

**Item No.**                    **Report of the Head of Planning, Building Control, Sport & Green Spaces**

**Address**                    PRONTO INDUSTRIAL ESTATE AND 585 - 591 UXBRIDGE ROAD HAYES

**Development:**            REVISION TO AFFORDABLE HOUSING OBLIGATION (APPLICATION UNDER SECTION 106BA)

**LBH Ref Nos:**            4404/APP/2015/3032

**Drawing Nos:**            Economic Viability Assessment  
S106 Agreement dated 05-06-15  
Letter to S106 Signatory

**Date Plans received :**    11/08/2015                    **Date(s) of Amendment(s):**

**Date Application Valid:** 11/08/2015

#### **REASON FOR URGENCY**

The process allowed for under Section 106ba of the Town and Country Planning Act 1990 (as amended) only provides a period of 28 days for the Local Planning Authority to make a determination unless otherwise agreed with the applicant. In this instance an extension of time was agreed with the applicant subject to the application being included on the agenda of this meeting for determination.

#### **1. SUMMARY**

Planning permission (ref: 4404/APP/2014/2506) for the change of use of B1(c) floor space in Blocks A2, B, C and D to 12 additional residential units (C3) in addition to the 2012 approved 43 unit scheme, resulting in a total of 55 residential units, was approved in June 2015) and involved a Section 106 Agreement which required the applicant to provide an off-site affordable housing contribution of £120,000.

Under Section 106ba of the 1990 Town and Country Planning Act, the applicant seeks to remove the off-site affordable housing contributions from the approved development.

The Economic Viability Assessment submitted as part of this Section 106ba application is not considered to have fully demonstrated that the development is financially unviable and to justify the removal of the affordable housing contribution. In the absence of the previously agreed off-site affordable housing financial contribution, the development would fail to provide an appropriate contribution towards the provision of affordable housing in accordance with Policy H2 of the Hillingdon Local Plan: Part One - Strategic Policies (November 2012) and London Plan (2015) Policies 3.11 and 3.12.

It is therefore recommended that this Section 106ba application to remove the off-site affordable housing contributions from the approved development is refused.

#### **2. RECOMMENDATION**

**REFUSAL for the following reasons:**

1                    NON2                    Non Standard reason for refusal

The Economic Viability Assessment submitted as part of this Section 106ba application

has not fully demonstrated that the development is financially unviable and to justify the removal of the affordable housing contribution. In the absence of the previously agreed off-site affordable housing financial contribution, the development would fail to provide an appropriate contribution towards the provision of affordable housing in accordance with Policy H2 of the Hillingdon Local Plan: Part One - Strategic Policies (November 2012) and London Plan (2015) Policies 3.11 and 3.12.

### 3. CONSIDERATIONS

#### 3.1 Site and Locality

The application site is located on the southern side of Uxbridge Road, Hayes. 593-595 Uxbridge Road is located to the west of the site with 583 Uxbridge Road to the east. At the rear of the site, to the east, is Rosedale Park and allotment gardens are located to the south and west.

#### 3.2 Proposed Scheme

The application site currently benefits from planning permission (ref: 4404/APP/2014/2506, dated 19-06-15) for the change of use of B1(c) floor space in Blocks A2, B, C and D to 12 additional residential units (C3) in addition to the 2012 approved 43 unit scheme, resulting in a total of 55 residential units.

The Section 106 Agreement for planning permission ref: 4404/APP/2014/2506 required the applicant to provide an off-site affordable housing contribution of £120,000.

Under Section 106ba of the 1990 Town and Country Planning Act, the applicant seeks to remove the off-site affordable housing contributions from the approved development.

Section 106ba applications will only assess the viability of affordable housing requirements. It will not reopen any other planning policy considerations or review the merits of the permitted scheme.

#### 3.3 Relevant Planning History

4404/APP/2008/3558 Pronto Industrial Estate And 585 - 591 Uxbridge Road Hayes

Demolition of existing buildings and redevelopment of site to provide replacement Class B1(c) light industrial space and 34 two-bedroom and 9 one-bedroom flats with associated car parking, landscaping and amenity space.

**Decision:** 23-03-2009 Approved

4404/APP/2011/2079 Pronto Industrial Estate And 585 - 591 Uxbridge Road Hayes

Application to replace an extant planning permission ref: 4404/APP/2008/3558 dated 23/03/2009; Demolition of existing buildings and redevelopment of site to provide replacement Class B1(c) light industrial space and 34 two-bedroom and 9 one-bedroom flats with associated car parking, landscaping and amenity space.

