

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.

The permission was varied on 20 March 2019 to allow for the construction of the Cool Oak Lane Pedestrian and Cycle Bridge to be delayed (this has now been built).

Variations proposed

a) As development has progressed, there have been a number of items that the Council and developers have agreed would be useful regeneration initiatives for the developer to carry out, in addition to those already set out in the s106.

In summer 2019, the Deputy Chief Executive agreed a partial award of CIL relief for exceptional circumstances to reflect the additional regeneration benefits being provided. It is therefore proposed to enter into a further variation to the S106 to secure these additional obligations, or vary the existing contributions and payment triggers, as set out below (definitions used are the same as the terms in the S106):-

- In recognition of the additional costs incurred by BMLLP to continue to deliver the current on-site employment and training strategy, a mechanism to secure approval by the Council of BMLLP's costs of implementing the employment and training strategy (not to exceed £45,000) at the end of the scheme;
- A financial contribution of £25,000 towards the improvement of the Broadway and Welsh Harp Reservoir;
- In recognition of the provision and implementation of an on-site neighbourhood investment strategy, a mechanism to secure approval of the costs associated with the implementation of that neighbourhood investment strategy (not to exceed £50,000) at the end of the scheme;
- In recognition of the on-site school engagement that BMLLP is providing, a mechanism to secure approval of a school engagement strategy (valued at £30,000) at the end of the scheme; and
- The advance payment of the New Community Centre Contribution, and removal of BMLLP's requirement to provide the Community Land.

As local planning authority Barnet are satisfied with the proposed variations set out above.

b) On 24th April 2020 a request was received from Barratt to delay payment of some of the s106 obligations that would become due upon occupation of block H1 in summer 2020. This is because of the impact (which remains uncertain) of the Covid 19 pandemic on construction activity and the resultant delay to the construction programme. Delays would need to be formalised through a variation to the s106 agreement. Officers have reviewed the request and as set out below consider that

the requests for delay should be approved, apart from the request to delay the Site of Special Scientific Interest payment as without this payment the works to the Welsh Harp will not be able to continue to their current programme. .

Obligation	Payment Deferral Request	Payment due date/trigger	Alternative trigger	Implications	Officer Recommendations
S106					
Education Contribution	1,117,255	August 2020	Deferral to 1 st occupation of Block K1 requested i.e. Autumn 2021 and the next block to be occupied after H1.	Deferral has limited direct impact on the scheme or on the Council as the education contribution was to be used to bring forward a school on the site but plans for the school have yet to be agreed. £2.1 million has been received for earlier phases but not yet allocated for spend.	Agree deferral subject to LLP agreeing to take early possession of Marsh Drive in spring 2021
Bus service impact contribution	90,000			Given the Covid 19 situation it is not clear at present how the contribution would be used by TfL to meet the requirements anticipated in the s106.	Agree deferral.
Controlled Parking contribution	30,000	Due prior to occupation of block H1		Monies have been received for earlier phases but not yet spent. Therefore it is considered that a delay to receipt of this payment would not affect the Council's programme for reviewing the CPZ.	Agree deferral..
Traffic order and signage contribution	2,500	Due prior to occupation of block H1		This contribution is for Legible London signage. A delay to payment is considered acceptable.	Agree deferral.
Travel Plan monitoring contribution	16,600	Due prior to occupation of block H1		Monies have been received for earlier phases but not yet spent. Therefore it is considered that a delay to receipt of this payment would not affect the Council's ability to fund monitoring of the travel plan.	Agree deferral.
Site of Special Scientific Interest	125,000	Due prior to occupation of block H1	N/A	Without payment works to the Welsh Harp cannot continue so	Refuse deferral.

				payments for these should not be deferred	
Total	3,480,526				
Major highways works – in kind contribution	Works will cost BM LLP c£10m to complete	Completion of works prior to occupation of 1056 units (one of last units in phase 4), likely to have been early in 2022. There is no trigger for start on site in the s106, but it is assumed that there would be an 18 month programme for carrying out the works	Deferral to July 2021 for start of works requested with completion of the highway works linked to the occupation of the 1468 unit (Ph5). It is not yet clear what date this is likely to be as Barratt's programme has slowed because of Covid 19 and has not yet been reprogrammed.	The Council, TfL and the developer have been in discussion for some time regarding the highway works but a final technical design has yet to be agreed. Therefore, it is currently not possible to go out to tender.	Given that a final technical design has yet to be agreed, officers recommend that the request is agreed. However, a number of properties have been acquired on West Hendon Broadway under CPO2a. It is necessary for these to be demolished prior to the highway works being carried out. The demolition of these properties should not be delayed as a consequence of the delay to the highway works.

c) Extension of time for Council to expend s106 monies.

The schedules to the s106 place requirements on the Council to spend monies within a certain time frame or they can be returned to the developer. Given the likely extended time frame for the development programme, it is considered that it would be appropriate to review the expenditure periods as part of this deed of variation and amend them to reflect realistic timescale for expenditure if necessary.

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.

Government guidance on planning obligations and Covid 19

The government's guidance was updated on 30 June 2020 and is set out below

“Where the delivery of a planning obligation, such as a financial contribution, is triggered during this period, local authorities are encouraged to consider whether it would be appropriate to allow the developer to defer delivery.

Deferral periods could be time-limited, or linked to the government’s wider legislative approach and the lifting of CIL easements (although in this case we would encourage the use of a back-stop date). Deeds of variation can be used to agree these changes. Local authorities should take a pragmatic and proportionate approach to the enforcement of section 106 planning obligations during this period. This should help remove barriers for developers and minimise the stalling of sites”.

Therefore, varying the s106 is in accordance with government advice.

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 in detail in the ‘variations proposed’ section above and summarised below, with the final wording of the s106 to be delegated to the Service Director, Planning and Building Control.

A)

- In recognition of the additional costs incurred by BMLLP to continue to deliver the current on-site employment and training strategy, a mechanism to secure approval by the Council of BMLLP’s costs of implementing the employment and training strategy (not to exceed £45,000) at the end of the scheme;
- A financial contribution of £25,000 towards the improvement of the Broadway and Welsh Harp Reservoir;
- In recognition of the provision and implementation of an on-site neighbourhood investment strategy, a mechanism to secure approval of the costs associated with the implementation of that neighbourhood investment strategy (not to exceed £50,000) at the end of the scheme;
- In recognition of the on-site school engagement that BMLLP is providing, a mechanism to secure approval of a school engagement strategy (valued at £30,000) at the end of the scheme; and
- The advance payment of the New Community Centre Contribution, and removal of BMLLP’s requirement to provide the Community Land.

B)

Delay payment of the education contribution, bus service impact contribution, controlled parking contribution, traffic order and signage contribution and travel planning monitoring contribution from prior to occupation of block H1 to occupation of

block K1 (subject to LLP agreeing to take early possession of Marsh Drive in spring 2021).

Start of major highway works deferred to July 2021 with completion of the highway works linked to the occupation of the 1468 unit (Ph5). (Demolition of properties acquired under CPO2a on West Hendon Broadway not to be delayed as a consequence of the delay to the highway works).

C)

Review the requirements on the Council in the s106 to expend the contributions in a certain period and amend them as necessary to reflect extended timescales for expenditure.