

REPORT TO DEVELOPMENT MANAGEMENT COMMITTEE

7 December 2022

REFERENCE: HW/S106/22/00394

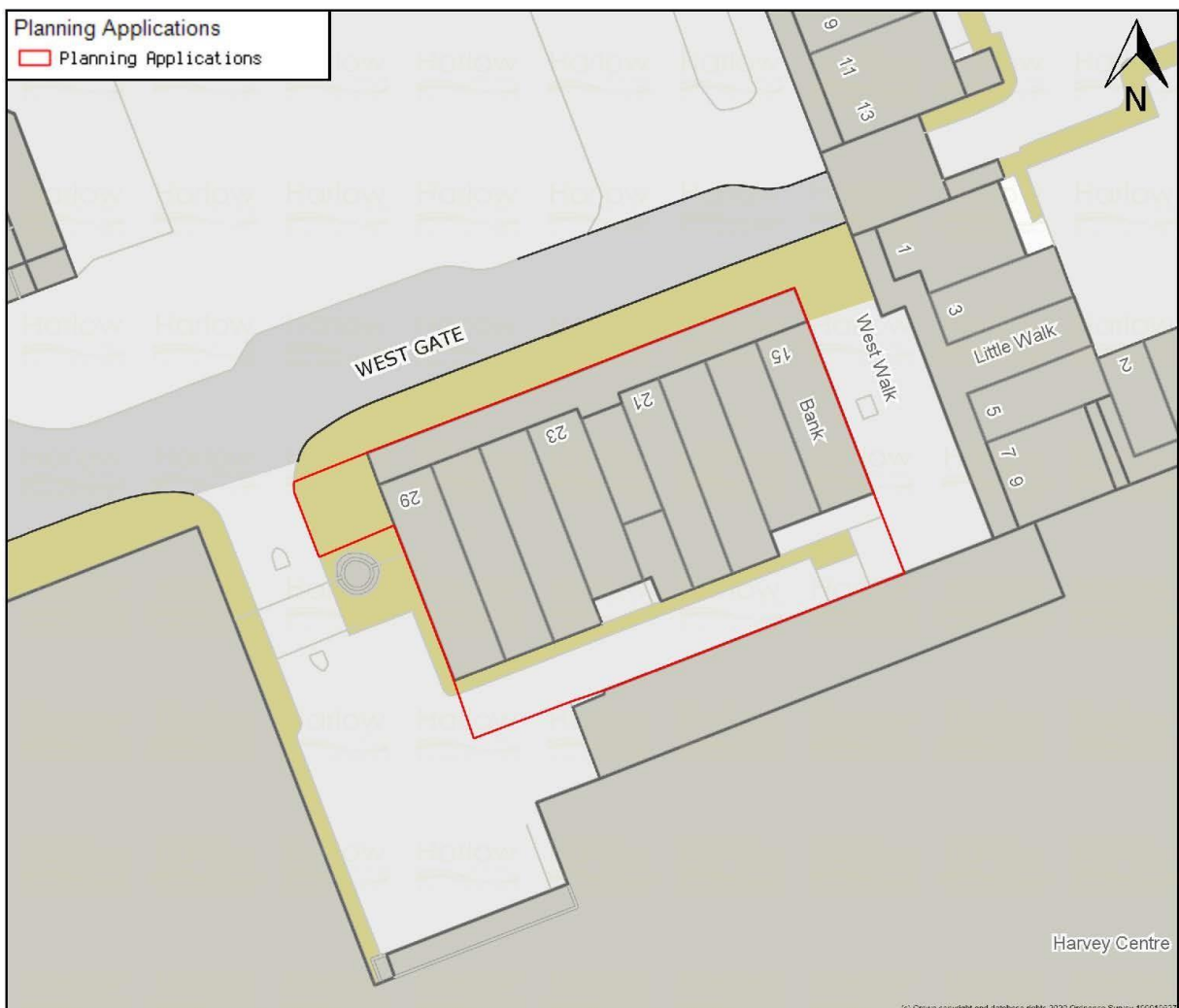
OFFICER: John Hoad

APPLICANT: SSRE Investments 4 Ltd (Strawberry Star)

