

Appendix 4	Officer's delegated report for application reference 2013/5062/P
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<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	08/10/2013
		N/A	<b>Consultation Expiry Date:</b>	03/10/2013
<b>Officer</b>			<b>Application Number(s)</b>	
Jason Traves/David Morrissey			2013/5062/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
University College Hospital and Odeon Site 235 Euston Road/Tottenham Court Road/Grafton Way (and related former Middlesex Annexe site, 44 Cleveland Street, W1T 4JT)			Refer to draft decision notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
<p>S106A application for modification and discharge of planning obligations of the s106 planning agreement signed July 2004 which consolidated the following applications: application PS9604299R2 dated 19.08.1998 for:</p> <p>1) Redevelopment by the erection of a new University College Hospital of approximately 650 beds, including wards, surgical facilities, outpatients, day care, seminar rooms, laboratories, accident department, radiology, ancillary offices, workshops, storage and associated services, and some 1,000 sq m of A1/A3 floorspace;</p> <p>2) The provision of car parking and 2 community health facilities within the Odeon site (Grafton Way/Tottenham Court Road W1); Application PSX0005046 dated 28.07.2004 for erection of a building for hospital use (C2) comprising 3 basement levels for car parking, ground floor for community health facilities, and 1st to 5th floors as hospital, and related support accommodation and roof top plant.</p> <p><b>The proposed modification is to delete clause 4 and related definitions of the planning agreement signed July 2004 to remove entirely the requirement for affordable housing obligations.</b></p> <p>[NB: A related application (Ref: 2013/5050/P) was submitted under S106BA of the Town and Country Planning Act for modification and discharge of planning obligations of the s106 planning agreement signed July 2004. The proposed modification was to delete clause 4 and related definitions of the planning agreement signed July 2004 to remove entirely the requirement for affordable housing obligations. This application had 28 days in which to be determined and was refused on 28.08.2013]</p>				
<b>Recommendation(s):</b>		Refuse s106A variation application		
<b>Application Type:</b>		Section 106A -Application to discharge planning obligations		

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	42	No. of responses	14	No. of objections	14
			No. electronic	14		
Summary of consultation responses:	See Appendix A					
CAAC/Local groups* comments: *Please Specify	See Appendix A					

## Site Description

The application relates to a 2004 Section 106 ("the Consolidated Agreement") linked to planning permission (Application Ref: PS9604299) granted on 19 August 1998 for the development of a new hospital on a site bounded by Euston Road, Tottenham Court Road, Beaumont Place, Grafton Way and Gower Street and a reserved matters approval for health related development (including underground parking and two community health facilities) on the "Odeon site" at Grafton Way/Tottenham Court Road. The main hospital site is built and operating whilst the Odeon site remains vacant. Further sites related to the agreement include the former Middlesex Hospital Annexe, 44 Cleveland Street. The Cleveland Street site was last used for outpatients and medical related uses, but has been vacant since about 2005.

## Relevant History

A more detailed summary of the Relevant History is contained at Appendix B.

However, in broad terms, the application relates to provisions in a Section 106 agreement dated 1<sup>st</sup> July 2004 ("the Consolidated Agreement") primarily linked to a planning permission (Application Ref: PS9604299) granted on 19 August 1998 for the development of a new hospital on a site bounded by Euston Road, Tottenham Court Road etc. Undischarged planning obligations contained in various s106 agreements made in 1999 and linked to PS9604299 were consolidated into the single Consolidated Agreement in 2004 which also contained obligations linked to permission for development on the Odeon site/Grafton Way development granted on 28 July 2004.

The most relevant requirements of the Consolidated Agreement for the purposes of this report are the requirement for a specified level of off-site affordable housing provision on a nominated site (now identified as the Cleveland Street site, it being noted that the owner was required to nominate a delivery site and that Cleveland Street was nominated in 2006).

The Agreement provides for the specified level of this affordable housing to either be arrived at based on a formula set out in the s106 tied to a 4 potential residential sites named in the Agreement OR for a minimum backstop of 30 units to be provided. Additionally the Consolidated Agreement requires a further 1,425 sqm of Affordable Housing (arising from the Odeon scheme.) to be provided.

The main hospital site is built and operating whilst the Odeon site remains vacant. Other related sites remain vacant or have been sold on/developed.

Because the named sites identified in the Agreement did not deliver any new residential units, the formula for arriving at the specified number of units has fallen away and only the "backstop" requirement for provision of 30 units is still engaged (plus the requirement for the 1,425 sqm of Odeon Affordable housing.)

The s106A variation application which is the subject of this Report relates specifically to these requirements which have still not been met. Relevant extracts from the Consolidated Agreement (clause 4 plus the related definitions set out under Clause 2) are at Appendix C.

It should also be noted that the Consolidated Agreement contains the following provision at clause 4.2.1:

*"....if the All Affordable Housing units are not completed by 1<sup>st</sup> June 2010 or has not been transferred to a Housing Association in accordance with the requirements set out in Clause 4.1.4 and 4.1.5 the Council may serve notice on the NHS Trust requiring the NHS Trust to offer the*

*Council a conveyance transfer or lease (as the case may be) of the Interest in the All Affordable Housing Land<sup>1</sup> as a separate parcel, completely cleared of buildings and in a stable, developable and fully decontaminated state for provision of affordable housing, with vacant possession and free from encumbrances, on no unusually onerous terms and together with all relevant ancillary easements, rights and other matters so that the same may be developed for Affordable Housing for a nominal consideration of £1 and the Owner shall comply with such requirements”.*

## **Relevant policies**

### **NPPF 2012**

### **DCLG Guidance: Section 106 affordable housing requirements - Review and appeal (April 2013)**

### **London Plan 2011**

#### **LDF Core Strategy and Development Policies**

CS1 Distribution of growth  
CS3 Other highly accessible areas  
CS5 Managing the impact of growth and development  
CS6 Providing quality homes  
CS9 Achieving a highly successful central London  
CS14 Promoting high quality places and conserving our heritage  
CS16 Improving Camden's health and well-being  
CS19 Delivering and monitoring the Core Strategy

DP1 Mixed use development  
DP2 Making full use of Camden's capacity for housing  
DP3 Contribution to the supply of Affordable Housing  
DP5 Homes of different sizes  
DP6 Lifetime homes and wheelchair housing  
DP22 Promoting sustainable design and construction  
DP24 Securing high quality design  
DP25 Conserving Camden's heritage

#### **Camden Planning Guidance 2011**

CPG1 Design  
CPG2 Housing  
CPG3 Sustainability  
CPG8 Planning Obligations

### **Bloomsbury Conservation Area Appraisal and Management Strategy 2011**

### **Fitzrovia Area Action Plan**

[NB: The submission version of the Fitzrovia Area Action Plan is under examination and hearings were held from 2 to 4 July 2013. Proposed main modifications were published for consultation on 27 September 2013. After the consultation has concluded, the Inspector will consider the comments received and issue a report on the soundness of the Plan. The emerging Plan is a material consideration at present, but will have relatively limited weight until the Inspector's report is published.

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<sup>1</sup> This was either the Obstetrics site on Huntley St (now built on) or Cleveland Annexe; which became the nominated site.

The Odeon and Cleveland Street sites are included as opportunity sites (Sites 6 and 2 respectively), along with a number of other sites controlled by UCLH.]

