

Planning Committee Report 24/0911/MDO

1.0 Application information

Number: [24/0911/MDO](#)

Applicant Name: Curlew Alternatives Property LP

Proposal: Modify s106 legal agreement tied to planning permission ref. 21/1104/FUL to pay a financial contribution in lieu of the provision of affordable private rent units to improve scheme viability.
The Harlequin Centre

Site Address: Paul Street
Exeter
EX4 3TT

Registration Date: 30 August 2024

Link to Application: <https://publicaccess.exeter.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Case Officer: Matthew Diamond

Ward Member(s): Cllr James Banyard, Cllr Diana Moore, Cllr Tess Read

REASON APPLICATION IS GOING TO COMMITTEE

The Council's Constitution delegates minor variations of existing section 106 legal agreements to the Head of City Development, subject to consultation with the Chair of Planning Committee. The proposal is not considered to be a minor variation of a section 106 legal agreement; therefore, the Planning Committee must make the decision.

2.0 Summary of recommendation

DELEGATE to GRANT completion of a Deed of Variation to the s106 agreement relating to planning permission 21/1104/FUL to pay a financial contribution in lieu of the provision of affordable private rent units.

3.0 Reason for the recommendation

The proposal will result in the delivery of affordable housing elsewhere in the city, whilst improving the viability of the scheme ensuring it is delivered. The financial contribution will not be restricted to the delivery of affordable private rent units and could be spent on other affordable housing tenures, including social rent. Part of the financial contribution will be paid before the completion of the development helping to meet current affordable housing needs. The delivery of the scheme will ensure that the public benefits set out in section 16.6 of the committee report for [21/1104/FUL](#) are achieved.

4.0 Table of key planning issues

Issue	Conclusion
The Viability of the Originally Approved Scheme	Following extensive pre-application engagement with the developer involving an independent valuer it is agreed the original scheme is not viable or deliverable, due to changed market conditions since the original scheme was approved. This is primarily due to rising construction costs and higher interest rates.
Affordable Housing Policy	The proposal is considered to accord with Policy CP7 of the Core Strategy and the Affordable Housing SPD, as exceptional circumstances have been demonstrated to justify commuted provision in the form of a financial contribution towards the delivery of affordable housing in the city.
Impact on Heritage Assets	The public benefits of the scheme will be changed due the proposed modification; however, they are still considered to outweigh the 'less than substantial harm' to designated heritage assets affected by the development. The sustainability benefits of the scheme are also considered to outweigh the harm to non-designated heritage assets. Therefore, the proposal accords with Chapter 16 of the NPPF on conserving and enhancing the historic environment.
Planning Balance	Overall, the benefits of the scheme with the proposed modification to the s106 agreement are considered to outweigh the impact of removal of the affordable private rent units. The s106 agreement would still serve a useful purpose, subject to the modification proposed.

5.0 Description of site

The site comprises the vacant Harlequins Shopping Centre and its environs, including: 21-22 Queen Street, Paul Street, the junction of Paul Street, Queen Street and Upper Paul Street, the footbridge across Paul Street linking the Harlequins

Shopping Centre to the Guildhall Shopping Centre, the vehicle ramp to the multi-storey car park in the Guildhall Shopping Centre, the public car parks on the site and the service yard to the rear of the shopping centre. The site area is 1.04ha.

A complete description of the site and its surrounding context is provided in section 5.0 of the committee report for planning permission [21/1104/FUL](#).

6.0 Description of development

The proposal is to modify the s106 legal agreement tied to planning permission ref. 21/1104/FUL to pay a financial contribution in lieu of the provision of affordable private rent units to improve scheme viability. S106A of the Town and Country Planning Act allows developers and local authorities to agree changes to s106 agreements by a deed of variation at any time, or developers can apply to modify s106 agreements after five years. As the s106 agreement was signed less than five years ago (24 January 2022), the developer seeks agreement with the Council for the proposed change.

