



REGULATORY SERVICES COMMITTEE

19 February 2015

REPORT

Subject Heading:

Proposed variation of Section 106
Legal Agreement in connection with
P1526.07: Interwood Site, Stafford
Avenue, Hornchurch

Change of use of site from industrial to
residential and erection of 73 no. 1 & 2
bedroom flats in three blocks

Squirrels Heath

Ward

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Policy context:

Local Development Framework
The London Plan
National Planning Policy Framework

Financial summary:

None

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input type="checkbox"/>

SUMMARY

This report relates to the development of land at the former Interwood Site, Stafford Avenue, Hornchurch. The site has the benefit of planning permission (under planning reference P1526.07) subject to a Section 106 legal agreement. The legal agreement obligates the owners to provide affordable housing on the site, the carrying out of highway works, and the payment of financial contributions in respect of highways and the provision of education facilities.

A request has been made to the Council to vary the legal agreement under the provisions of Section 106A of the Town and Country Planning Act 1990 (as amended) to phase the payment of the education contribution required by the S106 Agreement.

The Section 106 Agreement has been varied twice before by Deeds of Variation.

RECOMMENDATIONS

It is recommended that the Head of Regulatory Services be authorised to enter into a Deed of Variation under section 106A of the Town and Country Planning Act 1990 (as amended), to vary the legal agreement completed on 12 August 2008 in respect of planning permission P1526.07 and modified by previous Deeds of Variation Dated 20 October 2011 and 17 April 2014, to change the phasing of the payment of the Education Contribution.

The variation of the phasing of the education payment shall be as follows:

- i) Not to occupy or permit occupation of the Affordable Housing Units forming part of Block C (6 no. 2 bed units) until payment of £24,446.39 of the Education Contribution has been made to the Council;
- ii) Not to occupy or permit occupation of the Open Market Units forming part of Block C until payment of £142,994.73 of the Education Contribution has been made to the Council.

The Developer and/or Owner to bear the Council legal costs in respect of the preparation of the Deed of Variation irrespective of whether the matter is completed.

Save for the variation to the Education Contribution set out above and any necessary consequential amendments to the legal agreement dated 12 August 2008 all recitals, terms, covenants and obligations in the said agreement shall remain unchanged.

The planning obligations recommended in this report have been subject to the statutory tests set out in Regulation 122 of the Community Infrastructure Levy

Regulations 2010 and the obligations are considered to have satisfied the following criteria:-

- (a) Necessary to make the development acceptable in planning terms;
- (b) Directly related to the development; and
- (c) Fairly and reasonably related in scale and kind to the development.

REPORT DETAIL

1. The site to which this proposal refers is the former Interchange Site, Stafford Avenue, Hornchurch. The site has planning permission for residential development of 73 no. 1 and 2 bedroom flats in three blocks. Permission for the development was granted subject to a legal agreement signed and dated 12 August 2008. The development has commenced on site.
2. The legal agreement includes a requirement for affordable housing, highway works and financial Highway and Education contributions. The Agreement pre-dates the Council's current Planning Obligations SPD.
3. Since completion of the legal agreement, there have been two requests to modify the legal agreement. The first modification, dated 20 October 2011, varied the legal agreement to phase the payment of the Education Contribution, such that a proportion of the overall payment would be required upon the occupation of each one of the individual three blocks within the development. The second modification, dated 17 April 2014, revised the definition of 'affordable housing' within the development and effectively reduced the affordable housing requirement from 33 units in the original scheme to 6 units.
4. A request has now been received from the owner that the Section 106 Agreement be further varied to alter the trigger point when the Education Contribution for Block C, within the development, becomes payable.
5. As presently varied, the Legal Agreement requires the payment of a total of £167,441.12 before any of the units within Block C can be occupied. This represents 56% of the overall Education Contribution. However, Block C is now proposed to provide a mix of both open market and affordable housing units – 6 of the units within the block are affordable and the remaining 35 are open market. The block is under construction and built in such a manner that the 6 affordable housing units will be ready for occupation before the remainder of the block is completed.
6. The owner is requesting a further modification of the legal agreement so that a proportion of the required Education Contribution for Block C can be paid prior to the occupation of the 6 affordable housing units (equating to

14.6% of the Block C contribution), with the remainder paid prior to the occupation of the remaining 35 open market units to be constructed as part of Block C. This means that a total of £24,446.39 Education Contribution would be paid prior to occupation of the 6 affordable housing units within Block C; with a further payment of £142,994.73 before the 35 market housing units within Block C are occupied.

7. The applicant has advised that there is a contract in place with Estuary Housing Association, which will enable the affordable housing units to be provided on site. A requirement to pay the education contribution for the block in full before these 6 affordable units can be occupied is not financially viable as there will be no income from the remainder of the units which are yet to be constructed and it is unlikely that bank funding could be obtained to pay the education contribution. If the applicant waits until the 35 market units are completed this affects the contract with the housing association and this will delay the availability and handover of the affordable housing units.
8. Staff consider the phasing of payment of the education contribution to be acceptable. The current trigger point for payment of the contribution is 'prior to occupation' and the variation sought would still ensure that funding for education infrastructure is received before occupation of the relevant units. It is not considered that the phasing of the payment in the manner proposed would, in this case, adversely affect the Council's ability to manage the impacts of the development on educational infrastructure. The proposal would also enable the affordable housing units within the development to be provided at an earlier stage than they otherwise might be.
9. It is not considered that the proposed changes to the phasing of the payment of the Education Contribution would have any material impact on the remaining provisions of the S106 Legal Agreement.

10. Conclusion

- 10.1 Staff consider that the proposed variation of the S106 Legal Agreement to split the phasing of the payment of the Education Contribution for Block C between the occupation of the affordable housing units and the occupation of the open market units is acceptable. It is therefore recommended that the proposed variation of the legal agreement is approved.

IMPLICATIONS AND RISKS

Financial Implications and risks:

No implications.

Legal Implications and risks:

Legal resources will be required for the variation of the legal agreement.

Human Resource Implications:

None.

Equalities and Social Inclusion Implications:

The Council's planning policies are implemented with regard to Equalities and Diversity. The proposal will continue to meet infrastructure requirements relating to education provision which is in the wider interest of the community

BACKGROUND PAPERS