

APP/X5210/Q/21/3276844
100 Avenue Road, London NW3 3HF
(Appellant: Essential Living (Swiss Cottage) Ltd)

Appeal Summary: *Application in accordance with Section 106A, sub-sections (3) and (4), to amend clause 3.2 (and associated definitions) of the Section 106 Agreement relating to 2014/1617/P dated 24/08/2015 for the redevelopment of site including a 24 storey and 7 storey building with a total of 184 residential units, 1,041sqm of retail/financial or professional services/café/restaurant and 1,350sqm of community use. The amendments include removing the requirement to provide 28 Affordable Rent units, 8 Intermediate Housing units and 18 Discounted Market Rent units (for a minimum of 15 years post completion), to be replaced with 18 Discounted Market Rent units in perpetuity.*

Case Management Conference Summary Note

1. The case management conference (CMC) between the Inspector and representatives of the appellant, the London Borough of Camden (the Council) and the Belsize Society took place on Monday 6 September 2021. The CMC discussed procedural matters only, to ensure that the forthcoming Inquiry is conducted in an efficient and effective manner.
2. The Inspector appointed to conduct the Inquiry is Tom Gilbert-Wooldridge. The Inquiry will open at 10:00 on Tuesday 9 November 2021. It is anticipated the event will operate in-person based on current guidance¹, with the option of virtual participation where necessary.
3. The Council should ensure that interested parties are made aware of this note. It is recommended that a copy be posted on the Council's website.

Main Issues

4. Having regard to Section 106A(6) of the Town and Country Planning Act 1990, the main issues are likely to focus on:
 - i) whether the planning obligation relating to affordable housing continues to serve a useful purpose;
 - ii) whether the obligation should continue to have effect without modification; and
 - iii) if the obligation serves a useful purpose, whether it would serve that purpose equally well if it was modified as proposed.
5. Areas of disagreement between the parties include whether the viability and deliverability of the approved development and the planning balance are relevant matters. As to whether these matters are dealt with as specific main issues in the eventual decision will depend on the evidence heard in due course.

¹ <https://www.gov.uk/guidance/coronavirus-covid-19-planning-inspectorate-guidance> (updated 15 July 2021)

Dealing with the Evidence

6. At this stage, all of the main issues above would be best dealt with through the formal presentation of evidence in chief by each party's witnesses, and the evidence would be the subject of cross-examination. A round table discussion may be helpful on the draft deed of variation.
7. The appellant and the Council intend to engage in further discussion to reduce areas of dispute prior to the Inquiry. This includes matters relating to viability. Any updates to the statement of common ground (SOCG) between the appellant and the Council should be provided by the time proofs are exchanged. Any SOCG between the appellant and the Belsize Society should be produced within the same timeframe.
8. Any matters that have been raised by interested parties should be addressed by the appellant in particular, before and during the Inquiry as necessary. It is the appellant's intention to provide a composite response to matters raised by interested parties not covered under the main issues by the proofs' deadline.

Inquiry Arrangements

9. The Council will confirm as soon as possible whether an appropriate venue can be provided for the Inquiry including whether the venue can support live streaming and participants who may need to join the event virtually. The Council will also confirm whether it would be able to host the entire Inquiry virtually if pandemic restrictions change. It was agreed that the Inquiry should default to a virtual event if any key participant is required to isolate. Any technical queries for the Planning Inspectorate should be directed via the case officer².
10. The Council and the Belsize Society agreed to investigate the likely number of interested parties who may wish to speak at the Inquiry in order to understand any room capacity issues. It was also suggested that the main parties could be flexible on their numbers on particular days if necessary.
11. It was thought that the Inquiry should be completed within the 4 sitting days allocated (9 to 12 November) but that it would be prudent to reserve a day in the following week in reserve for any overrun (date to be confirmed). The final day could be heard virtually if only closing submissions remain.
12. The Council agreed that it would issue notification letters, press notices and site notices containing details of the inquiry arrangements. These should be issued no later than 3 weeks before the Inquiry opens. Site notices should be displayed in prominent locations around the site and it would be helpful to see evidence of where these have been displayed.
13. The site visit would need to adhere to any social distancing measures in place. The parties indicated that an unaccompanied site visit would be appropriate for this particular case and that a walking route could be provided for the Inspector.

