

COMMITTEE DATE: 19/06/2019

APPLICATION No. **18/02469/MJR** APPLICATION DATE: 19/10/2018

ED: **PLASNEWYDD**

APP: TYPE: Removal of condition(s)

APPLICANT: DG1 Developments Ltd

LOCATION: PROPOSED DEVELOPMENT SITE, 199-209 CITY ROAD,
ROATH

PROPOSAL: REMOVAL OF CONDITION 26 OF 18/01053/MNR RELATING
TO TERM TIME STUDENT ACCOMMODATION

RECOMMENDATION :That planning permission be **REFUSED** for the following reasons :

1. The occupation of these premises for general residential use would be unacceptable as the development would provide a poor standard of amenity for future occupiers by virtue of an insufficient amount of outdoor amenity space, poor outlook, lack of natural light and ventilation to bedrooms and lack of privacy, contrary to policies KP5 and H6 (ii) of the Cardiff Local Development Plan, Supplementary Planning Guidance "Cardiff Residential Design Guide" (January 2017) and "Flat Conversions" (March 2019), and Planning Policy Wales (Edition 10).
2. The proposed use of the premises for general residential use meets the thresholds set out in policies H3, C1 and C5 of the Cardiff Local Development Plan for the provision of community infrastructure in the form of affordable housing, community facilities and open space. Notwithstanding the viability information submitted and verified, the proposal does not include appropriate on-site provision, an acceptable scheme for alternative off-site provision or confirmation from the relevant parties that they are willing to provide a financial contribution in lieu of such provision, and is therefore contrary to policies KP6, KP7, H3, C1 and C5 of the Cardiff Local Development Plan, Cardiff Supplementary Planning Guidance "Planning Obligations" (January 2017) and Planning Policy Wales (Edition 10).

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 The proposal is for the removal of condition 26 of planning consent 18/02469/MJR which limits the occupation of the premises to student accommodation during term time only, other than the ground floor commercial units.
- 1.2 The applicant states, in a supporting letter, that they are concerned that due to the over-provision of especially built private student accommodation in the city, including consented schemes that have not yet been built, that the scheme will

become unviable because of lack of demand.

1.3 The applicant also states that if approved there is an expectation that the Council will seek an appropriate financial contribution towards providing affordable housing in other parts of the city through a Section 106 Agreement. The applicant considers that on site-provision of affordable housing is not practical in management terms. He also says that it is anticipated that the Council will require contributions in lieu of external amenity space and local community facilities. The applicant fully expects the Council to seek appropriate financial contributions secured by a S106.

1.4 The applicant's agent has subsequently stated that:

Given the DV's conclusions on viability in the draft report, we will not be offering a contribution to the requirements identified by other Departments.

1.5 The individual units of accommodation comprise a living room, shower room and bedroom. The approved plans show the living room having space for a double sofa, dining table and two chairs with a small kitchen area. The plan for the bedroom shows a double bed, wardrobe, cupboard and two bedside units. The living rooms have either one or two windows. 122 of the bedrooms and all of the shower rooms have no external windows. For the benefit of the committee these plans do not change from the approved.

2. **DESCRIPTION OF SITE**

2.1 The application site is located at the northern end of City Road, on the west side, immediately adjacent to the Gaiety building (to the south), and directly opposite the junction with Glenroy Street. The application site is also on the corner of a narrow access lane (between the site and the Gaiety building) that leads from City Road to another lane that runs parallel to City Road and provides access to garages and similar storage structures associated with properties on both City Road and Richmond Road.

2.2 All of the original properties on the site, numbers 199-209 City Road, were demolished during the early part of 2017.

2.3 Work commenced on 01/03/2018 to construct the approved student flats. The development is well under way with work having progressed to the upper storeys.

