

## PLANNING APPLICATIONS COMMITTEE

18 June 2020

**APPLICATION NO.**

19/P3746

**DATE VALID**

21/10/2019

**Site Address:**

Units 2, 3 and 3A, 32-34 Bushey Road, Raynes Park,  
SW20 8BP

**Ward:**

Dundonald

**Proposal:**

DEED OF VARIATION TO S106 AGREEMENT  
ATTACHED TO LBM PLANNING PERMISSION  
18/P2619 RELATING TO THE DEMOLITION OF  
EXISTING BUILDINGS AND ERECTION OF A PART  
THREE, PART FOUR STOREY RESIDENTIAL  
BUILDING COMPRISING 32 SELF-CONTAINED  
FLATS (6 X STUDIO, 11 X 1 BED & 15 X 2 BED).

**Drawing Nos:**

n/a

**Contact Officer:**

David Gardener

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**RECOMMENDATION**

**Grant variation of S106 agreement subject to the following:**

- a) That in place of the provision of 10 affordable units on site the amended S106 Agreement provides for the payment to Merton Council of a financial contribution of not less than £266,468.
- b) That in place of the carbon off-set financial contribution of £34,951 a clause is added to secure as-built calculations to be submitted prior to first occupation of any residential unit.
- c) The applicant agrees to meet the Council's costs of preparing (including legal fees) the amended S106 agreement; and
- d) The developer agreeing to meet the Council's costs of monitoring the S106 obligations.

### 1. INTRODUCTION

This application is brought to the Planning Applications Committee for determination as the proposed variation of the S106 Agreement would materially

alter the terms of the agreement which formed the basis of the planning approval and which was endorsed by the Planning Applications Committee in November 2018.

## **2. SITE AND SURROUNDINGS**

The application site is approx. 0.18Ha in size and is located at the southern end of Edna Road. The site also fronts Bushey Road. The site currently comprises two single storey buildings with vehicle access from Bushey Road. One building is used as a car showroom with ancillary offices (Sui Generis Use) and a service desk for car repairs use. The other building is used for car repairs (Use Class B2) which are partly ancillary to the car showroom use, and pet grooming (Sui Generis Use). The remainder of the site comprises areas of surface parking and storage.

Two-storey terrace houses are located to the north, west and east of the application site. Bushey Mansions, The David Lloyd Sports Centre and Prince Georges Playing Fields are located opposite the site, to the south of Bushey Road. A public footpath also abuts part of the sites western boundary connecting Edna Road with Bushey Road.

The site is not located in a Conservation Area. The site has moderate public transport accessibility (PTAL 3) and is also located in a controlled parking zone (zone RPS).

## **3. CURRENT PROPOSAL**

The proposal is to vary the terms of the existing S106 planning agreement relating to planning permission 18/P2619 to replace on site provision of affordable housing with an off-site financial contribution. The proposal also seeks to remove the carbon off-set financial contribution to bring forward a development that would be a zero-carbon development.

The legal agreement signed in April 2019 requires the following to be provided on site:

Intermediate housing comprising 10 units (4 x two bed units, 4 x one bed units and 2 x studio units) and a carbon off-set payment of £34,951.

The applicant is offering an off-site financial contribution of £240,453 towards affordable housing. In support of the applicant's proposals, evidence has been provided of communications with various housing associations regarding the possible purchase of the affordable units. The submission is also accompanied by a Financial Viability Analysis which has been the subject of an independent review by the Council's independent viability consultant to inform this committee report.

The applicants have put forward their proposed contribution by being based on the difference in Residual Land Value (RLV) between the agreed consent (i.e. 10 shared ownership units) and a 100% private scheme.

In support of the desire for a zero-carbon development, the applicants have submitted an energy strategy, which has been reviewed by the Council's Climate Change Officer.

#### **4. PLANNING HISTORY**

18/P2619 - DEMOLITION OF EXISTING BUILDINGS AND ERECTION OF A PART THREE, PART FOUR STOREY RESIDENTIAL BUILDING COMPRISING 32 SELF-CONTAINED FLATS (6 X STUDIO, 11 X 1 BED & 15 X 2 BED). – Permission Granted 24/04/2019.

