

## LONDON BOROUGH OF BARKING & DAGENHAM

### PLANNING COMMITTEE

19 October

#### Deed of Variation

<b>Case Officer:</b>	Olivia St-Amour	<b>Valid Date:</b>	28 September 2020
<b>Applicant:</b>	Pocket Living LLP	<b>Expiry Date:</b>	23 November 2020
<b>Application Number:</b>	20/01873/S106	<b>Ward:</b>	Abbey
<b>Address:</b>	Land Between Whiting Avenue and Gurdwara Way, Barking and Dagenham		

The purpose of this report is to set out the Officer recommendations to Planning Committee regarding a request to vary the Section 106 Agreement for 17/01790/FUL at Land Between Whiting Avenue and Gurdwara Way, Barking and Dagenham.

#### Proposal:

This proposal seeks agreement for a Deed of Variation to the Section 106 Agreement, approved under 17/01790/FUL: *Redevelopment of site comprising a car park, turning head and incidental open space for the erection of two new buildings (4 storeys and part 4, part 6 storeys) to provide 78 one-bedroom flats (Use Class C3) together with associated communal and private amenity spaces, cycle parking and refuse storage; provision of substation; creation of new publicly accessible route between Whiting Avenue and Gurdwara Way; landscaping and highways alterations including works to and re-configuration of existing access road, turning head and the re-provision of 10 car parking spaces.*

The above planning permission was subject to a Section 106 Agreement, securing *inter alia*:

- Secure 100% sub-market housing with a minimum 20% discount on sales for both initial purchasers and subsequent buyers in perpetuity.
- Cap on salary at £50,000 for eligible purchasers for the first 3 months then with a cascade.
- Not to undertake any first round sales marketing of the flats until a marketing strategy has been submitted to and approved in writing by the Council. First round sales marketing to be undertaken in accordance with the approved marketing strategy.
- The two wheelchair user flats shall be marketed to eligible wheelchair users for a period of six months in accordance with a marketing strategy to be submitted to and approved in writing by the Council, in consultation with the Council's Access Officers. If no wheelchair user comes forward, then the wheelchair user flats shall be sold to other eligible purchasers.
- All qualifying potential purchasers of properties within the scheme must be resident or working in the Borough, with priority awarded to those who qualify under the priority key worker categories. This is in addition to being a first-time buyer and under 40 years of age.

The applicant is seeking to amend the legal agreement through a Deed of Variation to remove the obligation for the eligible purchaser to be under the age of 40.

This proposal is not an application for planning permission, but pertains to an agreement to vary the legal agreement made under Section 106 of the Town and Country Planning Act (as amended). All other clauses are to remain.

The agreement is sought under S106A 'Modification and discharge of planning obligations'. The legislation states at S106A(1) states:

*A planning obligation may not be modified or discharged except—  
(a) by agreement between [the authority by whom the obligation is enforceable] [the appropriate authority] and the person or persons against whom the obligation is enforceable;*

S106A(2) states:

*An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.*

S106A enables modification to be made by way of agreement, when the S106 is less than 5 years old. When a S106 is over 5 years old an application may be sought to vary the S106. The S106 agreement for 17/01790/FUL is dated 20 December 2017 and as such a formal application is not required to vary the agreement, but an assessment must be made by the local planning authority.

S106A(6) states:

*the authority may determine—*

*(a) that the planning obligation shall continue to have effect without modification;*

*(b) if the obligation no longer serves a useful purpose, that it shall be discharged; or*

*(c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.*

#### **Officer Recommendations:**

Planning Committee is asked to resolve to:

1. agree to vary the obligation as set out in this report; and
2. delegate authority to the London Borough of Barking & Dagenham's Director of Inclusive Growth in consultation with the Head of Legal Services to agree to a Deed of Variation to amend the S106.

## OFFICER REPORT

### Site, Situation and relevant background information:

The application site is located to the east of Gurdwara Way (A124), to the north of Abbey Road and to the west of Whiting Avenue. The site comprises an area of unallocated land a short walk away from Barking Town Centre and located within the Barking Town Centre Area Action Plan (AAP) area but outside of the Barking Town Centre boundary.

To the east of the site, Whiting Avenue is generally characterised by 3 and 4-storey mansion blocks and 2-storey houses. To the west of the site across Gurdwara Way is a locally listed former pumping station and associated house.

