

Planning Committee

Report subject	To seek agreement to reconsider the previous resolution of 4 October 2022 Planning Committee to approve application no. APP/21/01199/F at 13 – 15 High Street, Poole subject to the completion of a Section 106 Agreement.
Meeting date	23 May 2024
Status	Public Report
Executive summary	To provide an update on the planning application at 13 High Street, Poole and to seek refusal of the planning application due to the failure of the applicant to complete a Section 106 Agreement in accordance with the earlier resolution of the Planning Committee.
Recommendations	<p>It is RECOMMENDED that:</p> <p>The Planning Committee overturn the previous resolution to approve this application. Recommend the application now be refused due to the failure of the applicant to complete a suitable Section 106 Agreement to secure the Heads of Terms set out in the original committee report recommendation.</p>
Reason for recommendations	The Planning Committee resolved to approve the application subject to the completion of a Section 106 Agreement, but the applicant has failed to complete a suitable Section 106 Agreement within a reasonable timeframe. Without the contributions and mitigation required through the s106, the scheme is contrary to Local Plan policy.
Report Author	Steve Llewellyn, Team Leader, Development Management

Wards	Poole Town Cllr Sue Aitkenhead, Cllr Andy Hadley, Cllr Mark Howell
Classification	For Decision

Background

1. At the Planning Committee of 4 October 2022, Members considered App. No. APP/21/01199/F at 13-15 High Street, Poole for the redevelopment of the site to form 40 apartments and 424sqm of Class E floor space, following the partial demolition of the existing buildings. The committee report is appended to this report along with the Agenda addendum and Minutes.
2. Planning Committee resolved that planning permission be approved subject to the completion of a Section 106 Agreement in accordance with the recommendation and conditions set out in the Officer's report and in the addendum and with the following additions:
 - Overage clause to review affordable housing viability to be included as an additional item in the list of terms under the Section 106 provision b) of the Recommendation; and
 - Informative Note: The applicant should note and inform future residents of the approved scheme that they may be excluded by the Council from being able to purchase an on-street residents permit or visitors parking permits in the locality of the site. This is to reduce the transport impacts from the development due to the low levels of car parking provision being proposed.
3. In accordance with the resolution of the Planning Committee, a deed pursuant to Section of the Town and Country Planning Act 1990 (as amended) was required to be entered into and completed to secure the following obligations:
 - Heathland SAMM's Contribution of £11,508 including admin fee towards strategic access, management and monitoring (SAMMs) to avoid or mitigate any adverse effect of the development on the Dorset Heathlands;
 - Harbour SAMM's Contribution of £4,099.20 including admin fee towards strategic access, management and monitoring (SAMMs) to avoid or mitigate any adverse effect of the development on Poole Harbour;
 - NHS Contribution of £3,360 towards the expansion and improvement of surgeries in the local area of Poole Central; and
 - An overage clause requiring a Late Stage Review of the viability of the development and the payment of an Affordable Housing Contribution (if

required following the Late Stage Review) prior to occupation of more than 75% of the residential units.

4. Instructions were subsequently issued to the Council's Legal team and work was commenced on preparing the Section 106 Agreement. The final version of the Section 106 Agreement was subsequently issued on 28 November 2023 for signing by the landowners.
5. The return of the hard copy engrossments of the Section 106 Agreement signed by the landowners have been awaited since but have not been forthcoming within the deadlines that have been set. Most recently, the planning agent for this planning application has advised on 25 April 2024 that work is still progressing on the Section 106 being signed but due to delays in the Section 106 Agreement being issued following the resolution of the Planning Committee in October 2022 it has been necessary for commercial terms to be renegotiated which includes the appointment of a Chartered Surveyor by the parties. However, the planning agent has not been able to provide any indication of the timescale for those matters to be concluded and for the signed engrossments of the Section 106 Agreement to be returned to the Council to enable it to be completed and a planning decision notice to be issued.
6. Consequently, in light of the delays in the signing of the engrossments of the Section 106 Agreement by the landowners that have already occurred to date, there remains continuing uncertainty regarding the timescale of when they will be signed and returned to the Council for the completion of the Section 106 Agreement. As a result, at this current time, a decision cannot be issued in accordance with the resolution of the Planning Committee at its' meeting on 4 October 2022.