## Assessment

### Summary

Having regard to the way events have transpired, the relevant provisions of the Consolidated Agreement at Clause 4 can best be summarised as currently requiring the provision of 30 affordable units, plus the further Odeon provision of 1,425 sqm of affordable rented units, all to be delivered on the Cleveland Street Annex site which was nominated by UCLH NHS Trust to meet their obligation. There is also a sanction contained in the Agreement whereby Camden can acquire the Cleveland Street Annexe for £1.00 in the event of non-compliance.

Clause 4 contains a timescale for obtaining planning permission for the Affordable Housing units, for entering into a lease with a Housing Association (April 2007), and for the units to be completed (1st June 2010).

As noted the requirements of Clause 4 have not been met.

In the view of officers, all of the Affordable Housing requirements in Clause 4 remain relevant as they relate to the specific impacts of the hospital scheme and the non- delivery of new residential units on the associated “*residential sites*”. The s106 exists so that the Trust can deliver a minimum level of affordable housing on a site in the area, meeting policy objectives and local expectations which formed part of the justification for accepting such an intensive development in this area and the release of other sites for potentially 100% private housing schemes.

### Nature of Application – Legislative and policy framework

Section 106A(3) provides the ability to apply for the obligation:

*“(a) to have effect subject to such modifications as may be specified in the application; or  
(b) to be discharged.”*

The procedure to be followed is set out in the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992.

An application may be determined in one of three ways:

*“(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.**”*

The modifications specified in the application must be considered in their entirety. It is not possible to approve an application by accepting some modifications but rejecting others. In this case there are no modifications proposed; it seeks to remove the affordable housing obligations in their entirety.

### Key Considerations

The key consideration of section 106A is whether or not the obligation serves a useful purpose.

There are no further planning regulations or guidance about how this is assessed. The National Planning Policy Framework (NPPF) does state that where obligations are being revised, local planning authorities should take account of changes in market conditions over time and, where appropriate, be sufficiently flexible to prevent planned development being stalled.

Section 106A of the 1990 Act does not require that regard is to be had to the development plan for the purposes of determining an application or appeal in respect of the proposed modification or discharge of a planning obligation. There is however a body of case law which clarifies these matters and it primarily comes down to what is the useful **planning** purpose.

### **Planning purpose**

The purpose is to secure the release of sites for housing and provision of affordable housing in the Fitzrovia area of the borough. This was the original purpose of the obligation and remains so.

Without it there is no requirement for UCLH NHS Trust to provide any housing or affordable housing related to the main hospital scheme (granted permission in 1998) or the unfinished Odeon scheme (granted permission in 2004).

The application includes a supporting statement and which attempts to justify why the obligation should be modified through its total removal.

### **Section 9- Need for the application**

"This application seeks to vary the Consolidated Agreement by deletion of the affordable housing provisions since the obligations do not serve a useful planning purpose and the affordable housing provisions can equally be secured by the proper application of current policy for a scheme for houses on the Site and in this respect the Trust is currently preparing a new scheme and is currently in pre-application discussions with the Council about the proposed application."

*Council response: The supporting statement to the application however goes on to state (p.6) "It is accepted that the provision of affordable housing is a planning purpose." The obligation serves not just a useful planning purpose it serves an essential one since in the absence of the obligation there is no mechanism or requirement to apply for permission for housing or construct any housing or affordable housing on the Cleveland St site. The site could be sold unencumbered.*

"The Site is a prime development site which is unmarketable and undevelopable as the current Affordable Housing obligations blight the Site. The affordable housing obligations have the effect of blocking development and cannot therefore be said to serve a planning purpose. The effect of the current obligations on marketability is set out in the letter of advice from BNP Paribas dated 26 July 2013 (annexed at Appendix 7). It is the view of BNP Paribas that "no developer will purchase the site for redevelopment from the Trust until this clause is removed. The Trust is not a developer and does not intend to develop the Site itself."

*Council response: The obligation serves not just a useful planning purpose as a mechanism for a future owner to meet a minimum affordable housing requirement. Without it there is no obligation for a future owner/developer to deliver any affordable housing. The Council has been willing to negotiate a viable and deliverable variation to requirements. However an alternative is not submitted as part of the proposed modifications. The modification to remove the whole obligation as specified in the application must be considered in its entirety and it is not possible to approve an application by*

*accepting some modifications but rejecting others.*

*The application assumes that a planning application including housing triggering a new affordable housing obligation will be submitted and approved. The removal of the obligation removes any control to ensure the Cleveland Street site is developed for housing including affordable housing. The removal of the obligation in its entirety is therefore unacceptable as the useful planning purpose cannot be guaranteed to be delivered in the absence of an approved scheme and/or revised agreement.*

*“It is accepted that the provision of affordable housing is a planning purpose. However, that planning purpose can equally be achieved through the application of policy in the determination of a future application for the Site. Currently and for the above reasons, the obligation frustrates and prevents the provision of any affordable housing or, in fact, any development on the Site, whereas the revised proposal removes the blight caused by clause 4 and frees the Site up so that finally it can be developed to provide much needed housing including affordable housing through the application of policy and, most importantly from the Trust's point of view, the disposal of the Site will cross-fund the provision and enhancement of its health facilities in the Borough, in particular the proposed provision of the proton beam facility at the Odeon Site.”*

*Council response: The current obligation serves as the only mechanism to guarantee delivery of any affordable housing. As the applicant points out affordable housing is a useful planning purpose and it is evident that the site can deliver a viable level of affordable housing. The key issue in the letter by BNP Paribas is not that affordable housing is unviable but that the marketing of the site is frustrated by the terms of the obligation. This highlights that a negotiated variation to improve clarity and assist certainty is the most appropriate route (as encouraged by Government). The answer to this is not to remove the obligation in its entirety, but to agree modifications that make the requirements clearer and deliverable to a purchaser/developer. The “revised offer” does not propose any modifications and therefore must be viewed as unacceptable.*

*“Account must be taken of the fact that there is currently no valid planning permission for this Site to which an obligation for affordable housing can be tied and a modified obligation must therefore take account of that fact. A replacement timescale for the provision of the affordable housing is not appropriate and will only serve to discourage developers and funders.*

*Whilst the history to this Consolidated Agreement is not necessarily a determining factor, the Council should consider how the proposed variation affects provision of affordable housing and in this respect the following points are relevant.*

*The affordable housing obligation in the Consolidated Agreement arises from two sources - the main hospital redevelopment and Odeon Site development. In neither case was affordable housing a policy requirement at the time it was imposed and would still not be a requirement under current policy. In the case of the Odeon Site the affordable housing was an offer made by the Trust in respect of disappointment value once housing was taken out of the redevelopment proposal but, more importantly and significantly, the Odeon Site development has not been built out as approved and the Trust will be seeking a different planning permission for the Site.”*

*Council response: The application claims there was no policy requirement for affordable housing. This is not the case.*

#### *25%/30 unit Requirement*

*The Council had a series of area based policies at the time of the original permission including for the Fitzrovia area. In particular, Policy PY51 of the adopted May 1987 Borough Plan stated:*



*“The council will generally resist proposals to increase land for hospital use in the Fitzrovia area unless such proposals include the release of other hospital land for residential purposes.”*