Planning permission was granted for two co-living blocks on the site on 24 January 2022 comprising 383 bedspaces (276 studios and 107 cluster flat bedrooms). Twenty percent of the bedspaces (55 studios and twenty-one cluster flat bedrooms) were secured as affordable private rent, where the rent does not exceed 80% of the open market rent. This tenure and percentage of affordable housing followed national Planning Practice Guidance for build to rent housing, advising that affordable housing in build to rent schemes should be provided by default as affordable private rent and managed by the same landlord as the open market units. The planning permission was due to expire on 24 January 2025, however a small part of the building was demolished on 3 December 2024 to implement the planning permission as a means of preserving it indefinitely.

The developer has stated that the scheme is not viable to deliver, due to rising construction costs, falling property values and higher interest rates since planning permission was granted. The base interest rate in January 2022 was 0.25% and is now 4.75%. The proposed removal of affordable housing from the scheme would improve its viability to enable it to be delivered. The proposed financial contribution towards off-site affordable housing in lieu of this would be payable as follows:

- £1,000,000.00 on demolition of the main structure of the existing building (anticipated summer 2025)
- £1,000,000.00 on commencement of above ground works following demolition.
- Overage payment equating to 50% of any profit achieved above a minimum target return of £10.1 million or 13% Gross Development Value (whichever is

higher) following completion of the development and based on an independent valuation, payable in two equal instalments:

1. On completion of the independent valuation
2. 12 months after completion of the independent valuation

The total of which shall not exceed £5.5 million (£7.5 million including the two upfront payments, which is the total value of the on-site affordable units).

The developer may choose to pay the overage payment in full within ninety working days of occupation without an independent valuation, should it be clear that the full amount would be due if an independent valuation were conducted (thus avoiding any delays). In addition, the Council may choose to delay the independent valuation for up to 12 months in anticipation of improved market conditions.

It should be noted that on 15 November 2024 the applicant amended the first payment trigger from the later of signing the proposed deed of variation or implementation of the planning permission to demolition of the main structure.

7.0 Supporting information provided by applicant.

- JLL Cover Letter
- Viability Review Summary report (JLL, September 2024)
- JLL Letter dated 15th November 2024

8.0 Relevant planning history

Reference	Proposal	Decision	Decision Date
24/1289/NMA	Non-material amendment to planning permission 21/1104/FUL to change the wording of the first paragraph of condition 10 from: Demolition works, or any other works which cause disturbance to bats, shall not in any circumstances commence unless the Local Planning Authority has been provided with either: To:	PER	06.11.2024

Reference	Proposal	Decision	Decision Date
	Works which cause disturbance to bats shall not, in any circumstances, commence unless the Local Planning Authority has been provided with either:		
21/1104/FUL	Development of two Co-Living (Sui Generis) accommodation blocks, following demolition of existing shopping centre and pedestrian bridge, change of use of upper floors of 21-22 Queen Street to Co-Living (Sui Generis), and all associated works including parking, landscaping, amenity areas, public realm improvements, new pedestrian bridge and provision of heritage interpretation kiosk. (Revised)	PER	24.01.2022
19/1556/FUL	Development of a Co-Living (Sui Generis) accommodation block and a hotel (Class C1) including bar and restaurant, following demolition of existing shopping centre and pedestrian bridge, change of use of upper floors of 21-22 Queen Street to Co-Living (Sui Generis), and all associated works including parking, landscaping, amenity areas, public realm improvements, new pedestrian bridge and provision of heritage interpretation kiosk. (Revised)	PER	23.04.2021

Reference	Proposal	Decision	Decision Date
19/1423/SO	Request for screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) for demolition of shopping centre and development of two buildings comprising Co-Living accommodation (approx. 320 bedrooms) and hotel (approx. 120 bedrooms), together with associated parking, landscaping, and public realm improvements.	EIANOT	28.10.2019

