

**LOCATION:** Former Homebase Site  
Rookery Way  
The Hyde  
London  
NW9 6SS

**REFERENCE:** 20/6153/NMA

**Received:** 21.12.2020

**Accepted:** 21.12.2020

**WARD:** Colindale

**Expiry:** 18.01.2021

**APPLICANT:** L&Q

**PROPOSAL:** Deed of variation – Former Homebase Site

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## Background

This report relates to the need to vary a S106 agreement pertaining to application: H/05828/14 dated 30/10/14 between the developer and local planning authority.

Application H/05828/14 allows for the following development:

*“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.”*

The s106 secures, amongst other things, 20% of the housing as affordable as well as off site highway works. The current landowners L&Q purchased the site with planning permission in 2015 and subsequently submitted a Unilateral Undertaking in 2018 which secured the conversion of 96 x private sale homes to affordable homes, taking the overall affordable housing provision from 20% to 45%.

The current deed of variation seeks to amend the affordable housing provisions, unit mix and highway works secured

The reason for the amendments is due to technical and constructional issues that have arisen during the construction programme.

### 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 plans simply to correct discrepancies between plans in the original deed and to ensure all plans correspond. 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 and L&Q.

### Proposed Changes

In implementing the consent, technical design development revealed a number of scheme-wide issues with the planning approved design, including inadequate area assigned to stairs, lift cores, risers, utility cupboards, balconies and structural zones on planning drawings.

As a result, the minimum space standards for homes could not be achieved within the approved building footprint and the approved unit mix is not deliverable within the approved building envelope.

In order to rectify this and ensure that each unit meets the minimum standard, the current application seeks to amend the unit mix as follows:

### Market Sale

Proposed - 15 x Studio (+ 3 on approved);  
80 x 1 bedroom (-9 on approved);  
57 x 2 bedroom (-9 on approved);  
6 x 3 bedroom (-35 on approved) –

## **158 x units in total (-55 on approved)**

### Intermediate (previously Shared Ownership)

Proposed - 7 x Studio (-10 on approved);

68 x 1 bedroom (+ 9 on approved);

88 x 2 bedroom (+ 37 on approved);

6 x 3 bedroom (-4 on approved) –

**169 units in total (+ 32 on approved).**

### Affordable Rent

Proposed - 8 x 1 bedroom,

16 x 2 bedroom

31 x 3 bedroom (+18 on approved);

5 x 4 bedroom (+ 5 on approved) –

**60 in total (+23 on approved).**

It is the intention for this deed of variation to the S106 to be executed in order to reconcile the amended unit mix with the legal agreement. As part of the deed of variation, the affordable housing delivery schedule will also be amended and the time limit on the delivery of the affordable housing extended to recognise the construction difficulties identified and the need to amend the floorplans/unit mix.

Also included within the DoV will be changes to the clauses relating to the Highway Works. The scope of the proposed highway works is as follows:

#### Phase 1

- Rookery Way: resurfacing of asphalt footway (including across existing private access), new vehicle crossovers, and relocation of gully.
- Edgware Road: Reinstatement of back edge of existing footway/edging replacement which bounds development.

#### Phase 2

- Rushgrove Avenue Junction - Through lanes narrowed to 3.25m which allows for HGVs that use the A5; a 2.5m wide right turn bay (this is the minimum width); a 3m wide bus lane (minimum width and as per existing); totalling 12m width. Box junction markings for southbound are added to keep the junction clear for right turning traffic onto Rushgrove. The footway to be widened into the grass area adjacent to retain the 2.0m width a right-hand turn from the A5 road.

The currently approved Shared Ownership units would be expanded to cover all elements of intermediate housing to allow flexibility in the delivery of the intermediate housing which could best respond to local needs.

#### Assessment:

The proposed changes to the unit and tenure mix are necessary due to the issues identified in the preceding section of this report. The approved unit mix could not be implemented whilst ensuring that minimum space standards are adhered to. The Council would not accept sub-standard residential accommodation and as such it is accepted that alterations to the unit mix are justified.

The proposed mix would result in additional affordable housing and an increase in 3 bedroom units within the affordable rented element. The changes would not result in any net increase in unit numbers and officers consider that the proposed changes are acceptable

As well as the unit mix amendments the additional changes to the affordable housing delivery, the definition of the intermediate housing and the S278 schedule are considered to be acceptable and would respond directly to the difficulties encountered during the construction process and/or would allow for the timely delivery of the remainder of the site.

In respect of the S278 works, these works represent the scope of works that has been agreed with the Council's Highways team and will replace the previously generic requirements.

### Equalities and Diversity Issues

The proposals do not conflict with either Barnet Council's Equalities Policy or the commitments set in the Council's Equality Scheme and also support the Council in meeting its statutory equality responsibilities.

### Recommendation

That all parties to the agreement and any other person having a requisite interest in the site are invited to enter into a Deed of Variation varying the extant section 106 Agreement, with the final wording of the s106 deed of variation to be delegated to the Service Director, Planning and Building Control: