

Application Number:	SEC/2020/0001		
Webpage:	Planning application: SEC/2020/0001 - dorsetforyou.com (dorsetcouncil.gov.uk)		
Site address:	Former St Marys School, Manor Road, Swanage, BH19 2BH		
Proposal:	Modify a Planning Obligation for planning permission 6/2018/0493 (Demolish temporary classrooms and outbuildings and convert existing remaining buildings to form 10 dwellings and erect 20 new dwellings with parking and landscaping. Removal of existing raised water tank) to remove requirement for affordable housing		
Applicant name:	Bracken Developments Ltd		
Case Officer:	Peter Walters		
Ward Member(s):	Cllr Suttle and Cllr Tritte		
Publicity expiry date:	26/07/2020	Officer site visit date:	N/A
Decision due date:	11/09/2020		

1.0 The application is being returned to the Planning Committee as the application seeks to vary an application previously considered at Committee in 2018 (the former Purbeck Planning Committee)

2.0 Summary of recommendation:

That the Committee would be minded to grant the application to allow the removal of the Section 106 legal agreement from application 6/2018/0493.

3.0 Reason for the recommendation: as set out in paragraph 16 at end of the report.

- It has been demonstrated that the proposed development is not viable if affordable housing is required.

4.0 Key consideration

Issue	Conclusion
Impact on viability of the development	The development is not considered to be viable if affordable housing is provided.

5.0 Description of Site

- 5.1 The site, with an area of 0.54 hectares (1.34 acres) is located to the west of Swanage Town Centre. Access to the site is from Manor Road to the south of the High Street. The site is terraced, with five different levels and slopes downwards in a northern direction towards the High Street. The site is located within the Swanage settlement boundary, within the Dorset Area of Outstanding Natural Beauty and within Swanage Conservation Area and close to several Listed Buildings (all Grade II). The site is also identified as being an area of high townscape value in the Swanage Local Plan. The site comprises the former St Mary's School, now vacant, following relocation to a new site in Northbrook Road, Swanage. The school buildings are located within the northern part of the site.
- 5.2 The main school buildings are constructed of stone elevations with flat, felt covered and part pitched tiled roofs. Others are temporary portable and lean-to structures. The buildings were used as a mixture of classrooms, hall, library and administrative facilities. The southern part of the site is dominated with hardstanding, with top highest terrace being a former parking area and the next terrace down being a playground. The next terrace down is a grass field. An area of hardstanding and temporary portable structures are located on the fourth terrace. On the last terrace is the old school buildings and a portable structure located to the west of the old school which, was formerly used as a pre-school.
- 5.3 There is a pedestrian footpath along the eastern boundary of the site. Immediately to the north of the site is a row of 19th Century terraced houses identified as positive buildings within the Conservation Area. The listed (Grade II) Methodist Church is located to the north of this terrace, with its open parking area fronting the high street. Residential properties are located to the west of the site in Queens Mead, with rear gardens separated from the site by Chapel Lane, a walled pedestrian route. A 3m high wall separates the site and Chapel Lane. A similar walled pedestrian path known as Sunshine Walk runs alongside the southern site boundary. This boundary varies in height from about 2m to about 3m. Along the eastern boundary is a Purbeck stone wall, which is listed due to being within the curtilage of Purbeck House Hotel.

6.0 Description of Application

- 6.1 The applicant is seeking to remove the obligation in the Section 106 legal agreement attached to the accompanying planning permission to provide 11 affordable housing units, on the basis that providing the affordable housing would render the proposal unviable. It should be noted that the proposal does not affect the development itself and so does not involve any changes to the design, layout, landscaping, access, parking or quantum of development.

It is proposed to implement permission 6/2020/0532 which granted permission for the conversion of existing building to form 10 dwellings and erect 20 new dwellings without any affordable housing provision.