Conclusion and Recommendation

7. The Poole Local Plan area cannot currently demonstrate an adequate 5-year housing land supply and the development proposed by this planning application would provide high density residential development in a highly sustainable location that would contribute towards meeting the housing need. Furthermore, it would also deliver an element of retail/commercial floor space that would provide some economic benefits and, if occupied, would contribute to the vitality and viability of the town centre.
8. However, set against this is the fact that the planning application has been in the planning system since 13 September 2021 and the hard copy engrossments of the Section 106 Agreement have not been signed by the landowners since they were issued by the Council on 28 November 2023. In addition, no timescale has been provided for the commercial terms to be

renegotiated and the engrossments of the Section 106 Agreement to be signed and returned to the Council. Given the length of time that this planning application has been in the planning system and that the return of the signed engrossments of the Section 106 Agreement has been awaited, it is considered that there is a need to conclude this planning application and to provide certainty rather than it being held in abeyance for a further indefinite period.

9. In the event that the Section 106 Agreement is not entered into by the landowners, it is necessary to consider the consequences of the planning obligations, that are the subject of it, not being secured. Consideration of these consequences is set out in the paragraphs below.
10. As stated above, the Section 106 Agreement seeks to secure a Heathland SAMM's Contribution of £11,508 including admin fee towards strategic access, management and monitoring (SAMMs) to avoid or mitigate any adverse effect of the development on the designated Dorset Heathlands/Dorset Heaths. Evidence shows that the Dorset Heaths are under significant pressure from urban development. Natural England advise that residential development should not be permitted within 400 metres of a designated heathland due to the potential adverse impact on heathland principally arising from human pressures and damage caused by domestic pets. In addition, it is also advised that as the majority of visitors to the heathland live within 5km of the site, all new residential development between 400 metres and 5km of a designated heathland, which includes all of the Poole Local Plan area, would have such a significant effect that mitigation is required.
11. In this instance, the application site is located within 5km (but not within 400m) of the designated Dorset Heathlands/Dorset Heaths and therefore the proposed net increase in residential dwellings would not be acceptable without appropriate mitigation of the adverse impact upon the Heathland arising from them. As part of the Dorset Heathland Planning Framework, a contribution is required from all qualifying residential development to fund Strategic Access Management and Monitoring (SAMM) in respect of the internationally important Dorset Heathlands. This proposal requires such a contribution, in this case £11,508 including admin fee. However, in the absence of the Section 106 Agreement being entered into by the landowners, the requisite contribution has not been secured and the adverse impacts arising from the proposed development upon the designated heathland will not be mitigated contrary to the provisions of Policies PP32 and PP39 of the Poole Local Plan (November 2018). Therefore, the proposed development would not satisfy the appropriate assessment required by the Conservation of Habitats and Species Regulations 2017 and cannot be approved.

12. Similarly, evidence demonstrates that there are also recreational pressures on Poole Harbour (SPA and Ramsar site) which can have a harmful effect on the interests features for which it has been designated. Therefore, all new residential development in Poole also has to provide mitigation to ensure the impact of additional visitors to Poole Harbour can be managed without causing harm to protected wildlife. In accordance with the Poole Harbour Recreation 2019-2024 SPD and Policies PP32 and PP39 of the Poole Local Plan (November 2018), development proposals for any net increase in homes are therefore required to provide a SAMM contribution for wardening, education and monitoring to mitigate the adverse effects of recreation related pressures within Poole Harbour.
13. The development proposed by this application would result in a net increase in residential dwellings and therefore such a contribution is required to mitigate the associated increased recreational impact upon the internationally important Poole Harbour SPA and Ramsar site. The Section 106 Agreement therefore seeks to secure a Harbour SAMM's contribution of £4,099.20 including admin fee to mitigate any adverse effect of the development on Poole Harbour. Again, in the absence of the Section 106 Agreement being entered into by the landowners, the requisite contribution has not been secured and the adverse recreational impacts arising from the proposed development upon Poole Harbour will not be mitigated contrary to the provisions of Policies PP32 and PP39 of the Poole Local Plan (November 2018). Therefore, the proposed development would not satisfy the appropriate assessment required by the Conservation of Habitats and Species Regulations 2017 and cannot be approved.
14. In response to the proposed development, the NHS through the Dorset Clinical Commissioning Group identified that the increase in population arising from the development, if approved, would have an impact on local NHS resources in terms of the Primary and Community Care that would require a proportionate financial contribution of £3,360 towards the expansion and improvement of surgeries in the local area of Poole Central. The Section 106 Agreement seeks to secure this contribution. In the absence of the Section 106 Agreement being entered into by the landowners to secure this contribution, the proposed development would fail to mitigate the identified impacts arising from it on local NHS resources contrary to the provisions of Policy PP39.
15. Consideration has been given as to whether there have been any material changes in circumstances since the Planning Committee's original resolution to approve. In this respect the relevant Development Plan remains the Poole Local Plan (2018). Whilst the Council is currently considering feedback from the public consultation on the BCP-wide Local Plan, the policies in the draft Local Plan are not attracting weight at this time. In addition, the requirements