**Decision:** 14-02-2012 Approved

4404/APP/2014/2506 Pronto Industrial Estate And 585 - 591 Uxbridge Road Hayes

Change of use of B1(c) floorspace to provide 12 additional residential units and associated ancillary works. (Amendment to planning permission ref: 4404/APP/2011/2079, dated 30-03- 2012 (Application to replace extant planning permission ref: 4404/APP/2008/3558, dated 23-03- 2009); Redevelopment of site to provide replacement Class B1(c) light industrial space and 34 two-bedroom and 9 one-bedroom flats with associated car parking, landscaping and amenity space).

**Decision:** 19-05-2015 Approved

**Comment on Planning History**

Planning permission for Class B1(c) light industrial space and 34 two-bedroom and 9 one-bedroom flats was granted in March 2012 under planning application ref: 4404/APP/2011/2079. This permission replaced a previous planning permission (ref: 4404/APP/2008/3558), granted in March 2009, for the same development.

Planning permission (application ref: 4404/APP/2014/2506) for the change of use of the previously approved B1(c) floorspace to provide 12 additional residential units and associated ancillary works was granted in June 2015 following a Section 106 Agreement which required the owner to provide an off-site affordable housing contribution.

It is important to note that the extant consent has been implemented and is currently under construction with some residential/commercial blocks having been completed whilst others are nearing completion.

**4. UDP / LDF Designation and London Plan**

The following UDP Policies are considered relevant to the application:-

Part 1 Policies:

PT1.H2 (2012) Affordable Housing

Part 2 Policies:

LPP 3.11 (2015) Affordable housing targets

LPP 3.12 (2015) Negotiating affordable housing (in) on individual private residential and mixed-use schemes

SPD-PO Planning Obligations Supplementary Planning Document, adopted July 2008

**5. MAIN CONSIDERATIONS**

London Plan (2015) Policies 3.11 and 3.12 require developments to provide 35% affordable housing on-site, taking into account individual circumstances including development viability. Although affordable housing provision is normally required on-site, affordable housing may be provided off-site or through a cash in lieu contribution ring fenced, and if appropriate 'pooled', to secure efficient delivery of new affordable housing on identified sites elsewhere.

Policy H2 of the Hillingdon Local Plan: Part One - Strategic Policies (November 2012) seeks to maximise the delivery of affordable housing from all sites, and to ensure that the affordable housing mix reflects housing needs in the borough.

The original planning application (ref: 4404/APP/2008/3558) was supported by a financial viability assessment demonstrating that it was not feasible to provide any affordable housing within the redevelopment.

At the time of the 2012 permission (ref: 4404/APP/2011/2079) it was considered that there had not been significant changes in the economic situation since the original permission was granted, and that the cost modelling previously undertaken would remain valid. As such, the planning application (ref: 4404/APP/2011/2079) was approved without requiring affordable housing provision.

The applicant provided a financial viability assessment as part of the change of use planning application ref: 4404/APP/2014/2506 in order to demonstrate the feasibility of providing on-site affordable housing. The outcome of this report was that it was not feasible for the development to provide any affordable housing units on the site.

The Council employed an independent consultant to assess the viability report. The report, as submitted, was not considered acceptable and therefore extensive discussions between the officers and the applicant followed in respect of the specific circumstances of the proposal. It should be noted that these discussions had regard to vacant building credit which has subsequently been revoked.

The final response from the Council's independent consultant is concluded at Appendix 2 of the applicant's S106b application and stated:

'Further to the Borough's instructions regarding assessing the financial viability submission in this case, which as you know has been through several iterations, not least a debate about Vacant Building Credit, I write formally to confirm that officers and ourselves now believe that the latest offer from the applicants should be supported. The scheme clearly needs net capital growth to proceed but the applicants have nevertheless committed to a financial contribution towards affordable housing of £120,000.'

It was agreed with the applicant that they would provide a financial contribution of £120,000 towards off-site affordable housing; the sum agreed would equate to two off-site units. This was secured through a Section 106 Legal Agreement. It was considered that although there would be no affordable housing provided on site, the financial contribution towards off-site affordable housing (which would provide the Council the ability to fund two units elsewhere) was acceptable in accordance with London Plan (2015) Policies 3.11 and 3.12.

In this case the final decision on the application was based on extensive and drawn out discussions including numerous exchanges taking into account a number of factors and professional judgement. This situation is quite different from the circumstances which the DCLG Review and Appeal guidance dated April 2013 appears to envisage, which is that the decision is based on an updated and agreed modification to the Viability Statement.

