

LOCATION: The Former Peel Centre, Colindale, London

REFERENCE: H/04753/14

WARD: Colindale

APPLICANT: Redrow Homes Limited

PROPOSAL: Deed of variation – the Former Peel Centre, Colindale London

Received:
Accepted:
Expiry:
Final Revisions:

It is proposed to vary the wording contained within schedule E to the section 106 agreement dated 23 December 2015 by agreement between London Borough of Barnet and Redrow Homes in relation to the planning permission which was granted for:

Hybrid planning application for the phased comprehensive redevelopment of part of the existing Peel Centre site including the demolition of all existing buildings and the provision of a residential-led mixed use development comprising up to 2,900 new residential units (Use Class C3), with 888 units in full detail and up to 2,012 units in outline in buildings ranging from 2-21 storeys; up to 10,000 square metres of non-residential floorspace (Use Classes A1-A4, D1, D2); the provision of a 3 form entry primary school (including nursery provision) and a minimum of 4 hectares of public open space. Associated site preparation/enabling works, transport infrastructure namely a new pedestrian connection to Colindeep Lane and junction works, landscaping and car parking. The application is accompanied by an Environmental Statement.

Background

This report relates to the need to vary a S106 agreement pertaining to application: H/04753/14, dated 23 December 2015 between the developer and local planning authority. Application H/04753/14 allows for a substantial residential-led mixed use development of the Peel Centre, Colindale with part of the agreed S106 requiring contributions from the developer (Redrow) as well as London Borough of Barnet and TfL to fund the improvement of the capacity of Colindale Tube Station and public realm works on Colindale Avenue. The first payments are to be made by all three parties on or before 30 September 2017, totalling £8.5 million. Further payment dates are then scheduled for the developer on or before 31 July 2018 (£6.5 million) and on or before 31 December (£142,000).

The agreed S106 states at Schedule E Paragraph 1.2 that *‘The Council shall pay each instalment of the Colindale Station Contribution to Transport for London with 20 Working Days after the date of receipt of that instalment ...’*. An amendment is now found to be necessary to replace this wording, as follows:

“The Council shall pay the Colindale Station Contribution to Transport for London on terms that require its use towards the cost of the Colindale Station Works. The transfer of the funding from London Borough of Barnet to TfL will take place in accordance with project milestones to be agreed between TfL and London Borough of Barnet”

As the project milestones for the Colindale Station Works have not yet been finalised, it is recommended that the project milestones which will need to be reached before transfer of funding to TfL takes place is delegated to the Deputy Chief Executive in consultation with the Chairman of the Planning Committee.

The change in wording is considered necessary to help ensure that the Colindale Station works progress in a timely manner and the Council retains an element of control over the substantial section 106 sums involved.

A consequential amendment is also necessary to Schedule E section 1.3 of the s106, where it states that

“1.3 In the event that all or any part of each instalment of the Colindale Station Contribution has not been expended or Committed for Expenditure within five years after the date on which it was paid to the Council then Transport for London shall repay that unexpended part of the Colindale Station Contribution to the Developer”. This section should be amended to say that ‘the Council’ shall repay the unexpended part to the Developer.

Legal Basis

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 S106 by agreement. S106 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 S106; in this current situation there is no revised planning application requiring a revision to the original S106, however, there is a need to revise the wording of the original S106 on the basis that the current wording is no longer appropriate.

Consequently a S106a application is not an appropriate vehicle in this case, as the Former Peel Centre s106 was signed in December 2015 which is less than 5 years ago.

Therefore the requirement is to vary the agreement by agreement between all parties against whom the S106 would be enforceable against. In this case the

agreement was made between - The Mayor and Burgesses of the London Borough of Barnet, and Redrow Homes Limited.

The text that needs amending is set out below at paragraph 1.2.