of the Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document and the Poole Harbour Recreation 2019-2024 Supplementary Planning Document remain in place.

16. Having regard to the background set out above and the current situation and uncertainty regarding the progression of the signing of the engrossments of the Section 106 Agreement by the landowners, it is therefore recommended that the Planning Committee agree to now refuse this planning application due to the failure of the applicant to enter into the Section 106 Agreement to secure the required planning obligations set out at paragraph 3) above.
17. In this regard, it is recommended that this planning application be refused in accordance with the justification set out at paragraphs 10-14 inclusive and for the following reasons:
 1. The application site is within 5Km of a Site of Special Scientific Interest (SSSI). This SSSI is also part of the designated Dorset Heathlands SPA (Special Protection Area) and Ramsar site, and is also part of the Dorset Heaths SAC (Special Area of Conservation). The proximity of these European sites (SPA and SAC) means that determination of the application should be undertaken with regard to the requirements of the Conservation of Habitats and Species Regulations 2017. The applicant has failed to demonstrate in accordance with the Habitat Regulations that the proposals will cause no harm to the SPA and SAC heathland. It is clear, on the basis of advice from Natural England that, notwithstanding the CIL contribution, no avoidance or mitigation of adverse effects through Strategic Access Management and Monitoring (SAMM) has been secured. In the absence of any form of acceptable mitigation it is likely to have an adverse effect on the heathland special features including those which are SPA and SAC features. Having regard to the Waddenzee judgement (ECJ case C-127/02) the Council is not in a position to be convinced that there is no reasonable scientific doubt to the contrary. For these reasons, and without needing to conclude the appropriate assessment, the proposal is considered contrary to the recommendations of the Berne Convention Standing Committee on urban development adjacent to the Dorset Heathlands, and Policies PP32 and PP39 of the Poole Local Plan (November 2018).
 2. The application site is within close proximity to Poole Harbour which is a Special Protection Area (SPA), Site of Special Scientific Interest (SSSI) and Ramsar site and the determination of the application should be undertaken with regard to these European designations and the requirements of the Conservation of Habitats and Species Regulations 2017. The applicant has failed to demonstrate in accordance with the Habitat Regulations that the proposals will cause no harm to the SPA. It is clear, on the basis of advice from Natural England that, notwithstanding the CIL contribution, no avoidance

or mitigation of adverse effects through Strategic Access Management and Monitoring (SAMM) has been secured. In the absence of any form of acceptable mitigation it is likely to have an adverse effect on the special features of Poole Harbour including those which are SPA features. Having regard to the Waddenzee judgement (ECJ case C-127/02) the Council is not in a position to be convinced that there is no reasonable scientific doubt to the contrary. For these reasons, and without needing to conclude the appropriate assessment, the proposal is considered contrary to the recommendations of the Berne Convention Standing Committee on urban development adjacent to Poole Harbour, and Policies PP32 and PP39 of the Poole Local Plan (November 2018).

3. The proposal fails to make a contribution towards the expansion and improvement of doctor's surgeries in the local area of Poole Central. As such, it would put an additional demand on existing local NHS resources and facilities arising from the associated increase in population that would be contrary to the provisions of Policy PP39 of the Poole Local Plan (November 2018).

Appendices

Appendix 1 – Committee Reports for 4 October 2022 - Agenda Item 5a ([Public Pack](#))[Agenda Document for Planning Committee, 04/10/2022 10:00 \(bcpcouncil.gov.uk\)](#)

Appendix 2 – Planning Committee Addendum for 04 October 2022 ([Public Pack](#))[Planning Committee Addendum Agenda Supplement for Planning Committee, 04/10/2022 10:00 \(bcpcouncil.gov.uk\)](#)

Appendix 3 – Planning Committee Minutes of Meeting for 04 October 2022 [Minutes Template \(bcpcouncil.gov.uk\)](#)