LOCATION: Harlow Quarter Block D 15 - 29 West Gate, Harlow, Essex, CM20 1JP

PROPOSAL: Deed of variation request to change from 'Discount Market Sale' to 'Discount Market Rent' housing provision, or commuted payments in lieu of provision, in S106 Planning Agreement linked with planning permission HW/FUL/19/00291

LOCATION PLAN



REASONS BROUGHT TO COMMITTEE: The application amends a significant proposal for Harlow Town Centre.

Application Site and Surroundings

The site is located at 15-29 West Gate, Harlow and is part of the wider redevelopment area now known as 'Harlow Quarter'. See 'Relevant Planning History' below.

Details of the Proposal

The applicant proposes to implement the existing planning permission for Block D of the proposed Harlow Quarter as a residential Build to Rent (BTR), rather than a 'for sale', development. There are several consequences of this in respect of changes to the details of the existing permission (see 'Relevant Planning History' and related Note below).

In respect of housing, the original permission was granted with a planning obligation requiring provision of eight flats (5% of the total) as 'discounted market sale' housing. This was agreed by the applicant on the basis that it was a 'commercial offer' towards affordability in the context of the accepted marginal financial viability of the development (rather than a fully justified planning requirement).

The BTR approach clearly cannot offer discounted market sale housing.

The applicant is seeking a change to the existing legal agreement which would be an equivalent rental discount for on-site affordable housing provision.

RELEVANT PLANNING HISTORY:

Planning permissions / applications and related matters

Covering whole of 'Land At Harvey Centre'; now known as 'Harlow Quarter' mixed use redevelopment site

(The application / site has also become known as the 'Strawberry Star' (SS) site, after the current landowner / developer)

<u>App Number</u>	<u>Proposal</u>	<u>Status</u>	<u>Decision Date</u>
HW/FUL/17/00097 Existing permission covering application site plus adjoining area (whole of SS site)	Demolition of the existing buildings and comprehensive re-development of the site to provide a mixed-use development (including 4 new buildings ranging from 3 to 16 storeys) comprising 447 residential units, circa 4,000 sqm of flexible retail floorspace, communal amenity space, a new pedestrian boulevard, car parking, cycle parking, with associated hard and soft landscaping,	Permitted	08 / 2018

	revised access and servicing arrangements.		
HW/FUL/19/00291 Amended scheme for Block D section of the SS site only (The subject application for the relevant Planning Agreement)	Demolition of existing building at 15 – 29 Westgate and redevelopment of the site to provide a mixed-use development within a part 8 and part 12 storey building comprising 163 residential units, flexible commercial (Use Class A1-A5) floorspace, and ancillary communal amenity, car parking and cycle storage.	Permitted	02 / 2020
HW/LDCE/21/00433 Certificate of Lawful Development Planning	Permission W/FUL/17/00097 has been lawfully commenced	Approved	09 / 2021
HW/S106/22/00217 A deed of variation request	Removal of Schedule 3 (Car Parking) from S106 Agreement linked with planning permission HW/FUL/19/00291, Block D.	Approved	08 / 2022
HW/REMPVAR/22/00361	Variation of Condition 18 (Approved Plans) of planning application HW/FUL/19/00291 (under Section 73 of the Planning Acts) to reduce and reconfigure permitted ground floor commercial space to accommodate ancillary residential amenity space.	Under consideration	NA
HW/OUTAM/21/00251 Application covering	Outline planning application with all matters reserved to demolish the existing	Under consideration	NA

adjoining area, (forming the remainder of the SS site)	buildings and provide a comprehensive re-development of the site with a mixed-use development comprising up to 678 residential units, up to 3,000sqm (GEA) flexible retail / drinking establishment / leisure / community / commercial space (Use Classes E and sui generis), communal residential amenity space, a new pedestrian boulevard, public realm improvements, car parking spaces and cycle parking with associated plant and hard/soft landscaping (Amended Description due to scheme amendments; and now expected to be subject to further amendment in July 2022)	(Committee resolution to grant subject to planning agreement)	
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Note: This application is part of a package of amendments to the original permission for residential development on the site. The change to BTR requires applications for:

