



**REGULATORY
SERVICES
COMMITTEE**

REPORT

9 June 2011

Subject Heading:

P1135.03 – Stafford Avenue,
Hornchurch – change of use from
industrial to residential and erection of
20, 2-bed flats in 2 blocks - variation of
unilateral undertaking (received - 4th
April 2011)

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Policy context:

Local Development Framework
The London Plan
National Planning Policy Statements/
Guidance

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 type="checkbox"/>
High customer satisfaction and a stable council tax	<input type="checkbox"/>

SUMMARY

The report concerns a proposed variation of a Section 106 Unilateral Undertaking which was completed upon the grant of planning permission P1135.03 for the erection of 20 residential units. The Unilateral Undertaking required at Paragraph 3b) that the owner was “not to renew any Leases after they have expired and for the avoidance of doubt not to renew the lease of the industrial unit shown outlined bold in black on Phase 2 of the Indicative Phasing Plan after 4th May 2005 and not to renew the lease of the industrial unit outlined bold in black on Phase 3 of the Indicative Phasing Plan after 31st October 2009 PROVIDED THAT the leases or tenancies which are comprised in the industrial unit shown outlined bold in black on Phase 4 of the Indicative Phasing Plan may be renewed periodically until 31st December 2009 and not thereafter.”

An application was made, and granted, in 2009 for the variation of the legal agreement to allow the renewal period for Phase 4 for a further two years, until 31st December 2011. This application effectively extends the original period by 4 years, until 31st December 2013. In light of the current economic situation, Staff are willing to allow a further renewal of leases or tenancies given the specific circumstances pertaining here. Staff therefore recommend the approval of the Deed of Variation.

RECOMMENDATIONS

That Staff be authorised to enter into a Section 106 Legal Agreement under the Town and Country Planning Act 1990 (as amended), with the agreement of the Council as Local Planning Authority and the party or parties providing the original unilateral undertaking or their successors in title to secure the following by Deed of Variation under Section 106A of the Town and Country Planning Act 1990 which relates to Schedule 1 paragraph 3b of the Unilateral Undertaking dated 15th July 2005 (as varied by the deed of variation dated 8th July 2009):

- The Owner “not to renew any Leases after they have expired and for the avoidance of doubt not to renew the lease of the industrial unit shown outlined bold in black on Phase 2 of the Indicative Phasing Plan after 4th May 2005 and not to renew the lease of the industrial unit outlined bold in black on Phase 3 of the Indicative Phasing Plan after 31st October 2009 PROVIDED THAT the leases or tenancies which are comprised in the industrial unit shown outlined bold in black on Phase 4 of the Indicative Phasing Plan may be renewed periodically until 31st December 2013 and not thereafter.”
- Save for the variation of Schedule 1 paragraph 3b of the unilateral undertaking dated 15th July 2005 (as varied by the deed of variation dated 8th July 2009) all recitals, terms, covenants and obligations in the original unilateral undertaking will remain unchanged.

- The above shall be subject to payment of the Council's legal fees for preparation of the deed of variation.

REPORT DETAIL

1. Site Description

- 1.1 The application site is located at the western end of Stafford Avenue on a formerly commercial site. The surrounding area is a mixture of residential and commercial uses with the railway running to the north of the site and a river running to the west.

2. Description of Proposal

- 2.1 The developer, H&F Investments Limited, request permission to vary the terms of the existing unilateral undertaking(as varied by the deed of variation dated 8th July 2009) signed at the time of the grant of full planning permission under reference P1135.03.
- 2.2 The unilateral undertaking at Clause 3 b) requires the following.... That the Owner covenants with the Council "not to renew any Leases after they have expired and for the avoidance of doubt not to renew the lease of the industrial unit shown outlined bold in black on Phase 2 of the Indicative Phasing Plan after 4th May 2005 and not to renew the lease of the industrial unit outlined bold in black on Phase 3 of the Indicative Phasing Plan after 31st October 2009 PROVIDED THAT the leases or tenancies which are comprised in the industrial unit shown outlined bold in black on Phase 4 of the Indicative Phasing Plan may be renewed periodically until 31st December 2009 and not thereafter."
- 2.3 This application for a variation of the legal agreement follows the signing of a deed of variation on 8th July 2009 which varied Clause 3b to the following end wording: "...until 31st December 2011 and not thereafter."
- 2.4 The proposed variation would allow the developer to lease the existing office building in Phase 4 until 31st December 2013.

