



REGULATORY SERVICES COMMITTEE

22 October 2015

REPORT

Subject Heading:

Proposed variation of Section 106
Legal Agreement in connection with
P0745.12: Corner of Lambs Lane North
and New Road, Rainham

Redevelopment to provide 28
residential units, new access road,
associated car parking and
landscaping.

Ward

Rainham and Wennington

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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

Havering will be clean and its environment will be cared for	<input type="checkbox"/>
People will be safe, in their homes and in the community	<input checked="" type="checkbox"/>
Residents will be proud to live in Havering	<input type="checkbox"/>

SUMMARY

This report relates to the development approved under planning permission P0745.12 on land at the junction of New Road and Lambs Lane North, Rainham. Planning permission was granted subject to a Section 106 legal agreement.

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 amend the mortgagee exclusion clause as set out in clauses 9(a) and (b) of the S106 Agreement.

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 5 October 2012 in respect of planning permission P0745.12

The variation shall be as follows:

i) Add definition of Chargee: "any mortgagee or chargee of the Registered Social Landlord or the successors in title to such mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security"

ii) To delete clauses 9(a) and 9(b) and add a new clause 9(a) as follows:

9(a) Any Chargee shall prior to seeking to dispose of the Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge give not less than one month's prior notice to the Council of its intention to dispose and:

- (i) in the event that the Council responds within one month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit can be made in such a way as to safeguard them as Affordable Housing for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the Chargee in respect of the mortgage or charge then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to complete such transfer.
- (ii) if the Council does not serve its response to the notice served under paragraph 9(a)(i) within the one month then the Chargee shall be

entitled to dispose free of the restrictions set out in this agreement which shall from the time of completion of the disposal cease to apply

- (iii) if the Council or any other person cannot within two months of the date of service of its response under paragraph 9(a)(i) complete such transfer for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the Chargee in respect of the mortgage or charge then provided that the Chargee shall have complied with its obligations under paragraph 9(a)(i) the Chargee shall be entitled to dispose free of the restrictions set out in this agreement which shall from the time of completion of the disposal cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph 9(a)(i) shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

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 clauses set out above and any necessary consequential amendments to the legal agreement dated 5 October 2012 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 located at the junction of New Road and Lambs Lane North. Planning permission was granted under planning permission P0745.12 for redevelopment of the site to provide 28 units. Permission for the development was granted subject to a legal agreement

signed and dated 5 October 2012. The planning permission has been implemented and the development is complete.

2. The legal agreement includes a requirement for a minimum of 14 units within the development to be provided as affordable housing, an infrastructure contribution and a requirement for a landscape management and maintenance plan.
3. A request has been received on behalf of the current registered provider (Estuary Housing Association) for a variation to clauses 9 (a) and (b) of the legal agreement. A copy of the existing legal agreement is appended to this report.
4. It is requested that a definition of "Chargee" be included and that clauses 9 (a) and (b) be amended as set out in the recommendations section of this report.
5. The amendment to the clauses has been requested on the basis that the clause is currently overly restrictive. It is common practice for the Registered Provider (RP) to raise development finance by charging their properties to lenders as security. The mortgagee exclusion clause, as drafted, effectively binds the property to be retained as affordable housing if the mortgagee goes into possession. This has the effect of limiting the value of the property to a lender, in turn reducing the amount of development finance that an RP can raise against the development.
6. The effect of the amendments to the relevant clauses would be that the properties could be sold free of the affordable housing requirement if the mortgagee went into possession. The revised clauses would give the Council notice that the units would be sold and provide a right for them to be transferred as affordable housing still. In the event that the Council cannot direct a buyer to the mortgagee then they can be sold at Open Market Value free of restrictions.
7. Staff consider the proposed amendments to be acceptable. It is considered that the amendments requested represent a low risk of a net loss of affordable housing, given that role of the RP is to provide affordable housing. The amendments to the clauses would not reduce affordable housing provision or allow the RP to stop providing affordable housing on the site. It would come into play in the event that the RP went into administration but the units would then fail to be provided as affordable housing in any event. The proposed amendments would have the benefit of allowing the RP to increase their borrowing against the increased value of the properties, thereby potentially creating more funding for the provision of further development of affordable housing.
8. It is not considered that the proposed changes would have any material impact on the remaining provisions of the S106 Legal Agreement.

9. **Conclusion**

- 9.1 Staff consider that the proposed amendments to the S106 Legal Agreement relating to the mortgagee exclusion clauses are 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 affordable housing requirements, which is in the wider interest of the community.

BACKGROUND PAPERS