



Report of the Chief Planning Officer

PLANS PANEL SOUTH AND WEST

Date: 25 April 2013

Subject: APPLICATION 06/01712/FU – APPLICATION TO DISCHARGE/AMEND A PLANNING OBLIGATION UNDER SECTION 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990, RELATING TO PLANNING PERMISSION REF. NO. 06/01712/FU, 247 HOUSES AND FLATS, LAND OFF STATION LANE, EAST ARDSLEY

APPLICANT

Miller Homes

DATE VALID

21 December 2012

TARGET DATE

15th February 2013

Electoral Wards Affected:

ARDSLEY & ROBIN HOOD

YES

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

Defer and Delegate Approval to the Chief Planning Officer the completion of a revised 106 Agreement with the following provisions: the commuted sum of £350 000, to be paid £200 000 concurrent with the execution of the replacement planning obligation, and £150 000 in December 2015. The existing education contributions to be made in September 2013 and September 2015.

1.0 INTRODUCTION

1.1 Planning permission was granted for the erection of 88 houses and 159 flats in May 2007, following consideration by Plans Panel (East). The development is still under construction, and is approximately 50% completed. The applicant completed a Section 106 Agreement (April 2007) to provide 11 no. 3-bed houses and 15 no. 2 bed apartments, all to be made available as social housing for rent. This represented (10%) of the dwellings on site.

1.2 In December 2011, notice was served by the developer pursuant to the Section 106 seeking release from provision of affordable housing on-site and conversion of the

obligation to payment of a commuted sum in lieu. Approval was granted on 7th February 2012, on the evidenced basis that no Registered Social Landlords would take the affordable units.

1.3 The current application seeks to discharge this particular obligation, and for the Council to agree the exact amount of commuted sum. The applicant has stated that it is not viable to provide the full commuted sum, and has submitted a full financial viability appraisal to justify a reduced commuted sum. In addition, the original completed Section 106 required payment of the commuted sum upon completion of the final unit, which may be some years away and which is a factor to taken into account.

1.4 Members views are sought on the amount of commuted sum in view of the financial appraisal, and in view of the timing of the payment of the commuted sum.

2.0 PROPOSAL:

2.1 The applicant is seeking to renegotiate the original Section 106 Agreement, and to agree the amount of the commuted sum. The Council's surveyor has calculated that in accordance with the provisions of the S106 Agreement, the commuted sum should be £1,480,000. The applicant has stated that the scheme is currently estimated to make a loss in excess of £3m, and in the circumstances, this would justify the complete waiver of the Affordable Housing Commuted Sum, on the grounds that the development is economically unviable. Notwithstanding, the applicant is prepared to offer an Affordable Housing Contribution of £350 000 payable of £200 000 concurrent with the execution of the replacement planning obligation and £150 000 in December 2015. Other commuted sums in the Agreement in respect of education contributions and play areas provision are also under consideration. The existing and proposed provisions are set out below:

2.2 Existing Section 106 Agreement

1. Commuted sum in lieu of affordable housing. £1.4m. The payment would not be made until the construction of the final dwelling.
2. £100 000 education contribution, consisting of 50% upon occupation of 124th dwelling (estimated September 2013 and 50% at completion of development – 2018)
3. £62 000 Play Areas contribution payable upon occupation of 124th dwelling (estimated September 2013)

2.3 Proposed Section 106 Agreement (provisional)

1. £350 000 to be spent on local infrastructure. Provisionally, £200 000 to be paid on completion of the revised S106 and £150 000 in September 2015.
2. £100 000 education contribution, consisting of 50% upon occupation of 124th dwelling (estimated September 2013 and 50% in September 2015).
3. £62 000 Play Areas contribution payable upon occupation of 124th dwelling (estimated September 2013)

3.0 SITE AND SURROUNDINGS:

3.1 The site is under construction for houses and flats. Development was started in 2007 and around 90 dwellings have been substantially completed. Access is taken from Station Lane, with many flats constructed to the western end of the site. The eastern end, towards Fall Lane, contains mainly houses, but with some blocks of flats interspersed. The southern boundary abutting the Leeds – London railway line is mainly occupied by flats.