3 **PLANNING HISTORY**

3.1 17/00111/MJR - Construction of a new 5 to 8 storey (plus rooftop plant room) development of student residential accommodation: comprising 146 studio rooms and associated amenity spaces; a private internal landscaped courtyard and two small ground floor commercial units (class A1 or A2 or A3) - was approved on 16/08/2017 subject to conditions including condition 26 which states:

“During term-time, the development (with the exception of the ground floor A1/A3 uses) shall not be used or occupied for any purpose other than as Student Accommodation (where the term “student” shall mean a student as defined in the Council Tax (Discount Disregards) Order 1992 (or any statutory amendment or re-enactment thereof for the time being in force)).

Reason: For the avoidance of doubt and to ensure the development hereby permitted is for the occupation of students and for no other residential use. “The approval was also linked to a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 for a contribution of £55,000 towards Traffic Orders and a zebra crossing on City Road.

- 3.2 18/01053/MJR - Variation of condition 2 of 17/01111/MJR to allow replacement drawings amending some design detailing and variation of condition 13 to alter the timescale of approval of design proposals from 'prior to commencement' to 'within six months of this permission' at 199-209 City Road, Roath, Cardiff was approved on 04/10/2018 subject to conditions including condition 26 which states:-

“During term-time, the development (with the exception of the ground floor A1/A3 uses) shall not be used or occupied for any purpose other than as Student Accommodation (where the term “student” shall mean a student as defined in the Council Tax (Discount Disregards) Order 1992 (or any statutory amendment or re-enactment thereof for the time being in force)).

Reason: For the avoidance of doubt and to ensure the development hereby permitted is for the occupation of students and for no other residential use.”

When the delegated report on this application was prepared in June 2018 building works were described as being at ground floor level.

- 3.3 19/00609/MJR - Discharge of conditions 5 (landscaping), 13 (public realm) and 21 (security measures for future residents) of 18/01053/MJR, 199-209 City Road, Roath, Cardiff – approved 22/05/2019
- 3.4 When the current application [18/02469/MJR] was received, it was considered to be invalid as a S73 application, and the applicant was advised by the Local Planning Authority that it should be a full application. The applicant appealed this opinion. The Inspector allowed the appeal and the notice of invalidity was quashed on 26/11/2018.
- 3.5 Adjoining site - 19/01374/MJR – Demolition of existing building and construction of purpose built student accommodation building up to eight storeys (25 metres) incorporating class A1/A2/A3 and D2 floorspace at ground level and all associated development, 195-197 City Road, Roath, Cardiff, CF24 3JB – Undetermined.

4. **POLICY FRAMEWORK**

- 4.1 Planning Policy Wales, Edition 10 (December 2018).
- 4.2 Cardiff Local Development Plan (January 2016):

KP1 Level of Growth
KP5 Good Quality and Sustainable Design
KP6 New Infrastructure
KP7 Planning Obligations
KP8 Sustainable Transport
KP12 Waste
KP13 Responding to Evidenced Social Needs
KP14 Healthy Living
EN13 Air, Noise, Light Pollution and Land Contamination
H2 Conversion to Residential Use
H6 change of use or redevelopment to residential use
T1 Walking and Cycling
T5 Managing Transport Impacts
T6 Impact on Transport Networks and Services
C1 Community Facilities
C3 Community Safety/Creating Safe Environments
C5 Provision for Open Space, Outdoor Recreation, Children's Play and Sport
W2 Provision for Waste Management Facilities in Development

4.3 Supplementary Planning Guidance:

Planning Obligations (January 2017)
Flat Conversions (28 March 2019)
Tall Buildings (January 2017)
Waste Collection and Storage Facilities (October 2016)
Residential Design Guide (January 2017)
Student Accommodation (28 March 2019)
Managing Transport Impacts (July 2018)

5. **INTERNAL CONSULTEES RESPONSES**

5.1 The Neighbourhood Regeneration Manager states:

Request for Community Facilities

The Cardiff Planning Obligations SPG 2017 (Section 8 – Community Facilities) states that 'Growth in population arising from new development generates demand for and increases pressure on community facilities. To meet the needs of future residents, it may be necessary to meet this additional demand through:

- *The provision of new facilities,*
- *The extension to, or upgrading of, existing facilities'.*

If no onsite provision is proposed, a financial contribution is sought on residential developments containing 25 or more new dwellings where it has been identified that investment in community facilities will be required to meet the needs of the new population.