9.0 List of constraints

- Adjacent to City Wall (Scheduled Monument)
- Public right of way to City Wall from Paul Street
- Within Central Conservation Area (*statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area under the Planning (Listed Buildings & Conservation Areas) Act 1990*).
- Adjacent to St David's Conservation Area
- Listed buildings and structures surrounding the site (*statutory duty to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses under the Planning (Listed Buildings & Conservation Areas) Act 1990*)
- Locally listed buildings near the site (*these are non-designated heritage assets, as referred to in Para. 216 of the NPPF*)
- Potential contamination
- Within Area of Archaeological Importance.
- Queen Street within Air Quality Management Area.
- 8 Norway Maples and 1 Cherry tree on south part of site.
- Within 'zone of influence' for Exe Estuary SPA and Ramsar Site (*statutory duty to protect European sites under the Conservation of Habitats and Species Regulations 2017 (as amended)*).
- Residential properties near the site – amenity considerations.

10.0 Consultations

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

Housing (ECC): Whilst it is always better to see affordable housing integrated into a scheme and provided on site to achieve a mixed community on a scheme, having

reviewed the viability information and report provided by JLL with input from Burrows-Hutchinson it is clear to see there are viability issues on this scheme which makes it difficult to achieve on site delivery of affordable housing.

The commuted sum payments detailed and the overage nature of the later payments will help a more targeted delivery of affordable housing across the city and can be used to unlock other sites in need of investment.

11.0 Representations

There were three objections (including Exeter Civic Society). The following issues were raised:

- Object to removal of seventy-six affordable rooms for key workers because mixed use accommodation is a critical part of any modern development.
- Doubt the council will be able to provide similar key worker accommodation elsewhere with the funds received, or that it will be able to spend the funds in a timely manner unless there are schemes developed where these funds can be spent.
- Wonder whether the recent increase in rents has been considered alongside the increase in development costs.
- There is a desperate shortage of affordable accommodation and do not believe these vital units would be provided elsewhere even with the financial settlement proposed.
- Contrary to national and local planning policy, including Policy CP7, Chapter 5 and Glossary of NPPF, PPG advice on Build to rent.
- Will set a regressive precedent for the provision of affordable units in co-living accommodation and would be a significant departure from NPPG, Local Plan Policy CP7 – Affordable Housing and the Affordable Housing SPD. However, it should be noted that 20% is already a significant reduction to 35% required by Policy CP7
- The application does not consider how the Public Sector Equalities Duty will be complied with on and off-site given 5% of the affordable units are secured as wheelchair accessible.
- The application would remove affordable units from an area of the city where the unaffordability of property to rent is acute; if the application is approved the off-site funds should be conditioned to be spent in St David's ward.
- No published comments from Council Housing Team regarding the possibility of using the revised s106 funding to acquire similar accommodation elsewhere, or the number of co-living spaces that could be purchased with the possible funds that may be received.
- Commencement of ground works should be made clear, e.g. the digging of trenches for foundations or services.

12.0 Relevant policies

National Planning Policy and Guidance

National Planning Policy Framework (NPPF) (2024) – sections:

- 2. Achieving sustainable development
- 4. Decision-making
- 5. Delivering a sufficient supply of homes
- 16. Conserving and enhancing the historic environment

Planning Practice Guidance (PPG):

- Build to rent
- Historic environment
- Planning obligations
- Viability

GPA3 – The Setting of Heritage Assets (Historic England, December 2017)

Development Plan

Core Strategy (Adopted 21 February 2012)

- CP5 – Mixed Housing
- CP7 – Affordable Housing
- CP17 – Design and Local Distinctiveness

Exeter Local Plan First Review 1995-2011 (Adopted 31 March 2005) – Saved Policies

- C1 – Conservation Areas
- C2 – Listed Buildings
- C3 – Buildings of Local Importance
- C4 – Historic Parks and Gardens
- C5 – Archaeology

Other Material Considerations

The Exeter Plan – Publication Plan: Regulation 19 (December 2024) (Not Adopted)