7.0 Relevant Planning History

RELEVANT PLANNING HISTORY			
App No	Proposal	Decision	Decision issued
6/2018/0493	Demolish temporary classrooms and outbuildings and convert existing remaining buildings to form 10 dwellings and erect 20 new dwellings with parking and landscaping. Removal of existing raised water tank. : Former St Marys School, Manor Road, Swanage, BH19 2BH	Committee resolution to Approve subject to Section 106 Legal agreement 30.01.2019	02/04/2019
The decision to grant consent was subject to a Legal agreement dated 28 th March 2019 (under section 106 of the Town and Country Planning Act 1990) to secure 11 no affordable housing units intended for affordable rented or shared ownership			
6/2018/0494/LB Listed Building consent	Demolition of raised water tank & restoration of the summer house : Land at entrance of former St Marys School, Manor Road, Swanage, BH19 2BH	Approved	27/11/2018
6/2019/0577	Removal of condition 19 of planning permission 6/2018/0493 (Demolish temporary classrooms and outbuildings and convert existing remaining buildings to form 10 dwellings and erect 20 new dwellings with parking and landscaping. Removal of existing raised water tank) to allow unrestricted occupation of the dwellings : Former St Marys School, Manor Road, Swanage, BH19 2BH	Refused	21/04 /2020
Officer note: Condition 19 of planning permission 6/2020/0432, had required that: The properties shall only be occupied by a person as his or her only or principal home. The occupier shall supply to the Council (within 14 working days of the Council's request to do so) such information as the Council may reasonably require in order to determine compliance with this condition.			

Reason: To ensure that the approved properties are not used as second homes, which would harm the sustainability of local communities and would not contribute towards meeting local housing need.

Summary Reasons for refusal for application 6/2019/0577:

The provision of an open market home, would undermine the Local Planning Authority's ability to manage the number of new homes which are built as, or become, second homes in the Area of Outstanding Natural Beauty. contrary to Policy H14 of the emerging Purbeck Local Plan and paragraph 8 of the NPPF.

The Council considered that significant weight could be attached to emerging Policy H14 consistent with Paragraph 48 of the NPPF.

6/2020/0432	Removal of condition 19 of planning permission 6/2018/0493 (Demolish temporary classrooms and outbuildings and convert existing remaining buildings to form 10 dwellings and erect 20 new dwellings with parking and landscaping. Removal of existing raised water tank) to allow unrestricted occupation of the dwellings	Approved	07/12/2020
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Officer note: In the light of appeal decision APP/D1265/W/20/3252152 and the award of costs against the council, it was considered premature to apply this policy. The original S106 remains applicable to this permission.

8.0 List of Constraints

Within Swanage Conservation Area

Within Dorset AONB

Adjacent to Grade II listed building – Clarence Cottage and East Boundary Walls to Garden - Distance: 12m from site

Adjacent to Grade II listed building – The Methodist Church and Hall Immediately East and Boundary Walls to West and North – Distance: 17m from site

Adjacent to Grade II listed building – Stables and Outbuildings to Purbeck House – Distance: 19m from site

9.0 Consultations

All consultee responses can be viewed in full on the website.

Consultees

1. Town Council - Swanage

- Objection
- Considered that circumstances have not significantly materially changed since planning application was submitted.

- Considers that the proposal will have a material adverse impact on local housing needs.

2. Dorset Council – Ward Member – Cllr Trite

- Objection
- Considers that the removal of affordable housing is not justified

3. District Valuation Service (DVS)

- Considers that based on the details provided that the proposal is no longer viable if affordable housing is included as part of the scheme.

Representations received

In addition to letters to neighbouring properties, a site notice was posted on the site on with an expiry date for consultation of 12th June 2020. An advert was also published in the local newspaper with an expiry date of 26th July 2020.

Total - Objections	Total - No Objections	Total - Comments
5	0	0

Summary of Comments against:

- Affordable housing is needed in Swanage.
- Purbeck area already extremely expensive to live in.
- Hard to understand what has changed significantly since the application was submitted.