The formula in the SPG is based on the number of bedrooms and associated occupancy figures per dwelling, and is calculated as follows:

No. of bedrooms	Number of Dwellings	Contribution per dwelling	Totals
1/studio	146	£720.51	£105,194.75
TOTALS:	146		£105,194.75

*In summary, the following contribution is sought from the developer:
£105,194.75*

Community Infrastructure Levy (CIL)

CIL Regulation 122(2) provides:

A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- (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.*

Comments in respect of the request for contributions towards community facilities are as follows:

- (a) Necessary to make the development acceptable in planning terms:*

The Cardiff Planning Obligations SPG was formally adopted by Council on 26th January 2017. The SPG was adopted to help to ensure that developments contribute toward the provision of necessary infrastructure and measures required to mitigate their impact. Policy KP6 of the Cardiff Local Development Plan (adopted January 2016) supports the provision of community facilities as part of new residential developments.

It is also in accord with Planning Policy Wales which supports the negotiation of planning obligations and states “Contributions from developers may be used to offset negative consequences of development, to help meet local needs, or to secure benefits which will make development more sustainable”. A development proposing a significant increase in population, such as this, would create pressures on existing local facilities that need to be offset via a financial contribution. It would be unacceptable to grant planning consent in the absence of such provision.

- (b) Directly related to the development*

Several community facilities are located within proximity to the site and are likely to experience an added pressure as a result of the new population. It is envisaged that a forthcoming community facilities contribution would be directed towards these facilities.

- (c) Fairly and reasonably related in scale and kind to the proposed development*

Contributions towards community facilities are derived using a formula-based calculation which takes into account, amongst other things, the size of the residential development and the projected increase in population.

5.2 The Housing Strategy Manger states:

In line with the adopted LDP (Policy H3), an affordable housing contribution of 20% of the 146 units (29 units) is sought on this brown-field site.

*Given the proposed design/configuration of the scheme, it does not appear possible to deliver the affordable housing units on site. As an alternative to on-site provision, we would be willing to accept the affordable housing contribution as a financial contribution in lieu. On that basis we would seek a financial contribution of **£1,488,570** (in lieu of 29 units (20%)) which is calculated in accordance with the formula in the Affordable Housing chapter of the Planning Obligations Supplementary Planning Guidance (SPG) (2017).*

5.3 The Parks Officer states:

Open Space Provision

These comments relate to the current LDP (C5 Provision for Open Space, Outdoor Recreation, Children's Play and Sport; KP16 Green Infrastructure), and the 2017 Planning Obligations Supplementary Planning Guidance (SPG), supported by policies set out in the 2008 SPG for Open Space which set the Council's approach to open space provision.

The Council's LDP requires provision of a satisfactory level and standard of open space on all new housing/student developments, or an off-site contribution towards existing open space for smaller scale developments where new on-site provision is not applicable.

*Based on the information provided on the number and type of units, I have calculated the additional population generated by the development to be 154.4. This generates an open space requirement of 0.375 ha of on-site open space based on the criteria set for Housing accommodation, or an off-site contribution of **£160,198**.*

As no public open space is being provided on-site, the developers will be required to make a financial contribution towards the provision of new open space, or the design, improvement and/or maintenance of existing open space in the locality, given that demand for usage of the existing open spaces would increase in the locality as a result of the development.

The use of S106 contribution from this development will need to satisfy CIL and the current distance requirements set out in the 2017 Planning Obligations SPG – play areas 600m (not applicable to student and sheltered accommodation), informal recreation 1000m, and formal recreation 1500mm, measured from edge of the site.

In the event that the Council is minded to approve the application, I assume it will be necessary for the applicant and the Council to enter into a Section 106 Agreement to secure payment of the contribution.

Consultation will take place with Ward Members to agree use of the contribution, and this will be confirmed at S106 stage. The closest areas of recreational open space are Roath Recreation Ground and Roath Pleasure Gardens.