- H6 – Co-living housing
- HH1 – Conserving and enhancing heritage assets (Strategic policy)
- HH2 – Conservations Areas

HH3 – Archaeology

HH5 – Conserving and enhancing Exeter City Walls

IF2 – Viability (Strategic policy)

Exeter City Council Supplementary Planning Documents:

Affordable Housing SPD (April 2014)

Planning Obligations SPD (April 2014)

Exeter Local Housing Needs Assessment: Report of Findings December 2024

Local Plan Viability Assessment November 2024

First Homes Planning Policy Statement (June 2021)

13.0 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

The consideration of the proposal in accordance with Council procedures will ensure that views of all those interested are considered. All comments from interested parties have been considered and reported within this report in summary with full text available via the Council's website.

Any interference with property rights is in the public interest and in accordance with the Town and Country planning Act 1990 regime for controlling the development of land. This recommendation is based on the consideration of the proposal against adopted Development Plan policies, the application of which does not prejudice the Human Rights of the applicant or any third party.

14.0 Public sector equalities duty

As set out in the Equality Act 2010, all public bodies, in discharging their functions must have "due regard" to the need to:

- a) Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:

- a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of other persons who do not share it;
- c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons 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 proposal the planning authority has had due regard to the matters set out in section 149 of the Equality Act 2010.

15.0 Financial issues

The requirements to set out the financial benefits arising from a planning application is set out in s155 of the Housing and Planning Act 2016. This requires that local planning authorities include financial benefits in each report which is: -

- a) made by an officer or agent of the authority for the purposes of a non-delegated determination of an application for planning permission; and
- b) contains a recommendation as to how the authority should determine the application in accordance with section 70(2) of the Town and Country Planning Act 1990.

The information or financial benefits must include a list of local financial considerations or benefits of a development which officers consider are likely to be obtained by the authority if the development is carried out including their value if known and should include whether the officer considers these to be material or not material.

Material considerations

- Financial contribution (up to £7.5m – see section 6.0 above) towards off-site affordable housing in lieu of 20% of the dwellings as affordable private rented (Policy CP7, Affordable Housing SPD, Chapter 5, and Glossary of NPPF, and PPG advice on Build to rent).
- £252,546 habitats mitigation (Policies CP16 and LS2, Chapter 15 of NPPF, PPG advice on Natural Environment and Natural England consultation response for 21/1104/FUL).
- £98,048 to improve facilities at either Barnfield Hill Medical Practice, Southernhay Medical Practice or St Leonards Medical Centre (Policies CP10 and CP18, PPG advice on Planning Obligations and NHS Devon CCG consultation response for 21/1104/FUL).

- £10,000 towards traffic regulation orders in the area (Chapter 9 of NPPF, PPG advice on Promoting sustainable transport and Devon County Council – Local Highway Authority consultation response for 21/1104/FUL).
- £25,000 towards management, maintenance, repair, and promotion of City Wall (Policy C5, Chapter 16 of NPPF, PPG advice on Historic Environment, and consultation responses from Historic England and Heritage Officer for 21/1104/FUL).
- £175,000 for maintenance/upgrade of off-site public open spaces (Policy L4, Public Open Space SPD and consultation response from Public & Green Spaces Service Manager for 21/1104/FUL).
- £45,000 for maintenance/upgrade of off-site play areas (Policy L4, Public Open Space SPD and consultation response from Public & Green Spaces Service Manager for 21/1104/FUL).
- New public realm works on site (as shown on plans for 21/1104/FUL).
- Public realm improvements to Paul Street and Paul Street/Queen Street junction (as shown on plans for 21/1104/FUL).

Non-material considerations

The adopted CIL charging schedule applies a levy on proposals that create additional new floor space over and above what is already on a site. This proposal is not CIL liable, as it does not comprise uses within the Community Infrastructure Charging Schedule that was in effect when the original planning permission was granted planning permission.

The co-living block will generate council tax.