*The original 1997 committee report for the UCLH hospital states:*

*“6.5 With regard to use of the site for a hospital, Policy SS8 of the Borough Plan accepts Camden’s role as a medical centre of national importance, but looks to resist expansion within the Community Area unless this can be shown to provide essential facilities which could not be accommodated elsewhere. In this case this is not specifically an expansion of facilities but an amalgamation and rationalisation to provide much needed hospital facilities. The proposal therefore represents a more efficient and resourceful use of land for hospital facilities than at present. There are no other sites in the vicinity where it has been demonstrated that this particular use could be satisfactorily accommodated.*

*Policy PY51 of the Borough Plan generally looks to resist proposals to increase land for hospital use in Fitzrovia unless the proposals include the release of hospital land for other uses. In this case the application proposes not only a rationalisation of hospital land overall, but the release of several large sites for residential use (see para. 6.42 for further details). The proposal would therefore comply with policies SSB and PY51 of the Borough Plan.”*

*The report further stated:*

*“6.42 Sites I-VI [NB: Middlesex is referred to as site III] are sites which will be sold and are likely to be developed for residential purposes. It is understood that HMG will be submitting planning applications for residential or part residential use on these sites. **The residential sites will be more valuable if they are not restricted by affordable housing requirements, however the size and nature of the developments are likely to be such that UDP policy would require such a restriction.** The success of this proposal, which includes substantial benefits for the Council, is dependent on funding, some of which is to come from these sites. **It is considered that the provision of affordable housing relating to these sites can be dealt with by a unique arrangement.** It is proposed that a 25% affordable housing quota for sites I, III, IV, and VI, be cumulatively provided on the Obstetrics site<sup>2</sup> within 24 months of completion of the hospital development. The arrangement proposed would be as follows....”*

*This clearly indicates a consideration that the development of other sites could be subject to affordable housing requirements (the emerging UDP policy HG14 had a target of 25% and had been through examination). In the absence of any detailed proposals for the surplus sites the 1998 DC report specifically refers to a “unique arrangement” which was designed to help UCLH in the disposal of surplus sites as part of their funding model. The report made it clear that in order to maximise the value from the disposal of these sites, the Council agreed that the Affordable Housing requirement would be set at 25% of the total number of new residential units provided on these sites, or 30 units, whichever was greater.*

*The s106 housing requirement was and is an important mechanism to support and offset the main hospital scheme and expansion in Fitzrovia and to create mixed and balanced communities including affordable housing. In addition the 2002 Odeon scheme and 2004 agreement generated a further specific obligation to deliver 1425 sqm off-site.*

*Other Borough Plan policies at the time similarly supported affordable housing e.g. HG2, HG26, HG27, HG43 and SS10*

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<sup>2</sup> Subsequently supplemented by the Cleveland St site in the 2004 agreement

### Odeon requirement

The policy requirement for 25% affordable housing was later reflected in the UDP March 2000 in policy HG11.

*The 2002 Odeon site Development Control Committee Report states:*

*“6.6 The applicants have given consideration to the fact that the site is not to be developed for residential use, and, in recognition of the need for residential use in the area, the applicants have offered to provide an amount of off site residential as affordable housing. This offer would provide 1,425 sq m of affordable housing floorspace, which would equate to some 23 units. This would equate to some 25% of the units, had the site been developed for principally residential use. This affordable housing would be provided by UCLH in addition to that to be provided as part of the main hospital agreement and would probably be provided on one of the two sites previously identified, either the Obstetrics site, Huntley Street, or the Cleveland Street Annexe site. However, other sites may be considered, should these become available. The timing of this provision will depend on decanting of services into the main Hospital site and disposal options on surplus sites. This provision of affordable housing is not a policy requirement of the development, but is an offer from the applicants, which Officers consider should be accepted.”*

*This last sentence has been relied on to support the contention that the specific Odeon obligation was not required by policy and not related to the development, so supports the removal of that part of the current obligation. Officers consider that the sentence has been taken out of context by the applicant.*

*The site was vacant and was identified in the plan as a potential mixed-use site including housing. UDP policies such as RE5, HG8, SCL2 and CL3 would have been applicable to the development and would have supported the provision of housing. The report highlighted that the applicants had given consideration to the fact that the site was not to be developed for residential use, and in recognition of the need for residential use in the area, offered to provide an amount of off site residential as affordable housing.*

*This indicates that housing (or lack of) was a consideration and affordable housing would be a policy requirement if residential use would trigger such a requirement. It would be more correct to say there was no housing proposed (which would generally be sought as a policy requirement) on which to assess whether any affordable housing was required and at what level it should be provided.*

*An equivalent and proportionate affordable housing offer in the absence of any housing was made and accepted. No residential use was proposed, so an affordable offer was made to compensate for the estimated residential use that would be forgone by approving solely medical uses.*

*This would appear to be a legitimate way to overcome a policy deficiency i.e. no housing, so was and would be a legitimate policy objective.*

*“Turning now to the main hospital site obligation, that was intended to increase the value of the Residential Sites to cross-fund the new hospital. The affordable housing was calculated as 25% of the Units that could be provided on the four sites or a minimum of 30 units. The following details set out the history of the Residential Sites:*

*(a) 1-9 Huntley Street - this site provided its own affordable housing on-site in accordance with policy relevant at the time of the redevelopment;....”*

*Council response: This is not factually correct. In 2002 the site was in use as affordable housing for*

*key workers employed within the NHS. The conversion of 54 former key worker self-contained flats to market flats and shared ownership units for sale did not require planning permission (apart from relatively minor works and external alterations) and did not provide any new housing or affordable housing.*

*The buildings refurbishment including 33 market units for sale (along with 20 low cost home ownership) resulted in a reduction of affordable housing units and floorspace.*

### Approach to future applications

The s106 establishes the baseline for a quantum of affordable housing on the nominated site. The s106 says the affordable housing should be “*part of the Middlesex Annexe site*” and also that applications for residential sites be “*...in general accordance with Council and Central Government adopted planning policies ...*”. This recognises that sites would be developed in the future in potentially different forms and that this affordable housing could be one component of a scheme that would also have to be in accordance with policy at the time of an application.

It does not follow that as the provision of 30 units (and 1425 sqm) would meet an existing and specific obligation, it would override the need for schemes which deliver this obligation to comply with relevant policies in other respects. The Council is obliged by law to consider whether a development does or does not accord with the development plan and to any other material considerations.

Over and above the 30 affordable units (and 1425 sqm related to the Odeon) the s106 does not oblige a developer to create any more housing or affordable housing as part of a scheme including other uses which could be otherwise policy compliant. This provides flexibility for a developer to consider viable options.

Further housing units *in addition* to the s106 quantum, which is a distinct requirement related to other schemes and sites, would inevitably have to be assessed against current mixed use, housing and affordable housing policies.

Factors such as site constraints, the listed workhouse, and other recognised factors can be taken into account.

Where less than the policy target is proposed this would properly need to be subject to viability analysis at the planning application stage which could suggest that a lower level of provision of that balance would be justifiable. A deed of variation to the s106 would also be necessary.

### Housing Need

Since permission was granted in 2004, the policies for housing in mixed use development and affordable housing have become increasingly more important to the Council in meeting local housing needs. This reflects national and regional policy imperatives. Affordable housing targets are on a borough-wide basis.

