

Address:	Kings Cross Central - Main site Land between Euston Road, St Pancras Station, Midland Main Line, The New Channel Tunnel Rail Link, York Way and Kings Cross Station.	
Application Number:	2004/2307/P	Officer: Jennifer Walsh
Ward:	St Pancras and Somers Town	
Date Received:	January 2015	

Proposal: Deed of Variation to the s106 planning agreement secured on 22nd December 2006 which included the following application:
2004/2307/P: Outline application for a comprehensive, phased, mixed-use development of former railway lands within the King's Cross Opportunity Area, as set out in the Revised Development Specification. The development comprises business and employment uses within the B1 use class; residential uses (including student accommodation), serviced apartments and hotels; shopping, food and drink and financial and professional services within the A1, A2, A3, A4 and A5 use classes; the full range of community, health, education, cultural, assembly and leisure facilities, within the D1 and D2 use classes; night clubs; multi storey and other car parking; re-erection of the linked triplet of gas holder guide frames to enclose new residential and other development, on the site of the Western Goods Shed; re-erection of the guide frame for gas holder no 8, alongside the re-erected triplet, to enclose new play facilities and open space; relocation of an existing district gas governor; works of alteration to other existing buildings and structures, to facilitate their refurbishment for specified uses; new streets and other means of access and circulation; landscaping including open space; new bridge crossings and other works along the Regent's Canal; the re-profiling of site levels; and other supporting infrastructure works and facilities (R1).

Under the terms of the 2006 agreement, within the Kings Cross Central (KXC) development, the applicants were obliged within the Section 106 under Clause NN to provide "A minimum of 53,670 sq m Gross External Area (GEA) of Affordable Housing floorspace to deliver 42,936 sq m Net Internal Floor Area (NIFA), such floorspace to provide 750 units of Affordable Housing under the Baseline mix." This includes 500 Social Rented and 250 Intermediate units which were to be provided. For the main site and the Triangle site, 1,946 dwellings were approved in total, of which 43% was proposed to be affordable.

It is now 8 years since the original S106 agreement was signed for the redevelopment of King's Cross Central. The affordable housing element of the overall development has changed in a number of aspects due to different factors including the economy, political changes, reductions in subsidy from the GLA and changes to affordable housing tenure.

This report outlines the affordable housing provision for Phase 1 and the proposed changes to the affordable housing numbers to be incorporated into Phase 2.

Under the terms of the 2006 agreement, within the Kings Cross Central (KXC) development, the applicants were obliged within the Section 106 under Clause MM to provide a Nursing Home. Within the proposed Deed of Variation, this clause is sought to be removed.

Drawing Numbers: N/A	
RECOMMENDATION SUMMARY: Approve Deed of Variation	
Applicant:	Agent:
Argent LLP 4 Stable Street Kings Cross London N1C 4AB	N/A

OFFICERS' REPORT

1.0 SITE

- 1.1 The deed of variation relates to the Kings Cross Central site. King's Cross Central is bound to the east by King's Cross Station and York Way, to the north by the railway lines used by High Speed 1, to the west by St Pancras International, and to the south by Euston Road. A large element of the site is located within the Regents Canal Conservation Area.

2.0 THE PROPOSAL

- 2.1 This proposal is not an application for planning permission, but a request for a Deed of Variation to the Section 106 agreement dated 22nd December 2006. This Deed of Variation seeks to amend the affordable housing numbers noted in the section 106 signed in 2006.
- 2.2 Amongst a number of obligations, Clause NN of the associated 2006 S106 Legal Agreement required a certain amount of affordable housing to be provided across the site. This clause was to be subject to further amendments by agreement as part of the reserved matters proposal for P1 (2012/4741/P).
- 2.3 Following a tender process begun in July 2007, One Housing Group was selected as the Registered Provider (RP) partner for the first phase of the affordable housing provision. All of the first phase has now been committed and is either on site or complete and occupied. There is a range of provision including social rent, affordable rent, shared ownership, supported housing and a block of Extra Care.
- 2.4 Phase 2 is now required to be considered. Due to different factors including the changes that have taken place in the grant funding regime for affordable housing and the economy there are some revisions which need to be considered for Phase 2, which will provide the residual requirement on the site.
- 2.5 In order to reach the affordable housing price for the Phase 1 units, it has been necessary to access public subsidy via the HCA and, latterly, the GLA. The affordable housing price is the amount that a provider of affordable housing will be able to pay to a developer in order to secure and operate the affordable housing. It is therefore a key element of any development viability, and any significant changes to the price a RP is able to pay will impact on the overall levels of affordable