3.2 The area is mainly residential in character.

4.0 RELEVANT PLANNING HISTORY:

4.1 06/01712/FU - Planning permission was granted for the erection of 88 houses and 159 flats in May 2007.

5.0 HISTORY OF NEGOTIATIONS:

5.1 The details have been considered by the Council's Surveyor. The timing of the payment of contribution has been brought forward, rather than payment at the end of the development.

6.0 PUBLIC/LOCAL RESPONSE:

6.1 Ward members have been consulted, and the representations are as follows:

6.2 Councillor Dunn supports the proposals. The enhancement of local education facilities is a local priority, given the size of the existing primary schools and the increased demand for primary school places, the demand being generated in part by large housing developments such as this. Payments should be made as early in the process as possible to ensure that proper planning can take place.

6.3 Councillor Mulherin supports the proposal, given the local circumstances. The two ward priorities are seen as enhancing local education facilities at primary school level, and/or provision of facilities in conjunction with the Youth service. Again, this is in part because of the large housing developments which have taken place in the area, without any corresponding increase in facilities for children/youths.

7.0 CONSULTATIONS RESPONSES:

7.1 Regarding the potential extra contributions for the above development, Childrens Services believe that, in terms of education, the money should be spent on school expansions or improvements in the local area. The increasing birth rate and house building does mean that there is pressure for school places in the Ardsley/Robin Hood area. Initial consultations are taking place locally with Childrens Services.

7.2 This consultation is seeking comments on proposals to create extra school places in the city by permanently expanding five primary schools from September 2014. This would mean increasing the admissions limit in reception at the following schools in the Ardsley & Robin Hood ward:

- East Ardsley Primary School – from 45 to 60 places
- Robin Hood Primary School – from 45 to 60 places

7.3 Childrens Services have advised that this is consultation only, and the consultation period expired on Friday 29th March.

8.0 PLANNING POLICIES:

8.1 Leeds UDP (Review 2006)

GP7: development requiring section 106 agreement to be acceptable.
H11, 12, 13: provision of affordable housing.

8.2 Core Strategy

As the Council have resolved to move the Publication Draft Core Strategy to the next stage of independent examination some weight can now be attached to the document and its contents recognising that the weight to be attached may be limited by outstanding representations which have been made which will be considered at the future examination.

Policy H5 – Affordable housing

Policy ID2 – Planning obligations and developer contributions

8.3 Leeds Supplementary Planning Guidance:

8.3.1 SPG3: Affordable Housing (Affordable Housing Policy Guidance Note (Feb 2003); Affordable Housing Policy Guidance Note Annex: Housing Needs Assessment Update (Jul 2005) - revision April 2010; Affordable Housing Policy Guidance Map; Assessment of Need for Affordable Housing (Nov 2003) Interim Affordable Housing Policy (June 2011).

8.3.2 At the time when planning permission was granted, the requirement under policy and guidance at that time was for 15% affordable housing. At that time, Plans Panel accepted 10% on site provision, in view of local circumstances. Current proposals would be required to provide 15% affordable housing, for a two year period, and then reverting to the current policy requirement of 25% affordable housing.

8.4 Government Policy:

8.5 National Planning Policy Framework (NPPF)

8.5.1 The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system.

8.5.2 Paragraphs 203 – 206 of the NPPF now provide the national planning basis for planning obligations. This reaffirms the 3 principle tests for securing contributions from development.

8.5.3 When it comes to setting planning obligations, the NPPF is clear that the scale of obligations should not threaten the viability or deliverability of a scheme. As such special consideration needs to be given to the setting of affordable housing thresholds and planning obligations through the plan making process.