Camden's Housing Strategy highlights that from April 2002 to March 2011, 1,435 new units of affordable housing, comprising both social rented or intermediate tenures, were developed. However, the last detailed assessment of housing need (in 2008) found that an additional 4,787 affordable homes a year over a five year period would be required to meet current and newly arising need.

The 2008 housing need assessment also highlighted a particular need for larger social rented homes, and the ability of over half of households in need of affordable housing to cover the costs of intermediate tenure, rather than social rented tenure. In view of revised population projections and

household composition this need will not have declined; it will have increased. It is further noted that in the Fitzrovia area that relatively low levels of affordable housing are delivered annually.

Further in respect of case for increasing need, over 22,000 LB Camden households have applied for social housing on the Council's Housing Needs Register (HNR). Whilst their consideration is subject to meeting criteria, the applications figure is an indicator of the scale of need in the borough and the priority that Camden needs to place on affordable housing delivery.

Also under the latest Deprivation Indicators the 'Barriers to Housing and Services' group measures the physical and financial accessibility of housing and key local services. The indicators making up this group are: household overcrowding, homeless people accepted for assistance, affordability of owner-occupation to under-35s, distance to GP surgery, supermarket, primary school and post-office. Two of the Fitzrovia Area Plan sub areas were among England's 20% worst-scoring, and the third was among England's worst 30%.

#### *Purpose of a modified obligation – Nil affordable housing provision*

The proposed modification does not serve a useful purpose. The "revised offer" does not propose any modifications, for example to enhance clarity or give more certainty to assist the delivery of the affordable housing requirement; it removes entirely all the affordable housing requirement.

Without the obligation there is no requirement for UCLH NHS Trust or a subsequent owner to provide any housing on the Cleveland Street site or any other site or implement a permission which may include such a requirement. Hence timescales and non-delivery clauses were built into the s106 in the event of breach of the agreement.

In the event of such a breach the obligation also contains provisions should the Trust not deliver the affordable housing; the "£1 clause". The Trust is in breach of its obligations and without such provision the Council has no means of guaranteeing delivery of the obligation. These provisions therefore also serve a useful purpose.

The Applicant has submitted very little evidence with their application to justify why the planning purpose doesn't exist and does not put forward a modification or revised proposals to ensure delivery of any affordable housing which is its prime purpose.

Whilst this assessment is not about revisiting in detail the planning merits or otherwise of the original decisions it is still considered that the obligation was necessary to make development acceptable (not only the original hospital and the Odeon scheme but the related sites), was therefore related to the development and also reasonably related in scale and kind.

Also, in light of the activity of UCLH in the borough, delivering other aspects of the original permission, the council is left to assume that the scheme is viable and not stalled because of market conditions. Therefore, there is no convincing justification why the affordable housing does not indeed serve a useful planning purpose in view of the matters set out in this report. It is evident that the obligation does serve a useful planning purpose and should continue to have effect without modification.

## **Conclusions**

The s106 housing requirement was a mechanism to justify and offset the hospital scheme and expansion in Fitzrovia and to create mixed uses, not solely an affordable housing policy requirement. In addition, it was intended to help UCLH in the disposal of surplus sites as part of their funding model.

It simply sets out a requirement to provide a percentage of affordable housing by a given date and, if not, then required the creation of 30 units on part of the nominated site in the event other sites envisaged to be released for new housing did not generate any additional housing (and 1425 sqm related to the Odeon scheme)

The other sites envisaged for release have not generated any additional housing, therefore the Council relies on this fall back position for a minimum amount of affordable housing relating back to the specific impacts of the UCLH scheme and the non-housing delivery on associated “residential sites”. The s106 exists so that the Trust can deliver a minimum level of affordable housing on a site in the area, meeting policy objectives and local expectations of a planning agreement that UCLH freely entered into.

The Trust is seeking by this application to remove all obligations for affordable housing. They are also seeking to remove a further clause that currently enables the council to purchase the site for £1 if the obligations are not met. It enables the council to enforce the obligation such that the site can be obtained for £1 for the council to deliver the housing themselves or in conjunction with a registered provider. Whilst the Trust is seeking to consider how this obligation relates to the Cleveland Street site in isolation, this obligation relates to the consolidated UCLH planning agreement of 2004 and which secured the affordable housing obligations.

The s106A procedure only enables affordable housing obligations to be removed or modified if the obligation no longer serves a useful planning purpose. The procedure also effectively creates an expectation that the trust should consider if there is any alternative and if so, to nominate that alternative. This has not happened. Also, in light of the activity of UCLH in the borough, delivering other aspects of the original permission, the council is left to assume that the scheme is viable and not stalled because of market conditions. Therefore, pursuant to the s106A clauses, the authority must determine that the affordable housing requirement is to continue to have effect without modification or replacement and refuse the application.

In regards to the £1 clause which gives the Council the right to purchase the site if the obligation is not delivered and which the trust is seeking to remove, this is a separate matter. The affordable housing obligation and whether or not it serves a useful planning purpose, is the sole, relevant consideration of the s106A procedure. The £1 clause is not. Nor are the other various comments made in the Trust’s case to remove the affordable housing obligation and which do not relate to whether or not it serves a useful purpose.

The obligation has not prevented the Trust from building the main hospital, progressing with other health related uses on other sites and the sale of surplus sites. It has not stalled the development of the permitted scheme which the obligation relates. The result being that the Trust has received all the benefits of the permission and the sale of sites but not delivered any new affordable housing and has therefore failed to fulfil this key obligation. The evidence cited in this report supports the council’s view that in this time, the priority and need for housing has intensified and thus it continues to serve a useful planning purpose. Indeed, it could be said to be serving a critical purpose.

As noted in the assessment of this and the s106BA application, the current situation between the parties could be explored by informal discussion ahead of a deed of modification of the 2004 agreement. This is a different and separate process. This offer was made to the Trust before this application was received.

However, in the context of this s106A application, in the absence of any evidence that the affordable housing does not serve a useful planning purpose, or indeed contradicts the evidence of this report that there is a critical need for housing, as well as the absence of an alternative put forward by the

Trust that is, the authority must determine that the affordable housing requirement is to continue to have effect without modification or replacement and refuse the application.

**Legal Comments:**

Legal Comments are incorporated in the Report.

**Recommendation: Refuse the s106A variation application.**

## APPENDIX A – CONSULTATION RESPONSES

Site notices were displayed from 11/09/2013 until 02/10/2013.

A public notice displayed in the local press on 12/09/2013, expiring on 03/10/2013.

Letters were sent to neighbours on 09/09/2013, expiring on 30/09/2013.

A total of 11 objections were received raising the following issues which are relevant to this application:

- Note that the community of Fitzrovia does not support this proposal;
- Removal of affordable housing goes against the original agreement;
- There would be no community based intent to the scheme and would not benefit local residents who have also had to contend with the hospital development works;
- Concern that the scheme will be gated and it and its residents will not be integrated into the area;
- There is no supporting evidence including financial information to support the proposal;
- Questioning if there are any exceptional circumstances to warrant waiving the planning obligation in this central London location;
- Building luxury flats instead of affordable housing will change the area and force local residents out;
- social diversity would be limited by another luxury flat complex; and
- more affordable housing is needed.

