

**LOCATION:** Barnet and Southgate College, Grahame Park Way, Colindale, NW9 5RA

**REFERENCE:** H/03551/14

**WARD:** Colindale

**APPLICANT:** Barratt North London and Barnet and Southgate College

**PROPOSAL:** Deed of variation – Barnet and Southgate College, Grahame Park Way, Colindale, NW9 5RA

**Received:**  
**Accepted:**  
**Expiry:**  
**Final Revisions:**

It is proposed to vary the wording contained within schedule 9 to the section 106 agreement dated 6<sup>th</sup> May 2015 by agreement between London Borough of Barnet, Barnet and Southgate College and Barratts in relation to the planning permission which was granted for:

Demolition of all existing buildings; redevelopment to provide 396 residential units (266 flats, 56 maisonettes and 74 dwelling houses) in buildings ranging from 3 to 9 storeys; access from Grahame Park Way and Corner Mead; associated internal street network, open space, landscaping, parking refuse/cycle storage and amenity space provision; provision of 1.6 hectare site for educational use (subject to separate future planning application)

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## Background

This report relates to the need to vary a section 106 agreement pertaining to application: H/03551/14, dated 6<sup>th</sup> May 2015 between the landowner, developer and local planning authority. The amendment found to be necessary is to remove the words “a primary school” at paragraphs 1 and 3 of schedule 9 and replace them with the words “an education use”.

## Legal Basis

The government guidance suggests that:

*Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see section 106A of the Town and Country Planning Act 1990).*

*Paragraph: 009 Reference ID: 23b-009-20160519*

In practice there is no set process for varying a section 106 by agreement. Section 106 agreements are normally varied when a later planning permission is granted which varies the original planning approval resulting in the need to revise the original section 106; in this current situation there is no revised planning application requiring a revision to the original Section 106, however, there is a need to revise the wording of the original Section 106 on the basis that there is a change in the type of development to be brought forward.

Consequently a Section 106a application is not an appropriate vehicle in this case, as The Barnet and Southgate College s106 was signed in May 2015 which is less than 5 years ago.

Therefore the requirement is to vary the agreement by agreement between all parties against whom the section 106 would be enforceable against. In this case the agreement was made between - The Mayor and Burgesses of the London Borough of Barnet, Barnet & Southgate College and BDW Trading Limited (a subsidiary of Barratt).

The text that needs amending is set out below.

#### **SCHEDULE 9**

#### **SCHOOL SITE**

1. The Owner shall transfer the School Site to the Council for the provision of a primary school, or any meanwhile uses deemed acceptable by paragraph 2 below, subject to the below:
  - (a) The School Site shall be transferred at nil consideration to the Council as a Serviced Plot;
  - (b) The transfer shall take place prior to occupation of the 350<sup>th</sup> Residential Unit
2. The Council shall use the School Site only for the provision of a primary school, subject to obtaining all necessary consents, along with any uses that the School Site can be put to in the meantime, including open space, recreation, sports or community uses (including temporary healthcare facilities), subject to obtaining all requisite consents

### Further background / history

Prior to the legal agreement being signed on the 6th May 2015, enabling the development of the Trinity Square site, Barnet council and Barnet and Southgate College entered into a land swap arrangement in 2014.

Part of this land swap agreement secured an area of 1.6 hectares for a school/educational use. The general requirements in relation to the 1.6h site are:

- The site is to be used for a minimum two form entry school or other educational use
- The operator is to be a state-funded organisation providing or being established to provide education (which may be the Council)
- The school is to be designed and built to DfE (or its successor) standards
- The site is not to be used for any purpose other than state-funded education until 31 Dec 2033.

As part of the planning application to develop the whole site; comprising mainly residential accommodation, a section 106 agreement was entered into which, alongside other requirements stipulated that the 1.6 hectare site be transferred to the council at a particular date for the provision of a primary school.

This requirement is at schedule 9 to the section 106 agreement. The description of development for the planning permission only refers to the “provision of a 1.6 hectare site for educational use” and makes clear that this will be subject to separate future planning application.

The committee report assessing the planning application referred to the need to utilise the site for a primary school, as set out in the Colindale Area Action Plan.

Since the signing of the Section 106 agreement there have been several developments in relation to school organisation in the area:

- Central Government has approved the opening of a new three form entry primary school at the Peel Centre site, located very close to the Trinity Square site. The Peel Centre residential development is anticipated to produce a child yield sufficient for around 1.5 forms of primary entry, leaving capacity to meet primary-aged child yield for other housing developments.
- The council is funding the expansion and re-location of Blessed Dominic primary school for primary-aged pupils to a site adjacent to Trinity Square site.
- There is a pressing need for secondary provision in the local area. In recent years, several local primary schools have expanded along with new primary provision. These primary aged pupils will require secondary schooling from September 2018 onwards. Saracens High School Trust has been given permission by central government to open a new secondary free school to meet the educational needs of children and young people in the Colindale area.
- The borough is experiencing a shortfall in places for children with special educational needs across the borough.