3. Planning History

- 3.1 P1135.03 – Change of use from industrial to residential and erection of 20, 2-bed flats in 2 blocks – granted following the signing of a S106 legal agreement on 15th July 2005
- 3.2 P1135.03 Application for deed of variation – variation made 8/7/09

- 3.3 P1526.07 - change of use from industrial to residential and erection of 73 flats in 3 blocks - refused 30/10/07; subsequent appeal - approved 9/9/08
- 3.4 P1526.07 – Application for deed of variation under appeal reference APP/B5480/A/07/2049203/NWF (Council ref. P1526.07) – Committee resolved to vary the Unilateral Undertaking at its meeting on 18/11/10; the Deed of Variation is not yet completed. This was to enable delaying payments of the education contribution for Blocks C, D and F by paying in instalments instead of prior to first occupation.

4. Staff Comments

- 4.1 The agent indicates that since concluding the variation to the original unilateral undertaking 2 years ago, the factory building occupied by Supreme O Glaze has been demolished and that work has started on Block D which comprises 18 flats, due for completion at the end of February/beginning of March 2012. They indicate that they would then construct Block C then Block F, the latter is where the office building is currently located. Their programme has slipped and it is unlikely that they would start construction of Block F until 2014. The slippage is due, they indicate, because of difficulty/time taken in raising funding for Block D. They also raise that slippage occurred because of the planning appeals process and the severe recession.
- 4.2 They highlight that the office building is a quiet, commercial activity used almost exclusively Monday to Friday daytime only and that some of the occupiers have been there for over 10 years. Informal discussions with the 10 occupiers has highlighted that they would wish to remain beyond December 2011 as they consider it would be very difficult to find alternative accommodation in the Borough. Their continued occupation would ensure that the building would provide local employment/rates and the uses/parking would not interfere with other building works for Blocks C or D.
- 4.3 Staff are mindful of the Ministerial Statement made on 23rd March 2011 entitled “Planning for Growth” states that “To further ensure that development can go ahead, all local authorities should reconsider, at developers' request, existing section 106 agreements that currently render schemes unviable, and where possible modify those obligations to allow development to proceed; provided this continues to ensure that the development remains acceptable in planning terms.”
- 4.4 The proposed development granted in 2005 (under reference P1135.03) for 20, 2-bed flats has been completed, this is know as Phase 1 of the 4 phase Interwood Site, Stafford Avenue Development. A recent site visit indicates that former industrial buildings occupying the Phase 2 and Phase 3 parts of the development site have been demolished and the only remaining unit is that to the south-east of the whole Interwood Site (Phase 4). The proposed rewording to allow an extension to the industrial lease of the Phase 4

building comes after Phase 1 has been sold and in use as 20 units of residential accommodation.

- 4.5 The proposal seeks to delay the need to curtail the use of the office building by a further 2 years, until the end of December 2013 (in effect for 2 and a half years from now).
- 4.6 Staff consider that this would not materially affect the requirements of the original agreement.
- 4.7 If this deed is not varied, the industrial leases/rent collection would cease at the end of December 2011, i.e., in just over 6 month's time and the building would remain vacant until such time as the Phase 4 development is able to proceed. In this time of recession wider economic considerations are relevant to this consideration and Staff consider that it is more preferable for the existing use to continue rather than for the building to be vacant. Also, the extension would not interfere with the approved development which will not now be begun until 2014, according to the applicant.
- 4.8 Members are invited to consider whether the circumstances outlined in this case are sufficiently robust to accept the variation proposed through a Section 106 Legal Agreement.
- 4.9 Whilst it is recognised that the approval of this variation could give rise to other similar requests for variations on other sites, each request would be considered on its own merits and the approval of this request would not establish a precedent.

5. Conclusion:

- 5.1 Taking into account the current difficulties in the housing market and elsewhere in the economy, Staff consider that the variation allowing a delay to enable the office building would be retained rather than left vacant until development occurs can be permitted. Members are invited to consider whether the circumstances in this instance are sufficiently unique to allow such a variation.

IMPLICATIONS AND RISKS

6. Financial Implications and Risks

- 6.1 None.

7. Legal Implications and Risks

- 7.1 A Deed of Variation would need to be prepared.

8. Human Resource Implications

8.1 None.

9. Equalities and Social Inclusion Implications and risks:

9.1 The Council's planning policies are implemented with regard to Equalities and Diversity.

BACKGROUND PAPERS

Background Papers

1. The planning application as submitted or subsequently revised including all forms and plans.
2. The case sheet and examination sheet.
3. Ordnance survey extract showing site and surroundings.
4. Standard Planning Conditions and Standard Green Belt reason for refusal.
5. Relevant details of Listed Buildings, Conservation Areas, Article 4 Directions.
6. Copy of all consultations/representations received and correspondence, including other Council Directorates and Statutory Consultees.
7. The relevant planning history.