Additional issues raised by the same objectors and which appear to relate separately to wider development intentions for the site are noted for information:

- Loss of historical buildings and history;
- Suggestion that the workhouse building should be renovated and not demolished;
- Luxury apartments in a workhouse is offensive to the poor back then as well as now and similarly, cheap housing replacing historical buildings is offensive;
- Objecting to any demolition whatsoever on the site;
- Opinion that a lack of statutory listing for buildings other than the workhouse does not mean they should be allowed to be demolished and should instead be renovated;
- Suggestion that the rear of the site is a consecrated graveyard and the wishes of any remaining family may not have been considered;
- The redevelopment plans are not in keeping with the historical significance of the property;
- Some buildings would be destroyed and this would ruin the current preserved state of the wings and their interiors;
- Concerned that the wings of the building on the site are not being protected in the current plans. They have lasted a long time and are still sturdy buildings with a lot of character. These buildings could be renovated and add a lot to the proposed plans for the site; and
- Surprise that other, less historically important sites, such as Arthur Stanley House on Tottenham Street are not being redeveloped first.

In addition to the objections above, a further 03 letters of objection were received from local groups as summarised below.

### Fitzrovia Trust

- The objection relate very closely to those made in previous representations concerning application 2013/5050/P;
- The need for affordable housing in Fitzrovia and LB Camden is even greater now than it was in 2004 when the agreement was entered into;

- Policies relating to affordable housing are now well established;
- The S106 was signed freely and in good faith by the UCLH Trust in 2004;
- There is no evidence presented to suggest that the S106 agreement adversely affects the viability of the named sites in the agreement nor contradicts the provisions of the NPPF;

#### Charlotte Street Assoc

- The assoc is submitting the same comments as for the earlier s106BA application, namely:
- Reference to timescales and obligations imposed in the s106 planning agreement and suggesting that, had they been adhered to by UCLH, the affordable housing would have been delivered before the listing of the workhouse;
- Concerned that the applicant is not serious about honouring their obligations given they are raising issue with the certificate of immunity from listing for wing blocks as a reason why they cannot commence on site;
- Opinion that viability cannot affect the legal agreement as UCLH paid nothing for this site and have already secured all the [development] benefit from the legal agreement;
- Opinion that the need for affordable housing is even more urgent currently;
- Opinion that the listing of the workhouse does not prevent a high quality residential scheme coming forward; and
- Suggest the council presses for a proposal that conforms with the s106 obligations and planning policy. Otherwise, the council should invoke the £1 provision in the planning agreement and acquire the site.

#### Fitzrovia Neighbourhood Association

- For UCLH to suggest that the heritage listing blocks the site from being marketed and not being viable for development is a nonsense. The site is located in an area that has experienced rising land values and high demand;
- UCLH complain about uncertainty and ambiguity, yet it is in their gift to remedy this by securing a planning permission for the Cleveland Street site;
- Socially-rented housing is much needed in Fitzrovia and this section 106 agreement recognises this; and
- If UCLH are not willing to honour the 106 agreement then Camden Council should immediately exercise its right to acquire sufficient land from UCLH.



## APPENDIX B - SUMMARY OF SITE HISTORY

The application relates a 2004 Section 106 ("the Consolidated Agreement") linked to planning permission (Application Ref: PS9604299) granted on 19 August 1998 for the development of a new hospital on a site bounded by Euston Road, Tottenham Court Road, Beaumont Place, Grafton Way and Gower Street and a reserved matters approval for health related development (including underground parking and two community health facilities) on the "Odeon site" at Grafton Way/Tottenham Court Road. The main hospital site is built and operating whilst the Odeon site remains vacant.

This permission was subject of three separate agreements relating to:

- (a) Off site affordable housing;
- (b) The two community health facilities and other obligations; and
- (c) A unilateral undertaking for a new community centre.

The main hospital and maternity wing was built in two phases commencing in 2001 and completing in 2008. In the meantime detailed proposals for the Odeon site (Ref: PSX0005046) were submitted in 2001 and approved by committee in February 2002, subject to completion of a s106 agreement.

As the timescales for delivering previous obligations had been affected and as some circumstances had changed since the original permission and related agreements, in order to amend all the relevant requirements and amended delivery deadlines all previous s106 agreements were consolidated into the Consolidated Agreement - a single agreement dated 1 July 2004. The agreement is between the Council and the University of London NHS Foundation Trust ("the Trust"). The related Odeon site/Grafton Way development was granted permission on 28 July 2004.

The 2004 Consolidated Agreement, which is the subject of this application, carried forward both the previous obligations related to the main hospital development (Phases I and II) and the approved Odeon site proposals, and contains a number of requirements, including:

- Off-site affordable Housing provision for a minimum of 30 units, on a site to be nominated and to be calculated based on a formula set out in the s106. The Cleveland Street site was finally nominated in May 2006 and an additional 1,425 sqm related to the Odeon scheme was calculated;
- A Community Centre which was created at John Astor House and now leased to the Council and occupied;
- A Centre for Independent Living which was to have been part of the Odeon scheme, however, the latest proposal is to part fund the Greenwood Centre project;
- Mental Health Resource Centre(MHRC)-this was also to have been part of the Odeon scheme, but the last proposal was to part fund rebuilding a facility on Tottenham Mews ; and
- Car Parking on the Odeon site for 140 cars to service the main hospital.

A number of the obligations have still not been met and the officers have been involved in long running negotiations to find ways for the obligations can be delivered in the light of changing circumstances and considering appropriate and reasonable alternatives. For example, the Odeon site scheme has not completed and a new medical scheme is being prepared in line with the emerging Fitzrovia Area Action Plan.

This s106A variation application relates specifically to the affordable housing requirements contained in the 2004 planning agreement at paragraphs 4.1 - 4.5. Also, the related definitions as set out under Clause 2 of the agreement.

## Summary of the Affordable Housing Obligation

The background to this s106 requirement was that the new University College London Hospital was part of a PFI (Private Finance Initiative) project. The business case/funding model for the project was dependent partly on the disposal and redevelopment of surplus hospital sites. The Council's policy in the Fitzrovia area at the time of the original permission was that proposals to increase land for hospital use should be balanced with some form of commensurate release of other hospital land for residential development and a number of sites were identified (See 1997 committee report and subsequent unilateral and s106 agreements).

The 1997 committee report identified "a unique arrangement" in which a 25% affordable housing quota would be delivered off-site, related to the potential future private development across residential sites including the Cleveland Street site.

On the basis of an, as yet, unknown quantum of future development of these released sites a 25%/ minimum / 30 unit stipulation was agreed between the parties.

The consolidated 2004 agreement reiterated this affordable housing provision - again at 25% of any residential developments across four named residential sites and a minimum 30 affordable (rented) units would need to be provided. Given that planning permission had been granted for a development on the Odeon site, the 2004 agreement also incorporated a requirement to provide a further off-site provision of 1,425 sq m of affordable homes to rent. The Odeon site development has never been built out and sits vacant. It should be noted that the Trust are progressing their Proton Beam Therapy scheme proposal on the site in line with the emerging Fitzrovia Area Action Plan.

The back stop minimum requirement of 30 affordable units and 1,425sqm would have been in the event that the policy objective of seeing other sites released for new residential development, which could potentially provide new affordable housing, did not materialise. This has proved to be the case. The four named sites have delivered no new affordable housing:

- The Cleveland Street site – In Trust ownership and still vacant: the nominated affordable housing site;
- 1-9 Huntley Street – A block of 54 nurses flats sold in 2004 and refurbished as 33 private units and 20 shared ownership units; i.e. no new residential units created and a reduction in affordable housing
- Arthur Stanley House – In (partial) Trust ownership and vacant -no housing; and
- The Obstetrics site – Developed as the UCL Macmillan Cancer Centre-no housing.