19/P2976 – APPLICATION FOR DISCHARGE OF CONDITIONS 3, 4, 11, 15, 16, 17, 18, 30 & 31 ATTACHED TO LBM PLANNING PERMISSION 18/P2619 RELATING TO THE DEMOLITION OF EXISTING BUILDINGS AND ERECTION OF A PART THREE, PART FOUR STOREY RESIDENTIAL BUILDING COMPRISING 32 SELF-CONTAINED FLATS (6 X STUDIO, 11 X 1 BED & 15 X 2 BED). – Pending

19/P4342 - NON-MATERIAL AMENDMENTS TO FENESTRATIONS AND LANDSCAPING IN LBM PLANNING PERMISSION 18/P2619 RELATING TO THE DEMOLITION OF EXISTING BUILDINGS AND ERECTION OF A PART THREE, PART FOUR STOREY RESIDENTIAL BUILDING COMPRISING 32 SELF-CONTAINED FLATS (6 X STUDIO, 11 X 1 BED & 15 X 2 BED). – Withdrawn

20/P1076 – APPLICATION FOR VARIATION OF CONDITION 2 & 19 ATTACHED TO LBM PLANNING APPLICATION 18/2619 RELATING TO DEMOLITION OF EXISTING BUILDINGS AND ERECTION OF A PART THREE, PART FOUR STOREY RESIDENTIAL BUILDING COMPRISING 32 SELF-CONTAINED FLATS (6 X STUDIO, 11 X 1 BED & 15 X 2 BED). AMENDMENTS INCLUDE ALTERATIONS TO FLAT LAYOUTS, ACCESS, FENESTRATION AND SOFT LANDSCAPING. - Pending

#### **5. CONSULTATION**

Council's Section 106 Officer

Recommend both the early and late stage reviews are retained within the Section 106 Agreement. The early stage review is required in order to incentivize implementation of the development project. The late stage review is required to secure the maximum reasonable amount of affordable housing under the London Plan. Surplus in either would be paid to the Council as an additional financial contribution to Affordable Housing in the borough.

### Council's Climate Change Officer:

Using the additional information provided, I am satisfied that the design exceeds Merton and GLA's minimum requirements with regard to energy policies, which require a minimum of a 35% improvement over building regulations.

The information provided in the SAP calculations show that the building as designed has incorporated the principles of the Mayor and GLA's energy policies of "be lean, be clean, be green" fully and has the potential to be a zero-carbon development in terms of energy use. This supports the applicants request to amend the condition relating to the carbon offset charge. Through discussions with the applicant I am also aware that some of the aspects of the design are not fully locked into place, so there is a risk that the development, once built, will not mirror the values used in the "as designed" SAP calculations. As such, if you were to agree to amend the carbon offset condition, I recommend that you make it conditional on "as built" calculations demonstrating that it is zero carbon. Any shortfall should be subject a payment of £95 per tonne for a 30 year period.

I also considered the design in relation to the risk of overheating. The floor plans show that around a third of properties are single aspect which usually is an indicator that the building may have a high risk of overheating. However, having considered the additional information such as the use of an MHVR, window size, positioning and balcony design and good thermal properties of the building fabric, I expect that overheating will not be a major issue.

No further information was provided on water calculations, so we don't know the extent to which the application is likely to meet the GLA and Merton's policies relating to water use, which limits average internal water consumption to 105l/day. But on discussion, I am clear that the applicant understands the policy requirements and is intending to meet it, so I am happy for you to rely on pre-occupation conditions for water use.

## **6. POLICY CONTEXT**

6.1 NPPF - National Planning Policy Framework (2019):

4. Decision making: Planning Conditions and obligations (paragraph 57)

5. Delivering a sufficient supply of homes.

14. Meeting the challenge of climate change, flooding and coastal change

6.2 London Plan (2016):

3.11 Affordable housing targets.

3.12 Negotiating affordable housing on individual private residential and mixed uses schemes.

3.14 Affordable housing thresholds

5.2 Minimising carbon dioxide emissions

5.3 Sustainable design and construction

8.2 Planning obligations

6.3 Merton Local Development Framework Core Strategy – 2011 (Core Strategy):

Policy CS 8. Housing choice.

Policy CS 15. Climate Change

6.4 Draft London Plan 2020

Policy H5. Threshold approach to applications

Policy SI 2. Minimising greenhouse gas emissions

6.5 Supplementary planning considerations

Mayor of London - Affordable Housing and viability. (SPG 2017)

Merton Council - Development viability supplementary planning document. (May 2018).

## **7. PLANNING CONSIDERATIONS**

7.1 The key planning considerations are whether in this particular instance the provision of affordable housing on site may reasonably be waived in favour of an off-site contribution and whether the contribution is reasonable, and whether it has been demonstrated that a zero-carbon development can be achieved to allow for the removal of the carbon off-set contributions.