16.0 Planning assessment

S106A of the Town and Country Planning Act allows developers and local authorities to agree changes to s106 agreements by a deed of variation at any time. The scheme of delegation in the Council's Constitution delegates minor variations of existing section 106 agreements to officers, subject to consultation with the Chair of Planning Committee. As the proposed change is not considered to be a "minor variation" it is being brought to Planning Committee for determination.

The key issues are:

1. The Viability of the Originally Approved Scheme
2. Affordable Housing Policy
3. Impact on Heritage Assets
4. Planning Balance

1. The Viability of the Originally Approved Scheme

Planning permission 21/1104/FUL was granted on 24 January 2022 for two co-living blocks on the currently vacant Harlequins Shopping Centre site comprising 383 bedspaces (276 studios and 107 cluster bedrooms). Twenty percent of the units (55 studios and twenty-one cluster bedrooms) were secured as affordable private rent units, alongside a number of other contributions (see section 15.0 above), with first priority given to essential local workers. This took into account national Planning Practice Guidance on the appropriate tenure and amount of affordable housing that should be provided in build to rent housing schemes.

In early 2023, the applicant informed officers that the development was not deliverable, due to changed market conditions since planning permission was granted. They sought the removal of the affordable private rent units from the scheme in lieu of a financial contribution towards affordable housing elsewhere in the city, to generate more development finance, making the scheme viable. They sought advice on the best process to achieve this. Officers agreed to commission an independent valuer to review the viability of the scheme on an open book basis and Burrows-Hutchinson Ltd was appointed to do this work.

Discussions between Burrows-Hutchinson Ltd, the applicant and officers took place on an 'open book' basis in 2023 and early 2024, culminating in the applicant making an offer in April 2024. Following further discussions, the applicant made an improved offer in July 2024. Again, following further discussions, the applicant increased the total contribution that may be payable to the Council following an independent review of the development finances at completion of the scheme from £7.2 million to £7.5 million. This figure represents the total value of the affordable units and is where the financial contribution would be capped accordingly. Following this, the applicant submitted the current application for a deed of variation to the s106 agreement.

Based on the pre-application discussions referred to above, officers accept that the originally approved scheme is not financially viable and will not be delivered. This is primarily due to rising costs in the construction industry since the original application was granted planning permission. Removal of the affordable private rent units would increase the development value of the scheme, as full market rents could be charged on all the rooms (instead of up to 80% on 20% of the rooms). This would make the scheme a more attractive proposition to investors, which are needed to generate the development finance necessary to deliver the scheme.

2. Affordable Housing Policy

Policy CP7, as revised by the First Homes Planning Policy Statement (June 2021), requires 35% affordable housing on developments where ten or more homes are proposed. The policy states that the overall percentage of affordable housing and the tenure split will be subject to considerations of viability and feasibility.

The Affordable Housing SPD states that where affordable housing is required under Policy CP7, the Council will expect it to be provided on the development site, and commuted provision will only be agreed in exceptional circumstances and at the Council's discretion, in the following order of priority:

1. Off-site provision
2. Off-site purchase
3. Financial contribution spent on the provision of affordable housing in the city

The NPPF and Planning Practice Guidance state that affordable housing on build to rent schemes should be provided by default in the form of affordable private rent and 20% is generally a suitable benchmark for the level of affordable private rent homes to be provided (and maintained in perpetuity) in any build to rent scheme.

Contrary to the above, Policy H6 (Co-living housing) of the emerging Exeter Plan states co-living development proposals will be supported when they deliver a financial contribution towards the off-site provision of affordable housing, in accordance with Policy H5 (Build to rent). The Regulation 19 version of the Exeter Plan was published for consultation on 12 December 2024. The consultation runs to 6 February 2025. While the policies in the Exeter Plan carry limited weight in decision making at the current time, they show the future direction of travel when dealing with co-living housing proposals in the city going forward.

