

## Application Number –WP/19/01016/FUL

**Proposal:** Demolition of the existing church and erection of 18 flats (including at least 6 affordable units) with associated external amenity space and parking spaces-

**Location:** St Nicholas Church, Buxton Road, Weymouth DT4 9PJ

**Applicant name** –Hector Benjamin Ltd

**Case Officer** – Bob Burden

**Ward Member(s)** – Cllr B Heatley, Cllr C Sutton, Cllr K Wheller

This application is brought back before the Committee due to a change to the terms of the Section 106 Agreement since the planning committee considered the application in July 2020.

### **1.0 Summary of Recommendation:**

**Recommendation A:** Delegate authority to the Head of Planning to grant subject to the completion of a Section 106 Agreement to secure provision of 35% affordable housing (6 flats and a financial contribution to off-site affordable housing provision – the latter not being required if more than 6 affordable units are provided on site) and subject to the planning conditions as set out in the previous committee report in July 2020 and appended to this report, with an updated plans list condition to include the following amended plans:

Proposed Block Plan 38A received 10th July 2020

Proposed Plan/ground floor plan 30G received 10th July 2020

Proposed Site Plan/First Floor Plan 31G received 10th July 2020.

**Recommendation B:** Refuse permission for the reasons set out if the legal agreement under Section 106 of the town and country Planning Act 1990 (as amended) is not completed within 6 months of the date of the committee resolution or such extended time as is agreed by the Head of Planning.

### **2.0 Reason for the recommendation:**

2.1 It is considered that the proposed modification to the wording of the draft S106 would be acceptable because the site lies within the defined development boundary and it is policy-compliant.

### **3.0 Key planning issue**

3.1 Potential reduction of 65% affordable housing on the site. The proposed modification to the S106 agreement (ensuring 35% affordable housing) is considered acceptable.

### **4.0 Description of Site**

4.1 See attached previous committee report from July 2020 which is appended to this report.

## **5.0 Description of Proposal**

5.1 See attached July 2020 report. This application has been brought back to committee due to a proposed change to the draft wording of the S106 agreement. The description of development has been amended since the application was considered in July 2020, with the applicant's agreement, to delete the reference to "18 affordable flats" and instead include "18 flats (including at least 6 affordable units)".

## **6.0 Relevant Planning History**

6.1 None relevant

## **7.0 Relevant Constraints**

Within Defined Development Boundary.  
Within Conservation Area.

## **8.0 Consultations**

8.1 See attached July 2020 report.

## **9.0 Representations**

9.1 See attached July 2020 report.

## **10.0 Relevant Policies**

10.1 The following are considered relevant having regard to the proposed changes to the draft S106 agreement:

### **West Dorset, Weymouth and Portland Local Plan**

HOUS1 – Affordable Housing

### **National Planning Policy Framework**

4. Decision-making
5. Delivering a sufficient supply of homes

## **11.0 Human rights**

Article 6 - Right to a fair trial.

Article 8 - Right to respect for private and family life and home.  
The first protocol of Article 1 Protection of property

This Recommendation is based on adopted Development Plan policies, the application of which does not prejudice the Human Rights of the applicant or any third party.

## **12.0 Public Sector Equalities Duty**

As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have “due regard” to this duty. There are 3 main aims:-

- Removing or minimising disadvantages suffered by people due to their protected characteristics
- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the PSED.

## **13.0 Financial benefits**

- At least 6 affordable housing flats.
- Spending by occupiers in local shops and facilities.
- Employment created during construction phase.

## **14.0 Climate Implications**

14.1 See attached July 2020 report.

## **15.0 Planning Assessment**

15.1 The Committee will recall considering this application at its meeting on 9th July 2020. The application was for the whole development (100% i.e. all 18 flats) to be affordable housing in perpetuity, secured by a section 106 agreement. Members resolved to delegate authority to approve the application subject to the legal agreement, conditions and a widening of the proposed vehicular access by a further 0.5m . However, it has since become apparent that Homes England will only sanction a maximum of 35% of an affordable housing development using a section 106 agreement.

15.2 The comments of the Housing Enabling Team Leader regarding this situation are set out below:

The Housing Enabling Team are supportive of this application to provide affordable housing at Buxton Road. There are currently around 1900 households on the Weymouth and Portland Housing Register, of these 408 have a need for two bedroom properties.

An all affordable housing scheme on this site in Buxton Road will require funding from Homes England. This would be part of the 2021 – 2026 Affordable Homes Programme. The official guidance from Homes England states that: “the purchase of homes built under Section 106 agreements, where the affordable homes are secured through developer contributions is not funded”.

This would mean that if all the homes were to be provided as affordable through S106 requirements then funding would not be available. This would mean the delivery of affordable housing on the site would be unviable.

The Housing Enabling Team did contact Homes England to see if any flexibility would be given for this site but this is a standard approach from Homes England.