- car free development - minimal parking (already approved)
- adjustments to approach to providing discounted market housing, as a contribution to assisting affordability (this application)
- ground floor use and design changes (application on this agenda)

The other relevant applications are listed above.

CONSULTATIONS

New consultation is not required as all necessary consultee information is available from past / current applications under 'Relevant Planning History'. This is referred to below as relevant.

Neighbours and Additional Publicity

Not applicable. Neighbour publicity and consultation is not appropriate, in the circumstances of a planning agreement change proposal of this kind. This is because the Council must consider only the original purpose, and any continuing benefits, of the legal agreement.

PLANNING POLICY

Development Plan

Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that proposals should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The Development Plan consists of the Harlow Local Development Plan (HLDP, Dec 2020), Essex and Southend-on-Sea Waste Local Plan 2017 and Essex Minerals Local Plan 2014.

The relevant policies of the Harlow Local Development Plan 2020 (HLDP) are:

Strategic Policies

- HGT1 - Development and Delivery of Garden Communities in the Harlow and Gilston Garden Town
- SD1 - Presumption in Favour of Sustainable Development
- HS1 - Housing Delivery

Development Management Policies

- H8 - Affordable Housing

Planning Standards

National Planning Policy Framework (NPPF) – regularly updated

This set out the Government's key economic, social and environmental objectives and the planning policies to deliver them. These policies will provide local communities with the tools they need to energise their local economies, meet housing needs, plan for a low-carbon future and protect the environmental and cultural landscapes that they value. It seeks to free communities from unnecessarily prescriptive central government policies, empowering local councils to deliver innovative solutions that work for their local area.

(National) Planning Practice Guidance (PPG) – regularly updated

Detailed guidance to complement the NPPF, where particularly relevant this is noted in the report.

Supplementary Planning Documents (SPD) / Other Current Planning Guidance

Harlow (District) Council (HDC)

- Design Guide SPD (2011) and its Addendum (2021)
- Harlow Town Centre Masterplan Framework (HTCMF) SPD (2022)

This SPD provides a context for consideration of this proposal.

The Council has embarked on preparation of a Harlow Town Centre Area Action Plan - see below. However, in the face of significant, immediate, pressure to achieve HLDP Town Centre regeneration aims and determine relevant major planning applications, the Council prepared a 'Town Centre Masterplan Framework SPD'. Evidence and draft

material from the Area Action Plan has been used in the HTCMF SPD, so the evolution of these documents is compatible.

Guidance Note 4C: Housing is particularly relevant to the application:

The Council will support the introduction of new residential accommodation in the town centre.....

In residential developments of more than 10 dwellings it will be expected that at least 30% affordable housing is provided in accordance with HLDP Policy H8.

(Extract)

Spatially specific Town Centre Guidance Note 8, Opportunity Area 3 Town Centre North applies for the application subject to report.

- Affordable and Specialist Housing SPD (adopted 2021)

Essex County Council (ECC)

- ECC Development Management Policies (2020 - living document with regular updates).
- Essex Local Viability Protocol (2018)

Harlow and Gilston Garden Town (HGGT)

- HGGT Vision (2018)
- HGGT Design Guide (2018)
- HGGT How to Guide on Planning Obligations and Viability (2019)

This HGGT guidance has less weight than a formal SPD, but is material.

Emerging Policy

The draft Harlow Town Centre Area Action Plan - AAP (HTCAAP) (Issues and Options - Regulation 18 version completed in 2018, with a Pre Submission - Regulation 19 version prepared in 2019).

