



140 London Wall, London EC2Y 5DN

Our Ref: MR/LH

Date: 7th December 2016

Mr David Joyce
London Borough of Camden
5 St Pancras Square
London
N1C 4AD

Dear David,

APPLICATION FOR VARIATION OF SECTION 106 AGREEMENT PURSUANT TO THE PROVISIONS OF S.106A TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

KIRBY STREET, 36-43 KIRBY STREET, FARRINGDON, LONDON EC1N 8TE

On behalf of my client, Unite Group Plc, I write to enclose a planning application in accordance with Section 106A of the Town and Country Planning Act 1990 (as amended).

The purpose of this application is to vary the planning obligation, clause 4.2, pursuant to planning permission 2006/1445/P dated 13th December 2006 relating to restrictions placed on the occupancy of the building to be exclusively used by students during University term time. The application is made to widen the occupancy of the building during non-term time in line with changing market demand and conditions for properties such as 36-43 Kirby Street which falls within a prime central London location.

In accordance with the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, this application provides the following information as per section 3(1):

- the name and address of the applicant;
- the address or location of the land to which the application relates and the nature of the applicant's interest in that land;
- sufficient information to enable the authority to identify the planning obligation which the applicant wishes to have modified or discharged;
- the applicant's reasons for applying for the modification or discharge of that obligation; and;
- such other information as the authority consider necessary to enable them to determine the application.

Governing Legislation

The modification of planning obligations is governed by s.106A of the Town and Country Planning Act 1990. As amended it provides the ability to renegotiate planning obligations where the obligation predates April 2010 or is over 5 years old.

s.106A(6) of the Town and Country Planning Act 1990 provides:

"(6) Where an application is made to an authority under subsection (3), the authority may determine;



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A member of the RPS Group Plc

(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”.

National Planning Policy and Guidance Context

As stipulated within the National Planning Practice Guidance at paragraph 009, where modification is sought, the test under s.106A(6)(c) should be applied such that an application can be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way.

More pragmatically, the National Planning Policy Framework (‘herein’ The Framework) states at paragraph 205:

“Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled”.

Mindful of the age of the properties and consents as detailed below, as well as the fluidity and dynamism of contemporary markets, there is a requirement for greater flexibility of occupation over and beyond the original intended useful purpose, and a question as to whether this is still relevant in planning terms.

Applicant Details

Unite Group Plc own the freehold of Kirby Street, 36-43 Kirby Street. The location of the site is detailed on the enclosed site location plan.

Unite Group Plc is the UK’s leading manager and developer of student accommodation, providing homes for over 46,000 students in 132 purpose built properties across 28 of the UK’s strongest university towns and cities. Unite Group Plc have over 1,000 employees and work in partnership with more than 60 higher education providers, as well as renting rooms directly to students.

Their address is: c/o RPS CgMs, 140 London Wall, London, EC2Y 5DN.

Existing Planning Restrictions

Planning permission was originally granted conditionally and subject to Section 106 (s.106) Legal Agreement on 13th December 2006, LPA Ref. 2006/1445/P for the, *“Alterations and extensions to the existing workshops and offices (Use Class B1) including the erection of a two storey roof extension at fifth and sixth floor levels, a six storey rear extension and other ancillary works and change of use to provide 42 workshops (B1c use class) at basement and ground floor level and student residential accommodation (Class C3) comprising 128 studio units on the upper floors.”* (Decision notice and s.106 attached at **Appendix A**).

The s.106 agreement was signed on 13th December 2006 and placed the following restrictions on the development:

- Occupation of the units to be restricted to students in full or part-time higher education and no part of the property be sold as a separate self-contained unit. At paragraph 2.20 “Student

Accommodation" is defined as, "*non-self-contained accommodation to be used exclusively for purposes within Class C3 of the Use Classes Order by Students*".

- Compliance with the submitted 'Student Management Plan' and 'Code of Practice for Student Housing';
- Car free Housing;
- Waste Strategy and Management Plan.

Clause 4.2, *Student Accommodation*, is relevant in respect to restriction on occupancy and the relevant clauses of this section state:

4.2.1 *To ensure that the Student Accommodation is used and Occupied for no purpose other than its authorised purpose as housing available for letting as Student Accommodation AND the Student Accommodation shall be let at a rent no greater than rent of similar student housing of a similar size, age, specification, location and service charge level in the London Borough of Camden.*

4.2.2 *To ensure that the Student Accommodation is used at all times as a single planning unit and that:*

(a) no part of the Student Accommodation shall at any time be used as separate, independent self-contained dwelling units; and

(b) no part of the Student Accommodation shall be sold leased licensed or otherwise disposed of in any form as a separate unit of use or occupation

4.2.3 *The Owner covenants with the Council that after the Occupation Date the Owner shall not occupy or permit occupation of any part of the Development at any time when the Student Accommodation is not being used in strict accordance with this clause and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of this clause 4.2 and in the event of any breach of this clause to cease Occupation of the Development forthwith until the breach is rectified.*

[4.2.4 Notwithstanding the restriction contained in clause 4.2.3 of this Agreement, during the Olympic Period only, the Student Accommodation may be occupied by Olympic Officials.