² Please also see the following note for assistance:

<https://www.gov.uk/government/publications/guidance-for-local-planning-authorities-hosting-virtual-events-for-the-planning-inspectorate>

Management of Documents, including Core Documents

14. The appellant and the Council agreed to discuss how best to publish relevant documents online (including core documents) and will look into a dedicated webpage. The Inspector asked that this is set up by 4 October and before any inquiry notifications are issued. The parties should ensure that all documents are uploaded as soon as possible once they become available. If any personal data is present in documents, data protection procedures should be followed and that data redacted. Documents submitted during the Inquiry itself will also need to be uploaded.
15. Any Inquiry documents, including openings and closings, should be submitted by email to the Planning Inspectorate's case officer and the other main parties once agreed by the Inspector. Opening and closing statements should be submitted just before those stages of the Inquiry.
16. The parties agreed to work together on a list of core documents so they can be properly referenced in the proofs and at the Inquiry. The list of documents within the existing SOCG can be added to. The core documents should comprise only those documents to which the parties will be referring. Any decisions on which parties intend to rely should each be prefaced with a note explaining the relevance of the decision to the issues arising in the Inquiry, with the relevant paragraphs flagged up. A similar approach is to be taken in relation to any legal citations relied upon.
17. Where any documents are lengthy, only relevant extracts need to be supplied rather than the whole document. Such extracts should, however, be prefaced with the front cover of the relevant document and include any accompanying relevant contextual text. The Inspector will only require electronic copies of all documents unless specifically requested.
18. Further discussions on the draft deed of variation are expected to take place with updated versions to be produced before the Inquiry opens. Any changes to the main S106 agreement should be as clear as possible.

Inquiry Running Order

19. Following his opening comments on the first day of the Inquiry, the Inspector will invite opening statements from the main parties which should take no longer than 10-15 minutes each – appellant first, followed by the Council and then the Belsize Society.
20. The Inspector will then hear from any interested parties who wish to speak, although there is scope for some flexibility if someone has difficulties that prevent them from attending and speaking on day one.
21. This will be followed by the witnesses for the parties, in either a party by party or topic by topic order (to be determined before the Inquiry opens). The round table discussion on the draft deed of variation would take place after all the witnesses have been heard. Closing submissions would follow after that (the Belsize Society first, then the Council and then the appellant) which should be no longer than 30-45 minutes each. They should set out the parties' respective cases as they stand at the end of the Inquiry and be appropriately cross-referenced.

22. The Inspector will carry out the site visit at some point during the Inquiry. Its purpose is simply for the Inspector to see the site and its surroundings.

Timetable for Submission of Documents

23. Any new or updated SOCG between the parties should be submitted by **12 October**.
24. Proofs are to be submitted by **12 October**. Details of the preferred format and content of proofs and other material were annexed to the pre-conference note. The final list and copy of core documents should also be submitted by the same date. An updated draft deed of variation and final draft should be submitted by **12** and **26 October** respectively.
25. Evidence that notification letters, press notice and site notices have been issued and displayed should be provided by **19 October**.
26. There is no reference in the Rules or the Procedural Guide to supplementary or rebuttal proofs and the Planning Inspectorate does not encourage the provision of such. As an alternative to a rebuttal, it may be that the matter could more succinctly be addressed through an addendum statement of common ground. It is important that no new issues are introduced. Where an addendum statement of common ground or a rebuttal is necessary, copies should be provided no later than **26 October**.
27. Final timing estimates and a draft programme should be submitted no later than **26 October**. The Inspector will confirm the likely programme as soon as possible after this date. Other than in exceptional circumstances, participants are expected to take no longer than the timings indicated.

Costs

28. No application for costs is currently anticipated by any party at this stage. If an application is to be made, the Planning Practice Guidance (PPG) makes it clear that they should be made in writing to the Inspector before the Inquiry. The parties are also reminded that in order to support an effective and timely planning system in which all parties are required to behave reasonably, the Inspector has the power to initiate an award of costs in line with the PPG. Unreasonable behaviour may include not complying with the prescribed timetables.

Summary of Key Dates and Deadlines:

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| As soon as possible | Council to confirm the availability and suitability of an Inquiry venue and the ability to host the event virtually if required. |
| 4 October 2021 | Target date for the setting up of an Inquiry webpage. All documents (including core documents) should be uploaded onto the webpage as soon as possible once available and before notification documents are published. |

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| 12 October 2021 | Deadline for the submission of: <ul style="list-style-type: none"> • any new or updated SOCG • all proofs • composite response from appellant to interested parties' representations • final list and copy of core documents • updated draft deed of variation |
| 19 October 2021 | Deadline for the submission of evidence that the notification letters and press/site notices have been issued and displayed. |
| 26 October 2021 | Deadline for: <ul style="list-style-type: none"> • submission of final timing estimates and the draft programme • any addendum statement of common ground (and any necessary rebuttals) • final draft deed of variation |
| 9 November 2021 | Inquiry opens at 10:00 |

Tom Gilbert-Wooldridge
INSPECTOR

6 September 2021