10.0 Relevant Policies

Development Plan:

Purbeck Local Plan Part 1 (2012):

Policy SD - Presumption in favour of sustainable development

Policy AH - Affordable Housing

Swanage Local Plan

Policy SS: Swanage Settlement

Material considerations

Emerging Purbeck Local Plan

Officers have considered the emerging Purbeck Local Plan when assessing this planning application. The plan was submitted for examination in January 2019. At

the point of assessing this planning application the examination is ongoing following hearing sessions and consultation on proposed Main Modifications (carried out between November 2020 and January 2021). An additional consultation on Further Proposed Main Modifications is scheduled to open in December 2021 and close early in January 2022. The council's website provides the latest position on the plan's examination and related documents (including correspondence from the Planning Inspector, council and other interested parties). Taking account of Paragraph 48 of the National Planning Policy Framework, the plans progress through the examination and the council's position following consultation on proposed Main Modifications, at this stage only very limited weight can be given to this emerging plan.

The following policies of the emerging Local Plan are considered relevant to the application but cannot be given any significant weight in the decision-making process:

- H11 Affordable Housing
- H14 Second Homes

National Planning Policy Framework (NPPF) revised June 2021

Paragraph 57 of the NPPF states:

“Planning obligations must only be sought where they meet all of the following tests:

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.”*

Paragraph 58 of the NPPF states:

“Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”

Other material considerations

Purbeck Affordable Housing SPD

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 Public Sector Equalities Duty.

- The proposal does not include any physical changes to the previously approved scheme where this matter is considered.

13.0 Financial benefits

- None

14.0 Climate Implications

14.1 The proposal is to remove the requirement for the provision of affordable housing. This will not have any climate implications.

15.0 Planning Assessment

- 15.1 With the exception of the provision of affordable housing the proposal would be identical to that previously approved under extant permission 6/2020/0532 which varied the conditions attached to 6/2018/0493. Both permissions are subject to a planning obligation which secures 11 units of affordable housing to make the development acceptable in relation to Local Plan policy AH.
- 15.2 Policy AH seeks to secure affordable housing contributions but recognises that there will be occasions where exceptional circumstances make this requirement unviable and so provides the opportunity for viability to be appraised.
- 15.3 It is necessary to consider whether the applicant has demonstrated in accordance with policy AH that there are significant economic viability constraints that would prevent the provision of affordable housing, such that the proposal would be acceptable in the absence of the planning obligation.

Impact on viability of the development

- 15.4 The applicant has applied to remove the S106 legal agreement that requires the provision of 11 affordable housing units as part of the development. In this instance, Policy AH of the Purbeck Local Plan allows for development of 100% open market housing where it can be satisfactorily demonstrated that a scheme with affordable housing is not viable. Therefore, if the viability argument is satisfied, the S106 agreement can be removed without resulting in the approved scheme being contrary to the Development Plan. Following the grant of planning permission for the application, the applicant has undertaken a review of the viability of the scheme. The report states that:

“The viability review demonstrates that the site is not deliverable within the current planning gain framework. The reasons for this are the significant CIL contributions, the on-site abnormal works costs and the provision of affordable housing. The CIL charge and abnormal works costs cannot be reduced and as such the project will only come forward on the basis of 100% private sales scheme and even then only on the basis of a reduced profit margin”.

- 15.5 The applicant therefore contends that on the basis of the increased CIL charge and the abnormal costs associated with developing the site along with the high Existing and Alternative Land Use Values the proposal is therefore no longer viable if the requirement to provide affordable housing remains. These increased costs are set out in more detail below.

15.6 The applicant states that abnormal costs, some of which have come to light following the grant of the original planning permission have increased the overall cost of development and resulted in a scheme that is unviable. They state the following costs are abnormal:

• Demolition of Tower	£25,000
• Clearance (slab & structures)	£50,000
• Off Site Heritage Conservation	£45,000
• Underbuild	£38,700
• Retaining walls 1.5m	£168,000
• Attenuation & Hydrobreak	£20,000

15.7 The demolition of the water tower is necessary to provide access to the site, and was approved as part of the original planning application. The site is currently occupied by a number of former school buildings which would not be retained as part of the proposals. The off-site heritage costs were also agreed as part of the planning application. The underbuild relates to some of the parking provision.