### **7.2 Cash in lieu contributions to replace on-site affordable housing provision**

7.2.1 The London Plan sets out a detailed policy framework for delivering affordable housing. London Plan policy 3.11 states that the Mayor will, and boroughs and other relevant agencies and partners should, seek to maximise affordable housing provision and ensure an average of at least 17,000 more affordable homes per year in London over the term of this Plan. In order to give impetus to a strong and diverse intermediate housing sector, 60% of the affordable housing provision should be for social and affordable rent and 40% for intermediate rent or sale.

7.2.2 The objectives are given further impetus by Policy 3.12 which states that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use schemes.

7.2.3 The policy provides further criteria against which proposals should be assessed noting that negotiations on sites should take account of their individual circumstances including development viability, and the availability of public subsidy.

- 7.2.4 On the matter of financial contributions the London Plan asserts that a cash in lieu contribution should only be accepted where this would have demonstrable benefits in furthering the affordable housing and other policies in this Plan and should be ring-fenced and, if appropriate, pooled to secure additional affordable housing either on identified sites elsewhere or as part of an agreed programme for provision of affordable housing.
- 7.2.5 The Draft London Plan Policy H5 outlines that any proposed amendments that result in a reduction in affordable housing, affordability or other obligations or requirements of the original permission should be rigorously assessed under the Viability Tested Route. In such instances, a full viability review should be undertaken that reconsiders the value, costs, profit requirements and land value of the scheme.
- 7.2.6 During the assessment of the planning application (18/P2619) the scheme was amended from 34 units to 32 units due to design and scale issues identified by officers. The application was accompanied with a viability report which was reviewed and assessed by the Council's independent viability consultants. The conclusion was that the scheme could deliver 10 affordable units as 100% Shared Ownership units. This was the only viable option for delivering affordable housing at the time of the assessment. It should be noted that both the applicants appraisal and the Council's appraisal concluded that the scheme would result in a deficit. However, with the Housing Association seeking to deliver the 10 units on site, the scheme was progressed without further viability deliberations. This was agreed and secured within the S106 Agreement. The applicants had also provided evidence that Thames Valley Housing were interested in taking up the 10 units
- 7.2.7 Since the approval of planning permission 18/P2619, the applicant has outlined that Thames Valley Housing are no longer interested in the 10 units and have pulled out of interest all together. The applicant has therefore submitted evidence with the current application showing other Registered Housing Providers they have approached to try and secure the 10 affordable units with. The current application 19/P3746 has been submitted with supporting documentation, which includes correspondence with 19 RPs who have rejected interest in taking the 10 Shared Ownership units. Council Officers have reviewed the correspondence and are satisfied that it shows an unfortunate lack of interest from RPs to take on the 10 Shared Ownership units. The RPs approached by the applicant are the ones active in the Merton area and available on the Councils website. The communications forwarded by the applicant outline that the low number of affordable units have proved unattractive to a registered provider to take on.

7.2.8 Paragraph 2.56 of the Mayor's SPG sets out that: "Viability alone is insufficient justification for off-site affordable housing provision or a cash in lieu payment.". Officers are of the view that the applicant has demonstrated they cannot sell the homes to a Registered Provider. Given the above, officers consider that it would be reasonable to consider an off-site contribution in lieu of on-site provision.

### 7.3 Assessment of off-site contribution

7.3.1 The Mayor of London has published (2017) detailed guidance for assessing affordable housing and viability. This SPG does not and cannot set a fixed affordable housing requirement. Instead it provides a framework for delivering the maximum reasonable amount of affordable housing in the context of current London Plan Policies.

7.3.2 All schemes which propose off-site affordable housing or cash in lieu payments are required to provide a detailed viability assessment as part of the justification that off-site or cash in lieu is acceptable, in-line with the London Plan and relevant local policies. The preceding section of this report has sought to highlight the challenges faced in terms of securing the delivery of affordable housing on site.

7.3.3 The SPG states that to avoid incentivising off-site provision or in-lieu contributions, agreements for this should provide no financial benefit to the applicant relative to on-site provision.

7.3.4 The methodology recommended by the SPG is as follows:  
The starting point for determining in-lieu contributions should be the maximum reasonable amount of affordable housing that could be provided on-site as assessed through the Viability Tested Route. The value of the in-lieu contribution should be based on the difference in Gross Development Value arising when the affordable units are changed to market units within the appraisal. This is to ensure that where the on-site component of market housing is increased as a result of the affordable contribution being provided as a cash in-lieu payment, this does not result in a higher assumed profit level for the market homes within the assessment which would have the effect of reducing the affordable housing contribution.