- 5.4 The Shared Regulatory Services Officer states:
I can confirm that I have no comments regarding this application for removal (of condition 26)

6. **EXTERNAL CONSULTEES RESPONSES**

- 6.1 Welsh Water state:

We have no objection to the above application

7. **REPRESENTATIONS**

- 7.1 This application has been advertised in the press and on site. Local Members and surrounding residents have been notified. No representations have been submitted to date.

8. **ANALYSIS**

- 8.1 In January 2018 the applicant contacted the Local Planning Authority (LPA) regarding the prospects of varying condition 26 of the approval for application 17/001111/MJR to enable it to be used for general residential accommodation throughout the year and was advised that the proposal, as described in the original application is for Student accommodation (which falls outside of the class C3 of the Town and Country Planning (Use Classes) Order 1987 (residential)) classification). Any proposal which allowed for long-term occupation would again bring into further consideration residential amenity, detailed residential design and other policy considerations. The view that the approved use was not residential is consistent with the view of consultees in their advice to the Local Planning Authority when providing their comments/consideration and likely contributions, including the Housing Strategy Manager with regards to affordable housing.
- 8.2 Again in February 2018 the agent was further advised of the likely policy objection to residential use on the same design and internal arrangement as the consented student scheme.
- 8.3 In March 2018 the applicant commenced work in full knowledge of condition 26 and the advice of the Local Planning Authority.
- 8.4 The applicant, on 15 May 2018 stated their intention to submit a planning statement, addressing policy issues and other material considerations; a transportation report, addressing parking and sustainability issues and finally a report setting out the current state of play and anticipated changes in the student accommodation market in Cardiff. This would be used to part justify the proposal.

- 8.5 Savills on behalf of the applicant produced a Market Report on Cardiff Student Housing dated June 2018 and a Supplementary Statement in October 2018, which accompanies the current application. It was not until October 2018 that an application was submitted for the removal of the condition.
- 8.6 In the report it states that due to a perceived reduction in demand for student accommodation their client wishes to allow lettings to include non-students. However, the application is to remove condition 26 not vary it nor has any analysis been submitted in support of this application to justify a particular number of non-student lets.
- 8.7 The reports state that there has been an increase in demand for purpose built student accommodation, particularly by overseas students. Demand from overseas students is driven by respect for higher education in UK, lower value of the pound. Data from Cardiff University indicates that intake is 24% non-UK students and the number of non-UK students has tripled since 2008. Cardiff University's mission statement indicates that by 2020 50% of intake will be from outside the UK.
- 8.8 The number of students in Cardiff Universities, Sixth Form College and CAVC is over 100,000 with 31,597 in Cardiff University. If by 2020 Cardiff University's overseas students were to increase as planned there would be almost 7,500 extra overseas students who, according to Savills, would prefer purpose built student accommodation.
- 8.9 It should be noted that permission has been granted, subject to the signing of a S106 Agreement, for a new maths and computer science building on Senghennydd Road, there has been the recent development of an ongoing construction of new university buildings at Maindy Road for science and technology, a new journalism school in Central Square and a new Centre for student life building is under construction. It is considered that the recent and continuing improvement of facilities at Cardiff University will enhance the University's appeal.
- 8.10 The report identify' s 4 sites where temporary planning permission was sought to relax a student occupancy condition as they suspect it's a market indicator of a reduction in demand for student accommodation. Nevertheless Savills accept that there was a genuine reason for these applications i.e. that the scheme construction did not achieve the target handover dates for August-October lettings window. Three of the four temporary consents (17/00230, 17/02113 and 17/02293) expired in 2018 and the fourth (18/00308) will expire on 31/08/2019. No applications have been submitted to extend these temporary periods and there has been no breach of these planning consents. The current application is the only proposal that has sought to permanently remove the student occupancy condition.
- 8.11 The report state that City Road is a secondary location for student accommodation in Cardiff and at the same time state that 3 new student accommodation schemes are open and trading on City Road. It should be noted that more recently an application has been submitted for up to 134

student bedrooms on land immediately south of this application (the former gaiety site), which is evidence of ongoing interest in providing student accommodation in this area.