15.8 The Council has secured advice from the District Valuer Services (DVS) to assess the applicant's viability review. The District Valuer (DV) acknowledges that although the parking could be provided elsewhere, this is likely to have an impact on property values (as it would require the use of other open space) and therefore the subsequent decrease in property values would have a similar impact to the viability of the scheme. The retaining walls are required due to the topography of the site, which is on an incline and the attenuation and hydrobreak are additional measures required to drain the site successfully. In terms of the values provided for each of these abnormal costs, these have been independently verified by the District Valuer as being reasonable. As a result, the total additional costs are £346,700 in addition to the normal costs of developing the site.

15.9 Officers have discussed with the DVS whether the submitted costs should be considered to be abnormal, given that the developer would have been aware of many of these costs at the point of submitting an application. However, the Planning Practice Guidance (PPG) describes abnormal costs as:

How should costs be defined for the purpose of viability assessment?

Assessment of costs should be based on evidence which is reflective of local market conditions. As far as possible, costs should be identified at the plan making stage. Plan makers should identify where costs are unknown and identify where further viability assessment may support a planning application.

Costs include:

- build costs based on appropriate data, for example that of the Building Cost Information Service
- abnormal costs, including those associated with treatment for contaminated sites or listed buildings, or costs associated with brownfield, phased or complex sites. These costs should be taken into account when defining benchmark land value

Planning Practice Guidance Paragraph: 012 Reference ID: 10-012-20180724

- 15.10 The DV, on the basis of the PPG set out above, advise that the costs that the applicant has submitted as abnormal costs are within the definition above. As a result, they consider that it is acceptable and reasonable for those costs to be taken into account, even if they did not form part of the original assessment.
- 15.11 The development of the site is based on using the BCIS Upper Quartile Rate for development. Although the DV, who provided independent evaluation of the figures, initially raised concerns about the use of the Upper Quartile rate, they have now accepted that this is the correct rate to use as the site is situated within the Swanage Conservation Area and therefore the materials schedule is more expensive than would otherwise be the case. The use of the BCIS Upper Quartile Rate was considered to be acceptable when the parent application (6/2018/0493) was submitted. Officers consider that it is reasonable to continue to use this as the base rate.
- 15.12 As a result of these costs, the overall cost of developing the site is increased to £5,619,774. This proposal includes a 5% contingency for the new build development and a 10% contingency for the refurbishment element of the development. This provides a blended contingency of 5.9% across the whole project (as the new build element accounts for a larger proportion of the development).
- 15.13 The revenue from affordable housing is lower than open market housing, and this has an impact on the viability of the scheme.
- 15.14 The applicant also cites the increase in CIL rates as affecting the viability of the development. The CIL Charging Schedule is reviewed on an annual basis. At the

present time for residential developments, the charge is £256.15 per square metre in Swanage, which is higher than at the time the decision was issued. It is noted that the approved scheme included relief for the provision of the affordable housing. This meant that the CIL rate was £576,044. The removal of all affordable housing from the scheme will result in an increased CIL liability of £738,340, an increase of £215,779. The increased CIL liability is offset by the ability of the applicant to sell the residential units as open market housing.

15.15 The viability assessment completed by the applicant determined that the project residual value of the scheme will be -£801,444. This figure assumes that the scheme will be sold as 100% open market housing. The inclusion of affordable housing would have a greater impact on the viability of the scheme. The scheme can be delivered at a profit margin of 10.5% on the Gross Development Value, which is lower than the industry standard.

15.16 The Council has employed by the District Valuer Service to provide an independent assessment of the viability appraisal. Policy AH of the Purbeck Local Plan Part 1 states that:

Where it is considered that there are significant economic viability constraints that would prevent the provision of affordable housing in accordance with the policy, the applicant will be required to provide full justification of exceptional circumstances to the Council's satisfaction. Such justification will be expected to include a financial viability appraisal, site suitability appraisal, and development mix appraisal. This 'open book' approach will enable the Council to form a view on the viability of the proposed scheme, including the identification of economic constraints (for example, existing high use values) and their impact. The appraisal will be subject to independent verification, which the applicant will be expected to fund.

