning Inspectorate Reference No's.

APP/X5210/Q/21/3276844

London Borough of Camden

2021/0025/P

Introduction

I am Andrew Jones BSc MRICS of BPS Chartered Surveyors. I am a Director of BPS a company I started more 21 years ago. I have 29 years post qualification experience. My initial training was with Jones Lang LaSalle; later in my career I was appointed a Partner in the Consultancy division of Donaldsons. I have considerable experience of a wide range of major and minor developments from mixed use town centre schemes through to large housing estate developments. I have advised several national house builders in relation to scheme appraisals and financial structuring of transactions.

I have led negotiations on the financial terms of major development projects for several local authorities (as land owner and facilitator) including social housing schemes, regeneration projects and other town centre re-development schemes.

I have been involved in assessing viability for major developments for planning purposes since 2004 and currently act for 20 London Boroughs and more than 20 other Unitary and District Council's in this capacity. My company reviews in excess of 200 Major planning applications per annum including some of the largest developments currently planned in the Country. This scope necessarily involves a wide range of mixed use developments.

As a company we no longer work for developers to avoid potential conflicts of interest as a high proportion of our work is in the context of planning viability. I have worked for many large and small developers prior to this corporate decision as such I have a good knowledge of the development process from all perspectives.

Since BPS was founded the practice has advised more than 70 local authorities and governmental bodies.

I have also been a part of MHCLG's Expert Consultation Panel concerning revisions to the NPPF and PPG.

I confirm that I have prepared this report in accordance with the Royal Institution of Chartered Surveyors Practice Statement and Guidance Note, *Surveyors acting as expert witnesses* (4th Edition), issued 2 July 2014.

RICS Financial viability in planning: conduct and reporting 1st edition, May 2019 - Statement of Compliance

In preparing my evidence I confirm that I have acted with

- objectivity
- impartially
- without interference and
- with reference to all appropriate available sources of information.

My company was involved at both the original planning application stage and also of this latest application leading to this Appeal and continues to act for the Council in respect of providing independent development viability advice in a planning context on other applications in the borough with instructions awarded on a case by case basis. I consider that I have no conflicts of interest in acting for the Council in this appeal.

My advice is not subject to a performance or success related fee basis.

Statement of truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

A handwritten signature in black ink, appearing to be 'AJ', with a stylized flourish extending to the right.

Signed Andrew Jones BSc MRICS

Director BPS Chartered Surveyors

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1.0 Scope and Summary of my Evidence

- 1.1 This appeal relates to an application in accordance with Section 106A of the Town and Country Planning Act 1990 (As Amended), sub-sections (3) and (4), to amend clause 3.2 (and associated definitions) of a S106 Agreement relating to 2014/1617/P dated 18/02/2016 (as amended by 2018/4239/P dated 04/08/2020 and 2019/1405/P dated 07/05/19).
- 1.2 The amendments sought by the appeal include removing the requirement to provide 28 Affordable Rent units, 8 Intermediate Housing units and 18 Discounted Market Rent units (for a minimum of 15 years post completion). The appeal proposal seeks to replace the above with 18 Discounted Market Rent units only (in perpetuity).
- 1.3 The Council determined the s.106A application under delegated powers on 7 April 2021 and refused the proposed modification for a single reason. The scope and focus of my evidence relates to this reason which is set out below:
- ‘In accordance with Section 106A of the Town and Country Planning Act the planning obligation shall continue to have effect without modification. The application to modify the affordable housing obligation is refused as the original obligation is considered to serve a useful purpose which is delivering the consented amount and tenures of affordable housing. Furthermore, the proposed modification would not serve it equally well, because there would be a significant reduction in the amount of affordable housing and a loss of a range of tenures that are considered genuinely affordable. Therefore, the proposed modification to the original planning obligation would fail to meet the requirements of s106A(6)(c) of the Town and Country Planning Act 1990.’*
- 1.4 The Council’s contends through the evidence of Jonathon McClue BPlan (Hons) Deputy Team Leader and legal submissions on its behalf, that the main issues are whether the current affordable housing provisions serve a useful purpose and whether the proposed modification would serve the same purpose equally well
- 1.5 The Appellant through reports prepared by Savills contends that development viability is relevant to the above consideration. The Council argues that it is not.

1.6 Consideration of the scheme's viability has therefore been undertaken on a without prejudice basis and it is within this context that I provide my evidence.

1.7 My evidence falls into three main sections:

a) Consideration of the Appellant's viability case and whether it provides any assurance of scheme deliverability. I contend that with the proposed amendment to the level/amount and tenure of affordable housing, the apparent scale of scheme deficit indicated by Savills remains so significant that it provides no rational assurance that this stalled scheme would be delivered even if the appeal proposal were to be approved.

b) Consideration of the current terms of the S106 Agreement dated 24 August 2015 and whether this constrains the development to be delivered as a build for rent scheme. It is noted that discussions are ongoing concerning possible modifications to the S106 Agreement which would amend the basis of both the late-stage viability review and also the review which would be triggered by residential units in the scheme being sold to individual occupiers instead of being offered as rental units only.