- 8.12 The applicant's agent stated when the original application was submitted that Cardiff University Campus is approximately 700m to the south west and there are a number of student accommodation facilities which have gained planning permission within close proximity to the site. The Institute of Highways and Transportation issued guidelines for "Providing for Journeys on Foot" and identifies in table 3.2 suggested acceptable walking distances of desirable 400m, acceptable 800m and preferred maximum 1200m. University facilities are located in relation to this site within the acceptable guidelines and as such should not be a significant obstacle in the student use of this building. It should be noted that existing student accommodation at Talybont is some 900m from the nearest university teaching facilities and further again from leisure facilities in the city centre.
- 8.13 Savills are of the opinion that unless condition 26 is removed this development will not reach full occupancy and will potentially become unviable. Savills say that a modest increase in the proportion of international students is anticipated and feel the availability of stock and in the immediate pipeline will satisfy demand for the foreseeable future. Savills also refer to the uncertainty on future European applications to Universities due to Brexit.
- 8.14 The supplementary statement states that in October 2018 all purpose-built student accommodation schemes had some rooms available with a 95% occupancy rate to date. Savills say that from a sample there is evidence of discounted rents to fill rooms. The statement also advice that one new planning consent for 91 beds at Drake Walk has been granted and in the pipeline consents exist for just under 3000 beds which had not been implemented at that time. Savills say that none of these schemes are currently progressing and that a change of use from student accommodation to aparthotel was granted at 34 Park Place.
- 8.15 Since the report was submitted one developer (361 beds) has gone into administration and one applicant withdrew his application (143 beds)). The consent at 34 Park Place was for a new development of 8 flats and an A3 use (ref 12/00005/DCI) approved 16/04/2014. The site had no previous history of consents for student accommodation since 1997. Savills may have mistakenly been seeking to refer to 23-24 Park Place where a change of use was granted from student accommodation to a part-hotel (Class C1) ref 18/01563/MJR, not to C3 (residential) use. Hotel uses are acceptable in principle in the Central Business Area. The report on this application said that larger student schemes were more popular and benefitted from economies of scale. The applicant submitted evidence of a marked decline in occupancy over the period that the accommodation had been open.
- 8.16 It is not clear what the reason for the 95% occupancy rate in October was. It may be a temporary blip or a factor associated with Brexit uncertainty that Savills initially mentioned. However, Savills have not referred to the Office for

National Statistics report Estimated and projected number of 18 year olds in the UK population, 2000 to 2034. This shows a peak 18 year old population in 2009 with a gradual decline of about 100,000 until 2020 before rising throughout the two thousand and twenties by some 180,000. According to UCAS in August 2018 27% of all 18 year olds go to University. It is likely that the number of 18 year old UK university students will be significantly increasing during the next decade.

- 8.17 It should also be noted that this building is nearing completion and is therefore well ahead of those consents that is referred to in their report which have not been commenced.
- 8.18 On the basis of what Savills have said about Cardiff University's aim to significantly increase the number of overseas students, the rate of increase in the number of such students that has been taking place over the last few years, and the preference of overseas students for purpose built student accommodation then it is not unreasonable to conclude that additional accommodation is likely to be required. Whilst Brexit may cause some temporary uncertainty there is no clear evidence that the attractiveness of British Universities will not continue, especially with the ongoing improvements to further educational facilities in Cardiff.
- 8.19 The District Valuer's report identifies a significant viability gap with this development and an even greater gap should the required planning obligations be met. Whilst the applicant's agent said his client recognised that the Authority would expect contributions towards affordable housing, external amenity space and local community facilities, the applicant is not prepared to make any financial contributions to these requirements which are identified within Planning Policy Wales, Cardiff's LDP and SPGs.
- 8.20 Notwithstanding the viability issues the applicant has referred to and those referred to by the District Valuer the future living standards of residents in class C3 (residential) accommodation is a very significant consideration in the determination of this application.
- 8.21 LDP policy H6 states that "Considerations under criterion (ii) will include the compatibility of neighbouring uses, preventing insensitive or inappropriate infilling, privacy/amenity, size, density, aspect, scale, layout and requirements for security and amenity space"
- 8.22 External amenity space requirements for class C3 (residential) use flats are identified in page 53 of the Residential Design Guide, SPG i.e. 75 sqm for up to 5 units with an additional 10 sqm for each additional unit. According to application 19/00609 the amenity space proposed would be approximately 215 sqm in area. This compares to the 1485 sqm required to comply with the Council's Residential Design Guide. The planted area within the amenity area would be some 66 sqm in area and the remainder would be tarmac. The amenity area available is substantially below that required for residential (Class C3) use flats and would not provide a pleasant sitting out area for future occupants.

