St Edmundsbury
BOROUGH COUNCIL

Working Paper 2

Development Control Committee

3 December 2015

Planning Application DC/14/0906/FUL
Land at Station Hill, Bury St Edmunds

Date Registered:	23 January 2014	**Expiry Date:**	29 February 2016 (with agreed extension)
Case Officer:	Gareth Durrant	**Recommendation:**	Refuse Planning Permission
Parish:	Bury St Edmunds	**Ward:**	Risbygate

Proposal: Erection of 135 no 1 and 2 bedroom flats with associated access, car parking, landscaping, bin & cycle storage (following demolition of existing buildings), as amended.

Site: Land at Station Hill, Bury St Edmunds

Applicant: Peal Estates LLP

Synopsis:

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

Recommendation:
It is recommended that the Committee determine the attached application and associated matters.

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Background:

This application was deferred by Committee at its meeting on 6 August 2015. Members were minded to grant planning permission for the proposed development but requested a further report on S106 matters before reaching a final decision on the planning application. Officers had recommended that planning permission be refused and the 'minded to' protocol was invoked in light of the significance of this matter. A copy of the committee report (reference DEV/SE/15/044) is attached at Appendix B.

The planning application has been amended since the Committee considered the planning application in August. The two small commercial units (which were added into the planning application earlier this year) have been removed. This amendment attracted objections from the Highway Authority given the two units could not be satisfactorily serviced. The applicants have reverted back to the planning application in its submitted form and 135 dwellings (all flats) are proposed.

Proposal:

1. A description of the proposal is included at paragraphs 1-9 of report number DEV/SE/15/044 (Appendix B), although Members are to note that the two commercial units have been removed from the application which is now exclusively for residential development (135 flats).

Application Supporting Material:

2. The documents comprising the planning application are listed at paragraph 10 of report number DEV/SE/15/044 (Appendix B).

Site Details:

3. The site and its surroundings are described at paragraphs 11-16 of report number DEV/SE/15/044 (Appendix B).

Planning History:

4. There are a number of planning applications relevant to the current commercial uses operating from the buildings on site, but none are of direct relevance to this residential led mixed use development.

Consultations:

5. These are set out at paragraphs 18 – 49 of report number DEV/SE/15/044 (Appendix B).

6. The Parks and Infrastructure Manager (SEBC) has considered the scheme in the light of public open space requirements and has provided the following comments:

    - We would seek a contribution towards providing additional/improved play provision at Fen Way, Tay Fen Meadows, to create a facility that could serve the planned number of units here at Station Hill and the Tayfen Road Development Site. This facility would cost in the region of £75,000.00 to provide.

7. A further consultation response has been received from Suffolk County Council (Planning Obligations) in the light of the enactment in April 2015 of the S106 pooling restrictions imposed by Article 123 of the Community Infrastructure Levy Regulations 2010. These Regulations bar pooled funding being secured from more than 5 planning obligations towards any particular infrastructure type or project. The County Council's updated comments are as follows:

    - The County Council have adopted the 'Section 106 Developers Guide to Infrastructure Contributions in Suffolk' (2012), which sets out the agreed approach to planning applications with further information on education and other infrastructure matters provided within the supporting topic papers.

    - As of 6th April 2015, the 123 Regulations restrict the use of pooled contributions towards items that may be funded through the levy, even where there is none in place. The requirements being sought here would meet the new legal test however it is anticipated that the District Council is responsible for monitoring infrastructure contributions being sought.

    - **Education (Primary**). The local catchment schools are St Edmundsbury CEVCP School and Kind Edward VI CEVC Upper School. There are currently insufficient places available in all catchment schools to accommodate pupils arising from the development. Therefore funding will be required as follows:

      - 17 primary places required = £207,077
      - 3 secondary school places required = £55,065
      - 1 sixth form place required = £19,907

    - **Education (Pre-school provision).** It is the responsibility of SCC to ensure that there is sufficient local provision under the Childcare Act 2006. Section 7 of the Childcare Act sets out a duty to secure free early years provision for pre-school children of a prescribed age. From these development proposals up to 7 pre-school pupils are anticipated at a cost of £6,091 per place. A capital contribution of £42,637 is requested. The Council confirms the contributions will be invested to relocate and expand the Feoffment Pre School facility in the town.