It is in that context that I considered the potential viability implications associated with delivering a build for sale scheme reflecting the S106 Agreement as currently drafted.

c) In light of my conclusions relating b) above, whether the scheme could be considered to be more viable, therefore potentially more deliverable as a build for sale scheme noting this would not require planning consent to come forward on this basis. I then reflect on whether the proposed modifications to the affordable housing provisions would serve to make a significantly material difference to overall scheme viability.

1.8 In conclusion, my evidence is largely based on Savills appraisals which I have agreed in that they serve to adequately illustrate the points I make in this document. In reaching agreement on these figures I considered it would avoid needless inquiry time being spent on discussing the finer points of these appraisals. They clearly illustrate that as a build for rent scheme, the proposed alterations to quantum and tenure of the affordable housing whilst improving viability somewhat, still show a considerable net overall loss when allowing for costs incurred to date and nil profit. On this basis there is no rational basis for proceeding with

the scheme in comparison to the scheme as currently consented, therefore no basis in logic or evidence to permit the amendment.

1.9 Furthermore, it is apparent that the S106 Agreement as currently drafted does not appear to provide any effective financial barriers for bringing the scheme forward as a build for sale alternative.

1.10 I then consider the comparative attractions of delivering the consented scheme on this basis in the event to appeal was refused.

2.0 Viability Of the Current & Proposed Scheme

2.1 It is apparent from my company's report¹ submitted in response to the original application, that there are a number of aspects of Savills report of December 2020 and subsequent Addendum report of September 2021 with which I take issue. I am of the view however, that to debate these through the Inquiry would serve little or no purpose in that I also conclude that the scheme both as consented and as proposed would show a significant viability deficit. In consequence it will be seen that for the purposes of the Inquiry the Statement of Common Ground (SoCG) in respect of viability (dated 18/10/2021) shows that all viability inputs are effectively agreed between myself and Savills.

2.2 For the purposes of this section, I have used the viability SoCG to summarise our agreed findings:

Appraisal Iteration	Residual Deficit*1
Existing Consent. Assumes Market Sale	-£59,073,122 (Deficit)
Existing Consent. Assumes Build to Rent	-£70,964,078 (Deficit)
Proposed Scheme	-£56,651,291 (Deficit)

2.3 This table clearly illustrates that all the proposed affordable housing amendment would serve to achieve is to mitigate the scale of the net overall loss.

2.4 In effect the Appellant would have to simply write off the value of the land, the value of any works or expenditure incurred to date and accept a very much reduced developer profit under the scheme as proposed to be amended. By any rational measure this conclusion clearly leaves no apparent financial incentive for continuing to deliver the scheme.

¹ BPS report Dated March 2021

2.5 The same conclusion would of course apply to the consented scheme, therefore the issue of viability in the Appellant's view is simply a matter of reducing the scale of the loss. However, it can be seen that this does not bring the scheme to the point where it is deliverable, noting that the scheme is currently stalled. Therefore, the viability justification seeks to present a rationale which simply does not exist in reality and cannot be considered a rational basis for decision making.

3.0 The 24th August 2015 S106 Agreement

3.1 The S106 Agreement contains provisions for both a late stage review of viability together with a review of viability triggered by units within the development being sold as build for sale directly to occupiers.

3.2 I understand it is common ground that the documents as drafted contain contradictory provisions and can be summed up as offering a lack of clarity. I profess to offer no expertise in formulating a legal view on the document's interpretation but note that one possible construction of the document in relation to the build for sale review is that under the definition of *Disposal Viability Assessment* the document indicates that for a contribution to be made the residual value of the scheme would have to exceed £126,300,000.

3.3 I am aware that discussions are ongoing with the Appellant concerning possible modifications to the S106 Agreement in respect to this provision.

3.4 As currently drafted, I can envisage no circumstance whereby the consented scheme could realistically achieve a residual value of £126,300,000 if sold as build for sale. For this to occur the units would have to sell for approximately double their current forecasted value. In consequence there would, on this interpretation of the agreement, be no financial penalty applicable through this review were the developer to build and sell the scheme rather than build and rent the scheme.

4.0 Overall Conclusions

4.1 It is evident from the table set out in 2.2 above that the scale of losses identified under each of the three scenarios assessed would not provide any commercial rationale for proceeding with the scheme. In this context

simply adjusting the scale of the loss by amending the affordable housing provisions does not overcome this fundamental problem. I conclude from this that the proposed amendment is immaterial in terms of deliverability.

4.2 It is also clear from the table in 2.2 that there is a relatively little difference between the viability of a build for sale scheme compared to a build for rent scheme with the proposed amendments, being just £2.4m which is just 4% difference in terms of scale of overall deficit.

4.3 Although it is plainly stated that the Appellant's intention is to deliver the scheme as a build for rent development, at the time of writing, it is also apparent that there is no planning or S106 obstacle to its being delivered as build for sale which would achieve much of the saving sought by the proposed amendment to the affordable housing provision. This is a matter of developer choice.

4.4 Finally, it is clear the development is far from viable by any assessment. I question whether it is the role of planning system to address problems which are essentially issues of developer risk through the adjustment of public benefits which were considered necessary to mitigate the impact of the scheme at the time of its original consent. In this I am supported by NPPG which states:

...Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.

Paragraph: 009 Reference ID: 10-009-20190509

Revision date: 09 05 2019 See previous version