housing within any development. For Phase 1, a total of £37,395,045 subsidy has been received by One Housing Group.

- 2.6 The sums of money are not insignificant and for the general needs units there has been an average of nearly £160,000 subsidy per unit. Bearing in mind the general pressure on public finance and the change in circumstances from that of 8 years ago, as well as the emphasis on the affordable rent product, it is clear that public funding of this magnitude will not be available for Phase 2 at King's Cross.
- 2.7 As such, a request is now made to agree a Deed of Variation to the original S106 Legal Agreement to secure an alternative amount of affordable housing across Phase 2 of the site.

3.0 RELEVANT HISTORY

Kings Cross Central

- 3.1 2004/2307/P– Planning permission was granted on 22/12/2006 for Outline application for a comprehensive, phased, mixed-use development of former railway lands within the King's Cross Opportunity Area, as set out in the Revised Development Specification. The development comprises business and employment uses within the B1 use class; residential uses (including student accommodation), serviced apartments and hotels; shopping, food and drink and financial and professional services within the A1, A2, A3, A4 and A5 use classes; the full range of community, health, education, cultural, assembly and leisure facilities, within the D1 and D2 use classes; night clubs; multi storey and other car parking; re-erection of the linked triplet of gas holder guide frames to enclose new residential and other development, on the site of the Western Goods Shed; re-erection of the guide frame for gas holder no 8, alongside the re-erected triplet, to enclose new play facilities and open space; relocation of an existing district gas governor; works of alteration to other existing buildings and structures, to facilitate their refurbishment for specified uses; new streets and other means of access and circulation; landscaping including open space; new bridge crossings and other works along the Regent's Canal; the re-profiling of site levels; and other supporting infrastructure works and facilities (R1).
- 3.2 2012/4741/P– Planning permission was granted on 07/12/2012 for Reserved matters in connection with Building P1 comprising up to thirteen storeys of mixed use accommodation for 178 open market residential units and 77 'key worker' sub-market rented affordable units on upper floors above (at ground and first floor levels) a new two-form entry primary academy school; a 26-place nursery school; new premises for the Frank Barnes School for deaf and hard of hearing children; community meeting facilities; a small retail unit; plus basement level car parking and plant and immediately adjoining elements of public realm; together with submission of associated details in compliance with conditions 9, 10, 14, 16-24, 27, 28, 31, 33-39, 42, 42A, 43, 45, 46, 48, 49, 50A, 51, 56, 60, 61, 64-65 and 66-67 of Outline Permission reference 2004/2307/P, dated 22nd December 2006 (for a comprehensive, phased, mixed-use development of former railway lands within the King's Cross Opportunity Area).

- 3.3 This application was subject to a Deed of Variation to the Kings Cross Section 106 agreement as this application sought a variation to the residential mix proposed through substituting additional school floorspace for an equivalent amount for affordable housing from the Outline permission total. This deed of variation was agreed at committee and signed on 7th December 2012.

4.0 **CONSULTATIONS**

Not applicable.