SCHEDULE E

Transportation and Highway Works

1. Tube Station Works

1.1. The Developer shall (subject to Transport for London having agreed in writing prior to payment to comply with the provisions of Paragraph 1.3 of this Schedule E to this Deed) pay the Colindale Station Contribution to the Council in three instalments as follows:-

1.1.1. On or before 30 September 2017 the sum of FOUR MILLION SIX HUNDRED AND TWENTY THOUSAND POUNDS (£4,620,000.00) PROVIDED ALWAYS THAT on or before this date:-

(a) the Council has contributed or committed the sum of TWO MILLION SEVEN HUNDRED AND FIFTY THOUSAND POUNDS (£2,750,000.00)

(b) Transport for London has contributed the sum of ONE MILLION TWO HUNDRED AND EIGHT THOUSAND POUNDS (£1,208,000.00)

for the Colindale Station Works

1.1.2. On or before 31 July 2018 the sum of SIX MILLION FIVE HUNDRED AND TWENTY TWO THOUSAND POUNDS (£6,522,000.00) PROVIDED ALWAYS THAT on or before this date Transport for London has contributed or committed a further ONE MILLION FIVE HUNDRED AND NINETY TWO THOUSAND POUNDS (£1,592,000.00) for the Colindale Station Works

1.1.3. On or before 31 December 2018 the sum of ONE HUNDRED AND FORTY TWO THOUSAND POUNDS (£142,000.00)

1.2. The Council shall pay each instalment of the Colindale Station Contribution to Transport for London within 20 Working Days after the date of receipt of that instalment of the Colindale Station Contribution and use All Reasonable Endeavours to encourage Transport for London to deliver the Colindale Station Works for which each instalment of the Colindale Station Contribution is paid in a timely manner

1.3. In the event that all or any part of each instalment of the Colindale Station Contribution has not been expended or Committed for Expenditure within five years after the date on which it was paid to the Council then Transport for London shall repay that unexpended part of the Colindale Station Contribution to the Developer

It is proposed to vary the wording so that instead of the whole of the Colindale Station contribution being transferred to TfL within 20 working days of receipt that the money is transferred in accordance with the project milestones to be agreed between TfL and London Borough of Barnet.

Suggested wording following a review of other section 106 agreements is:

“The Council shall pay the Colindale Station Contribution to Transport for London on terms that require its use towards the cost of the Colindale Station Works. The transfer of the funding from London Borough of Barnet to TfL will take place in accordance with project milestones to be agreed between TfL and London Borough of Barnet”

TfL is not a party to the S106 agreement so will not have to agree to any amended wording. However, Redrow will need to agree to vary the agreement (which they have indicated they are happy to do) and agree the new wording. Therefore it is recommended that planning committee provide Delegated Authority to the Deputy Chief Executive in consultation with the Chairman of Planning Committee to agree project milestones which will need to be reached before transfer of funding to TfL takes place.

Policy Background

As the proposal in this case is to vary the S106 to address a procedural implementation issue it is not considered that a full assessment against planning policy is required.

It is worth noting however that the Colindale Area Action Plan (AAP) was adopted in March 2010. The 3rd objective of the AAP is to “Improve the quality and attractiveness of the transport network/infrastructure and encourage the use of sustainable modes of transport, addressing the significant increase in travel resulting from proposed growth.” To this end the Council has been working alongside developers and TfL to ensure that improvements to Colindale Station are brought forward and a number of S106 agreements attached to developments in the area have required contributions towards public transport improvements (including the station as secured through the Peel Centre s106).

Assessment

It is considered that the proposal to vary the S106 agreement is acceptable and necessary to help ensure that the Colindale Station works progress in a timely manner and the Council retains an element of control over the substantial section 106 sums involved.

Recommendation

That all parties to the agreement dated 23 December 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 23 December 2015 at schedule E paragraph 1.2 as set out below:

“The Council shall pay the Colindale Station Contribution to Transport for London on terms that require its use towards the cost of the Colindale Station Works. The transfer of the funding from London Borough of Barnet to TfL will take place in accordance with project milestones to be agreed between TfL and London Borough of Barnet”

A consequential amendment is also necessary to Schedule E section 1.3 of the s106, which should be amended to say that ‘the Council’ shall repay the unexpended part to the Developer rather than TfL.

As the project milestones for the Colindale Station Works have not yet been finalised, it is recommended that the project milestones which will need to be reached before transfer of funding to TfL takes place is delegated to the Deputy Chief Executive in consultation with the Chairman of the Planning Committee.