8.6 Renegotiation of Section 106 planning obligations (Consultation August 2012)

8.6.1 The following paragraphs are relevant:

"The Policy Proposal

Paragraph 2. The Government's Housing Strategy "Laying the Foundations: A Housing Strategy for England" published on 21 November 2011 set out a number of proposals to help unlock stalled development. There are currently around 1400 housing schemes of over 10 housing units with planning permission that are stalled. 62% of stalled units predate April 2010.

Paragraph 3. The Government is concerned about the high number of stalled schemes and the lost economic benefit they represent. Some planning obligations negotiated in different economic conditions now make sites economically unfeasible – resulting in no development, no regeneration or community benefits.

Paragraph 4. We want to ensure that effective renegotiation of planning obligations can be achieved to make them more reflective of the current market and help unlock stalled development, whilst continuing to ensure through the use of obligations that development is acceptable to communities and local authorities in line with local plans. Wherever possible, such renegotiation should be agreed on a voluntary basis.

Paragraph 5. Where agreement cannot be reached on a voluntary basis, we are proposing that signatories to section 106 agreements should be able to formally

request reconsideration of planning obligations agreed in more buoyant market conditions. This would apply to planning obligations agreed prior to 6 April 2010. This change would not apply to planning obligations agreed since April 2010

Impact on affordable housing

Paragraph 15. Planning obligation contributions towards affordable housing represent the largest proportion of all obligations.

Paragraph 16. The Department's view (Communities and Local Government) is that some obligations agreed prior to April 2010 which include a high level of affordable housing, may now be so unviable that development may not occur at all under the current terms. Those applications will therefore not deliver any affordable housing, and therefore the policy change will help bring forward more affordable housing than would otherwise happen.

Paragraph 17. As with all other areas of obligations, renegotiation does not mean that affordable housing contributions should automatically be reduced or lost. It means that obligations should be tested against local plan policies to see if a revised obligation serves its purpose equally well. It may be possible, for example, for authorities and developers to agree a similar level of provision, but in different ways or to change the phasing in which delivery is expected. Where the overall level of affordable housing needs to be reduced to reflect changed viability, local authorities may consider requiring delivery within an agreed timeframe."

8.7 Written Ministerial Statement – Housing and Growth

8.7.1 On the 6th September 2012 the government published a ministerial statement setting out its new proposals to boost housing and economic development. A key aspect of this statement centred on affordable housing. Firstly, with a view to increasing supply through additional funding and secondly by reconsidering the impacts on development viability.

8.7.2 In the context of planning obligations however it is the second proposal that is of most relevance. The government estimate that there are approximately 75,000 new homes nationally that have stalled due to site viability. With a view to helping deliver these dwellings there will be new legislation issued in 2013 to allow developers to apply directly to the Planning Inspectorate to renegotiate the affordable housing element of Section 106 agreements. The Planning Inspectorate would then assess how many affordable homes would need to be removed from the Section 106 agreement for the site to be viable. The Planning Inspectorate would then instigate a new Section 106 agreement for a three year period, with fewer affordable homes. If the scheme was not developed within this 3 year period the original Section 106 agreement would be re-instated.

Growth and Infrastructure Bill

8.8 Further to the original announcements made in September, the government presented the Growth and Infrastructure Bill to Parliament on the 18th October 2012. The Bill is currently at Report stage. The proposals contained within the Bill largely reflect the proposals put forward in the September Statement and are expected to come into force this year. The new provisions are as follows:

"Clause 5 allows the modification or discharge of the affordable housing elements of Section 106 agreements to make developments viable.

Clause 38. New section 106BA – Modification or discharge of affordable housing requirements

Clause 39. This section provides for an application to vary an "affordable housing requirement" contained in a planning obligation, and defines that term for these purposes. Special provision is made in relation to a first application made under this section. If, on a first application, the affordable housing requirement makes development of the site economically unviable, the authority must modify or remove it so as to make it viable. The authority can not make the revised obligation more onerous than the original obligation.

Clause 40. In relation to a second or subsequent application, the authority has more flexibility in amending the affordable housing requirement. However, they cannot amend the requirement so as to make the relevant development economically unviable.