- **Play space provision.** Consideration will need to be given to adequate play space provision.

- **Transport** refers to relevant policy and guidance.

- **Libraries.** Due to pooling restrictions, no libraries contribution is sought.

- **Waste**. A waste minimisation and recycling strategy needs to be agreed and implemented by planning conditions.

- **Supported Housing**. Supported Housing provision, including Extra Care/Very Sheltered Housing providing accommodation for those in need of care, including the elderly and people with learning disabilities, may need to be considered as part of the overall affordable housing requirement. We would also encourage all homes to be built to 'Lifetime Homes' standards.

- **Sustainable Drainage Systems**. When considering major development (of 10 dwellings or more), sustainable drainage systems should be provided unless demonstrated to be inappropriate. As of 6th April 2015, the sustainable drainage provisions within the Flood and Water Management Act 2010 have been implemented, and developers are required to seek drainage approval from the county council and/or its agent alongside planning consent. The cost of ongoing maintenance is to be part of the Section 106 negotiation.

- **Fire Service.** Early consideration should be given to access for fire vehicles and provisions of water for fire-fighting. The provision of any necessary fire hydrants will need to be covered by appropriate planning conditions. Suffolk Fire and Rescue Service (SFRS) seek higher standards of fire safety in dwelling houses and promote the installation of sprinkler systems and can provide support and advice on their installation.

- **Superfast broadband**. SCC would recommend that all development is equipped with high speed broadband (fibre optic).

Representations:

8. These are set out at paragraphs 50-58 of report number DEV/SE/15/044 (Appendix B).

9. Further representations were received after report no DEV/SE/15/044 had been completed and these were reported verbally to Members of the Development Control Committee at their meeting in August. Those additional representations received are summarised as follows:

    - Councillor Mrs. Wakelam wrote to express her concerns about the planning application and support for the officer recommendation

that planning permission should be refused. The principal areas of concern were;

- the height of the proposed buildings which would dominate and overshadow the listed station buildings.
- poor aspects of the layout and lack of tree planting to Station Hill
- lack of on-site provision of public open space.
- 10% affordable housing is not acceptable
- Other contributions to infrastructure should be provided.

- Pigeon Investments Ltd (owners of Burlingham Mill sited adjacent to the application site) requested that development along the Station Hill frontage be controlled by condition to prevent visibility splays to other access points in Station Hill from being compromised by the development.

Policy:

10. Relevant Development Plan policies are listed at paragraph 59 of report number DEV/SE/15/044 (Appendix B).

Other Planning Policy:

11. Other relevant planning policy is discussed at paragraphs 60-67 of report number DEV/SE/15/044 (Appendix B).

Officer Comment:

12. The full officer assessment is included at paragraphs 68-234 of report number DEV/SE/15/044 (Appendix B). Members deferred their consideration of the planning application to provide opportunity for the submitted viability appraisal to be updated to reflect current market conditions and to consider a more detailed report on the planning obligations to be secured by S106 Agreement. This section of the report is therefore focussed on S106 (and related) matters, but also includes a 'risk assessment' given the Committee resolved it is 'minded to' grant planning permission, contrary to officer advice.

13. The applicants have updated their viability assessment and this is attached as a confidential paper at Appendix A. Officers have commissioned an independent review of the viability assessment and this piece of work will be completed in advance of the Meeting on 4th December 2015. Members will be updated separately on the findings of the independent assessment. This assessment is not anticipated to demonstrate anything other than the proposed development, with a fully policy compliant level of S106 contributions, would not be viable in 'normal' market conditions. The discussion on S106 matters included in this section of the report has been prepared on that key assumption.