- 8.23 The SPG Managing Transport Impacts and Parking Standards specify a minimum of 1 cycle space per bedroom. In this case 146 cycle spaces would be necessary. Only 40 are indicated with the earlier submission, which had been relaxed for student use. The provision of an additional 106 cycle spaces would reduce the limited amenity space by some 60sqm, leaving approximately 155 sqm available for amenity use.
- 8.24 The external amenity area would be considerably smaller than that required to meet that specified in the Residential Design Guide SPG, by failing to provide sufficient space for residents to enjoy, relax, socialise or contribute to good health. Furthermore no off site contribution has been offered to compensate for this significant inadequacy.

In respect of outlook, both the Residential Design Guide and Flat Conversions SPGs state that *“Habitable rooms in individual dwellings, including single aspect flats, should have a pleasant outlook onto streets or amenity spaces, rather than, for example, face a poorly landscaped parking area.”* 50 of the flats would overlook the small amenity area and cycle parking stands this poor outlook is compounded by these flats being overshadowed on three sides by the building, which is a 5 storey, rising to 8 storey building on the southern side. Given this relationship, the amenity area would be in shadow for most of the day and only receive sunlight during part of the afternoon.

- 8.25 Paragraphs 4.6.3 and 4.6.4 of the Flat Conversions SPG states;
4.6.3 Privacy between flats in the same building and adjacent buildings is important. Rooms should be arranged in a manner that maximises the living standards of occupants whilst preventing the overlooking of neighbouring properties and avoiding bedrooms facing high boundary walls. This accords with Policy KP5 in the LDP.

4.6.4 All habitable rooms must benefit from natural light, ventilation and a means of outlook that should be onto streets or amenity spaces.

The Cardiff Residential Design Guide SPG (2017) and LDP Policy KP5 offers a series of design principles on outlook, light and privacy. Almost 84% of the flats have no windows to their bed areas. The bed areas would have no outlook, minimal natural light or natural ventilation. In addition, those units facing the alleyway and Gaiety theatre to the south, other than the one nearest City Road, would have very limited angled outlooks from their living areas contrary to good design principles set within the Flat Conversions SPG and Policy KP5 of the LDP.

- 8.26 Those flats facing north and those facing south in the courtyard (35 in total) would have a direct separation distance of 16.5m between their living room windows, well below the 21m normally required to safeguard privacy between facing habitable rooms and contrary to the SPG. The Residential Design Guide SPG states that *“A privacy distance of at least 21 metres will be required between facing windows to habitable rooms on the private side of a development.”*