The Council therefore relies on this fall back position for a minimum amount of affordable housing. There is no similar mechanism apart from the s106 for ensuring a minimum level of affordable housing being delivered on a site in the area. The deadline for meeting the obligation being June 2010 has passed.

The s106 also contains clause 4.2.1 that states:

*"....if the All Affordable Housing units are not completed by 1<sup>st</sup> June 2010 or has not been transferred to a Housing Association in accordance with the requirements set out in Clause 4.1.4 and 4.1.5 the Council may serve notice on the NHS Trust requiring the NHS Trust to offer the*

*Council a conveyance transfer or lease (as the case may be) of the Interest in the All Affordable Housing Land<sup>3</sup> as a separate parcel, completely cleared of buildings and in a stable ,developable and fully decontaminated state for provision of affordable housing ,with vacant possession and free from encumbrances ,on no unusually onerous terms and together with all relevant ancillary easements ,rights and other matters so that the same may be developed for Affordable Housing for a nominal consideration of £1 and the Owner shall comply with such requirements”.*

At clause 4.3.1, if the parties agree, the s106 allows for a payment *in lieu* of up to 5 affordable housing units out of the 30 unit requirement. Clause 4.3.2 also says that if the nominated land cannot accommodate the affordable housing units, it allows for a payment *in lieu*.

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<sup>3</sup> This was either the Obstetrics site on Huntley St (now built on) or Cleveland Annexe; which became the nominated site.

APPENDIX C: EXTRACTS FROM THE CONSOLIDATED SECTION 106 AGREEMENT

2. DEFINITIONS AND OPERATIVE PROVISIONS

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:

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|-----|---|--|
| 2.1 | <b>the “Act”</b>                              | means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991)  |
| 2.2 | <b>“Affordable Housing”</b>                   | means low cost subsidised housing provided by a Registered Social Landlord or the Council available for rent to people nominated by the Council through its housing allocation scheme who cannot afford to occupy homes available on the open market               |
| 2.3 | <b>“Affordable Housing Units”</b>             | the low cost and subsidised units of Affordable Housing to be provided on the All Affordable Housing Land in connection with the Original Planning Permission  |
| 2.4 | <b>“Agreement”</b>                            | means this deed  |
| 2.5 | <b>“All Affordable Housing Land”</b>          | means the area of land to be ascertained in accordance with Clauses 4.1.2 being the area of land reasonably required to accommodate the Affordable Housing required to be provided in respect of the Original Planning Permission and the Odeon Affordable Housing |
| 2.6 | <b>“All Affordable Housing Land Consents”</b> | means all licences, consents, permissions and approvals necessary for the Developer lawfully to demolish and clear (as necessary) all buildings on the All Affordable Housing Land and to construct and use the All Affordable Housing Units                       |
| 2.7 | <b>“All Affordable</b>                        | means the Affordable Housing Units and the   |

	<b>Housing Units”</b>	Odeon Affordable Housing
2.8	<b>“the “Blue Land”</b>	means that part of the Property shown coloured blue on the Location Plan being Phase 2 of University College London Hospital Grafton Way London W1
2.9	<b>“the Brief for the Centre for Independent Living”</b>	means the brief appended hereto at Schedule 1 marked the “Brief for the Centre of Independent Living
2.10	<b>“the Brief for the Mental Health Resource Centre”</b>	means the brief appended hereto at Schedule 2 marked “Brief for the Mental Health Resource Centre”
2.11	<b>“the Brown Land”</b>	means that part of the Property shown coloured brown on the Location Plan being Phase 1 of University College London Hospital Euston Road London W1
2.12	<b>the “Centre for Independent Living”</b>	means an area comprising approximately 670 square metres to be constructed and fitted out for use by the Council as a centre for independent living together with a two bedroom flat and 15 car parking spaces to be created on the Odeon Site as part of the Odeon Site Development and as required by the Original Section 106 Agreement
2.13	<b>“the Centres”</b>	means the Centre for Independent Living and the Mental Health Resource Centre
2.14	<b>Fitzrovia Community Centre Certificate of Completion</b>	means the certificate to be issued by the appropriately qualified person responsible for supervising the relevant construction contract certifying that the Fitzrovia Community Centre has been practically completed for the purposes of the construction contract pursuant to which the

said Fitzrovia Community Centre shall have been constructed

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| 2.15 | <b>"Community Centre"</b>                 | means the community centre for the local people in Fitzrovia at the John Astor Site in accordance with the Community Centre Brief   |
| 2.16 | <b>"Community Centre Brief"</b>           | means the brief for the Community Centre appended hereto at Schedule 4  |
| 2.17 | <b>"Council"</b>                          | means the London Borough of Camden of Town Hall, Judd Street, London WC1H 9LP   |
| 2.18 | <b>"Green Travel Plan"</b>                | means the plan designed to promote green travel to and from the NHS Trusts properties, appended at Schedule 7 hereto  |
| 2.19 | <b>the "Housing Association"</b>          | means the Registered Social Landlord nominated by the Council (which expression shall where the context requires include its successors in title assigns and persons deriving title through or under it) for the purpose of entering into the Housing Association Agreement                                   |
| 2.20 | <b>the "Original Implementation Date"</b> | means the date of implementation of the Original Planning Permission by the carrying out of a material operation as defined in Section 56 of the Act being 1 October 2001 (and "Implement" and "Implementation" shall be construed accordingly  |
| 2.21 | <b>"Interest"</b>                         | <p>means:-</p> <p>(i) a freehold interest in All Affordable Housing Land where at the time when the Interest is to be conveyed transferred or leased no underground parking either exists or is proposed beneath the surface of All Affordable Housing Land for the benefit of the Obstetrics Site or the</p> |

Middlesex Annexe Site as the case may be; or

- (ii) a 999 year headlease of All Affordable Housing Land where at the time when the Interest is to be conveyed transferred or leased there exists or it is proposed by the Developer that there shall exist beneath the surface of All Affordable Housing Land any underground parking for the benefit of the Obstetrics Site or the Middlesex Annexe Site as the case may be in which case, such headlease shall exclude such area of underground parking which shall be reserved for the remainder of the Obstetrics Site or the Middlesex Annexe Site as the case may be and in negotiating the terms of the headlease the parties shall give effect to any relevant paragraphs of the "Principles to which effect is to be given in the negotiation of the Lease" incorporated in the draft lease to the Housing Association which is annexed hereto at Schedule 8, particularly those relating to maintenance and financial obligations relating to the concrete slab and foundations to be constructed in connection with the underground car-parking

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|------|------------------------------|---|
| 2.22 | <b>the "John Astor Site"</b> | means the land shown coloured orange on the Location Plan being John Astor House 3 Foley Street London W1W 6DN                          |
| 2.23 | <b>the "Location Plan"</b>   | means the plan so entitled and annexed hereto which shows for identification purposes only the Property, the Middlesex Annexe Site, the |