S106 matters

14. The Framework repeats the tests of lawfulness for planning obligations

which are derived from Regulation 122 of The Community Infrastructure Levy Regulations 2010. The tests are that planning obligations should:

- be necessary to make the development acceptable in planning terms.
- be directly related to the development, and
- be fairly and reasonably related in scale and kind to the development.

15. Core Strategy policy CS2 seeks to secure high quality, sustainable development by (inter alia) providing the infrastructure and services necessary to serve the development. Further details of the requirements for infrastructure delivery are set out in Policy CS14.

16. The following Heads of Terms are triggered by the development proposals (by policy requirement, consultee requests or identified development impacts):

Affordable Housing

17. The Framework states that local planning authorities should use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for market and affordable housing. It also states that policies should be set for meeting the identified need for affordable housing, although such policies should be sufficiently flexible to take account of changing market conditions.

18. Core Strategy policy CS5 requires 30% of the proposed dwellings to be 'affordable'. The policy is supported by Supplementary Planning Guidance which sets out the procedures for considering and securing affordable housing provision (including mix, tenure, viability and S106).

19. Core Strategy Policy CS5 requires 41.5 of the 135 dwellings to be secured as 'affordable' (80% for affordable rent and 20% for shared ownership. The applicant has offered 13 dwellings as affordable (just under 10%) citing adverse viability for the below policy levels (a copy of their assessment is attached as a confidential paper at appendix A). The viability of the development and its impact upon affordable housing provision in particular is considered later in this section of the report.

Education

20. The Framework states that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. It advises that Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education.

21. Core Strategy Policy CS14 considers educational requirements (additional school places) as an essential infrastructure requirement.

22. The Local Education Authority has confirmed, post School Organisational Review, there is no capacity at local primary and secondary schools (including Sixth form) to accommodate the pupils forecast to emerge from this development and has requested developer contributions to mitigate impacts. The contributions would be used towards delivering additional school places in the catchment. The applicants have agreed, in principle, to provide the contributions and these could be secured via S106 Agreement.

23. Suffolk County Council has also confirmed a need for the development to provide a contribution to be used towards pre-school provision in the area to cater for the educational needs of pre-school children (aged 2-5) whom are forecast to reside at the development. The applicants have confirmed they are willing to provide this contribution in full.

Public Open Space

24. The Framework confirms that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities.

25. Core Strategy Policy CS14 considers provision of open space and recreation as required infrastructure.

26. Policy DM42 of the Joint Development Management Policies Document requires new development proposals to make appropriate provision for new public open space infrastructure.

27. These Development Plan policies are supported via the adopted Supplementary Planning Document for public open space, sport and recreation. This document sets out the requirements for on-site and off-site provision and maintenance. The SPD has, however, been largely superseded by the enactment of the pooling restrictions by Regulation 123 of the Community Infrastructure Levy Regulations 2010. This has had the effect of making unlawful the collection of general 'levies' to be used towards public open space. The collection of up to five contributions to be used towards specific (named) public open space projects would however be lawful. The formulas set out in the adopted SPD for calculating off-site cash payments for public open space can no longer be applied to this development at Station Hill.

28. The adopted Station Hill Masterplan document illustrates that strategic open space provision will be provided off-site in later phases of the masterplan and a separate area which will ultimately serve both the Station Hill and Tayfen Road Masterplan developments. The absence of public open space within the site is acceptable in principle, but only on the assumption the development contributes towards accessible public open space elsewhere. The Council's Park's Team has requested a payment of £75,000 is secured from this development to be used to enhance

children's play facilities at the nearby Tayfen Meadows public open space to the west of the application site.