It is considered that the circumstances set out above meet the 'exceptional circumstances' test in the adopted Affordable Housing SPD, namely that the current scheme is unviable to deliver and commuted provision of affordable housing is the accepted mechanism of delivery in emerging local policy; however, it should also be pointed out that the Affordable Housing SPD was published in 2014, before co-living housing was a consideration and before national guidance on build to rent housing was published in 2018, so it should be treated with some degree of flexibility. Another important factor that justifies an alternative approach is the site itself; it is a major brownfield site in the heart of the city with excellent access to shops, facilities and sustainable travel modes. This makes it an ideal location to provide new residential, particularly this specialist form of residential development, which lends itself to these types of location. The existing building is vacant and currently providing no public benefit in social, economic, or indeed environmental terms. The proposed deed of variation would improve the viability of the scheme and delivery, which would lead to the benefits set out in the original application (save for the affordable housing mechanism).

It is worth pointing out that planning permission [19/1556/FUL](#) was the first scheme in the city to include co-living housing and commuted provision of affordable housing was the first consideration by officers when this issue was being negotiated with the developer. At this stage, the national guidance on build to rent was still relatively new and the decision to treat the scheme as a build to rent scheme was taken late in

negotiations. This then set a benchmark for the few co-living schemes that have subsequently been submitted and granted planning permission in the city since this time.

Off-site provision and off-site purchase of affordable housing in lieu of on-site provision were not given consideration in negotiations. The specialist nature of this type of housing does not lend itself to these options and a financial contribution to be spent by the Council on the provision of affordable housing elsewhere in the city was considered the most appropriate alternative.

The Civic Society has objected partly due to the lack of information on how the financial contribution would be spent. This is not a matter for the Planning Committee to determine; however, the Asset Management Lead on behalf of Housing has confirmed that the funding can be used to unlock other sites in the city in need of investment.

As set out in section 6.0, the financial contribution would be paid in instalments: £1 million would be paid on demolition of the main structure of the existing building. £1 million would be paid when construction works begin (excluding demolition). The final instalment(s) would be subject to a review mechanism – following completion of the development, an independent valuation would be conducted of the development revenues and costs. Fifty percent of any profit achieved above a minimum target return of £10.1 million or 13% GDV (whichever is higher) would be paid to the Council in two equal instalments, when the independent valuation is completed and 12 months later. However, the Council may elect to defer the valuation for 12 months in anticipation of improved market conditions and the applicant may elect to pay the remaining instalments in full within 90 working days of occupation without an independent valuation, should it be clear that the full amount would be due if an independent valuation was carried out (thus avoiding any delays).

It should be noted that a similar review mechanism was agreed for the planning permission to redevelop the Royal Clarence Hotel site granted in August 2023 (ref. [22/0236/FUL](#)). However, for the current application, affordable housing contributions would also be secured upfront before the development is completed. This is not typical, with most planning obligations linked to various stages of occupation; for example, apart from the City Wall and Traffic Regulation Order contributions, the other financial contributions secured by the development must be paid prior to occupation. This therefore is considered to be a benefit of the application, as up to £2 million would be secured early before the occupation of the development, which could be spent on the delivery of affordable housing projects in the city in effect straight away, whereas the current mechanism would only deliver affordable units in tandem with the market units once the development is built (anticipated late 2027).

There would also be no restrictions on the type of affordable housing the financial contributions could be spent on. While the current mechanism aims to deliver

affordable housing on-site supporting mixed communities, which is a general policy aim, compared to other tenures of affordable housing, affordable private rent (where the rent does not exceed 80% of the market rent) arguably has less public benefit than social rent, for example. Officers aimed to mitigate this by giving first priority to essential local workers, however there would be complete freedom on how and where the financial contributions could be spent to support affordable housing delivery elsewhere in the city. This flexibility can also be considered a benefit.

Four affordable studio units were secured as wheelchair accessible in the s106 agreement. The agent has confirmed that there will be no reduction in the number of wheelchair accessible units in the scheme, but the four affordable wheelchair accessible units would become open market wheelchair accessible units. There would be nineteen open market wheelchair accessible units overall, helping to meet the public sector equality duty.