Further, given that the application S106 agreement was negotiated and agreed only 53 days before this application was submitted, this is far from being the situation for which the guidance and procedure was intended to be used, which is set out at paragraph 2 of the DCLG Review and Appeal guidance dated April 2013:

'Unrealistic Section 106 agreements negotiated in differing economic conditions can be an obstacle to house building. The Government is keen to encourage development to come forward, to provide more homes to meet a growing population and to promote construction and economic growth. Stalled schemes due to economically unviable

affordable housing requirements result in no development, no regeneration and no community benefit. Reviewing such agreements will result in more housing and more affordable housing than would otherwise be the case.'

Notwithstanding this, a S106ba application has been submitted. The applicant has submitted an Economic Viability Assessment as part of this Section 106ba application; the Economic Viability Assessment states that the approved development is not sufficiently viable to provide any affordable housing financial contribution due to insufficient profit returns.

The 2015 Economic Viability Assessment states that the development would result in a profit deficit with and without the affordable housing contribution. It should be noted that the 2015 profit deficit is lower than the profit deficit set out in the 2014 Economic Viability Assessment. This means that based on the assessment the viability of the development has actually improved from the calculations upon which the applicant agreed to the contribution.

The 2014 assumed average sales figures were £205,000/one-bed flat and £260,000/two-bed flat. The 2015 assumed average sales figures are £228,750/one-bed flat and £292,375/two-bed flat. These assumed sales figures are based on sales of existing residential units on the site and nearby flat developments (within 1 mile of the application site).

However, the sales figures were based on figures at the beginning of December 2014. Recent figures from Land Registry show increases in Hillingdon year on year to June 2015 at 15.2%. As such, the sales figures in the 2015 Economic Viability Assessment should be increased to reflect the current increases in sales figures in Hillingdon. The applicant's agent disputes the Council's view on this point. He highlights that the Land Registry data cited is not site specific and therefore should not be used to ascertain the current value of the units on this particular scheme.

The Council has also challenged the sales costs quoted at 3% on the basis that these are not the industry norm; instead a figure of 1% for such a scheme would be closer to the norm. In response, the applicant's agent has provided further explanation on how this figure is generated. The 3% relates to Estate Agent and Marketing Costs which are shown at 1.5% each. Two fee quotes from two local active agents at 1.5% and 1.75% just for the agency fees have been provided. The other 1.5% for marketing relates to furnishing and maintaining the show home, marketing etc. The agent also highlights that this figure was previously agreed by the Council's independent viability consultant and is repeatedly supported at appeals as being appropriate and reasonable.

The 2015 Economic Viability Assessment refers to a developers' profit of 20%. The Council is mindful that the independent Financial Viability consultants will accept developer profit up to but not exceeding 20%.

On the issue of the profit assumption used, the applicant's agent states that 20% represents an appropriate level of return in relation to risk. The 20% includes developers overheads and is subject to tax. He also highlights that this figure was previously agreed by the Council's independent viability consultant and is repeatedly supported at appeals as being appropriate and reasonable.

There was a recent case in Surrey where the developer had to accept a considerably reduced 10% profit on a scheme which had been constructed and the developer was seeking retrospective consent to remove the affordable housing contribution. Given the

scheme had already been completed, the Planning Inspector concluded that as the overall profit was known and the scheme was clearly viable, an affordable housing contribution remained appropriate. There are parallels in this case, as such the Council could argue that a 20% profit is excessive given the lower level of risk that now exists.

The extant consent has been implemented and is currently under construction with some residential/commercial blocks having been completed whilst others are nearing completion. As such, it can be argued that although the conversion of the previously approved commercial space into the proposed 12 residential units has not yet occurred, the overall development is viable and that the financial contribution towards off-site affordable housing, agreed as part of the Section 106 Legal Agreement, does not result in the development being financially unviable.

It should be noted that given the timescales associated with this type of application (28 days) and the nature of a committee report, this report does not attempt to provide a detailed technical analysis of all aspects of the submitted viability assessment or to provide a comprehensive schedule of all issues which may exist within the report. However, it does identify key issues which are substantive enough in themselves to demonstrate that the application should be refused.

The applicant's agent has indicated that any refusal of the application would be appealed. Should this be the case, the Council may choose to undertake a full viability appraisal to support its position in the appeal.