- 8.27 The Residential Design Guide SPG covering Daylight and Sunlight says in respect of the 25 degree rule that a significant building or structure will be obstructing reasonable light to a relevant window if it breaks a line projecting up from the centre of the relevant window 25 degrees from the horizontal. Facing windows can be assessed using the 25 degree method. There is a second assessment which relates to any extensions from an existing building line, and windows affected by this extension. An extension will be obstructing reasonable light to a relevant window if it breaks a line projecting 45 degrees both horizontally (assessed in a plan) and vertically (assessed in relevant elevations) from the centre of the window. The SPG says that this measure can also be applied to the assessment of relevant windows in a courtyard. In this case all the flats that will face south in the courtyard would conflict with the Council's 25 degree standards to a significant extent. Furthermore 17 of the courtyard flats fall short or well short of the 45 degree standard.
- 8.28 The Residential Design Guide SPG states that "*We will resist developments which do not meet these standards without further justification or other reasonable measures being in place to provide adequate light.*" It is not considered that there is any justification that overcomes the deficiencies identified above, and no assessment of daylight has been submitted.
- 8.29 At paragraph 4.2.2 Planning Policy Wales says that the planning system must enable the provision of a range of well-designed, good quality market housing. It is considered that for the reasons given above that this is not a well-designed quality scheme for C3 residential use.
- 8.30 Student accommodation is a distinctive form of residential accommodation recognised in the Use Classes Order as a sui generis, not within the C3 Use Class. The Student Accommodation SPG states that "*Student Accommodation is treated differently to other types of residential accommodation and will not be subject to the same standards in terms of size or amenity of accommodation. The key reason for this is because while the council expect developments to be built for the long term, student accommodation is designed to cater for people who will spend less than one year in the accommodation before moving on. As such, while the accommodation is permanent, the residents are transient utilising the accommodation for a specific and time limited period of their lives.*"
- 8.31 LDP Policy KP5 requires all new development to be of a high quality sustainable design. The inadequate accommodation proposed would not meet this policy requirement for C3 residential even though it is considered suitable for student accommodation having regard to the Student Accommodation SPG referred to above.
- 8.32 The applicant's agent says that the occupants will be young persons roughly of the same age group as students and that the flats will be rented on a short term basis. However, no effective control mechanism has been identified. It is considered that it would be most unlikely that a planning condition that met all the required 6 tests for conditions could be constructed to control this. If there were no exercisable control the applicant or any future owner could amend their letting or sales arrangements. In any event, general residential use is not

considered acceptable for the reasons given above.

- 8.33 In line with LDP policies, SPGs and PPW, Section 106 obligations would be sought for Class C3 residential development of this scale on this brownfield site. The Student Accommodation SPG says that any future change of use to residential accommodation would be subject to an affordable housing obligation. The applicant has stated that the contributions sought would render the development unviable, and has engaged consultants to undertake a viability assessment during the processing of this application. This information has been submitted to the District Valuer who concluded that the development is not viable and its viability would be made worse by some £1.8 million if the necessary S106 contributions were to be required.
- 8.34 The proposal is contrary to Cardiff LDP policies H3, KP6, and KP7 and C5 and the Planning Obligations SPG in that no contribution is to be made towards affordable housing, community facilities and open space.

The following contributions have been requested:

- Park services: **£160,198**. (*Consultation will take place with Ward Members to agree use of the contribution, and this will be confirmed at S106 stage. The closest areas of recreational open space are Roath Recreation Ground and Roath Pleasure Gardens*)
- Neighbourhood Renewal: **£105,194.75**
- Housing Strategy: *We would seek a financial contribution of **£1,488,570** (in lieu of 29 units (20%))*