5.0 **POLICIES**

5.1 **National Planning Policy Framework (2012)**

5.2 **The London Plan (2011)**

5.3 **Local Development Framework (2010)**

- CS6 - Providing quality homes
- CS19 - Delivering and monitoring the Core Strategy
- DP1 Mixed use development
- DP2 Making full use of Camden's capacity for housing
- DP3 Contributions to the supply of affordable housing
- DP4 Minimising the loss of affordable housing
- DP5 Homes of different sizes
- DP6 Lifetime homes and wheelchair homes
- DP7 Sheltered housing and care homes for older people
- DP8 Accommodation for homeless people and vulnerable people

5.4 **Camden Planning Guidance**

- CPG2 Housing

6.0 **ASSESSMENT**

Phase 1

- 6.1 The objective and purpose of the original obligation for the Kings Cross Central site was to deliver a certain amount of affordable housing. It was acknowledged at the time, and today, that there is a pressing need for affordable housing in Camden and the regeneration for the King's Cross Opportunity Areas sought to provide a mixed use development which provided affordable housing as well as numerous other benefits for Camden.
- 6.2 In Phase 1, the Affordable housing in the blocks at R4 and R5 represented the first residential units to come forward on the whole of the King's Cross Central regeneration site. The current position is that the following affordable housing has been completed:

Block	Provider	No of units	Tenure
R4 (Rubicon Court)	One Housing Group	78	Social rent
		24	Shared ownership
R4 (Tile House)	One Housing Group	15	Specialist Social Rent
R5 (North) (Saxon Court)	One Housing Group	63	Social Rent
		40	Shared Ownership
R5 (West) (Roseberry Mansions)	One Housing Group	40	Extra care
J (The Arthouse)	One Housing Group	29	Social Rent

6.3 A further two blocks have reserved matters planning and are currently in the final stages of development. These are Block T1 (to be known as 1 Canal Reach) and Block P1. Block T1 has been the subject of a variation following the advent of the affordable rent model. This coincided with a reduction in funding through the GLA/HCA and there will be 22 affordable rent units and 12 shared ownership units in the block. 77 units of intermediate rent will be provided in Block P1 and managed by Dolphin Square Foundation.

Phase 2

6.4 The current agreed S106 targets for the Kings Cross Central (KXC) development, completions against those targets and the resulting net targets for Phase 2 are as follows:

Category	Social/Affordable Rented - 395			Intermediate - 305				Sub-total
	General Needs Social Rent	General Needs Affordable Rent	Specialist Social Rented ¹	Key Worker Sub-Market Rented ²	Shared Ownership (HA/RP)	Homebuy	Right to Buy Homebuy	
S106 Target	340		55	117	92	50	46	700
Delivered to date	170	0	55	0	64	0	0	289
On site	0	22	0	77	12	0	0	111
Net target	148		0	40	16	50	46	300

¹ Including Extra Care (40 units)

² Including Dolphin Square Foundation (77 units)

Table 1.1

6.5 The applicant initially calculated that to deliver the affordable housing targets set out in the table above would require a minimum subsidy of £12m but, on the basis of figures subsequently given, it was clear that this figure was going to have to be revised considerably upwards.

6.6 In the event that it is not possible to deliver these targets, or to agree a variation to the S106 with different targets that are deliverable, the S106 signed in 2006 does

allow the developer to invoke a 'cascade' mechanism that would result in only half the target number of general needs units being delivered, i.e. 74 rather than 148.

- 6.7 The 'cascade' is the fall-back option against which the proposal needs to be compared. The developer can implement this option in line with the section 106 agreement. Following on from a series of discussions surrounding possible options and implementing the cascade option, all parties are trying to avoid this at present as it would substantially reduce the level of affordable housing provided on Phase 2.
- 6.8 Discussions have been ongoing and a mix of affordable units is now being proposed and considered. Whilst it is accepted that the option proposed is less favourable than the initial baseline mix, in the current circumstances, the proposal is considered more favourable than resorting to the 'cascade' mechanism on this site. This proposal is also considered acceptable as it requires no subsidy from the Council's Affordable Housing Fund.
- 6.9 The Deed of Variation proposed includes a revised Remaining Baseline Mix which offers 187 Affordable housing units.