This means that to enable an all affordable scheme to be delivered then only a policy compliant amount of affordable housing should be sought in the S106. Once planning has been granted Sovereign Housing will acquire the site to develop affordable homes. Sovereign are a Strategic Partner of Homes England so have already been awarded a substantial amount of grant to bring forward affordable homes, this will mean they will not have to make a grant application specific to this site.

It should be noted that several other 100% affordable housing sites have been developed by Sovereign, and other RPs, using this funding method. This availability of Homes England grant is helping to increase the delivery of affordable housing in the Dorset Council area.

The affordable housing contribution should be 6 units delivered on site and a financial contribution of £6,935 to ensure it is policy compliant. The financial contribution will not be applied if more than 6 affordable homes are delivered on site.

15.3 The Case Officer would point out that if this application had been originally submitted simply as a scheme for 18 flats it would have been subject to policy HOUS1 which requires 35% affordable housing and the requirements of Homes England are consistent with this. The applicant remains prepared to enter into the s106 to achieve the 35% figure. This means 6 of the total 18 flats (33.33%) can be specified as affordable flats. The shortfall of 1.66% on 35% would be addressed by an affordable housing financial contribution of £6,935 towards off-site provision.

15.4 This leaves the remaining 65% (12 flats). As mentioned above, this would be policy-compliant as open market flats. However, it is the applicant's intention for the whole of the development to be provided as an all-affordable scheme and has provided a letter which states the following:

*"The S106 needs to be for a maximum of 6 units. However we are able to confirm that the remaining 12 units will be allocated as affordable housing units, and it is anticipated that these will be Social Rented units.*

*The reason the S106 needs to be for a maximum of 6 units is due to the structure of Homes England Funding. In essence, Sovereign are unable to secure grant funding to any units that are covered within the Section 106. They have based their financial calculations on the S106 agreement only containing 6 affordable housing units. Therefore the current scheme will fail if the S106 contains more than 6 units. However as outline above, notwithstanding the S106, we are still offering the undertaking that all the units will be allocated as affordable units."*

Furthermore, Sovereign Housing are also expected to provide a letter consistent with this outcome and the committee will be updated at the meeting if such a letter has been received.

15.5 Given that the scheme with 35% affordable housing would be policy compliant (Policy HOUS1 of the adopted local plan), it is considered reasonable to support the application in this form. Nevertheless, and whilst it cannot be guaranteed, it is clear that the intention is to provide all 18 flats as affordable. If more than 6 affordable flats were delivered on site the financial contribution would not be required.

15.6 Since the committee meeting in July 2020 the applicant has submitted amended plans in respect of the access which are considered to be satisfactory by the planning officer, as per the committee resolution. Therefore it is proposed that condition no. 1 be updated to supersede the previous plans (those that have been subsequently amended) and include the amended plans which are as follows (in addition to those plans in the list which are still relevant):

Proposed Block Plan 38A received 10<sup>th</sup> July 2020  
Proposed Plan/ground floor plan 30G received 10<sup>th</sup> July 2020  
Proposed Site Plan/First Floor Plan 31G received 10<sup>th</sup> July 2020.

## **16.0 Conclusion**

16.1 The situation in terms of the restrictions on Homes England funding has only relatively recently emerged. The scheme in the form now presented would be acceptable in policy terms with 6 affordable flats and a contribution towards off-site affordable housing provision to make up the balance of the 35% required.

Moreover, there is the prospect that the remaining 12 flats may also end up being delivered as affordable - albeit this cannot be guaranteed.

## **17.0 Recommendation**

### **Recommendation A:**

Delegate authority to the Head of Planning to grant subject to the completion of a Section 106 Agreement to secure provision of 35% affordable housing (6 flats and a financial contribution to off-site affordable housing provision – the latter not being required if more than 6 affordable units are provided on site) and subject to the planning conditions as set out in the previous committee report in July 2020 and appended to this report, with an updated plans list condition to include the following amended plans:

Proposed Block Plan 38A received 10th July 2020

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Proposed Site Plan/First Floor Plan 31G received 10th July 2020.

### **Recommendation B:**

Refuse permission for the reasons set out if the legal agreement under Section 106 of the town and country Planning Act 1990 (as amended) is not completed within 6 months of the date of the committee resolution or such extended time as is agreed by the Head of Planning.

1. Policy HOUS1 of the adopted West Dorset, Weymouth and Portland Local Plan 2015 requires a minimum on-site provision of units as affordable housing and in the absence of a planning obligation to secure these affordable units the scheme would fail to meet the substantial unmet need for affordable housing in the district and the proposal would therefore be contrary to Policy HOUS1 of the adopted West Dorset Weymouth and Portland Local Plan. Furthermore the community-related benefits inherent in the scheme would not be achieved. Hence the scheme would be contrary to the objectives of paragraph 92 of the National Planning Policy Framework (2019).