The site benefits from planning permission 17/00698/FUL, approved 20 December 2017 for: *Redevelopment of site comprising a car park, turning head and incidental open space for the erection of two new buildings (4 storeys and part 4, part 6 storeys) to provide 78 one-bedroom flats (Use Class C3) together with associated communal and private amenity spaces, cycle parking and refuse storage; provision of substation; creation of new publicly accessible route between Whiting Avenue and Gurdwara Way; landscaping and highways alterations including works to and re-configuration of existing access road, turning head and the re-provision of 10 car parking spaces.*

The above planning permission has been implemented but is not yet completed. First occupation is expected early 2021.

### Key issues:

- Whether the removal of the obligation falls within the provisions of the legislation (S106A).

### Planning Assessment:

- 1.1 The National Planning Policy Guidance (NPPG) states at paragraph 23b-020 that “planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so”. Planning legislation (S106A) specifies that when modification is sought for an obligation less than 5 years after the date of the S106, agreement must be sought, and that this must be executed as a deed. The applicant has sought to remove the requirement for Eligible Purchasers to be under the age of 40.
- 1.2 The applicant Pocket Homes has indicated that the amendment is sought because there has been a low take up of properties since the site was first marketed in February 2020, but there have been 17 inquiries from otherwise eligible first-time buyers over the age of 40. The applicant therefore considers the obligation unduly restrictive and unfair on the prospective purchasers.
- 1.3 The obligation for the units to be made available to under 40s stems from the government’s Starter Homes initiative, for which a statutory framework was established in the Housing and Planning Act 2016. The government’s stance on Starter Homes has since shifted, and the Starter Homes policy was never implemented.
- 1.4 Funding for the development was provided through the Starter Homes fund, through a Funding Agreement between the Greater London Authority (GLA) and the London Borough of Barking and Dagenham (dated 17 March 2016). The applicant has written to the GLA to seek consent to waiver the requirement within the Funding Agreement for units to only be offered to persons under the age of 40. The GLA have agreed to the amendment to the Funding Agreement in a letter also signed by David Harley on behalf of LBBB (see Appendix 3).
- 1.5 In order to ensure the proposed variation is not in breach of the S106 attached to the planning permission, a Deed of Variation must also be sought to capture the change, and this must be agreed and signed by the LPA and the applicant.
- 1.6 The assessment in planning terms should be considered against S106A(6), in summary:
  - Does the obligation continues to serve a useful purpose?

- If so, would that purpose be served equally well if it had effect subject to the modifications specified in the application.
- 1.7 The main purpose of the Starter Homes initiative is to deliver housing available to first-time buyers priced at least 20% below market value. The S106 is subject to several criteria aimed at helping first-time buyers on the ladder, of which the “under 40” obligation is one component.
- 1.8 It is considered that the “under 40” obligation does serve a purpose to the extent that first-time buyers are statistically more likely to be under the age of 40, and the obligation therefore assists in reinforcing this focus.
- 1.9 Should the “under 40” obligation be removed, all units will continue to be sold at 20% less than open market value, and the first-time buyers requirement will be maintained. Priority was given to residents or workers of LBBB in the first instance, however in line with the S106, this requirement has since lapsed, and marketing is being opened to residents and workers across London. For the first 6 months of marketing the properties, the S106 also required the household income of an eligible purchaser to be no more than £50,000. In accordance with the S106 requirements, this has since lapsed and an eligible purchaser must now have a household income of no more than £90,000 (the London Plan Upper Limit). Priority will continue to be given to key workers, who are considered to be those employed in the following categories:
- NHS workers
  - Education
  - Local Authority
  - Police
  - Fire Brigade
- 1.10 With these other mechanisms in place, it is considered that the purpose of the development providing for first-time buyers would therefore continue to be served equally well if the variation had effect subject to the proposed modifications. Moreover, the removal of the “under 40” obligation would seek to promote a more inclusive environment, in accordance with emerging policy DMH1 (affordable housing), and emerging policy SP3 (delivering homes that meet peoples’ needs), of the Regulation 19 consultation version of the Draft Local Plan.
- 1.11 It is recommended that Members resolve to agree to the variation, which will allow first-time buyers of any age to purchase properties at this site, and will help ensure that no properties are left empty due to the age restriction.

**Conclusions:**

The application is made under s106a Modification and discharge of planning obligations. The legislation states at S106A(6):

6) Where an application has been made the authority may determine—

- (a) that the planning obligation shall continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

In considering the above changes, officers consider the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the proposed modification. It is considered the proposal falls within the legislative provisions as set out above and therefore recommend the deed of variation proceeds.