29. In this case, a policy compliant position would see the delivery of circa 1,644sqm (0.1644ha) of 'open space' on the application site (circa 14% of the total site area). The application effectively proposes no on site provision of public 'open space'. The Council's Park's Team has requested a payment of £75,000 is secured from this development to be used to enhance children's play facilities at the nearby Tayfen Meadows public open space to the west of the application site. This payment would be secured in lieu of provision at the application site. The applicants have confirmed they are willing to provide this contribution as part of a S106 Agreement.

Libraries

30. The Suffolk County Council has identified a need to provide library facilities for the occupiers of this development and initially requested a capital contribution of £21,780. However upon further consideration, following enactment of Regulation 123 of the CIL Regulations (pooling restrictions), the County Council has withdrawn its request given that contributions have already been secured from five or more planning obligations. No contributions towards the provision of libraries services would be secured from this development.

Health

31. The NHS Property Services has confirmed there is sufficient capacity in the existing health infrastructure (i.e. GP surgeries) to cater for the additional demand for local services this development would generate. Accordingly, no health contribution is to be secured from the proposed development.

Highways

32. Suffolk County Council, in its role as local Highway Authority has not requested any S106 contributions from this development for off-site highways works/improvements.

33. A travel plan is required for this development. The Travel Plan Co-Ordinator at Suffolk County Council has requested several amendments are made to the Travel Plan submitted with the planning application. Discussions are on-going with the applicant and certain measures included in a Travel Plan (particularly if they are financial in nature) might need to be secured as part of the S106 Agreement, including any bond secured to underpin the delivery of the plan. Suffolk County Council is presently considering whether they are able/prepared to accept a developer contribution that would be used by them to implement the Travel Plan on behalf of the developer. The Heads of Terms of a S106 Agreement set out in the next section are reflective of the currently unresolved nature of the Travel Plan and allows for potential for contributions to be secured should the need arise.

34. Network Rail, as owner of other land forming part of the wider Station Hill Masterplan site, has objected to the planning application on the grounds that (inter alia) no mechanism is in place or proposed to secure contributions from the development to off-set potential cumulative impacts upon infrastructure arising from anticipated development at the Station Hill and Tayfen Road sites. Potential impact upon the highway network is cited as a particular area of concern in this respect.

35. The approach suggested by Network Rail is not reasonable and would be contrary to the legal tests set out at Regulation 122 of the CIL Regulations (paragraph 190 above). There is no certainty that development of the later sites will be realised, and even if they do come forward the delivery timetable cannot be predicted with any certainty. It is unlikely that the Station Hill Masterplan development, as a whole, will be delivered in the short term. Accordingly, and given the relatively short payback periods which are appropriately included in S106 Agreements, it is unlikely that a 'cumulative impact' contribution would be able to be used within a reasonable time period and would likely be returned to the developer unspent before the all of the contributions could be secured. In any case, the Highway Authority has not requested a contribution to off-set cumulative impacts probably because it has not found it possible to determine the nature of the works that would be required given the uncertainties that exist.

36. In light of the above, the impact of each individual development must be considered on its own merits in the light of prevailing conditions and committed developments (with planning permission) at the time the development is considered. Appropriate S106 contributions should be secured from developments being proportionate and directly related to the impacts arising from that development.

Economic Development Contribution

37. Upon considering the planning application at the August meeting, Members instructed officers to explore whether it is possible to secure a developer contribution to be used for economic development initiatives away from the application site. In particular, Members were concerned that policy BV8 of Vision sought a mixed use development of the wider masterplan site, but the planning application proposed (at the time) almost 100% housing. Members were concerned that the loss of existing employment and employment opportunities at the site might be lost with no mitigation.

38. The applicants have offered a one-off contribution of £50,000 to be used in the town towards economic development initiatives. This is despite the schemes' adverse financial viability (please refer to the next sub section). The contribution is considered to meet the legal tests set out at paragraph 13 above and is considered reasonable when all circumstances are taken into account. The contribution would need to be secured as part of the S106 Agreement.