In conclusion, officers consider that there are exceptional circumstances to enter into a deed of variation to the s106 agreement to secure commuted provision of affordable housing in the form of a financial contribution in lieu of on-site delivery, as set out in this report. This will allow the scheme to be delivered resulting in the various public benefits set out in the original application. It takes into account emerging planning policy in the Exeter Plan. There will be flexibility over how the money is spent, which could include other tenures of affordable housing, such as social rent. Up to £2 million would be secured early, which could be used to deliver affordable housing projects before the development is completed (this will be secured irrespective of how quickly the scheme proceeds to completion). The proposal is therefore considered to accord with Policy CP7 and the Affordable Housing SPD.

3. Impact on Heritage Assets

While it is not considered pertinent to the current application, members should note that the original application considered the impact of the proposals on the significance of designated and non-designated heritage assets. In accordance with the NPPF, the 'less than substantial' harm caused by the scheme to designated heritage assets had to be weighed against the public benefits of the proposal. In the committee report for the original application, the public benefits were summarised as follows:

- Bringing vitality back to the site with an appropriate town centre use.
- Job creation (approx. seventy-eight gross jobs, of which some thirty-six are estimated to be net additional jobs to the local economy).
- Approx. £7.3m annual expenditure, some of which will go towards local businesses.
- Delivery of housing to help maintain a 5-year housing supply.
- Delivery of affordable housing (55 studios and twenty-one cluster bedrooms) with priority for essential local workers.

- Redevelopment of brownfield site.
- Public realm improvements to Paul Street and Paul Street/Queen Street junction, improving accessibility for pedestrians, cyclists and people with mobility difficulties, and the character and appearance of the Conservation Area.
- Improved public access to the scheduled City Wall and landscaping works enhancing the setting of the City Wall.
- 'Interpretation Centre' enhancing public engagement with the City Wall.
- £25,000 contribution towards management, maintenance, repair, and promotion of City Wall.
- Public cycle parking provision.
- Electric vehicle charging points.
- Removal of 1980s building with limited active frontages and replacement with high quality designed buildings with active edges improving the character and appearance of the Conservation Area, and natural surveillance of the public realm.
- Wider view of corner of RAMM from Paul Street through set back building line.
- Smaller footbridge will improve views up and down Paul Street within Conservation Area.
- Off-site public open space contribution of £175,000.
- Off-site play areas contribution of £45,000.
- Biodiversity net gain of 669.45% from new habitat creation.
- Remediation of contaminated land.
- Reduction in surface water flow from the site to the public sewer.
- Energy efficient buildings – Passivhaus design and use of renewables (CHP, photovoltaics)

As can be seen, the delivery of on-site affordable housing, with priority given to essential local workers, was considered to be a public benefit in this weighting exercise. This specific benefit would be replaced by the financial contribution set out in section 6.0 of this report. Whilst it is important to seek to preserve the setting of listed buildings and the character or appearance of conservation areas in accordance with statutory duties, the public benefits are still considered to outweigh the level of harm to the designated heritage assets (see committee report for [21/1104/FUL](#)). In the case of the non-designated heritage assets, the sustainability benefits of the scheme are also still considered to outweigh the level of harm to these assets. Therefore, the proposal is acceptable regarding Chapter 16 of the NPPF on conserving and enhancing the historic environment regarding the impact on the setting of heritage assets.

4. Planning Balance

The Planning Obligations SPD states the following at paragraph 4.7 (emphasis added):

“Developers should take all costs (including potential planning obligations, and any identifiable exceptional site development costs) into account when acquiring land for development. If, during the identification of Heads of Terms, it is claimed that the economic cost of fulfilling certain planning obligations would prevent development from occurring, it is expected that developers will also submit detailed ‘open book’ information about the scheme’s economics to the Council prior to the formal submission of a planning application. Before reviewing the nature of the planning obligations sought, the City Council may seek valuation advice from an independent third party. All costs incurred by the Council in validating viability claims will have to be met by the developer.

