



Our Ref: LPL 682B 21-08-2015

The Planning Inspectorate  
Registry Team  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

21<sup>st</sup> August 2015

Dear Sir/Madam

**Re: Section 106BC Appeal  
Section 106BA Application Reference 2015/2429/P  
22 Tower Street, London, WC2H 9TW**

Leith Planning Limited is instructed by English Rose Estates (Tower St) Limited (the "Owner") to submit a Section 106BC Appeal in accordance with the Town and Country Planning Act 1990 (as amended) in relation to 22 Tower Street, London to modify affordable housing requirements in relation to a planning obligation.

This Section 106BC appeal seeks to vary the affordable housing provision set out in the Section 106 Agreement dated 26<sup>th</sup> November 2014 associated with Grant of Consent Reference: 2014/3425/P.

A Section 106BA Application was submitted to the Council on 24<sup>th</sup> April 2015 and as yet has not been determined. As such, this appeal is on the grounds of non determination of the application.

In summary, and for the reasons set out in detail in the reports prepared by Gerald Eve LLP and Counsel's Opinion, the Owner's case can be summarised as follows.

The statutory provisions in section 106BC (read with section 106BA) require the Inspector to address two questions; first, is the current development

economically viable? Second, if not, would removal/modification of the affordable housing obligation render the development economically viable?

(1) Is the Scheme currently viable?

In light of the evidence and the assessment in the Gerald Eve reports, the Owner's case is that the current development is not economically viable.

With a notional PIL offer of £250K, Gerald Eve's appraisal assumptions derive a profit on cost of 14.10%. Having regard to the agreed target profit level of 20.0% on cost.

Further, it is neither viable nor practically possible to deliver the four on-site affordable housing units referred to in the section 106 agreement. In principle the Council's own policies accept that it is prepared to accept off-site affordable housing or a PIL where on-site affordable housing cannot be achieved. The Owner's case is that it has taken ample steps to investigate the view of Registered Providers, none of whom are prepared to take on the four on-site units and there is strong evidence of the consistent objection to the four affordable units being too small a package to be attractive to RPs.

(2) Would removal/amendment of the affordable housing obligation render the scheme viable?

The Owner's case is that an amendment of the affordable housing obligation would render the scheme capable of being viable, namely an amendment to permit a PIL of £250,000 rather than on-site provision of four units.

The PIL sought by the Council in the sum of £1,415,20 would not render the development economically viable and Owner relies on the reasoning set out in the Gerald Eve reports. PIL of such a figure would not bring the scheme within an acceptable margin.

However, the Gerald Eve reports demonstrate that a PIL in the sum of £250,000 renders the scheme potentially capable of achieving an acceptable level of viability having regard to the sensitivity analysis and to date the Owner has offered this sum as a gesture of good will to the Council, notwithstanding its position that as a matter of principle the removal of the affordable housing requirement in its entirety would be justified in this case having regard to the figures set out in the Gerald Eve report.

This Appeal is submitted with a number of supporting documents, namely:

- A copy of the (s106BA) application letter dated 24<sup>th</sup> April 2015 with attached email dated 24<sup>th</sup> February 2015 received from Sarah Ballantyne-Way of Camden Council. Please note that a copy of this letter was sent to the other signatories of the original Section 106 Agreement by way of notification.

- Acknowledgement letter from the Council dated 28<sup>th</sup> April 2015.
- A copy of the original Section 106 Agreement signed and dated 26<sup>th</sup> November 2014
- A copy of the Financial Viability Appraisal prepared by Gerald Eve and submitted in support of the Section 106BA application. Please note that a viability appraisal was not prepared and submitted with the original planning application (reference 2014/3425P). Gerald Eve confidentiality letter dated 24<sup>th</sup> April 2015.
- Copies of all of the documents in evidence and referable correspondence with Camden Council, including:
  - BPS Independent Review of Assessment of Viability dated 27<sup>th</sup> May 2015
  - Email dated 19<sup>th</sup> June 2015 from Jonathan McClue, Camden Council confirming that BPS had applied the incorrect multipliers in their calculations dated 19<sup>th</sup> June 2015 with attached revised calculation for the payment in lieu requirement.
  - Gerald Eve comments in response to BPS Report of 27 May 2015 issued 2<sup>nd</sup> July 2015
  - Formal Opinion of Heather Emmerson, 11 Kings Bench Walk dated 2<sup>nd</sup> July 2015
  - BPS Update Report dated 9<sup>th</sup> July 2015
  - Email from Leith Planning Limited to Jonathan McClue, Camden Council dated 16<sup>th</sup> July 2015 seeking clarification on the Council's position.
  - BPS Response to 22 Tower St dated 5<sup>th</sup> August 2015.
- Please note that the Sensitivity Analysis has been considered in detail at Section 13 of the Financial Viability Assessment of Gerald Eve dated April 2015.
- Draft Statement of Common Ground signed by the Appellant.
- Additional Information not previously seen by the LPA: Please see the Officer's Report in relation to Application Reference: 2014/6903/P approved by Camden Council on 31<sup>st</sup> March 2015.

I would be grateful if you would confirm safe receipt of this appeal.

Yours sincerely

Samantha Nicholls  
 BA (Hons) MTCP  
 Group Planning Director

cc English Rose Estates (Tower St) Limited  
LaSalle Investment Management

## **Schedule of Documents**

- 1) S106BA application letter dated 24<sup>th</sup> April 2015
- 2) Acknowledgement letter from the Council dated 28<sup>th</sup> April 2015.
- 3) Original Section 106 Agreement signed and dated 26<sup>th</sup> November 2014
- 4) a. Financial Viability Assessment prepared by Gerald Eve dated April 2015  
b. Confidentiality Letter
- 5) BPS Independent Review of Assessment of Viability dated 27<sup>th</sup> May 2015
- 6) a. Email dated 19<sup>th</sup> June 2015 from Jonathan McClue  
b. Revised Calculation
- 7) Gerald Eve comments in response to BPS Report of 27 May 2015 issued 2<sup>nd</sup> July 2015
- 8) Formal Opinion of Heather Emmerson dated 2<sup>nd</sup> July 2015
- 9) BPS Update Report dated 9<sup>th</sup> July 2015
- 10) Email from Leith Planning Limited to Jonathan McClue dated 16<sup>th</sup> July 2015
- 11) BPS Response to 22 Tower St dated 5<sup>th</sup> August 2015.
- 12) Draft Statement of Common Ground signed by the Appellant.
- 13) Officer's Report in relation to Application Reference: 2014/6903/P approved by Camden Council on 31<sup>st</sup> March 2015.