The pre-submission draft Plan was submitted to Cabinet in December 2019. It was originally intended that it would be progressed to public consultation. However, following a review of progress in relation to current and expected development pressures in the town centre, work on a statutory AAP was paused. Despite this the HTCAAP is of background relevance. It indicates 'direction of travel' in respect of the Council's objectives for regeneration of Harlow Town Centre, following on from HLDP Section 9 Retail Ambitions and Town Centre Redevelopment and Policy RS2, which defines an enlarged Town Centre. HTCAAP Opportunity Area (OA) Town Centre North policy applies for the application subject to report. As a draft, the AAP has limited decision weight.

Harlow Town Plan Consultation Draft

This is a corporate document setting out the Council's vision and aspirations for Harlow / HGGT growth beyond the current Development Plan period. Although this plan will not

become part of the Development Plan it is capable of being a material consideration and provides an important context for decisions on major planning applications.

Draft Commuted Sums and Alternative Sites for the Provision of Affordable Housing SPD 2022

The Council is developing a new approach that accepts that commuted sums may be appropriate in some circumstances. This is in the context of an increasingly active Council house building programme which would enable effective use of such funds. This new SPD is to be considered for approval at Cabinet on 1 December. Officers will update on progress at the meeting.

Summary of Main Issues

The only issues for consideration of this application are:

- **Is a change to the planning agreement acceptable in planning policy and guidance terms?**
- **Will the change assist overall Town Centre regeneration objectives?**

ASSESSMENT

Is a change to the planning agreement acceptable in planning policy and guidance terms?

The Council accepted in its grant of planning permission for this development that the financial viability position was such that affordable housing (in accordance with HLDP Policy H8) could not be required. Nevertheless, the applicant's commercial offer of eight units (5%) discounted market housing was valuable and welcome. It was given some weight in the overall decision.

The original permission was for a development with the discount sale housing and included an early-stage financial review mechanism to ensure an improvement in viability can be captured in additional financial contributions. The review will be triggered once the development proper starts (excepting demolition and site preparation).

The permission also required parking provision (now removed as part of the changed basis for this town centre scheme - see 'Relevant Planning History' above).

The proposed change to BTR housing would completely remove the possibility of discounted sale housing, but the applicant is proposing to continue the affordable housing offer in different form.

In housing strategy terms and in the circumstances of this development, rented affordable housing is likely to be preferable to provide a balance to discounted sale or shared ownership forms, which are increasingly dominant forms of affordable housing achieved through planning agreements. The level of discount (20% - effectively Government minimum discount levels) would be sufficient to help some people in local housing need, albeit not those in greatest need.

HLDP Policy H8 states that affordable housing will '*normally be provided on site unless exceptional circumstances should require it to be provided elsewhere*'.

In this case, on site provision of discounted rental housing is possible, but would come with some practical difficulties:

- Effective permanent provision of discounted rental accommodation requires an ownership and management commitment, normally, and preferably, by a Registered Provider (RP) (Housing Association), but also potentially by the BTR landowner. This is necessary to ensure re-lets at discount permanently.
- Sale of the discounted dwellings to an RP is normally best because the organisation is dedicated to affordable provision. However split ownership and management in an apartment block tends to be problematic for the consistency of the management and services offer. Where there are just a small number of discounted rental dwellings in a larger private development apartment block, it is also increasingly difficult to find a RP partner. This is because of the management challenges and costs (including service charges) arising with small numbers of dispersed properties, set against the benefits.
- The relatively low level of rental discount available is likely to make this type of affordable housing less relevant to those in priority need locally. As a result, taking responsibility for its provision is a low priority for both the Council and local partner RPs.

The Council's policies allow for commuted sums in lieu of in-kind provision to address the problems noted above. However, in this case the applicant is offering to manage discounted rental housing and has provided Heads of Terms for an appropriate variation of the planning agreement to secure this (Appendix 1).