## Appendix 1:

### Development Plan Context:

The Council has carefully considered the relevant provisions of the Council's adopted development plan and of all other relevant policies and guidance. Of particular relevance to this decision were the following Framework and Development Plan policies and guidance:

#### *National Planning Policy Framework (NPPF) (MHCLG, Feb 2019)*

<p><i>The London Plan: Spatial Development Strategy for London (GLA, consolidated with alterations since 2011, published March 2016)</i></p>	<ul style="list-style-type: none"> <li>Policy 3.3 – Increasing Housing Supply</li> <li>Policy 3.4 – Optimising Housing Potential</li> <li>Policy 3.5 – Quality and Design of Housing Developments</li> <li>Policy 3.8 – Housing Choice</li> <li>Policy 3.10 – Definition of Affordable Housing</li> <li>Policy 3.11 – Affordable Housing Targets</li> <li>Policy 3.12 – Negotiating Affordable Housing on Individual Private Residential and Mixed Use Schemes</li> <li>Policy 3.13 – Affordable Housing Thresholds</li> <li>Policy 5.2 – Minimising Carbon Dioxide Emissions</li> <li>Policy 5.3 – Sustainable Design and Construction</li> <li>Policy 5.5 – Decentralised Energy Networks</li> <li>Policy 5.6 – Decentralised Energy in Development Proposals</li> <li>Policy 5.7 – Renewable Energy</li> <li>Policy 5.9 – Overheating and Cooling</li> <li>Policy 5.10 – Urban Greening</li> <li>Policy 5.13 – Sustainable Drainage</li> <li>Policy 5.14 – Water Quality and Wastewater Infrastructure</li> <li>Policy 5.18 – Construction, Excavation and Demolition Waste</li> <li>Policy 5.21 – Contaminated Land</li> <li>Policy 6.3 – Assessing Effects of Development on Transport Capacity</li> <li>Policy 6.9 – Cycling</li> <li>Policy 6.10 – Walking</li> <li>Policy 6.13 – Parking</li> <li>Policy 7.1 – Lifetime Neighbourhoods</li> <li>Policy 7.2 – An Inclusive Environment</li> <li>Policy 7.3 – Designing Out Crime</li> <li>Policy 7.4 – Local Character</li> <li>Policy 7.6 - Architecture</li> <li>Policy 7.8 – Heritage Assets and Archaeology</li> <li>Policy 7.14 – Improving Air Quality</li> <li><i>Policy 7.15 – Reducing and Managing Noise, Improving and Enhancing the Acoustic Environment and Promoting Appropriate Soundscapes</i></li> <li><i>Policy 7.19 – Biodiversity and Access to Nature</i></li> <li><i>Policy 8.3 – Community Infrastructure Levy</i></li> </ul>
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*The Mayor of London's Draft London Plan - Intend to Publish version December 2019 is under Examination. Having regard to NPPF paragraph 48 the emerging document is a material consideration and appropriate weight will be given to its policies and suggested changes in decision-making, unless other material considerations indicate that it would not be reasonable to do so.*