4.2.5 At the end of the Olympic Period the Student Accommodation shall revert back to accommodation for Students and shall not be used for anything other than Student Accommodation in accordance with the terms of the Existing Agreement as varied by the First Deed of Variation].

[Wording in square brackets introduced by Second Deed of Variation dated 25 August 2011].

Clause 4.3 *Student Management Plan* is also relevant in respect to restriction on occupancy and the relevant clauses of this section state:

4.3.1 *On or prior to the implementation Date to submit a draft of the Student Management Plan to the Council for Approval.*

4.3.2 *Not to Occupy or permit Occupation of any part of the Development until such time as the Council has approve the Student Management Plan.*

4.3.3 *Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being used in strict accordance with the Student*

Management Plan as approved from time to time by the Council and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Student Management Plan and in the event of any breach of this clause to cease Occupation forthwith until the breach is rectified.

Planning permission was later granted subject to a Section 106 Legal Agreement on 25th August 2011 LPA Ref. 2011/0106/P for the, "Temporary Change of Use from student accommodation (Class C3) to provide accommodation officials and other persons associated with the Olympic and Paralympic games from 12th July to 09th September 2012 (sui generis)". (Decision notice and S106 attached at **Appendix B**).

This required a separate s.106 agreement to enable the additional clause allowing for the occupation of non-students, namely Olympic Officials. This illustrates that planning permission has been granted in the past, albeit on a temporary basis, for the occupation of the site by non-students.

Planning case for seeking modification of governing s.106

The applicant is seeking to modify relevant clauses of the governing s.106 agreement associated with planning approval reference 2006/1445/P. The purpose of the proposed modification is to enhance the operational parameters of the building such that the property can be used more flexibly, more sustainably, the use of the accommodation optimised, and can better reflect the needs of the student housing market today. The format, demand and requirements of the student housing sector, indeed as well as other more conventional housing markets, has altered markedly since the planning obligations were originally imposed in 2006. It is considered that the planning obligations can continue to serve their original intended purposes equally well with the proposed modifications.

It is considered that the relevant clauses are no longer compatible with the contemporary property market or appropriate when seeking to optimise the marketability and residential offer at the site. Given the limited justification for viable accommodation in central London to be left empty this directs further thought as to the use of student accommodation outside of the academic term to ensure that accommodation of this nature remains typically in use all year round. The planning policy justification is clear in that ensuring the occupation of the property outside of term times will serve to enhance the vitality and viability of the area. This also prevents any undue vacancy of the building, for example during summer months.

Planning Policy Assessment

In terms of the planning considerations associated with widening the use during non-term time, the following site-specific considerations are relevant.

Policy DP14 of the adopted Local Plan (2010) and Policy E1 of the Draft Local Plan 2015, states that the council will support tourism and visitor accommodation by:

- a) expecting new, large-scale tourism development to be located in Central London, particularly the growth areas of King's Cross, Euston, Tottenham Court Road and Holborn;
- b) allowing smaller scale visitor accommodation in the town centres of Camden Town, Kilburn, West Hampstead, Kentish Town and Finchley Road/Swiss Cottage;
- c) considering tourism development outside of the areas listed above that has a local or specialist focus and that would attract limited numbers of visitors from outside the borough.

It adds that all tourism development and visitor accommodation must be easily reached by public transport.

Located within vicinity of places of higher education, Camden's Policies Map zones the site as located within central London area, where hotels are supported by policy. Furthermore the site is easily reached by public transport (PTAL 6b) which supports hotel use.

The approach is also supported by the GLA having regard to paragraph 3.53B of Further Alterations to the London Plan (FALP); London Plan Housing SPG (March 2016) and further guidance set out within the Mayor's Academic Forum paper (January 2015) in relation to affordable student accommodation.

At paragraph 3.53B:

"3.53B Student accommodation should be secured as such by planning agreement or condition relating to the use of the land or to its occupation by members of specified educational institutions. Where there is not an undertaking with a specified academic institution(s), providers should, subject to viability, deliver an element of student accommodation that is affordable for students in the context of average student incomes and rents for broadly comparable accommodation provided by London universities. Information on this will be provided through the Mayor's Academic Forum in the London Plan Annual Monitoring Reports. Guidance on how such accommodation should be defined, delivered and retained will be provided in Supplementary Planning Guidance".