Development Viability

39. The Framework states under the heading of 'Ensuring viability and deliverability' (paragraph 173);

"Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."

40. The National Planning Practice Guidance sets out the following advice on development viability:

41. *"Decision-taking on individual applications does not normally require consideration of viability. However, where the deliverability of the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary. This should be informed by the particular circumstances of the site and proposed development in question. Assessing the viability of a particular site requires more detailed analysis than at plan level.*

42. *A site is viable if the value generated by its development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken."*

43. The Growth and Infrastructure Act inserted new Sections 106BA, BB and BC into the 1990 Town and Country Planning Act. These sections introduce an application and appeal procedure for the review of planning obligations on planning permissions that relate to the provision of affordable housing. Obligations including a *"requirement relating to the provision of housing that is or is to be made available for people whose needs are not adequately served by the commercial housing market"* are within scope of this new procedure. The purpose of this legislative amendment is to unlock stalled developments that have 'unrealistic' planning obligation requirements by allowing the developer opportunity to review (and reduce) affordable housing requirements if it can be demonstrated that delivery of the development is being stalled on financial viability grounds. Whilst not directly relevant to this planning application (which is not a S106 Agreement review) it does serve to demonstrate the direction of travel for S106 Agreements and that viability (the ability to deliver housing development) is a material planning consideration which must be taken into account, particularly when negotiating S106 packages from developments.

44. The applicant submitted a viability assessment with the planning application in January 2014 and updated it in November 2014. These were the subject of an independent assessment which subsequently validated the document (Nov '14 update). The viability assessment has been further updated (November 2015) and is currently the subject of independent review. The updated assessment seeks to demonstrate the proposals would not be viable with any S106 contributions. The viability reports are confidential documents and therefore are not published.

45. There are no Development Plan policies specifically addressing development viability although Core Strategy policy CS5 (Affordable Housing) states that targets for affordable housing provision are subject to viability being demonstrated, using whatever public subsidy may be available in the case. If the target cannot be achieved, the affordable housing provision should be the maximum that is assessed as being viable.

46. The Joint Affordable Housing Supplementary Planning Document provides further guidance about testing development viability, including commissioning independent advice, at the developers' expense. In this case, the Council commissioned Chris Marsh Associates (CMA) to critique the viability assessment. The developer's viability assessment and the critique previously carried out by CMA are not discussed in detail in this report given their strictly confidential nature. The applicants have, however, agreed to share these documents with Committee Members on the understanding that the sensitive information contained within them will not be shared with third parties nor debated in public session. A copy of the latest viability assessment is therefore provided to Committee Members as confidential papers to be read alongside this Committee report. A copy of the independent assessment of the latest (November 2015) viability assessment will be made available via the late papers and/or verbally summarised as part of the officer presentation to Members, as appropriate.

47. The applicant's viability assessment seeks to demonstrate that in the context of 'normal' and widely accepted industry standards regarding expectations of land value and developer profit, their scheme at Station Hill would not be viable. In this case, however, the applicant's have taken a pragmatic view of their development and have sought to offer a S106 package as close to a policy compliant position as possible. It is only the affordable housing levels that stand to be compromised from fully policy compliant levels (dropping from 30% to 10%), but Core Strategy policy CS5 and its related SPD allow for a reduction in this contribution where adverse scheme viability is demonstrated.

48. Core Strategy Policy CS14 does not make concessions on viability grounds so when this policy is considered alongside CS5 which does make those concessions it suggests that where a viability case is demonstrated, it is the level of affordable housing that should be reduced. Indeed this approach is supported by the new provisions of the Planning Act discussed at paragraph 42 above.

49. Nonetheless, the provision of affordable housing is a key corporate and political priority of the West Suffolk Authorities and policy CS5 does require the maximum level of affordable housing is provided from new developments, within the parameters of scheme viability. Furthermore the Affordable Housing SPD confirms, in cases where viability is demonstrated to justify a reduction in affordable housing provision, other obligations should be reviewed (on a priority basis) to establish whether the affordable housing offer could be increased.