Where viability claims are upheld, planning applications will only be approved if the benefits resulting from the proposed development will outweigh the negative impact of reduced planning obligations. These costs and benefits will be measured against planning policy and site-specific sustainability objectives. Planning applications are likely to be refused, for example, where it would not be possible to meet requirements associated with contaminated land.”

Following pre-application discussions, officers agree that the approved scheme is not viable and cannot be delivered, considering current market conditions. The removal of the affordable private rent units in lieu of a financial contribution will improve the viability and deliverability of the scheme. The benefits of the proposal are discussed under subsections ‘2’ and ‘3’ above. These benefits are considered to outweigh the negative impact of the removal of the affordable private rent units from the scheme.

S106A of the Town and Country Planning Act allows developers and local authorities to agree changes to s106 agreements by a deed of variation at any time. Developers can also apply to modify s106 agreements after five years; in this case, three years have passed since the s106 agreement was signed. Where such an application is made, in accordance with s106A subsection (6) the authority may determine:

- a) that the planning obligation shall continue to have effect without modification;
- b) if the obligation no longer serves a useful purpose, that it shall be discharged;
- or
- c) if the obligation continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

While this application seeks the Council’s agreement to the proposed change, it is also worth considering it in light of the above. The planning obligation under discussion is the s106 agreement tied to planning permission 21/1104/FUL, which secured fifty-five studios and twenty-one cluster flat bedrooms as affordable private rent units, with first priority given to essential local workers. This was alongside other obligations, to ensure that the development was acceptable in planning terms. The affordable units were secured to ensure that the scheme complied with Policy CP7,

taking into account national Planning Practice Guidance on build to rent. This policy and guidance are still in effect; therefore, the planning obligation still serves a useful purpose. However, for the reasons discussed in the subsections above, the s106 agreement will still serve a useful purpose subject to the proposed modification.

17.0 Conclusion

This application seeks to agree a modification to the s106 agreement tied to planning permission 21/1104/FUL via a deed of variation that will remove the affordable private rent units from the approved scheme in lieu of a financial contribution towards the delivery of affordable housing elsewhere in the city, payable in three parts: £1 million on demolition of the main structure of the existing building; £1 million when construction works begin (excluding demolition); and up to £5.5 million subject to an independent valuation when the development is completed, payable in two equal instalments – on completion of the valuation and 12 months after, unless the developer opts to pay the full amount within 90 days of occupation. The Council may choose to delay the valuation for up to 12 months in anticipation of improved market conditions.

As discussed in the Planning Assessment of this report, following pre-application engagement with the developer involving an independent valuer, the originally approved scheme is not financially viable and will not be delivered. Officers consider there are exceptional circumstances in this case to agree to a commuted sum in lieu of on-site affordable housing, given the position on viability, the nature of the site and emerging policy in the Exeter Plan requiring this mechanism for affordable housing delivery in co-living schemes. Part of the financial contribution will be paid before the development is completed, which is a benefit, as it will support the delivery of affordable housing to meet current needs. The contribution can be used towards all forms of affordable housing, including social rent, which provides the Council with flexibility and is an added benefit. Overall the proposal is considered to accord with Policy CP7, the Affordable Housing SPD, the Planning Obligations SPD, Chapter 16 of the NPPF with regard to the impact on heritage assets, and emerging Policy H6 of The Exeter Plan – Publication Plan: Regulation 19 (December 2024) (although this policy carries limited weight).

18.0 Recommendation

DELEGATE TO THE HEAD OF CITY DEVELOPMENT TO GRANT COMPLETION OF A DEED OF VARIATION TO THE S106 AGREEMENT RELATING TO PLANNING PERMISSION 21/1104/FUL TO PAY A FINANCIAL CONTRIBUTION IN LIEU OF THE PROVISION OF AFFORDABLE PRIVATE RENT UNITS AS SET OUT IN THIS REPORT