The mix is proposed as follows:

No. of Affordable Housing Units					
187					
General Needs Social Rented				Intermediate Housing	
				Sub-Market Housing Units	
127				60	
Unit Sizes (Net Internal)					
1 bed	2 bed	2 bed	3 bed	4 bed	1 person 1 bed
48m ²	61 m ²	68 m ²	84 m ²	93 m ²	38 m ²
No.	No.	No.	No.	No.	No.
19	26	18	52	12	60

- 6.10 It is proposed that the developer would bring forward and develop:
- 127 of the 148 general needs units at social rent,
 - Convert the remaining 21 to market sale;
 - Convert the 40 Sub market rent and 16 shared ownership units to 60 sub market rent 'Pocket' units;
 - Convert the 96 Homebuy units to 84 private sale
- 6.11 This proposal retains 127 social rent units (not affordable rent), which is a significantly higher level of social rent units than would be achieved through the cascade mechanism.

- 6.12 The conversion of 40 sub-market rent units and 16 shared ownership to 60 sub-market rent 'Pocket' units introduces a tranche of a product that Members have supported elsewhere in the borough, and replaces a tenure (shared ownership) that is becoming increasingly difficult to make genuinely affordable in Camden.
- 6.13 96 Homebuy units are proposed to be converted to private sale as the Council considers that the Homebuy units would not in reality be classed as affordable housing. Homebuy was a form of Intermediate Housing which was to be provided by the Developer whereby a Homebuy Loan was offered to the purchaser towards the purchase of a Homebuy unit. Therefore, it is considered that the Council loses nothing from their conversion to market sale.
- 6.14 The Council has considered all options proposed as well as the cascade mechanism and considers that this option offers a higher level of social rent, which is considered to be consistent with that originally intended and is therefore acceptable in this location. This proposal also converts a product that was unlikely to be classed as 'affordable' for those in housing need.
- 6.15 It is therefore considered that the proposed alternative mix of affordable housing as detailed above would meet the planning purpose of the original S106 agreement.

Nursing Home

- 6.16 Under the terms of the 2006 agreement, within the Kings Cross Central (KXC) development, the applicants were obliged within the Section 106 under Clause MM to provide a Nursing Home.
- 6.17 In relation to Section MM of the Agreement the Council considers that the need for a Nursing Home has changed since the Agreement was entered into. There is no particular identified need for nursing, residential or extra care beds for older people and, given the existing constraints on Council budgets, it is not considered to be in the public interest to invest the level of funding required into the facility in this location previously contemplated and provided for in the Agreement. Accordingly the parties have agreed that it is appropriate to delete section MM of the Agreement.

7.0 CONCLUSION

- 7.1 It is considered that the proposed approach and the revised mix of affordable units is logical and reasonable in the absence of realistic and deliverable alternatives and will ensure that the units secured will deliver maximum benefits to the local community as an important element of a key project. This proposed Deed of Variation is beneficial to both parties and considered to be acceptable in planning terms as it would meet the planning purpose of the original obligation in the 2006 s106 agreement; namely to deliver on site affordable housing which cannot be delivered as originally intended. The mix of the affordable housing proposed is considered to be acceptable in this instance due to the quality of the provision secured in comparison to the default position of the cascade which all parties would like to avoid.

- 7.2 It is recommended that the amended Affordable Housing figures should be approved and the requirements of the S106 Legal Agreement signed on 22nd December 2006 should be amended by way of Deed of Variation.

8.0 **LEGAL COMMENTS**

- 8.1 Members are referred to the note from the Legal Division at the start of the Agenda.
- 8.2 This application seeks the voluntary agreement of both parties to vary one element of the related legal agreement. As will be clear from the Report, the Council in its function as planning authority originally granted planning permission on the basis that the overall development would only be acceptable if the planning requirement to provide on-site affordable housing was secured through a Section 106 agreement. Therefore the key considerations in considering whether to approve the Recommendation are (a) what the default position would be under the cascade within the s106 Agreement dated 22 December 2006; (b) whether the alternative mix of units are acceptable for this site and (c) is the alternative mix of units of equivalent effect and scale. As noted in the assessment of the Report officers' view is that all three considerations are met hence the recommendation for approval.