

**Deed of Variation to the Section 106 legal agreement for full planning permission reference 00/2832 relating to affordable housing provision at Regal Court, Malvern Road, London, NW6**

**RECOMMENDATION**

That the Planning Committee grant approval of the proposed Heads of Terms for the deed of variation and delegate authority to the Head of Area Planning to agree the exact terms thereof on advice of the Director of Legal and Procurement.

**SITE DESCRIPTION**

This is the property known as Regal Court, a terrace of three-storey properties to the south-west of the junction of Malvern Road and Carlton Vale in the South Kilburn Regeneration Area. It currently provides 27 self-contained flats.

**PROPOSAL**

When planning permission was granted for the 27 units in 2001 it was subject to a legal agreement controlling, amongst other things, the tenure of the flats. The owners of the building have now undertaken a review of the accommodation and following this review they have now approached the Council with a view to renegotiate the Heads of Terms of the 2001 agreement, specifically as far as it relates to affordable housing provisions.

By way of background, when the 27 flats were granted consent the legal agreement required that 21 units be leased to a "social housing body" for a term of 10 years and that the remaining 6 flats be sold to a similar body for a terms of 999 years or on a freehold basis. These 6 units consist of 1 one and 5 two bed flats and for clarity, they are pepper-potted throughout the building.

In accordance with the legal agreement, all 27 flats were let to Shepherds Bush Housing Association for a period of 10 years. All tenancies are assured short-hold and the lease is due to expire in April 2013.

The owners of the building have now considered the obligation to retain the 6 units as affordable housing in perpetuity and have discussed options with Officers. Members will be aware that a reasonable proportion of affordable housing is sought in all schemes, but in this case it is considered that the legal agreement should be varied so as to no longer require these 6 units to be retained as affordable housing on the basis that a financial contribution to go towards affordable housing in South Kilburn is made in lieu.

## POLICY CONSIDERATIONS

### Brent Unitary Development Plan 2004

- STR11 Which seeks to protect and enhance the quality and character of the Boroughs built and natural environment and resist proposals that have a harmful impact on the environment and amenities.
- STR14 New development will be expected to make a positive contribution to improving the quality of the urban environment.
- STR19 New housing developments should provide adequate amenity, reduce need for car travel and improvement to public infrastructure.
- BE2 Townscape: Local Context & Character
- BE6 Public Realm: Landscape Design
- BE7 Public Realm: Streetscape
- BE9 Architectural Quality
- H9 Dwelling Mix
- H12 Residential Quality – Layout Considerations
- TRN23 Parking Standards – Residential Development
- PS14 Parking Standards

### **Core Strategy**

CP 9 – South Kilburn Growth Area

CP21 - Balanced Housing Stock

### **Mayor's London Plan 2011**

### **Supplementary Planning Guidance Note 17: Design Guide for New Development**

### **Supplementary Planning Document: S106 Planning Obligations**

## AFFORDABLE HOUSING ASSESSMENT

As explained above, the legal agreement only requires the provision of 6 units pepper-potted through the scheme, which is now not considered to be the favoured option for social housing providers, certainly in management terms. In addition, the units are not built to Scheme Development Standards and are also relatively small, with internal floor areas of approx 38 square metres for the one bed and 53 square metres for the 2 bed units. The six units were offered to Shepherds Bush HA when the short life lease ends, but they are not prepared to pursue their interest and no other RSL has come forward.

As a result, Officers have concluded that rather than insist on the retention of the scattered sub-standard units within the building it would be appropriate to obtain a

financial sum that could be used to provide good quality units elsewhere in South Kilburn. Officers have agreed on a figure of £480,000 that the owners would pay now (as explained above the lease will continue to April 2013). The sum of £480,000 is a share of the extra profit that the developer may gain after build costs and other overheads are taken into consideration and has been an approach used elsewhere in the Borough.

It is considered that the approach, and the total sum, is reasonable. One way of using the £480,000 would be to use the payment as 'grant' (at £40k a property) which could help to buy the Council at least 12 new well-sized affordable rent units or 5 brand new units (at £95k a property), whilst the existing affordable short-term occupants would stay with Shepherds Bush HA until April 2013. The HCA gives a grant of approx. £30k per unit and this allows an RSL, if they charge affordable rents, to build an affordable unit. The RSL pays for most of the build through capitalising the rent and taking a loan against it and there is nothing to stop Brent doing the same with any RSL, reflecting what the HCA does. Officers are of the view that if we put in our payment, this should incentivise an RSL to build and charge at target rents, with a grant of £95k covering a large proportion of the capital costs.

The variation of the S106 only relates to this particular point and there are no further changes to the scheme proposed at this time. However, for clarity, the original Committee report to Members in 2001 is repeated below:

#### ORIGINAL PLANNING COMMITTEE REPORT 00/2831

##### "PROPOSED

In March 2000, an application (99/2224) was approved which proposed the demolition of the existing rear additions to the building, the erection of smaller projections to replace these larger extensions and the conversion of the building into a total of 21 flats (19 two-bed, and 2 one-bed units). Each of the seven identifiable buildings, in visual terms, would provide flats on three floors. This application involved the removal of the existing ground floor shopfronts, and their replacement with detailing to reflect that currently evident on the upper-floor front elevation of the building.

A subsequent application (00/1757) proposed the erection of an additional storey on the building, in the form of a mansard roof, and the creation of six extra residential units in this floorspace. This application intended that the whole of the building be taken by a Housing Association. For Members' information, the original consent for 21 units on this site granted in March 2000, did not have any element of affordable housing.

