

LOCATION: The Former Peel Centre, Colindale, London

REFERENCE: H/04753/14 **Received:**

WARD: Colindale **Accepted:**

APPLICANT: Redrow Homes Limited **Expiry:**

PROPOSAL: Deed of variation – the Former Peel Centre, Colindale London **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 payment towards the Colindale Station improvement was made by all three parties on 30 September 2017, totalling £8.5 million. Further payment dates are then scheduled from the developer on or before 31 July 2018 (£6.5 million) and on or before 31 December (£142,000).

In relation to the second instalment, the agreed S106 states at Schedule E Paragraph 1.1.2 that '*On or before the 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”.

An amendment is now found to be necessary to replace this wording, as follows: “*On or before the 30 November 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”*

This financial contribution is to be used towards the cost of carrying out or procuring the carrying out of works to construct a new Colindale underground station. As per paragraph 1.2 of schedule E, the council are required to “*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 the Council’s deputy Chief Executive*”. As TfL are not intending on issuing for tenders until January 2019, officers recommend that the date for payment be changed from 31 July 2018 to 30 November 2018, as this would coordinate more closely with the TfL tendering process and with project milestones.

In relation to the Colindale Avenue Public realm contribution, a payment of £1,650,257 was made to the council on 2 February 2018. This is to be used towards public realm improvements as shown on Plan 70001368-GA-23-A (submitted with the Planning Application)

The agreed S106 states at schedule E, paragraph 2.2 that “*the Council shall carry out or procure the carrying out of the Colindale Avenue Public realm improvements by the date which is two years after the date on which the Colindale Avenue contribution was paid*”.

Furthermore, paragraph 2.3 of schedule E states that “*in the event that the Council has not carried out or procured the carrying out of the Colindale Avenue public realm improvement by the date which is two years after the date on which the Colindale Avenue was paid to the Council then the Council shall repay the Colindale Avenue contribution to the developer and the developer shall be entitled to carry out the Colindale Avenue public realm improvements and the council shall use all reasonable endeavours to facilitate the developer doing these works including the grant of any necessary statutory consents in relation to the same*”.

The public realm improvements on Colindale Avenue will link in closely with the Colindale Station works, however, the plans for Colindale station work are still under consideration and have not yet been finalised. It is recommended, therefore, that time period for carrying out or procuring the carrying out of works is extended from two to four years, meaning that funds need to be expended by 2 February 2022. This will ensure that projects align and are coordinated as much as possible. This will also ensure that the Council retains an element of control over the financial contribution received in relation to the public realm improvements and avoid repayment to the developer.

Officers recommend that the following amendment to schedule E, paragraph 2.2 is made and the wording is replaced as follows: “*the Council shall carry out or procure the carrying out of the Colindale Avenue Public realm improvements by the date which is four years after the date on which the Colindale Avenue contribution was paid*”.

Paragraph 2.3 will also need to be amended to refer to four years rather than two years.

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.

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

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.” In addition, public realm improvements along Colindale Avenue is also a key priority throughout the AAP. 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) and public realm improvements.

Assessment

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

Recommendation one

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 1.1.2 as set out below:

‘On or before the 30 November 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’.

Reason: As TfL are not intending on issuing for tenders until January 2019, it is recommended that payment be received on 30 November 2018, as this would coordinate more closely with the TfL tendering process and with project milestones.

Recommendation two

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 2.2 as set out below:

“the Council shall carry out or procure the carrying out of the Colindale Avenue Public realm improvements by the date which is four years after the date on which the Colindale Avenue contribution was paid”

And that consequently paragraph 2.3 is also amended to refer to four years rather than two years.

Reason: The public realm improvements on Colindale Avenue will link in closely with the Colindale Station works, however, the plans for Colindale station work are still under consideration and have not yet been finalised. It is recommended that time period for carrying out or procuring the carrying out of works is extended from two to four years, meaning that funds need to be expended by 2 February 2022 to ensure that projects align and are coordinated as much as possible. This will also ensure that the Council retains an element of control over the financial contribution received in relation to the public realm improvements and avoid repayment to the developer.