Will the change assist overall Town Centre regeneration objectives?

The Council wishes to support progress in development of this key Town Centre site at the earliest opportunity. Development of Block D should provide a stepping off point for redevelopment of the wider Harlow Quarter site and help start the regeneration of this important part of the Town Centre area.

The changes to the discounted housing arrangements are helpful to the developer's current model for financing and their commitment to starting this important development.

The financial viability of high-density town centre mixed use development in Harlow generally, and of this development specifically, is known to be marginal (HLDP general development viability evidence and site-specific viability studies considered in granting the Block D permission). For this reason, it has not been possible to give priority to affordable housing provision.

In these circumstances the fundamental factor in the decision is to achieve regeneration progress.

CONCLUSIONS

The applicant's proposal for direct provision and management of discounted rental housing by the BTR provider is acceptable. It represents a pragmatic approach to retaining the limited affordable housing benefits, whilst encouraging Town Centre regeneration.

RECOMMENDATION

That Committee resolve to approve the variation of the planning agreement associated with Planning Permission HW/FUL/19/00291, to change from 'Discount Market Sale Housing' provision to Discounted Rental Housing on the basis of:

A legally secured commitment by the landowner to permanently retain, offer to the rental market and appropriately manage, eight identified dwellings within the development at a discount of 20% on their independently verified local housing market rental values at the time of letting. Local only marketing criteria as set out in the existing agreement to be applied. Heads of Terms are at the Appendix 1 to this report.

Appendix 1

Heads of Terms for Deed of Variation (in kind provision)

Schedule 5 of the existing agreement (Discount Market Sales Housing) to be deleted and replaced with a new Schedule 'Discount Market Rent Housing Provision' as follows:

- Discount Market Rent units means the 8 units to be let at rents no more than 80% of the market rent value for the equivalent dwelling in the Development based on minimum 12 month tenancies to be managed and maintained by appointed PRS provider.
- The PRS provider means a company or body appointed to manage the development, including the Discount Market Rent units.
- Prior to commencement of development to submit a Discount Market Rent Scheme to the Council, detailing:
 - The location and mix of the Discount Market Rent units;
 - Confirmation of the appointment of the PRS Provider for the Block D scheme;
 - A housing management plan demonstrating how the Discount Market Rent Units are to be managed and maintained including the quality and service standards to be achieved.
 - Confirmation of the proposed renting price of the Discount Market Rent Units and the relationship between those prices and the open market prices of equivalent dwellings in the Development.
 - Arrangements on how the Discount Market Rent units are to be marketed and made available for Eligible People (including the local income threshold to be used to ensure that eligibility for this type of housing is appropriate)
 - Confirmation that the units will only be available to those with a local connection. This will mean they have lived in Harlow for at least five consecutive years, or they have close family who live in Harlow, or they have lived in Harlow for at least five consecutive years in the last ten years but had to move out of Harlow for work commitments or living costs in Harlow were too high.
- A commitment to provide the Discount Market Rent units in accordance with the approved Scheme to the same specifications and maintained to the same standards as the open market rent units.
- Not to allow occupation of development unless and until the Council has provided its written approval to the Discount Market Rent Scheme.
- Not to occupy any more than 75% of the dwellings in the development unless and until the Discount Market Rent:
 - Have been constructed in accordance with the Planning Permission and the Discount Market Rent Scheme approved by the Council;
 - Are ready for occupation;
 - Have been marketed in accordance with the approved Discount Market Rent Scheme.
- To notify the Council within 28 days of all of the Discount Market Rent units being occupied and, upon request by the Council, provide to the Council within 28 days

copies of any lease agreements and evidence of compliance with the Discount Market Rent Scheme.

- To not permit the Discount Market Rents to be occupied in perpetuity (unless otherwise agreed in writing by the Council) at any time:
 - For any purpose other than Discount Market Rent Units;
 - By any person other than an Eligible Person

Some minor, consequential, wording amendments may be required to the planning agreement as a whole.