

LOCATION: West Hendon Estate
REFERENCE: H/01054/13
Received:
Accepted:
WARD: West Hendon
Expiry:
Final Revisions:
APPLICANT: Barratt Metropolitan Limited Liability Partnership
PROPOSAL: 3rd Deed of variation – West Hendon Estate, London

It is proposed to vary the wording contained within the section 106 agreement dated 19 November 2013 by agreement between London Borough of Barnet and Barratt Metropolitan Limited Liability Partnership in relation to the planning permission which was granted for:

Hybrid planning application for the demolition and redevelopment of the West Hendon Estate to accommodate up to 2000 residential units, a new 2 form entry primary school, community building and commercial uses and associated open space and infrastructure comprising:, Outline submission for the demolition of existing buildings and the construction of up to 1642 new residential units (Class C3); up to 3,870m² (GEA) of D1 Class floorspace comprising nursery and primary school and community centre uses and up to 1,635m² (GEA) Class A1/A2/A3/A4/A5/B1 floorspace, within buildings ranging from 2 to 29 stories, associated cycle and car parking provision including basement level parking, landscaping and public realm works, interim works, associated highway works, and two pedestrian bridges across the Welsh Harp., Full planning submission (Phase 3 Blocks G1, G2, E1, E2, E3, E4) for the construction of 358 new residential units (Class C3), and 131m² (GEA) Class A1/A2/A3/A4/A5/B1 floorspace, within buildings ranging from 5 to 26 stories, cycle and car parking provision including basement level parking, associated landscaping and public realm works, associated highway works, energy centre, and interim works. , Submission of Environmental Statement.,

Background

This report relates to the need to vary a S106 agreement pertaining to application: H /01054/13, dated 19 November 2013 between the developer and local planning authority. The agreement was previously varied on 21 April 2015 to reflect minor

changes to the phasing of the Development and varied on 10 July 2017 to bind the interests of additional land acquired from the Council by the Developer

Application H/01054/13 allowed for the demolition and redevelopment of the West Hendon Estate to accommodate up to 2000 residential units, a new 2 form entry primary school, community building and commercial uses and associated open space and infrastructure comprising. The s106 allowed for, among other things the construction of the Cool Oak Lane Pedestrian and Cycle Bridge. The timescale for the completion of the bridge has been delayed. The s106 originally required the bridge to be completed prior to occupation of a residential unit in phase 3c and prior to commencement of phases 4, 5 and 6. It is understood that phase 3c is nearing completion and phase 4 is due to start on site shortly. However, the bridge has not yet been completed so it is proposed to vary the agreement to provide for a longer timescale to complete the bridge. The timescale proposed is for the bridge to be completed prior to occupation of phase 4 and prior to commencement of development of phases 5 and 6. As local planning authority Barnet are satisfied with the proposal to vary the timescale for completion of construction of Cool Oak Lane pedestrian and cycle bridge.

The section 106 agreement is proposed to be varied as follows:

- Paragraph 2.4 of Schedule H (relating to the Cool Oak Lane Pedestrian and Cycle Bridge) delete the words “~~prior to the date of first Occupation of a Residential Unit in Phase 3c AND FOR THE AVOIDANCE OF DOUBT development of Phases 4, 5 and 6 shall not Commence until the construction of the Cool Oak Lane Pedestrian and Cycle Bridge has been completed unless otherwise agreed with the Council in writing.~~”
- Replace with “prior to the date which is twelve (12) calendar months following the date of first Occupation of a Residential Unit in Phase 3c AND FOR THE AVOIDANCE OF DOUBT Phase 4 shall not be Occupied and development of Phases 5 and 6 shall not Commence until the construction of the Cool Oak Lane Pedestrian and Cycle Bridge has been completed unless otherwise agreed with the Council in writing.”
- In the definition of “Cool Oak Lane Pedestrian and Cycle Bridge Specification” in clause 2.1 of the Principal Section 106 Agreement delete “~~a timetable which demonstrates completion of the bridge prior to the date of first Occupation of a Residential Unit in Phase 3c~~” in part (c) of the definition and replace with “a timetable which demonstrates completion of the bridge prior to the date which is twelve (12) calendar months following the date of first Occupation of a Residential Unit in Phase 3c”

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.

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 deed of variation needs to be made between The Mayor and Burgesses of the London Borough of Barnet, Barratt Metropolitan Limited Liability Partnership.

Background

The new dedicated pedestrian and cycle bridge will provide an improved link between the West Hendon development and the area to the west, allowing easier access and use of the surrounding open spaces. The bridge has to cross the Welsh Harp, which is a special wetland for nature and people in north-west London. The 105-hectare nature reserve hosts a diverse range of habitats, including open water, marsh, reedbeds, woodland and meadows, bordered by a complex of playing fields, allotments and other greenspaces. It is a Site of Special Scientific Interest (SSSI) notified for its breeding pairs of great crested grebe, overwintering waterfowl, and marginal vegetation.

The completion of the bridge has been delayed because of the need to ensure that the important SSSI was respected. It was necessary to ensure the Environment Agency was satisfied in relation to flood risk, a permit was required from the Canal's and Rivers Trust and it was necessary to avoid construction in the 2018 breeding season. The Environment Agency have now confirmed that they are satisfied and the approval for Canal's and Rivers Trust is imminent. The bridge has full planning permission and the developer has procured its off site manufacture and installation. The developer is planning to start on site as soon as the Canal's and Rivers Trust

approval is received so that the bridge is completed prior to the 2019 breeding season.

Assessment

Although it is disappointing that completion of the bridge has been delayed, it is not considered necessary to delay commencement of construction of phase 4. Phase 3a is providing much needed new housing within Barnet and it considered acceptable for it to be occupied prior to completion of the bridge. Given that the delay was partially because of the need to avoid construction during the breeding season, and as set out above the developer has already procured its manufacture and installation and is due to start of site shortly the delayed timescale is considered acceptable.

It is considered necessary however to continue to ensure through a s106 that the bridge is constructed as early as possible in the development programme. Therefore the alternative wording proposed in the deed of variation is considered to be acceptable.

It is considered that the proposal to vary the S106 agreement is acceptable.

Recommendation

That all parties to the agreement dated 19 November 2013 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 19 November 2013 as set out below:

The section 106 agreement is proposed to be varied as follows:

- Paragraph 2.4 of Schedule H (relating to the Cool Oak Lane Pedestrian and Cycle Bridge) delete the words “~~prior to the date of first Occupation of a Residential Unit in Phase 3c AND FOR THE AVOIDANCE OF DOUBT development of Phases 4, 5 and 6 shall not Commence until the construction of the Cool Oak Lane Pedestrian and Cycle Bridge has been completed unless otherwise agreed with the Council in writing.~~”
- Replace with “prior to the date which is twelve (12) calendar months following the date of first Occupation of a Residential Unit in Phase 3c AND FOR THE AVOIDANCE OF DOUBT Phase 4 shall not be Occupied and development of Phases 5 and 6 shall not Commence until the construction of the Cool Oak Lane Pedestrian and Cycle Bridge has been completed unless otherwise agreed with the Council in writing.”
- In the definition of “Cool Oak Lane Pedestrian and Cycle Bridge Specification” in clause 2.1 of the Principal Section 106 Agreement delete “~~a timetable which demonstrates completion of the bridge prior to the date of first Occupation of a Residential Unit in Phase 3c~~” in part (c) of the definition and replace with “a timetable which demonstrates completion of the bridge prior to the date which is twelve (12) calendar months following the date of first Occupation of a Residential Unit in Phase 3c”