7.3.5 The applicant's viability assessment submitted calculates an off-site contribution of £240,453. The Council's viability consultant has reviewed the applicants viability assessment and outlined in their initial response that they calculate an off-site contribution of £991,964. There is a clear gap between both assessors conclusions on what the commuted sum figure should be. Upon further review by officers, the main reason for the difference is due to the methodology of calculating the commuted sum

- figure. The applicant has re-visited the viability of the whole scheme taking into account more up to date data, in line with the Draft London Plan Policy H5. The Council's assessor has applied the guidance in the Mayors SPD 2017 which deducts the open market value of the 10 affordable homes proposed as part of this development from the reasonable affordable housing value for the same homes. In seeking to help the planning permission being delivered, officers sought discussions between the viability assessors to see if a resolution could be achieved.
- 7.3.6 Upon review of the original viability appraisal with the original permission, officers note that the applicant's assessor had concluded a deficit of £529,672 and the Council's assessor had concluded a deficit of £226,846. However, at the time of the original permission the applicants had a Housing Association offer for the 10 units and therefore the scheme was brought forward without further discussions on viability. However, as outlined above, the Housing Association is no longer on board and the applicant hasn't secured a new one. This thereby leaves the applicant with a scheme that is currently unviable (based on both their appraisal and the Council's assessor's appraisal).
- 7.3.7 The above shows that the Council's assessor concluded at the time of the original application that 10 affordable housing units on site would result in a deficit. The applicant has further outlined that their proposed £240,453 off-site affordable housing contribution offer still results in a deficit of £125,019. The applicant outlines that this approach therefore ensures consistency with the Mayor's SPG in that it does not result in a higher assumed profit level when compared to on-site provision. The Council's assessor has outlined that the suggested £991,964 off-site contribution does reduce the profit levels in comparison to the original application.
- 7.3.8 In order to seek to further resolve the stalemate, the Council's assessor has applied the reduction of the applicants original deficit shown in the appraisal for the original permission (£529,672) from the suggested £991,964 commuted sum in order to seek a resolution, which results in a suggested commuted sum figure of £462,292. The applicants response to this was to re-iterate that a full viability review should be undertaken by the Council's assessor in order to arrive at an appropriate figure. This would provide more up to date figures and would take into account the additional CIL costs arising. The Council's assessor has subsequently applied a full viability review of the scheme and conclude that a similar off-site level contribution can be provided to that calculated by the applicant, which is £266,468.
- 7.3.9 On the basis of the conclusions of the revised assessment advice set out by the Council's independent assessor indicates they consider £266,468 as a fair and reasonable payment in lieu figure, given the circumstances

with this site and the original permission. In response the applicant has subsequently accepted the figure of £266,468 as a payment in lieu.

7.3.10 The NPPF states that “the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in circumstances since the plan was brought into force.”

7.3.11 The Council has in the past used accumulated Council funds for affordable housing to provide financial assistance to a Registered Providers to deliver affordable housing. Officers would question whether this would be fruitful in this instance given the low level of interest in the site and the small number of units involved.

7.3.12 A matter of judgment is that given the purpose of the contribution would remain to deliver affordable housing, the off-site contribution may be accepted. Given the time taken since the planning permission was issued (24<sup>th</sup> April 2019) and the correspondence with RP's (May to June 2019), officers consider it is reasonable in this case that an off-site contribution can be accepted.

#### 7.4 Removal of carbon off-set contribution to provide a zero-carbon development

7.4.1 London Plan policy 5.3 and CS policy CS15 seek to ensure the highest standards of sustainability are achieved for developments which includes minimizing carbon dioxide emissions, maximizing recycling, sourcing materials with a low carbon footprint, ensuring urban greening and minimizing the usage of resources such as water.

7.4.2 All new developments comprising the creation of new dwellings should demonstrate how they will:

a) Comply with Merton's Core Planning Strategy Policy CS15 Climate Change (parts a-d) and the Policies in outlined in Chapter 5 of the London Plan (2016) through submission of a detailed energy strategy.

i) The energy strategy should demonstrate how the sustainability policy objectives will be met and should include a breakdown of how emissions reductions are achieved at each level of the London Plan energy hierarchy in accordance with the Mayor's guidance on preparing energy assessments.