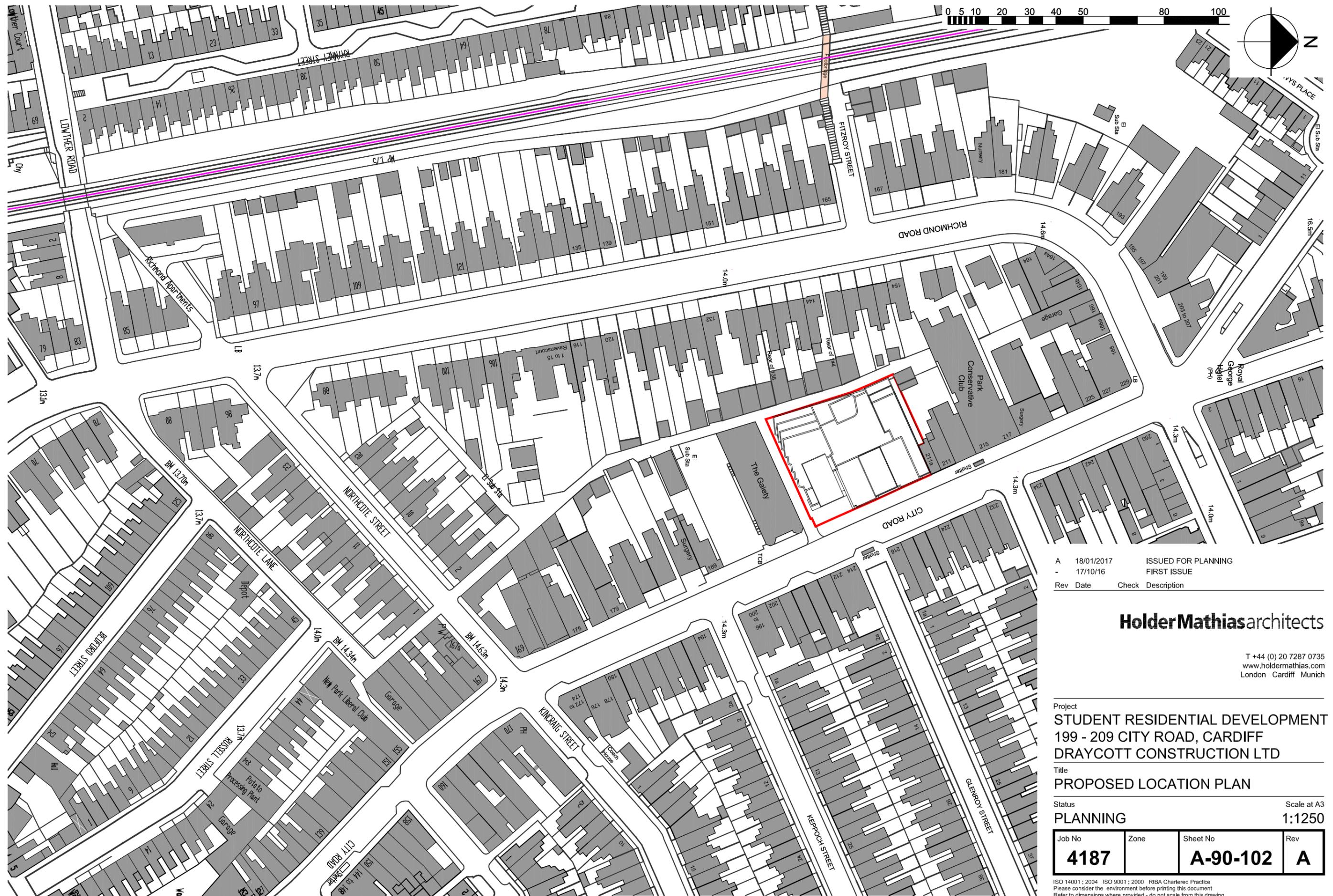
- 8.35 Having regard to the Policy tests set within PPW, W/O circular 13/97 and the Community Infrastructure Levy (CIL) Regulations 122(2), it is considered that the above requests meet those tests. Notwithstanding the viability report and the District Valuer's independent assessment, and for the reasons outlined in this report, it is concluded that these obligations are necessary. The failure to deliver any affordable housing or community infrastructure from 146 new residential dwellings, within an area of high housing need and where additional demands would be placed upon existing community facilities, is in itself grounds for objection.
- 8.36 For the reasons outlined above, it is recommended that this application be refused as the accommodation would fail to provide reasonable living conditions for future residents and fail to deliver necessary community infrastructure, contrary to LDP policies, SPGs and PPW edition 10.

9. **OTHER LEGAL CONSIDERATIONS**

- 9.1 Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of the earlier application. The Police were consulted and have made no representations. No evidence has been submitted that there would be a

significant or unacceptable increase in crime and disorder as a result of this application.

- 9.2 The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council's duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic.
- 9.3 The Well-Being of Future Generations Act 2016 – Section 3 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that future permanent residents of this building would reside in substandard C3 residential accommodation for the reasons given in this analysis and fails to meet the objective of cohesive communities



A	18/01/2017	ISSUED FOR PLANNING
-	17/10/16	FIRST ISSUE
Rev	Date	Check Description

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