The above provides defined policy support for greater flexibility in student accommodation schemes; allowing non-students to occupy the building outside of term time improves the viability of student accommodation enabling accommodation providers to effectively subsidise student rents with non-student income. This principle is captured at paragraph 3.9.15 of the London Plan Housing SPG which states;

"To enable providers of PBSA to maximise the delivery of affordable student accommodation by increasing the profitability of the development, boroughs may consider allowing the use of accommodation during vacation periods for ancillary uses. Such uses could include providing accommodation for students on short-term education courses at any institution approved in advance by the borough. Conditions and or legal agreements could be attached to any planning permission to ensure that the ancillary use does not result in a material change of use of the building".

The Council should agree to greater flexibility in respect to the occupancy of the property for the following principal reasons:

- The property is located within a prime London location where there is significant local and strategic need for conventional forms of housing. This is defined by acute housing need in many central London Boroughs including Camden. FALP at Table 3.1 identifies a minimum ten year target for the borough to deliver 8,892 new homes over the period 2015-2025 thus providing an annual target of 889 new homes. By opening up the property to non-students out of term time, this would contribute towards meeting acute local housing need in the area;
- By widening the occupancy of the property, this will ensure that the property is occupied all year round thus improving the vitality and viability of the local area. This will be of social and economic benefit to local businesses and would help to promote a mixed and balanced community in the area;

- The widening of the occupancy of the property would also help to support tourism and tourism spend in the local area whether occupiers are academic tourists for example foreign language students on short summer courses, or more conventional tourist trade.

We have recently advised Unite in relation to similar cases at 19-29 Woburn Place, Camden; and 2 Devonshire Street, Westminster where the London Boroughs of Camden and Westminster reviewed occupancy restrictions within existing s.106 agreements and deeds of variation were successfully negotiated allowing the properties to be occupied outside of term time by non-students as an ancillary use. This ensured that the properties could be occupied all year round with the non-student use outside of the academic term effectively controlled through a "non-student management plan" which complemented existing approved student management plans for the properties.

Suggested Modification to s.106 Obligations

The applicant thus proposes the following modification to the wording of Section 2, to insert [highlighted in red]:

"Non-Student" means "any person who is not a Student".

"Student Accommodation" means "non-self-contained accommodation forming part of the Development to be used exclusively for purposes within Class C3 of the Use Classes Order by Students **during the academic term** and as shown shaded green on Plan 2."

The applicant thus proposes the following modification to the wording of Section clause 4.2 as per the below:

4.2 Student Accommodation

Save as provide in Clause 4.7:

4.2.1 To ensure that the Student Accommodation is used and Occupied for no purpose other than its authorised purpose as housing available for letting as Student Accommodation AND the Student Accommodation shall be let at a rent no greater than rent of similar student housing of a similar size, age, specification, location and service charge level in the London Borough of Camden.

~~4.2.4 Notwithstanding the restriction contained in clause 4.2.3 of this Agreement, during the Olympic Period only, the Student Accommodation may be occupied by Olympic Officials.~~

~~4.2.5 At the end of the Olympic Period the Student Accommodation shall revert back to accommodation for Students and shall not be used for anything other than Student Accommodation in accordance with the terms of the Existing Agreement as varied by the First Deed of Variation.~~

4.3 Student Management Plan

4.2.1 On or prior to the implementation Date to submit a draft of the Student Management Plan to the Council for Approval.

4.3.2. Not to Occupy or permit Occupation of any part of the Development until such time as the Council has approve the Student Management Plan.

4.3.3 **Save as provided in clauses 4.3.4 and 4.7**, following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being used in strict accordance with the Student Management Plan as approved from time to time by the Council and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Student Management Plan and in the event of any breach of this clause to cease Occupation forthwith until the breach is rectified.

4.3.4 **Outside of the academic term to comply with the Non-Student Management Plan as approved by the Council from time to time and not to permit Occupation of the Development save in accordance with the Non-Student Management Plan and in the event of a material breach of the Non-Student Management Plan to remedy such forthwith and in the event of non-compliance with this clause the Owner shall upon notice from the Council take any steps reasonably required by the Council to remedy such non-compliance.**

4.7 Occupation of Student Accommodation outside of the academic term

Outside of the academic term to allow Occupation of the Student Accommodation by Students for any period of time or by Non-Students on a short term basis (less than 90 consecutive days) only.

Having suitably provided for the required information as established under the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, we await confirmation of the receipt and validation of the planning application. Should you however have any queries in the interim please do not hesitate to contact either myself or my colleague Lotte Hirst

[Redacted]

Yours sincerely,

[Redacted Signature]

MATTHEW ROE
Director

Kirby Street, 36-43 Kirby Street, Farringdon, London EC1N 8TE

Location Plan 1:1250

