

**LOCATION:** Gloucester House, 150 Woodside Lane, London, N12  
8TP  
**REFERENCE:** B/00551/14 **Received:** 31 January 2014  
**Accepted:** 16 May 2014  
**WARD(S):** Woodhouse **Expiry:** 11 July 2014

**Final  
Revisions:**

**APPLICANT:** Mr S Hamid

**PROPOSAL:** Variation to 106 contributions pursuant to planning permission F/01620/11 dated 2/12/11 for "Use of ground floor as Montessori nursery school (D1 use). Alterations to car park layout to provide walkway access to school entrance. Associated internal alterations". Variation includes amendments to S106 agreement dated 2 December 2011

**RECOMMENDATION:**

**Approve deed of variation to S106 agreement dated 2<sup>nd</sup> December 2011**

That the applicant and any other person having a requisite interest be invited to vary the agreement into a planning obligation under section 106 of the Town and Country Planning Act 1990 dated 2<sup>nd</sup> December 2011 for the purposes of securing the following:

1. Paying the council's legal and professional costs for varying the agreement and any other enabling agreements;
2. All obligations listed below to become enforceable in accordance with a timetable to be agreed in writing with Local Planning Authority;
3. **Open Spaces (Borough wide) £20,000.00**  
A contribution towards the improvement of Open Space in the London Borough of Barnet.
4. **Requirement to submit Travel Plan £5,000.00**  
Requirement to submit a Travel Plan for approval by the Council prior to first occupation of the development and the obligation to provide a contribution of £5000 towards the Council's costs of monitoring the implementation of the Travel Plan.
5. **Monitoring of the Agreement £1,250.00**  
Contribution towards the Council's costs in monitoring the obligations of the agreement.

**1. MATERIAL CONSIDERATIONS**

National Planning Policy Framework

The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the

statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The 'National Planning Policy Framework' (NPPF) was published on 27 March 2012. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that "good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people". The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would "significantly and demonstrably" outweigh the benefits.

#### The Mayor's London Plan: July 2011

The London Development Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2031. It forms part of the development plan for Greater London and is recognised in the NPPF as part of the development plan.

The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

The Mayor's Housing Supplementary Planning Guidance (November 2012) provides guidance on how to implement the housing policies in the London Plan.

#### Relevant Local Plan (2012) Policies:

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents (DPD). Both DPDs were adopted on 11 September 2012.

#### Relevant Planning History:

Application:	Planning	Number:	F/00554/11
Validated:	01/02/2011	Type:	APF
Status:	WDN	Date:	05/04/2011
Summary:	WIT	Case	David Campbell
		Officer:	

Description: Use of ground floor as Montessori nursery school (D1 use). Removal of 6no parking bays to use as external play area and landscape alterations including perimeter fencing and planting and erection of 2no canopies. Associated internal alterations and insertion of door to rear elevation to create access to

proposed external play area.

Application:	Planning	Number:	F/01620/11
Validated:	08/04/2011	Type:	APF
Status:	DEC	Date:	02/12/2011
Summary:	APL	Case Officer:	David Campbell

Description: Use of ground floor as Montessori nursery school (D1 use). Alterations to car park layout to provide walkway access to school entrance. Associated internal alterations.

#### Consultations and Views Expressed:

Neighbours Consulted: 95      Replies: 1  
Neighbours Wishing To Speak: 0

The objections raised may be summarised as follows:

- The nursery has erected a fence in their car park which is causing vehicles to drive into the adjoining block of flats parking area which is causing noise and disturbance.

Date of Site Notice: 22 May 2014

## **2. PLANNING APPRAISAL**

#### Site Description and Surroundings:

The application site is a two storey building comprising of mainly medical uses on the upper floors, with the ground floor (the subject of this application) which is currently occupied by MACE Montessori nursery school. The premises are located in Woodside Lane, with nearby residential dwellings including flats to the side and rear of the building. The site does not fall within a conservation area.

#### Proposal:

The proposal relates solely to the provisions for planning contributions with the S106 planning agreement as it relates to MACE Montessori School, Gloucester House, 150 Woodside Lane.

