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FAO

David Peres Da Costa (Development Management)
Aidan Brookes (Legal Services)
Brian Matthews (Housing Partnerships)

Via email only

31st January 2020

Dear David / Aidan / Brian

Application for the variation of Section 106 (S106) Agreement
S106 Agreement reference number: CLS/COM/PM/1685.2802
Planning application reference number: 2015/2775/P
254 Kilburn High Road, London, NW6 2BS

In accordance with the provisions set out in S106A of the Town and Country Planning Act 1990 (as amended) this letter seeks to vary the S106 Agreement dated 22 December 2016 relating to the redevelopment of 254 Kilburn High Road, London, NW6, 2BS. The Agreement relates to Planning Permission 2015/2775/P.

Planning history

Planning permission (2015/2775/P) was granted consent on 22 December 2016 at the site for:

'Redevelopment of the site (following demolition of existing buildings) to provide a mixed use development, comprising the erection of six storey building (with set back top floor) to provide 955 sqm of commercial space (Classes B1 and B8) and 60 dwellings plus cycle parking. 2x disabled car parking bays, refuse/recycling facilities and access together with landscaping including outdoor amenity space'.

The planning permission was subject to a S106 Agreement (CLS/COM/PM/1685.2802) dated 22 December 2016.

A subsequent permission (2017/4669/P) was granted on 18 September 2019 for a minor material amendment to the scheme to amend the parapet roofline to the building, the internal layout and cycle/substation storage areas. In granting permission, a deed of variation (CLS/COM/PM/1800.449) dated 18th September 2018 was signed to incorporate the details of that permission.

The S106 Agreement was varied by a further deed of variation (CLS/COM/LN/1800.1237) dated 4th December 2019 which made amendments to ensure the Affordable Housing Units are to be used for no other purpose than for the provision of Intermediate Rented Housing and Affordable Rented Housing (previously having been worded only for the purposes for Intermediate Housing).

Please find enclosed a copy of the site location plan with the site outlined in red, a copy of the decision notice (2015/2775/P), a copy of the original S106 Agreement and the subsequent deed of variations.

The proposal

The Section 106 Agreement was originally entered into by (1) 254 Kilburn High Road LLP ('the owner'), (2) Hemnall Limited ('the mortgagee') and (3) the Mayor and Burgesses of the London Borough of Camden ('the Council'). A copy of this (CLS/COM/PM/1685.2802) has been enclosed.

Section 4.1 of the S106 Agreement relates to the delivery of affordable housing and at paragraph 4.1.5 states the following:

'Not to occupy or allow occupation of any part of the Development until such time as:

- (i) the Affordable Housing Units have been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years:*
- (ii) the works of construction conversion and fitting out of the Affordable Housing units have been completed in accordance with the requirement of Sub-Clause 4.1.3 hereof'.*

As specified in criterion (ii) above, the agreement is worded so that no part of the development can be occupied until the construction works and fitting out of the affordable housing units have been completed. This prevents the occupation of any market housing until those works have been completed.

On behalf of the applicant, this letter seeks to vary the S106 Agreement, and in particular paragraph 4.1.5 (ii), to enable up to 70% of the marketing housing units to be able to be occupied prior to the completion of the works of construction, conversion and fitting out of the Affordable Housing Units.

Therefore, it is proposed that paragraph 4.1.5 would be worded as follows:

'Not to occupy or allow occupation of no more than 70% of the market housing units of the Development until such time as:

- (i) the Affordable Housing Units have been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years:*
- (ii) the works of construction conversion and fitting out of the Affordable Housing units have been completed in accordance with the requirement of Sub-Clause 4.1.3 hereof'.*

Reason for proposed variation

To date, approximately 80% of the market units have been sold subject to contract. However, the restrictive clause in the S106 Agreement hinders these sales and the overall delivery of the development of the site. In order to ensure consistent delivery of both market and affordable housing, the request to amend the clause merely allows for a more natural sequence to delivery.

Whilst it is acknowledged that the proposed variation of the agreement would delay the delivery of the affordable housing, it would not prejudice the overall intention of the original S106 Agreement, or planning policy requirements, insofar that the affordable housing would continue to be delivered. Further, we are aware that a similar approach to that proposed has in the past been approved by the Council on large housing developments, and, on Council owned sites, and a similar approach is requested for this site.

Furthermore, Origin Housing (the registered housing provided) have been briefed of the suggested variation and have confirmed their general agreement.

I trust the above is helpful in setting out the details of the proposal but if you require any more detail or have any further questions please do not hesitate to contact me.

Yours sincerely

Stuart Minty
Director
SM Planning