

REGULATORY SERVICES COMMITTEE

22 August 2013

REPORT

Subject Heading:

Proposed variation of Section 106 Unilateral Undertaking dated 12th August 2008 (amended 20th October 2011) in connection with planning permission P1526.07 Interwood Site, Stafford Avenue, Hornchurch:

Change of use of site to residential and erection of 73 no. 1 and 2 bedroom flats in 3 blocks.

The development included the provision of 33 units for affordable housing, comprising 9 one-bed flats 24 two-bed flats (23 for rent, 10 for shared ownership, with the Council receiving 64% nomination rights). Only 20 market units could be occupied before the affordable units were completed and transferred to a Registered Social Landlord.

The requested Deed of Variation would reduce the affordable housing to 6 two-bed flats (all shared ownership).

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Policy context:

Local Development Framework
National Planning Policy Framework
Planning Obligations Supplementary
Planning Document.

Financial summary

None

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

Ensuring a clean, safe and green borough	<input type="checkbox"/>
Championing education and learning for all	<input type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input type="checkbox"/>
Value and enhance the life of our residents	<input checked="" type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input type="checkbox"/>

SUMMARY

The report relates to part complete residential development at the Interwood site, Stafford Avenue, Hornchurch. The site has the benefit of planning permission under references P1135.03 and P1526.07 (granted on appeal). P1526.07 was subject to a Section 106 unilateral undertaking completed on 12th August 2008 (the original undertaking), revised by agreement dated 11th October 2011. The owners have requested a deed of variation based on the viability of the scheme to provide 6 affordable units, rather than 33 originally proposed.

Staff, having commissioned an independent assessment of viability, consider the request to be reasonable and recommend that a deed of variation should be completed.

RECOMMENDATIONS

It is recommended that the variation of the Section 106 undertaking dated 12th August 2008 pursuant to planning permission reference number P1526.07 by Deed of Variation under Section 106A of the Town and Country Planning Act 1990 (as amended), be approved in the following terms:

1. Revise Definition of Affordable Housing Units from:

“33 dwelling units comprising 9 one bedroom and 24 two bedroom dwelling units 23 for rent and 10 for shared ownership to be managed by the Registered Social Landlord in the Proposed Development with the Council to receive 64% of the nomination rights”

to:

“6 dwelling units for shared ownership to be managed by the Registered Social Landlord in the Proposed Development with the Council to receive nomination rights as set out in the East London Framework Agreement.”

2. Revise Definition of Nomination Agreement from:

“An agreement between the Council and a Registered Social Landlord outlining the Council’s nomination rights in respect of the Proposed Development”

to:

“Nominations as set out in the East London Framework Agreement”

3. Add Definition:

East London Framework Agreement – An agreement between Boroughs in East London setting out nominations for affordable housing.

4. Add Clause to require a contribution for affordable housing (commuted sum), such contribution (which may be zero) to be based upon a revised viability assessment of the approved scheme submitted by the developer if the development has not been completed by 31 January 2016, with independent assessment being undertaken for the Council at the developers expense.

The developer / owner shall pay the Council’s legal costs in respect of the preparation of the Deed of Variation irrespective of whether the matter is completed.

Save for the variation set out above and any necessary consequential amendments to the original undertaking all recitals, terms, covenants and obligations in the said original undertaking (as amended by agreement dated 11th October 2011) 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

- 1.1 The site subject to the request for a deed of variation of the original undertaking has an area of approximately 1.023 hectares, formally containing industrial and office buildings, at the western end of Stafford Avenue. Part of the site has been redeveloped to provide residential flats. Other parts of the site have been cleared although one office building remains.
- 1.2 The site has planning permissions for the redevelopment of the site to provide 93 residential units. Permission for 20 flats in two blocks was granted in 2003 (P1153.03) with a legal agreement securing an education contribution and

that further leases on the site would not be renewed so that redevelopment of the rest of the site would come forward. Permission for an additional 73 flats in three blocks was granted on appeal in 2008 (P1526.07) with a Section 106 unilateral undertaking signed and dated 12th August 2008. The legal undertaking included clauses to secure:

- 33 affordable housing units (9 one-bed, 24 two-bed; 23 for rent, 10 for shared ownership) to be provided prior to the completion of no more than 20 open market units.
- Either to pay for or undertake agreed highway works
- Education contribution of £299,002
- Restriction on occupiers obtaining residents parking permits for the area.

- 1.3 The undertaking was varied by way of agreement dated 20th October 2011 to enable the education contribution to be paid in phases.
- 1.4 Of the 2008 planning permission, one block containing 18 flats has been completed with work on the two other blocks (55 flats) yet to commence.
- 1.5 The developer has requested that the requirement for affordable housing be relaxed on the basis that the completion of the development is unviable. The developer has submitted a viability appraisal in order to demonstrate that the market conditions are significantly different from when permission was granted and that the provision of affordable housing at the level previously agreed results in a significant loss and therefore the development would remain stalled. The developer has suggested that they could provide 6 two-bed shared ownership flats as affordable housing.
- 1.6 The viability appraisal submitted by the developer has been independently assessed. The conclusions of the independent assessment of the viability appraisal are that the offer by the developer to provide 6% affordable housing for shared ownership is more than reasonable and should be accepted.
- 1.7 LDF Policy DC6 and London Plan Policy 3.12 allow for viability to be taken into account when considering whether the maximum reasonable amount of affordable housing can be provided.
- 1.8 The developer has indicated that if the new affordable housing offer is accepted, the next Phase of the development can progress to provide much needed residential units.
- 1.9 Staff therefore consider that it would be reasonable in this case to vary the S106 to relax the requirement for the number of affordable housing units to be provided. As a fall-back position should the development not come forward relatively promptly, an additional clause is recommended which would require a revised viability assessment to be undertaken if the development is not completed by 31 January 2016. This (approximately) 2 and half year window allows for notice to be given to tenants which occupy an existing office

building on site together with the design and tender of the project and the build period itself.

2. **Conclusion**

- 2.1 Staff consider that the proposed variation of the original agreement is acceptable and in line with adopted planning policy. It is therefore recommended that a variation be approved.

IMPLICATIONS AND RISKS

Financial implications and risks:

No direct financial implications or risks.

Legal implications and risks:

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

Human Resources implications and risks:

None

Equalities implications and risks:

None

BACKGROUND PAPERS

1. Planning application and appeal file relating to P1153.03 and P1526.07.