The subject deed of variation seeks to vary the planning agreement to delete the financial contributions required in relation to play equipment maintenance (£12,000) and reduce the contribution to open space provision and monitoring.

#### Planning Considerations:

#### **Nature of Application – Legislative and policy framework**

Section 106A (3) provides the ability to apply for the obligation:

*“(a) to have effect subject to such modifications as may be specified in the application; or  
(b) to be discharged.”*

The procedure to be followed is set out in the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992.

An application may be determined in one of three ways:

*“(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.**”*

The modifications specified in the application must be considered in their entirety. It is not possible to approve an application by accepting some modifications but rejecting others. In this case the application seeks to remove the financial contributions in relation to play equipment maintenance in their entirety and to reduce the contributions to open space provision and monitoring.

### **Key Considerations**

The key consideration of section 106A is whether or not the obligation serves a useful purpose.

There are no further planning regulations or guidance about how this is assessed. The National Planning Policy Framework (NPPF) does state that where obligations are being revised, local planning authorities should take account of changes in market conditions over time and, where appropriate, be sufficiently flexible to prevent planned development being stalled.

Section 106A of the 1990 Act does not require that regard is to be had to the development plan for the purposes of determining an application or appeal in respect of the proposed modification or discharge of a planning obligation.

### **Current S106 provision**

The current S106 agreement provides for the following obligations:

- £12,000 - Play Equipment Maintenance Fee (20 years)
- £5,000 - Travel Plan Contribution
- £60,000 - Open Space Provision
- £2,400 - Monitoring contribution

### **Planning Purpose of the modification.**

The purpose of the modification is to remove the contribution for play equipment maintenance and reduce the contributions to open space provision and monitoring.

The nursery is located in the ground floor of Gloucester House and due to the restrictions on the site there is no external play space. When the application was originally submitted the applicant intended to use Swan Lane Open Space which is directly adjacent to the site for outside play for the children at the nursery. As a result consent was granted on the basis that there would be financial contributions towards the open space and maintenance of the play equipment within the park. These were secured through the current S106 agreement.

The nursery school has now been operational for a number of years and due to lower numbers of children than originally envisaged and safeguarding issues for children using the public open space the applicant has not used the adjoining open space as originally envisaged. Due to the lower numbers attending the nursery they are able to meet the majority of the play needs of the children within the building. Furthermore, the requirement to pay these charges is placing a financial burden on the business which if the Council enforce payment will result in the business closing.

The proposed modification is considered to serve a useful planning purpose. The intent of the previous applications was to enable the use to provide external play, however in implementing the consent and starting the business access to external play space is not required at the level originally envisaged and therefore the contributions no longer meet the test for obligations as they do not fairly and reasonably relate to the development.

The proposal is to delete the contribution for the play equipment maintenance fee (as the play equipment within the park is designed for use by older children and therefore not used by the nursery) and to reduce the contribution to open space provision from £60,000 to £20,000 which is considered to more accurately reflect in scale and kind the occasional use of the adjoining open space by the nursery. As the monitoring contribution is worked out as a percentage of the total contributions this needs to be reduced to £1,250.

Therefore the, S106a variation is recommended for approval.

### **3. COMMENTS ON GROUNDS OF OBJECTIONS**

The objections received are to do with parking problems and do not relate to the proposal to vary the S106.

### **4. EQUALITIES AND DIVERSITY ISSUES**

The proposals do not conflict with either Barnet Council's Equalities Policy or the commitments set in our Equality Scheme and supports the council in meeting its statutory equality responsibilities.

## 5. CONCLUSION

The s106a variation application to reduce the financial contributions for open space provision (£60,000 to £20,000) and monitoring (£2,400 to £1,250) and remove the play equipment maintenance (£12,000) are considered to serve a useful planning purpose and is therefore recommended for approval.

**SITE LOCATION PLAN: Gloucester House, 150 Woodside Lane,  
London, N12 8TP**

**REFERENCE: B/00551/14**



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