- ii) For additional guidance on preparing an energy strategy, the applicant should consult the Sustainable Design and Construction SPG.
- b) All residential major development proposals will need to demonstrate compliance with the zero emissions target outlined in Policy 5.2 of the London Plan (2016).
  - i) Development proposals must achieve a minimum on-site emissions reduction target of a 35% improvement against Part L 2013, with the remaining regulated emissions (to 100% improvement against Part L 2013) to be offset through cash in lieu contribution, and secured via Section 106 agreement. The contribution will be used to enable the delivery of carbon dioxide savings elsewhere in the borough. to enable the delivery of carbon dioxide savings elsewhere in the borough.
  - ii) The cash in lieu contribution will be collected according to the methodology outlined in the Mayor's Sustainable Design and Construction SPG. This will require each tonne of CO2 shortfall to be offset at a cost of £60 per tonne for a period of 30 years (i.e. 60 x 30 = £1800 per tonne CO2).
  - iii) Major residential developments will be expected to calculate and demonstrate the cumulative CO2 emissions savings to be offset through cash in lieu contribution (in accordance with the above approved methodology, and in line with the Mayor's guidance on preparing energy assessments as part of their submitted energy strategy.
- c) Achieve wholesome water consumption rates not in excess of 105 litres per person per day.

7.4.3 The emissions reductions and water targets will be secured through the application of the Sustainable Design and Construction (New build residential –major) standard pre-occupation condition.

7.4.4 The above requirements provides an explanation as to what is expected from all new Major residential development planning applications. The original application met the above policy requirements, for which included a carbon off-set contribution of £34,951. Members should be aware that the current applicant was not the same applicant as the 2018 scheme. The current applicant seeks to create a high quality zero-carbon development. In principle, officers support such ambition given the Council's declaration of a climate emergency. The application has therefore been accompanied with energy information on how this would be

achieved. The Council's Climate Change officer has summarised the energy efficiency measures for the building, which include:

- The building design uses energy efficient materials, and focuses on avoiding heat leaking from joints and window frames to deliver a high level of air tightness.
- The building design results in a much lower demand for energy than a typical equivalent building. With no gas used on site, the heat and power demand can be met to a large extent with near zero carbon energy from the extensive solar PV.
- Battery storage on site enables delivery of PV electricity to dwellings at peak times when the sun is not shining.

7.4.5 The Council's Climate Change Officer has outlined that the design exceeds Merton's and the GLA's minimum requirements with regard to energy policies, which require a minimum of a 35% improvement over building regulations. A number of safeguarding proposals are put forward by the officer, such as the submission of 'as built' calculations so as the applicant is required to demonstrate that zero-carbon has been achieved, and conditions for water use. With the above measures, officers are satisfied that the carbon off-set contribution can be removed from the S106 Agreement, but replaced with the above clause. Should the calculations from the 'as built' assessment result in not fully meeting zero-carbon objectives then any carbon off-set contributions would be calculated and captured in line with Council's policy.

## **8. ENVIRONMENTAL IMPACT ASSESSMENT**

8.1 The proposal is not a planning application and the proposed changes do not impact on the environmental criteria which formed the basis of the earlier assessment. The proposals do not fall to be considered under the Environmental Impact Assessment Regulations.

## **9. LOCAL FINANCIAL CONSIDERATIONS**

9.1 Mayor of London Community Infrastructure Levy and London Borough of Merton Community Infrastructure Levy

The development is liable to pay the Mayoral Community Infrastructure Levy [CIL], and the Merton Community Infrastructure Levy. CIL contributions would be adjusted in comparison to the original planning permission and would be increased due to the loss of on-site affordable housing units.

## **10. CONCLUSION**

- 10.1 Adopted planning policies consider cash in lieu contributions as only to be accepted where they would have demonstrable benefits in furthering the affordable housing and other policies of the London Plan.
- 10.2 Given the failure to secure a registered provider due to RPs not having interest in the units on offer, members may consider that the offer broadly fulfills the wider objectives of London Plan policy insofar as it delivers the potential to deliver affordable housing elsewhere in the Borough. The contribution may reasonably be pooled with other financial contributions to help deliver affordable housing on other sites in the Borough.
- 10.3 Overall, officers consider that all reasonable endeavours have been made by the applicant to secure the 10 affordable housing units on-site and that the commuted sum off-site financial contribution should be accepted.
- 10.4 Ambitions for a zero-carbon development is encouraged and subject to safeguarding measures to be included within the deed of variation, officers are satisfied that the carbon off-set contribution can be removed.

## **RECOMMENDATION**

**Grant variation of S106 agreement subject to the following:**

- a) That in place of the provision of 10 affordable units on site the amended S106 Agreement provides for the payment to Merton Council of a financial contribution of not less than £266,468.
- b) That in place of the carbon off-set financial contribution of £34,951 a clause is added to secure as-built calculations to be submitted prior to first occupation of any residential unit.
- c) The applicant agrees to meet the Council's costs of preparing (including legal fees) the amended S106 agreement; and
- d) The developer agreeing to meet the Council's costs of monitoring the S106 obligations.