Obstetrics Site , the John Astor Site and the Residential Sites

- 2.24      **the “Middlesex Annexe Site”**      means the land at 44 Cleveland Street London WC1 shown coloured yellow on the Location Plan
- 2.25      **the “Obstetrics Site”**      means the area of land shown coloured black on the Location Plan being part of University College Hospital on Huntley Street London
- 2.26      **“Mental Health Resource Centre”**      means an area comprising approximately 664 square metres to be constructed and fitted out for use as a mental health resource centre on the Odeon Site as part of the Odeon Site Development for use by the Council as a resource centre for Mental Health plus six car parking spaces
- 2.27      **“Occupation Date”**      the first date when any part of the Original Development is occupied
- 2.28      **“the Odeon Affordable Housing”**      the units of Affordable Housing with a total floorspace of no less than 1,425 square metres to be constructed, fitted out and occupied exclusively as Affordable Housing in accordance with the requirements of this Agreement in connection with the Odeon Site Application
- 2.29      **“the Odeon Implementation Date”**      means the date of implementation of the Odeon Site Planning Permission by the carrying out of a material operation as defined in Section 56 of the Act excluding any operation relating to soil investigations, works or investigations in respect of land contamination, archaeological investigations, the clearance of the Property, any temporary works including the erection of temporary fencing and the erection of hoardings (and “Implement” and “Implementation” shall be



construed accordingly).

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| 2.30 | <b>“the Odeon Site”</b>                        | means that part of the Property shown coloured green on the Location Plan being Land at Grafton Way/Tottenham Court Road W1  |
| 2.31 | <b>the Odeon Site Application”</b>             | a planning application in respect of the development of the Odeon Site that was submitted to the Council on 7 <sup>th</sup> February 2002 for which a resolution to grant permission has been passed conditionally under reference number PSX0005046/R2 subject to the prior completion of this Agreement  |
| 2.32 | <b>“the Odeon Site Development”</b>            | erection of a building for hospital use (C2) comprising 3 basement levels for car parking, ground floor for community health facilities, and 1 <sup>st</sup> to 5 <sup>th</sup> floors as hospital, and related support accommodation and roof top plant pursuant to the Odeon Site Application as shown on drawing numbers: 17550(SP), 19622(--) LB3/C, LB2/B, LB1/D, LG/D, L1/C, L2/C, L3/C, L4/D, L5/A, LR, LG/100/E, (E)01/E, 02/B, 03/B, 01/100, 02/100, (S)01/200, (21)01, (M)04 (subject to any variations to the drawings approved by the Council from time to time) |
| 2.33 | <b>“the Odeon Site Planning Permission”</b>    | the planning permission to be granted for the Odeon Site Application substantially in the form attached hereto at Schedule 9   |
| 2.34 | <b>“Original Affordable Housing Agreement”</b> | the agreement made under Sections 106 and 299A of the Town and Country Planning Act 1990 between The Secretary of State for Health, the University College London Hospitals National Health Service Trust, Amec Project Investments Limited and Building and Property Group Limited together comprising Health Management Group  |

and the Council dated 19<sup>th</sup> August 1998 to provide Affordable Housing

- 2.35      **“the Original Section 106 Agreement”**      the agreement made under Sections 106 and 299A of the Town and Country Planning Act 1990 between The Secretary of State for Health, the University College London Hospitals National Health Service Trust, Amec Project Investments Limited and Building and Property Group Limited together comprising Health Management Group and the Council dated 19<sup>th</sup> August 1998 to provide inter alia a Centre for Independent Living, a Mental Health Resource Centre, car parking, public art and highway contributions
- 2.36      **the “ Original Application”**      means the planning application submitted by the Developer and the NHS Trust on 6 December 1996 and given reference number PS9604299R2
- 2.37      **the “Original Development”**      means:
- (i)      redevelopment by the erection of a new University College Hospital of approximately 650 beds, including wards, surgical facilities, outpatients, day care, seminar rooms, laboratories, accident department, radiology, ancillary offices, workshops, storage and associated services and some 1,000 sq. m. of A1/A3 floorspace and
  - (ii)      the provision of car parking and two community health facilities within the Green Land
- 2.38      **“the Original Planning Permission”**      means the planning permission granted for the Original Development pursuant to the Original Application dated 19 August 1998 a copy of

which is annexed hereto at Schedule 10

- 2.39      **"Phase 1"**      means the two hospital blocks forming part of the Original Development comprising, firstly, the block bounded by Euston Road, Tottenham Court Road and Beaumont Place, London W1 and secondly, to the immediate east of that block a high rise block on the corner of Euston Road and Gower Street, London W1 all to be constructed on the Blue Land pursuant to the Original Planning Permission
- 2.40      **"Phase 2"**      means the hospital block to be constructed on the Brown Land pursuant to the Original Planning Permission
- 2.41      **"Phase"**      shall mean either Phase 1 or Phase 2 where the context so permits
- 2.42      **"Planning Obligations Monitoring Officer"**      a planning officer of the Council from time to time allocated to monitor the progress of all planning obligations pursuant to Section 106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 15.1 hereof
- 2.43      **"the Parties"**      mean the Council and the NHS Trust
- 2.44      **"Phase 1 Certificate of Completion"**      means the certificate to be issued by the appropriately qualified person responsible for supervising the relevant construction contract certifying that Phase 1 has been practically completed for the purposes of the construction contract pursuant to which Phase 1 shall have been constructed
- 2.45      **"Phase 2 Certificate of Completion"**      means the certificate to be issued by the appropriately qualified person responsible for

	<b>Completion"</b>	supervising the relevant construction contract certifying that Phase 2 has been practically completed for the purposes of the construction contract pursuant to which Phase 2 shall have been constructed
2.46	<b>the "Price"</b>	shall mean a price determined by the Council being equivalent to 115% of the Housing Corporation Total Cost Indicator for Band A or, if the Housing Corporation ceases to publish such Total Cost Indicators, such equivalent affordable housing price structure as is in existence at the relevant time or, if there be none, the figure generated by 115% of Total Cost Indicator Band A indexed in accordance with the All Items Index of Retail Prices over the period commencing on the date when the Total Cost Indicator ceases to have effect and ending on the date when the Price is or is likely to be paid
2.47	<b>the "Property"</b>	means all of the Blue Land Brown Land and the Odeon Site
2.48	<b>"Registered Social Landlord"</b>	a registered social landlord registered as such by the Housing Corporation who has entered into an agreement with the Council to secure the Affordable Housing Units as accommodation for people nominated by the Council through its housing allocation scheme
2.49	<b>"Residential Sites"</b>	means all or any of the following sites where the context so admits: <ul style="list-style-type: none"> <li>(i) 1-9 Huntley Street, London edged in purple on the Location Plan;</li> <li>(ii) Arthur Stanley House, Tottenham Street, London edged in grey on the Location</li> </ul>

Plan;

(iii) The Middlesex Annexe Site edged in yellow on the Location Plan;

(iv) The Obstetrics Site edged in black on the Location Plan.

2.50      **the “Unilateral Undertaking”**

the unilateral undertaking made under Sections 106 and 299A of the Town and Country Planning Act 1990 by the Secretary of State for Health, the University College London Hospitals National Health Service Trust, Amec Project Investments Limited and Building and Property Group Limited together comprising Health Management Group to the Council dated 18 September 1998 to provide community provision for the local community in Fitzrovia

#### 4.            **OBLIGATIONS OF THE NHS TRUST**

## **The Provision of Affordable Housing**

### **4.1 The NHS Trust covenants with the Council as follows:**

4.1.1 No later than April 2006 the NHS Trust shall give notice to the Council either:-

- (a) that the All Affordable Housing Land shall be part of the Obstetrics Site; or
- (b) that the All Affordable Housing Land shall be part of the Middlesex Annexe Site.