<p><i>Draft London Plan - Intend to Publish version December 2019</i></p>	<ul style="list-style-type: none"> <li>Policy GG1 - Building Strong and Inclusive Communities</li> <li>Policy GG2 - Making the Best Use of Land</li> <li>Policy GG3 - Creating a Healthy City</li> <li>Policy GG4 - Delivering the Homes Londoners Need</li> </ul>
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	<p>Policy D1 - London's Form, Character and Capacity for Growth</p> <p>Policy D2 - Infrastructure Requirements for Sustainable Densities</p> <p>Policy D3 - Optimising Site Capacity Through the Design-Led Approach</p> <p>Policy D4 - Delivering Good Design</p> <p>Policy D5 - Inclusive Design</p> <p>Policy D6 - Housing Quality Standards</p> <p>Policy D7 - Accessible Housing</p> <p>Policy D11 - Safety, Security and Resilience to Emergency</p> <p>Policy D12 - Fire Safety</p> <p>Policy D14 - Noise</p> <p>Policy H1 - Increasing Housing Supply</p> <p>Policy H4 - Delivering Affordable Housing</p> <p>Policy H5 - Threshold Approach to Applications</p> <p>Policy H6 - Affordable Housing Tenure</p> <p>Policy H7 - Monitoring of Affordable Housing</p> <p>Policy H10 - Housing Size Mix</p> <p>Policy G1 - Green Infrastructure</p> <p>Policy SI1 - Improving Air Quality</p> <p>Policy SI3 - Energy Infrastructure</p> <p>Policy T2 - Healthy Streets</p>
<p><i>Local Development Framework (LDF) Core Strategy (July 2010)</i></p>	<p>Policy CM2 – Managing Housing Growth</p> <p>Policy CR2 – Preserving and Enhancing the Natural Environment</p> <p>Policy CP2 – Protecting and Promoting our Historic Environment</p> <p>Policy CP3 – High Quality Built Environment</p>
<p><i>Local Development Framework (LDF) Borough Wide Development Plan Document (DPD) (March 2011)</i></p>	<p>Policy BR3 – Greening the Urban Environment</p> <p>Policy BR5 – Contaminated Land</p> <p>Policy BR9 – Parking</p> <p>Policy BR10 – Sustainable Transport</p> <p>Policy BR11 – Walking and Cycling</p> <p>Policy BR13 – Noise Mitigation</p> <p>Policy BR14 – Air Quality</p> <p>Policy BR15 – Sustainable Waste Management</p> <p>Policy BC2 – Accessible and Adaptable Housing</p> <p>Policy BC7 – Crime Prevention</p> <p>Policy BP2 – Conservation Areas and Listed Buildings</p> <p>Policy BP5 – External Amenity Space</p> <p>Policy BP8 – Protecting Residential Amenity</p> <p>Policy BP10 – Housing Density</p> <p>Policy BP11 – Urban Design</p>
<p><i>Barking Town Centre Area Action Plan (BTCAAP) (February 2011):</i></p>	<p>Policy BTC13 – Housing Supply</p> <p>Policy BTC16 – Urban Design</p> <p>Policy BTC22 – Sustainable Energy</p> <p>Policy BTC23 – Developer Contributions</p>
<p><i>The London Borough of Barking and Dagenham's Draft Local Plan: (Regulation 18 Consultation Version, November 2019) is at an "advanced" stage of preparation. Having regard to NPPF paragraph 48 the emerging document is a material consideration and appropriate weight will be given to its policies and suggested changes in decision-making, unless other material considerations indicate that it would not be reasonable to do so.</i></p>	
<p><i>The London Borough of Barking and Dagenham's Draft Local Plan: (Regulation 19 Consultation Version, October 2020)</i></p>	<p>This report has regard to the emerging policies in the Regulation 19 version of the Council's Local Plan, which is currently subject to consultation. It is not</p>

	considered that there are any impacts to the proposal as a result of the proposed changes.
<i>Supplementary Planning Documents</i>	DCLG Technical Housing Standards (nationally described space standard) (DCLG, March 2015) (as amended) Housing Supplementary Planning Guidance (GLA, March 2016, Updated August 2017)

**Additional Reference:**

*Human Rights Act*

The provisions of the Human Rights Act 1998 have been taken into account in the processing of the application and the preparation of this report.

*Equalities*

In determining this planning application, the BeFirst on behalf of the London Borough of Barking & Dagenham has regard to its equalities obligations including its obligations under section 149 of the Equality Act 2010 (as amended).

For the purposes of this application there are no adverse equalities issues.

*Local Government (Access to Information) Act 1985*

Background papers used in preparing this report:

- Planning Application
- Statutory Register of Planning Decisions
- Correspondence with Adjoining Occupiers
- Correspondence with Statutory Bodies
- Correspondence with other Council Departments
- National Planning Policy Framework
- London Plan
- Local Plan

Other relevant guidance

**Appendix 2:**

<b>Relevant Planning History:</b>			
<i>Application Number:</i>	17/00698/FUL	<i>Status:</i>	Approved, subject to legal agreement 20 December 2017
<i>Description:</i>	Redevelopment of site comprising a car park, turning head and incidental open space for the erection of two new buildings (4 storeys and part 4, part 6 storeys) to provide 78 one-bedroom flats (Use Class C3) together with associated communal and private amenity spaces, cycle parking and refuse storage; provision of substation; creation of new publicly accessible route between Whiting Avenue and Gurdwara Way; landscaping and highways alterations including works to and re-configuration of existing access road, turning head and the re-provision of 10 car parking spaces.		
<i>Application Number:</i>	16/01604/FUL	<i>Status:</i>	Approved, 7 April 2017.
<i>Description:</i>	Engineering operations involving excavation of soil and other material, remediation of land, provision of new capping layer with associated regrading and landscaping of site.		