Clause 41. This section makes provision for regulations to prescribe procedural matters linked to these applications, and requires the local planning authority to have regard to guidance issued by the Secretary of State."

9.0 MAIN ISSUES

Policy background
Viability of the scheme
Timing of the payment
Applicant's fall-back position.

10.0 APPRAISAL

10.1 Policy background

10.2 The current application is made against the background of government policy, Ministerial Statements and the impending Growth and Infrastructure Act, whereby the Government is seeking to encourage renegotiation of S106 Agreements, where sites are unviable, and the delivery of housing has stalled.

10.3 Viability of the scheme

In summary, this has been assessed as follows:

- Anticipated total sales revenues including affordable housing
- less total development/construction costs (including funding costs, professional fees),
- less S106 contributions (e.g. greenspace, education, public transport)
- less profit (at market determined level)

equals residual land value.

10.4 The general conclusions from this are detailed below.

10.5 The general approach of the developer to assessing anticipated revenues and scheme costs is considered reasonable with inputs checked against British Chartered Institute of Surveyors (BCIS) Cost Indices data and current house/apartment values. With regard to the already developed and sold part of the site the surveyor has been able to independently verify the sales revenues generated to confirm that revenues represented by the applicant/developer are accurate.

10.6 On The Basis of the Land Price Incurred By The Applicant:

10.7 It is considered that there is no capacity for the scheme if completed to support the payment. This is only partly due to the land price paid however, with viability substantially impaired by falling house prices coupled with a large number of apartments on the scheme, which are largely out of favour in the market place.

- 10.8 On The Basis Of Adopting Current Land Values:
- 10.9 Whilst this might be academic the Council's surveyor is of the opinion that the scheme in its current form would not be viable to develop by another house builder with a requirement to make the payment.
- 10.10 It should be noted that the assessment is of the particular scheme approved which as mentioned above contains a large apartment element. Should a substantially varied or new proposal come forward for the undeveloped part of the site, perhaps encompassing conventional family housing, then the viability position may change. A new planning application would need to be submitted for family housing, and a new Section 106 Agreement negotiated.
- 10.11 It is also important to be aware that the assessment is based on current prevailing conditions and of overall viability of the whole scheme as of today including consideration of revenues already received.
- 10.12 Timing of the payment:
- 10.13 Any agreed commuted sum is due to be paid upon completion of the final unit on site. Given the current economic uncertainties, this sum may not be payable for a number of years. Indeed, if the final dwelling is not completed, then the commuted sum might not be forthcoming at all. The current proposal, for a substantially reduced commuted sum, does have the benefit of providing the commuted sum, partly upon completion of the revised Section 106 Agreement and part at the end of 2015. In addition, the timing of the education contribution is being renegotiated to bring those payments further forward.
- 10.14 Applicant's fall-back position:
- 10.15 As stated above, it may be that the final dwelling on the layout is not constructed for a considerable time, if at all, and that the commuted sum might not be forthcoming at all. Therefore, a reduced sum available shortly, and at the end of 2013 would actually provide finance towards local infrastructure, in accordance with local priorities as identified above.