Given these developments, the Council's education department, supported by the other parties to the section 106 agreement have requested a variation to the Section

106 that would enable the site to be used for a more appropriate educational use relevant to the needs of the area as envisaged in the original land swap agreement between the council and Barnet and Southgate College. It is anticipated that this would be educational provision for secondary aged pupils to meet the needs of the growing number of Colindale primary aged pupils and will be more relevant, appropriate and better meet the pressing needs of the area than further primary provision.

### Policy Background Colindale AAP

The Colindale AAP was adopted in 2010. While the AAP, alongside the Core Strategy and the London Plan still comprise the Statutory Development Plan, the Council are in the early stages of reviewing these documents to write a new Local Plan that will cover the whole of the Borough.

*Policy 7.6 Learning in Colindale of the AAP states “Development will deliver at least 4 new forms of entry in primary schools within Colindale, either through new schools or expansion/relocation of existing schools. The Barnet College site (subject to the College relocating) and Peel Centre East site are identified to each provide a 2 form entry primary school (420 pupils per school). Developers will be required to meet the costs associated with meeting the additional need for nursery and school places generated by their development proposals in line with the Council’s Contribution to Education SPD. New buildings for education uses in Colindale will be of the highest quality of design befitting their important community function. They will be prominent buildings and fully integrated into the local environment and where potential exists they will be ‘exemplars’ in sustainability and green education building design.”*

At the time of writing the AAP therefore it was anticipated that at least 4 forms of entry of primary provision would be provided. The Orion School has already been re-located and expanded to provide 2 additional forms of primary entry. The new primary school at the Peel Centre will provide an additional 3 forms of primary entry and the expansion and relocation of Blessed Dominic primary school will provide a further 1 form of entry. This means that the requirement set out in policy terms in the AAP for primary schools in the area is met. The AAP anticipated that secondary school need would be met through existing secondary school provision and that financial contributions would be made by development towards any works necessary to accommodate increased numbers of pupils. Since the AAP was developed, spare capacity in Barnet’s secondary schools has reduced due to the demographic growth in London. Although St James Catholic School is planned to expand, significant additional secondary school places are now required to meet the needs of Colindale pupils as they move through to the secondary sector.

### Barnet Core Strategy 2012

Barnet’s Core Strategy was adopted in 2012. New schools are covered by Policy CS10: Enabling inclusive and integrated community facilities and uses. The policy states:

In addressing educational needs within Barnet and responding to the need for parental choice we will support proposals for parent promoted schools or ‘Free Schools’ that:

- conform with DfE guidance on becoming a new school and
- meet parental demand for school places and
- provide educational facilities that conform with basic school requirements as set out in relevant DfE guidance.

#### Development Management policies DPD

The relevant development management policy is DM13 Community and Education Uses. The policy requires that new educational uses should be located where they are accessible by public transport, walking and cycling and preferably in town centres or local centres. New educational uses should ensure that there is no significant impact on the free flow of traffic or road safety. New educational uses will be expected to protect the amenity of residential properties.

#### Grahame Park SPD – Adopted 2016

The school site is referenced within the adopted SPD. The SPD does not specify that the school site needs to be used as a primary school.

#### Assessment

In pure planning policy land use terms the proposal to use the Barnet and Southgate College site for part provision of a secondary school rather than a primary school is considered acceptable given that the required level of primary provision, as set out in the AAP, has been secured within the Colindale area on the Peel Site and through the expansion of Blessed Dominic School.

However a secondary school has different planning impacts, in terms of amenity to surrounding residents and transport impacts to a primary school. These would need to be fully considered and assessed, as set out in Development Management policy 13 Community and Education Uses as part of a future application for development of the school site (as would the impacts of a primary school).

The proposal for the school would also need to be considered and assessed against policy CS10 of the Core Strategy. It is understood that local parents are supportive of proposals to bring forward a secondary school to provide additional secondary school places in the area which is one element of the policy.

Amending the agreement at this stage would provide Barnet's education department and the Department for Education with a greater level of confidence in working up the details of their future proposals as they would know that the school site was not bound within the section 106 to only be used as a primary school. A broader range of education uses would therefore be possible, subject to planning permission being granted. Barnet's education department therefore requests that the words "a primary school" at paragraphs 1 and 3 of schedule 9 are removed and replaced with the words "an education use".

Barratts and Barnet and Southgate College (the other parties to the section 106 agreement) have confirmed that they are happy to vary the section 106 agreement in this way.

Officers have considered the education department's request and have concluded that the proposed change to the section 106 agreement is acceptable, given that a

full planning application will be required for any proposed education use and given that a primary school is no longer required on the site for the reasons set out in the further background/history section above.

Recommendation

That all parties to the agreement dated 6<sup>th</sup> May 2015 and any other person having a requisite interest in the site be invited to enter into a Deed of Variation, varying the extant section 106 Agreement dated 6<sup>th</sup> May 2015 by:

*removing the words “a primary school” at paragraphs 1 and 3 of schedule 9 and replacing them with the words “an education use”.*