

**LOCATION:** Land formerly known as Homebase, Rookery Way, London, NW9 6SS  
**REFERENCE:** H/05828/14  
**WARD:** Colindale  
**APPLICANT:** L & Q New Homes Limited  
**PROPOSAL:** Deed of variation – Homebase, Rookery Way, London

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

It is proposed to vary the wording contained within the section 106 agreement dated 19 October 2015 by agreement between London Borough of Barnet and L and Q New Homes Limited in relation to the planning permission which was granted for:  
Demolition of the existing buildings, and the erection of eight blocks of apartments of 6-8 storeys with a building of 14 storeys adjacent to The Hyde (the A5, Edgware Road) and three terraced blocks comprising housing and duplex apartments, providing 386 residential units (Class C3), 936sqm of Class B1 (Business Hub), 97sqm of Class A3 use (Cafe), 295sqm of Class D1 use and 96sqm of Class D2 use. Associated car and cycle parking, storage and plant space located at basement level with private and shared residential external amenity space and landscaping.

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## Background

This report relates to the need to vary a S106 agreement pertaining to application: H/05828/14, dated 19 October 2015 between the developer and local planning authority. Application H/05828/14 allows for a residential-led mixed use development of the former Homebase site. The s106 allowed for the provision of 78 residential units to be provided as affordable housing on site, with a review mechanism to provide for a financial contribution towards affordable housing if a revised viability assessment to be submitted under the terms of the original s106 agreement showed that a financial contribution would be appropriate. Since the planning permission was granted, the land has been sold by Glasgow City Council and is now owned by L&Q New Homes Limited, a registered provider of affordable housing.

L and Q New Homes entered into a Unilateral Undertaking dated 12<sup>th</sup> October 2018 to provide an additional 96 affordable housing units, instead of open market units as part of the development. Consequently, they wish to vary the principal agreement dated 19<sup>th</sup> October 2015 to

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1. Vary the definition of Registered Provider and the threshold for Households on Intermediate Incomes.
2. Exclude occupiers of AHUs who have exercised a statutory right to acquire.
3. Provide the granting of nomination rights to the Council.
4. Make changes to Mortgagee in possession clause.
5. Make changes to the marketing of Shared Ownership Housing Units

6. Delete the Affordable Housing Review mechanism and amount.
7. Add new and delete certain definitions to reflect these changes.

## 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 Homebase site s106 was signed in October 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 land is now owned by L&Q New Homes Limited and so the deed of variation needs to be made between The Mayor and Burgesses of the London Borough of Barnet, and L&Q New Homes Limited.

## Policy Background

Core Strategy policy CS4: Providing quality homes and housing choice in Barnet. seeks a boroughwide target of 40% affordable homes on sites capable of accommodating ten or more dwellings. The proposal set out in the deed of variation would provide 45% affordable housing on this site, compared to the 20% provided under the original s106. The proposed mix is 22% affordable rent and 78% intermediate. This contrasts with the CS4 policy of seeking 60% social rented and 40% intermediate. The original s106 agreement allowed for 37% affordable rent and 41% intermediate which is 47% affordable rent and 53% intermediate.

## Assessment

It is considered that the proposal to vary the S106 agreement is acceptable. The amended mix provides a guaranteed 45% on site affordable housing, which is above the 40% set out in the Barnet Core Strategy policy. This is considered to be better

than retaining the affordable housing review mechanism and the 20% on site affordable housing set out in the original s106 agreement which would only deliver a financial contribution towards affordable housing if certain thresholds for viability were met. The proposal to provide the affordable housing as 22% affordable rent and 78% intermediate, is considered to be acceptable given that more affordable housing in total is being provided on site than required through the original s106 agreement.

The amendment to the definition of registered provider is needed to reflect that the site is now owned by L&Q new homes who are a registered provider. The change to the mortgagee in possession clause is needed to reflect changes in definitions accepted by mortgagees since the original s106 was entered into. Changes to thresholds for households on intermediate incomes, exclusion of occupiers of affordable housing units who have exercised a statutory right to acquire, nomination rights, marketing of units and consequential amendments are needed to reflect currently accepted definitions. These changes are considered to be acceptable in the circumstances of this site and the proposal to provide 45% on site affordable housing.

#### Recommendation

That all parties to the agreement dated 19 October 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 19 October 2015 as set out below:

1. Vary the definition of Registered Provider and the threshold for Households on Intermediate Incomes.
2. Exclude occupiers of AHUs who have exercised a statutory right to acquire.
3. Provide the granting of nomination rights to the Council.
4. Make changes to Mortgagee in possession clause.
5. Make changes to the marketing of Shared Ownership Housing Units
6. Delete the Affordable Housing Review mechanism and amount.
7. Add new and delete certain definitions to reflect these changes.