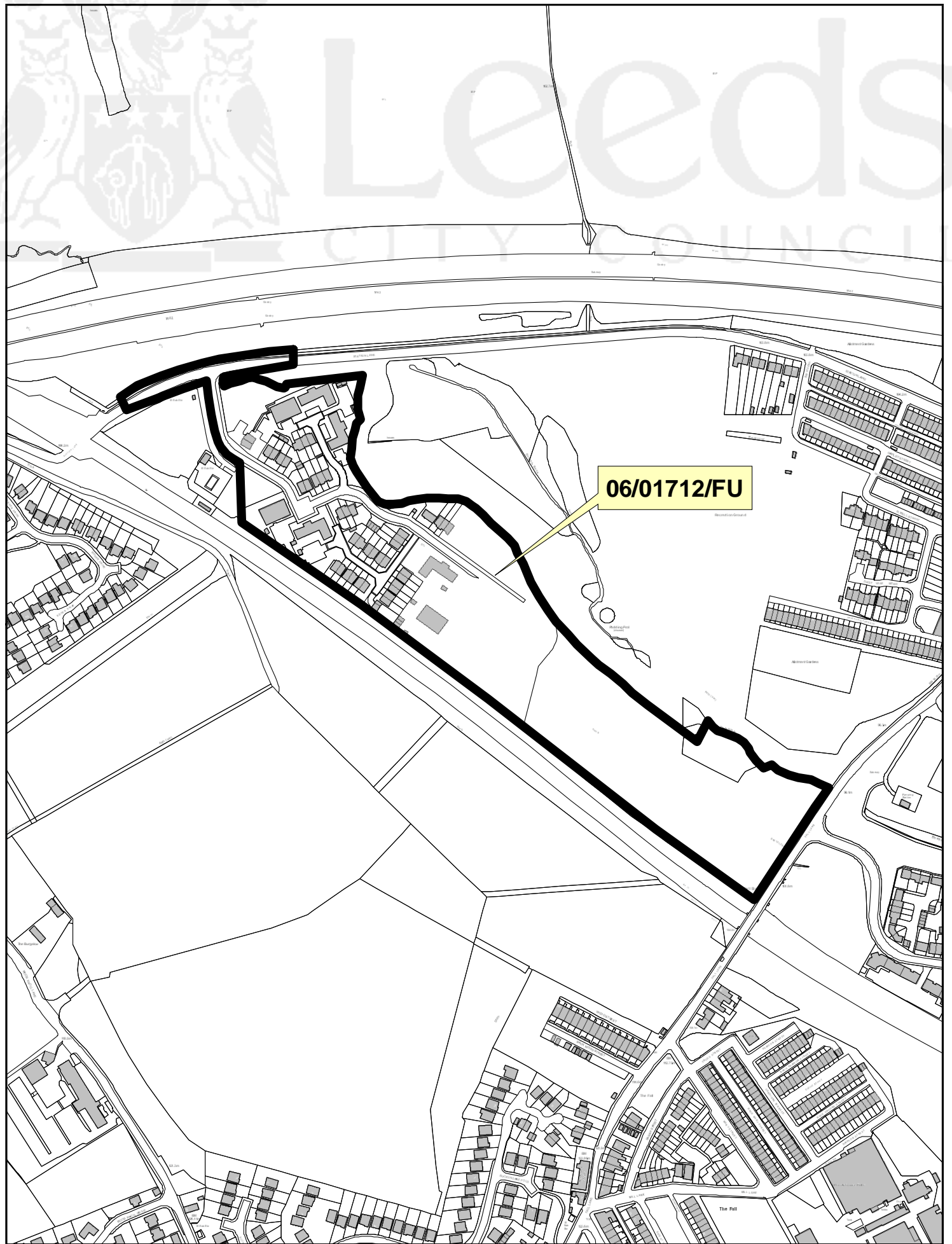
11.0 CONCLUSIONS

- 11.1 The applicant has clearly demonstrated that the site is not viable with a commuted sum at £1.4m. Even without the commuted sum, the site is unviable to develop. A commuted sum of £350 000 has been negotiated, which would be payable much earlier in the process, than the date in the Section 106 Agreement. There would be some doubt if the £1.4m would be payable in any case, should the final unit not be constructed. In these circumstances, approval is recommended.
- 11.2 Members should be aware of the Government consultations, Ministerial Statements, and impending Growth and Infrastructure Act, as set out in Section 8.0 above, which places significant weight on proposals to revise affordable housing provision where there are issues concerning site viability and delivery of houses.
- 11.3 Should any further planning applications be submitted on site for a revised layout/mix of houses and flats, the Council will have a further opportunity to negotiate on the provisions of the section 106 Agreement, which would have to be considered against policies and circumstances pertaining at the time.

Background Papers:

Application file:

History file: 06/01712/FU



SOUTH AND WEST PLANS PANEL