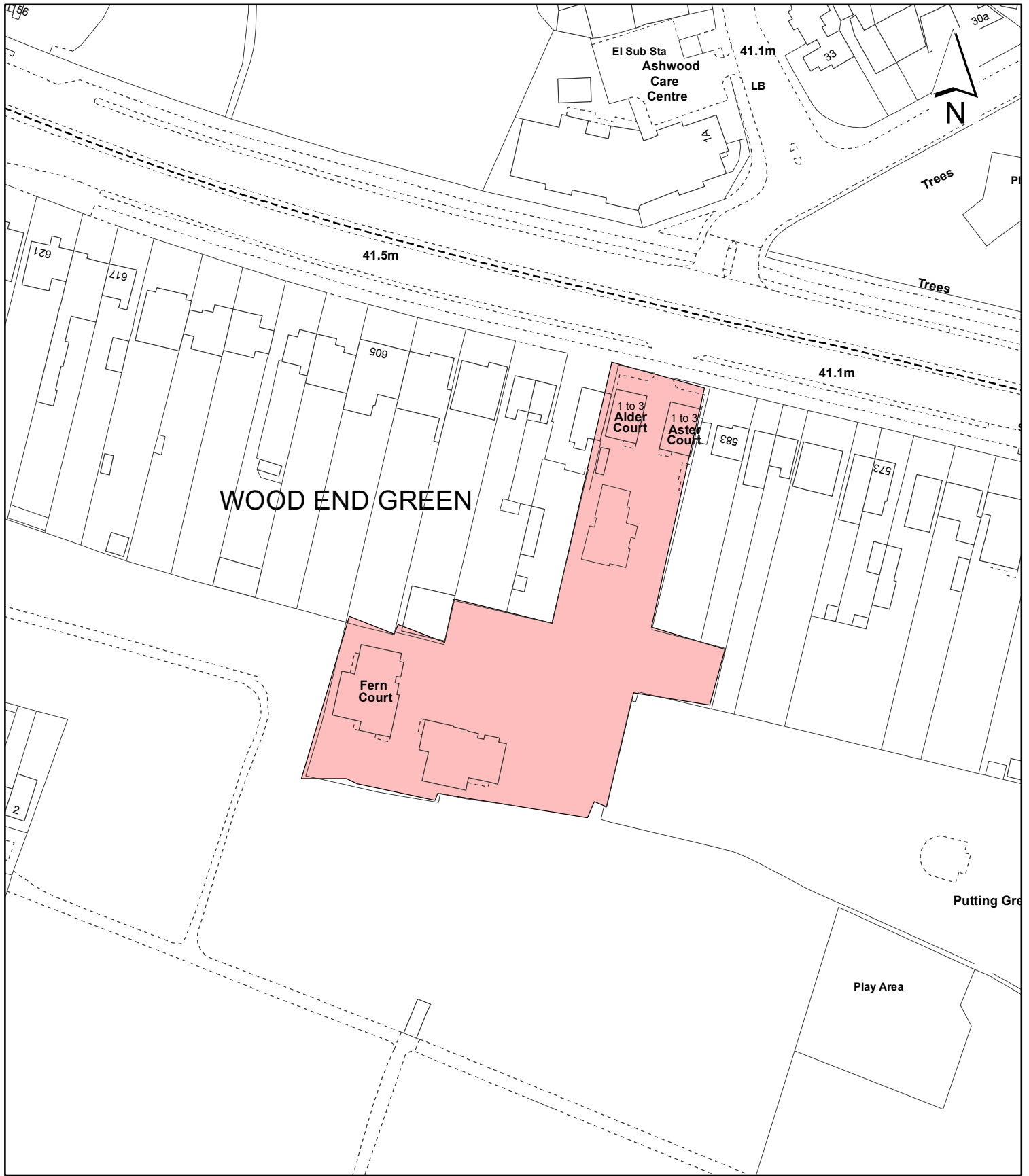
Overall it is considered that the Economic Viability Assessment submitted as part of this Section 106ba application has not fully demonstrated that the development is financially unviable and to justify the removal of the affordable housing contribution. In the absence of the previously agreed off-site affordable housing financial contribution, the development would fail to provide an appropriate contribution towards the provision of affordable housing in accordance with Policy H2 of the Hillingdon Local Plan: Part One - Strategic Policies (November 2012) and London Plan (2015) Policies 3.11 and 3.12.

It is therefore recommended that this Section 106ba application to remove the off-site affordable housing contributions from the approved development is refused.

**Contact Officer:** Katherine Mills

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**Notes:**

 Site boundary

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Site Address:

**Pronto Industrial Estate  
 And 585 - 591 Uxbridge Road  
 Hayes**

**LONDON BOROUGH  
 OF HILLINGDON**  
 Residents Services  
 Planning Section  
 Civic Centre, Uxbridge, Middx. UB8 1UW  
 Telephone No.: Uxbridge 250111

Planning Application Ref:

**4404/APP/2015/3032**

Scale:

**1:1,250**

Committee:

**Major**

Date:

**September 2015**



**HILLINGDON**  
 LONDON