50. A review of the other planning obligations sought from the development has been carried out and all of the 'other' contributions are considered necessary in order to make the development sustainable. Accordingly, these provisions should be prioritised over affordable housing provision to ensure the development is sustainable with respect to infrastructure provision.

Risk Assessment

51. A risk assessment is required in this case given Members are minded to grant planning permission for the development contrary to officer advice.

52. Given that Members are of mind to *grant* planning permission there is limited risk of an appeal with its associated costs. There is potential for the applicants to appeal against the imposition of a condition or conditions they do not agree with, but it is normal practice to agree precise wording with applicants prior to entering into a S106 Agreement so this risk is considered negligible. The recommended conditions are included at the end of this report, but only in a summarised form to allow for their precise wording to be agreed with the applicants if the Committee remains minded to approve this application.

53. The principal risk associated with a potential grant of planning permission in this case is a potential Judicial Review. However, officers are content Members have properly considered the material planning issues and the justification for going against officers' advice in this case are properly and adequately recorded in the minute of the August committee meeting.

54. Officers consider the risks associated with a potential grant of planning permission in this case are limited.

Conclusion:

55. At their meeting on 6 August 2015, the Committee resolved they were of mind to grant planning permission for the proposed development but wished to consider the S106 Heads of Terms and development viability in more detail and in the light of up to date evidence.

56. If the Committee remains of mind to grant planning permission it is recommended that the applicant's offer of S106 Heads of Terms is secured. Planning permission should only granted following validation of the viability assessment by the Council's viability consultant and satisfactory resolution of the objections received from Suffolk County

Council's Travel Plan Co-Ordinator.

Recommendation:

Members should note that the application remains recommended for **REFUSAL** in line with the recommendation and reasons set out in the report at Appendix B. However, should Committee remain of mind to grant planning permission for this development it is **RECOMMENDED** the planning permission is subject to:

i) The completion of a S106 agreement to include:

- Affordable housing (10% = 13 units)
- Education contribution (Primary and Secondary School - £282,049)
- Pre-school contribution (£42,637)
- Tayfen Meadows Play Area Contribution (£75,000)
- Economic Development Contribution (£50,000)
- Travel Plan contribution and/or bond (if subsequently considered necessary and lawful by the Head of Planning and Growth).
- Any further clauses considered necessary by the Head of Planning and Growth.

ii) the prior satisfactory resolution of the objections received from the Travel Plan Co-Ordinator at Suffolk County Council, and;

iii) controlling conditions, including:

- Time limit (3 years for commencement)
- Compliance with approved plans
- Materials, detailing and colours
- Archaeology
- Strategy for enhancing water use efficiency, post occupation
- Bin and cycle storage strategy
- Landscaping (precise details of new hard and soft landscaping and strategy for future management and maintenance).
- Ecology (strategy for provision of enhancements at the site)
- Construction management plan, including working hours.
- As recommended by the Local Highway Authority
- No planting, structures or development to be carried out in the foot/cycleways to the frontage of the site (to protect visibility splays)
- As recommended by the Environment Agency, including contamination & remediation (further investigations and any remediation necessary)
- Means of enclosure
- Noise mitigation (measures to be applied to flats)
- Fire Hydrants
- Waste minimisation and re-cycling strategy (demolition)
- Foul and surface water drainage scheme.
- Implementation of an agreed Travel Plan (unless the matter is addressed fully via the S106 Agreement)
- Any additional conditions considered necessary by the Head of Planning and Regulatory Services.

Documents:
All background documents including application forms, drawings and other supporting documentation (but excluding viability reports) relating to this application can be viewed online.

Appendices

Appendix A – Viability assessment (confidential paper, not published)
Appendix B – Officer report to August 6th meeting of the Development Control Committee

Case Officer: Gareth Durrant Tel. No. 01284 757345