15.17 The District Valuer has considered the information provided against the current CIL rates and house prices. Officers asked the DV to consider whether a smaller contribution of affordable housing could be provided, as opposed to the provision of no affordable housing. The DV considered whether the level of affordable housing agreed at the time of the planning application could be provided (35%). They also considered the viability of the scheme with lower levels of affordable housing, initially considering that 6% affordable housing provision may be achievable. This was in light of evidence provided in relation to the likely purchase value of the properties which resulted in a revised Benchmark Land Value.

15.18 However, the DV undertook further studies to establish the potential existing use value (EUV) of the site as well as reasonable alternative uses (AUV) for the site (which given the central location within the town is relatively high). On top of the existing use value is the premium of 20% for the landowner to sell the land. Additionally, a third-party landowner is also expected to receive a premium, calculated at £180,000.

- 15.19 This resulted in a Residual Land Value which was less than the adopted Benchmark Land Value that the DVS used when 6% affordable housing was considered (derived from the Existing Use Value (EUV)). This took account of the increase in CIL liability resulting from a higher proportion of open market houses that do not benefit from social housing relief from CIL. The DVS notes that for the proposed scheme to be judged as financially viable on this site the residual land value needs to be higher than the EUV and also offer a sufficient premium compared to other valuation approaches. As a result of this, the DVS advise that the site is not financially viable with the presence of any affordable housing on it.
- 15.20 The abnormal costs, along with the high land values and higher CIL rates in combination reduce the profit margin of the scheme to a point where, in the opinion of the DVS, only a 100% open market housing scheme is viable.
- 15.21 Policy AH of the Purbeck Local Plan Part 1 requires the applicant to justify not providing affordable homes on the grounds of viability. In this instance, officers consider that this is justified and therefore the proposal is compliant with the Development Plan. It is noted that there have been objections to the proposal by the Town Council and members of the public on the grounds of the need for affordable housing in the area. Officers acknowledge that this is the case. However, as set out above, the applicant is entitled to apply to remove the obligation and officers are satisfied that the viability assessment evidences that the development is not viable if affordable housing is provided and is therefore not contrary to Policy AH of the Purbeck Local Plan Part 1.

Impact on the original planning balance

- 15.22 The original permission 6/2018/0493 was judged to be acceptable in all respects subject to conditions. The provision of affordable housing was to be secured in accordance with policy AH, but the benefit of affordable housing provision was not a deciding factor in judging the acceptability of the scheme which, subject to conditions, was in accordance with planning policy.
- 15.23 Since permission was granted the presumption in favour of sustainable development in accordance with paragraph 11 of the NPPF has become applicable in the Purbeck area due to the failure to meet the housing delivery test which renders the Local Plan housing policies out of date. The presumption in favour of sustainable development does not alter the acceptability of the development proposal which was not identified to result in harm to heritage assets or any other protected area or assets. Policy AH remains applicable and although the policy seeks affordable housing provision it also provides for situations where developers are able to fully justify proposals for housing schemes without affordable housing.

16.0 Conclusion

16.1 On the basis of the independent analysis of the viability statement submitted by the applicant, taking account of nationally recognised building cost figures, the approved development is not considered to be viable if affordable housing needs to be provided. Officers therefore consider that permission should be granted for the removal of the Section 106 legal agreement in accordance with Policy AH: Affordable Housing of the Purbeck Local Plan Part 1.

17.0 Recommendation

That the Committee would be minded to grant the application to allow the removal of the Section 106 legal agreement from application 6/2018/0493.

● Approximate Site Location

Application reference: SEC/2020/0001

Site address: Former St Marys School, Manor Road, Swanage, BH19 2BH

Proposal: Modify a Planning Obligation for planning permission 6/2018/0493 (Demolish temporary classrooms and outbuildings and convert existing remaining buildings to form 10 dwellings and erect 20 new dwellings with parking and landscaping. Removal of existing raised water tank) to remove requirement for affordable housing