4.1.2 All Affordable Housing Land shall be such area of land in respect of which the NHS Trust shall have given notice to the Council pursuant to Clause 4.1.1 as the parties agree is reasonably required to accommodate All Affordable Housing Units and the parties shall use all reasonable endeavours to agree the All Affordable Housing Land within three months of the Calculation Date specified in clause 4.4.1

4.1.3 The NHS Trust hereby acknowledges that if All Affordable Housing Land is to be part of the Middlesex Annexe Site then any planning permission subsequently granted for the residential development of the Obstetrics Site may require the provision on that site of Affordable Housing in conformity with the policies of the Council (unless such provision for the Obstetrics Site has already been included in the Middlesex Annexe Site).

4.1.4 No later than April 2007 the NHS Trust shall:

- (a) submit and thereafter expeditiously pursue planning applications to the Council for the redevelopment or refurbishment of the Residential Sites for residential use such applications to be in general accordance with Council and Central Government adopted Planning Policies having prior to submission of such applications consulted with the Council as to their substance and having had regard to such consultations;
- (b) Obtain at its own expense (in consultation with the Housing Association) All Affordable Housing Land Consents:

- (c) subject to Clause 4.2 enter into a binding agreement (which shall include an agreed form of lease substantially in the form of the draft lease annexed hereto at Schedule 8) in a form to be approved by the Council (such approval not to be unreasonably withheld or delayed) with the Housing Association (the "Housing Association Agreement")

4.1.5 The Housing Association Agreement shall provide for the following steps to have taken place by no later than 1<sup>st</sup> June 2010 :

- (a) the All Affordable Housing Units shall have been completed on the All Affordable Housing Land in a good and workmanlike manner using good quality materials in accordance with the detailed specification of the Housing Association; and
- (b) that a lease of the All Affordable Housing Units shall have been granted to the Housing Association (which shall be a headlease and not subject to any derivative interests or if the interest granted to the NHS Trust is itself a leasehold interest then an underlease of the same without any intermediate interest between) upon the Housing Association paying the Price to the NHS Trust such lease to be for a term of 125 years (less 7 days if the NHS Trust holds a leasehold interest in the All Affordable Housing Land) at a peppercorn rent upon the terms or substantially the terms of the draft lease annexed hereto and in negotiating the terms of that lease the parties shall give effect to the "Principles to which effect is to be given in the negotiation of the Lease" incorporated in the said draft lease;

#### 4.2 Transfer Of The All Affordable Housing Land For Nominal Consideration

##### 4.2.1

- (a) Without prejudice to the Council's ability to enforce Clause 4.1.4 and 4.1.5 above if the All Affordable Housing Units are not completed by 1<sup>st</sup> June 2010 or has not been transferred to a Housing Association in accordance with the requirements set out in Clause 4.1.4 and 4.1.5 the Council may serve written notice on the NHS Trust requiring the NHS Trust to offer the

Council a conveyance transfer or lease (as the case may be) of the Interest in the All Affordable Housing Land as a separate parcel, completely cleared of buildings and in a stable, developable and fully decontaminated state for provision of affordable housing, with vacant possession and free from encumbrances, on no unusually onerous terms and together with all relevant ancillary easements, rights and other matters so that the same may be developed for Affordable Housing for a nominal consideration of £1. and the Owner shall comply with such requirements.

- (b) the making of any conveyance transfer or lease of the All Affordable Housing Land to the Council pursuant to this Clause shall absolve the NHS Trust of any further obligation to the Council hereunder and the NHS Trust shall be entitled to include in any such conveyance transfer or lease a covenant restricting the use of the All Affordable Housing Land to use for Affordable Housing.
- (c) the NHS Trust hereby agrees that if the Council has served notice on the Council pursuant to Clause 4.2.1 (a) it shall indemnify the Council in respect of the costs which the Council demonstrates as having been reasonably incurred in the selection and nomination of the Housing Association.
- (d) Any conveyance, transfer or lease whether to the Housing Association pursuant to Clause 4.1.4(a) or to the Council pursuant to Clause 4.2.1 shall contain such provisions that either party to it may reasonably require having regard to the relevant planning permission or the requirement to provide Affordable Housing or any other material matters AND if there shall be any dispute as to the form of lease or transfer then either party may refer the drafting of the same to Conveyancing Counsel ("Counsel") of at least ten years standing and should the parties be unable to agree the identity of such Counsel then his appointment shall be referred to the Chairman for the time being of the Bar Council and the form of such assurance or lease as drafted by Counsel shall be final and binding upon the



parties hereto and the costs of such Counsel shall be in his award

**4.3 Payments in Lieu of Affordable Housing**

4.3.1 The parties agree that the number of units within the Affordable Housing Units which the NHS Trust covenants in the Housing Association Agreement to construct may be less (by up to five units) than the number of units calculated in accordance with Clause 4.4.2.

4.3.2 In the circumstances described in Clause 4.3.1 or (if All Affordable Housing Land is to be part of the Middlesex Annexe Site if the parties agree that the All Affordable Housing Land cannot accommodate the Affordable Housing Units) then the parties will agree the number of Affordable Housing Units which are not capable of being so provided and the NHS Trust shall pay to the Council within 28 days of such agreement being reached in respect of each unit of Affordable Housing which it has been agreed shall not be provided on All Affordable Housing Land a sum equivalent to the Price for the relevant number of units.

#### **4.4 Calculation Of The Affordable Housing Units**

4.4.1 For the purposes of this Agreement the number of units comprised in the Affordable Housing Units shall be calculated by no later than 1 December 2008 (the "Calculation Date").

4.4.2 The number of units comprised in the Affordable Housing Units shall be equivalent to 25% (or the nearest percentage of whole units) of the total number of new residential units:

- (a) which shall have been completed on the Residential Sites at the Calculation Date; and
- (b) which shall not have been completed on the Residential Sites at the Calculation Date but in respect of which applications submitted pursuant to Clause 4.1.4(a) shall have been made and in respect of which the grant of planning permission has been recommended by Council officers.

4.4.3 For the purpose of the calculation referred to in clause 4.4.2 above:

- (a) the said percentage shall only apply to the net increase in residential units after the date of this Agreement on that Residential Site comprising 1-9 Huntley Street; and
- (b) the Affordable Housing Units shall comprise a minimum of 30 residential units regardless of what development takes place on the Residential Sites.

#### **4.5 MIX AND STANDARDS OF THE AFFORDABLE HOUSING UNITS AND THE ODEON AFFORDABLE HOUSING UNITS**

All Affordable Housing Units shall reflect the design and other standards contained in the Housing Corporation's scheme work and design criteria and the Council's adopted housing strategy policy and the Council's adopted Planning policies for the year in which the Housing Association Agreement is entered into Provided that the unit mix of All Affordable Housing Units shall be

18

substantially the same as that for which planning permission has been granted for the Residential Sites at the Calculation Date unless the Council requires some alternative unit mix (such alternative mix not in any event to require an enlargement of the agreed envelope of the scheme of All Affordable Housing Units for which planning permission shall have been granted