This current proposal takes elements of both previous schemes, in that it seeks consent for the physical enlargement of the building in the form of an additional storey, along with the use of the extended building for a total of 27 residential units, with 6 of the units providing permanent affordable housing. The number of affordable units has effectively arisen from the additional flats, over and above the original consent for 21 units. The applicant has been in discussions with the Council's Housing Service during the lifetime of this application and it is now intended that all 27 of the units will be occupied as affordable housing for a period not less than 10 years from the date of any permission being implemented. At the end of this period, it is intended that the 6 units will continue as affordable housing, whilst the remainder will revert to general housing.

The Housing Service have expressed their full support for the application and the Shepherds Bush Housing Association have been chosen to work with them in developing this scheme.

## HISTORY

99/2224 - Conversion of building into 21 self-contained flats. Granted 15/03/00.

For Members' information, at the time of this decision, it was considered that there was no requirement for any affordable housing provision on the site, on the basis that as the development effectively amounted to the conversion of each of the 7 individual units, it would be difficult to insist on any such provision.

00/1757 - Erection of an additional floor above existing premises containing 6 self-contained flats. Permission granted subject to a Section 106 legal agreement at Planning Sub-Committee of 21/11/00. Agreement was not signed and consent consequently not issued.

00/2831 - Demolition of rear additions and erection of replacement extensions and new mansard roof; conversion of existing building to provide 21 flats (19 two-bed and 2 one-bed) for general housing and provision of 6 flats (1 one-bed and 5 two-bed) in new additional storey for occupation by Housing Association. Granted at Planning Committee 12 June 2001. Planning permission issued 6 September 2001.

## REMARKS

Members may be aware of the recent planning history of the site. An unauthorised hostel use (E97/0819) was considered at a Public Inquiry and the appeal dismissed. The hostel use, which was considered to cause significant problems for the locality, has now ceased. Subsequently, two proposals to create 21 self-contained general market, and 27 affordable flats on the site, the first has full planning consent and the later agreed in principle, subject to a Section 106 legal agreement, was considered

at the Planning Sub-Committee in November 2000. The planning history of the site is a material consideration in the assessment of this current scheme.

The background to this application is somewhat complicated, in that it takes elements of early decisions in principle, but now has Brent Housing Service involvement, who have been negotiating with the applicant to secure nomination rights to the Council. This application is now subject to a legal agreement in order to control the use to which the building will be put.

#### ERECTION OF ADDITIONAL STOREY

It has been accepted in application 00/1757 that the provision of an additional storey on this building and the creation of an additional 6 dwelling units in this additional floorspace, is acceptable, subject to a Section 106 agreement to affordable use. The proposed alterations are acceptable in terms of their impact on the building and the established streetscene. There was no objection in the past, in design terms, to the removal of the rear projections and their replacement with smaller extensions. In the circumstances, the physical changes to the building are considered to be acceptable.

#### HIGHWAY ISSUES

In terms of the parking requirement of the proposed development, it remains important to consider the proposal in comparison to the previously approved residential developments, as well as the original use of the building. Previously, it was considered that the proposed 21 residential units did not require any additional off-street parking provision, with the standards for the converted and the pre-converted buildings both requiring a total of 10.5 spaces.

In this particular case, whilst the circumstances are somewhat unusual, it is now proposed that the building be used for a total of 27 affordable units for the next 10 years. This would be controlled by means of a legal agreement and the Council's standards allow for the relaxing of parking requirements where the accommodation is for affordable purposes. Consequently, the requirements for these 27 affordable units are actually less than for the 21 units previously approved. Whilst no off-street parking is possible here, there is no additional requirement for the proposed works, certainly over the next 10 years.

As a result, what highway concerns there are, would only come into play when, potentially, 21 of these 27 residential units become market housing at the end of the period. It is obviously a difficult task to envisage what the planning framework will be so far in the future, but were standards to remain unchanged from those used currently, the proposed scheme would require a total of 12.0 parking spaces. This would represent an increase of 1.5 spaces over and above the current requirement, and has to be a material consideration in the assessment of this proposal.

The discussion is inevitably balanced but the Director of Transportation does not object to the planning application, on the grounds that the proposed parking shortfall would be minimal and that, in any event, it is unlikely that the planning policy framework will require increased parking provision in 10 years' time when the issue of potential parking increase would next be considered. The site has very good accessibility to public transport services, and whilst there is no controlled parking zone (CPZ) in force here at present, it is likely that the area will be the subject of a CPZ (accepting that it would need to be the subject of the necessary consultation) in the next batch of designations, which are likely to be at the end of this year.

As previously, the view is taken that a financial contribution should be paid here towards on-street parking controls, or non-car modes of transport, in the locality. This contribution would only need to relate to the additional 6 units over and above the original 21 units approved by 99/2224.

#### STANDARD OF ACCOMMODATION

The proposed building has not changed since the most recent application was considered by Committee in November 2000. It is evident, therefore, that this application continues to propose a somewhat intensive use of the site, with a total of 27 units arranged over a total of four floors. However, the proposed works comply fully with the internal space and stacking standards set out in SPG17 and are, therefore, acceptable. Those flats at ground floor level will be able to benefit from small patio areas to the rear, whilst there are opportunities to create some balcony areas at first-floor level on the roof of these ground-floor additions, as well as balconies at upper floors. As a result, future residents will be able to benefit from such facilities on all levels, whilst measures have been incorporated into the scheme in order to ensure no significant loss of amenity (via overlooking) between the different units within the development.

#### CONCLUSIONS

It is considered that the scheme has a number of benefits, including the provision of affordable homes and bringing this building back into an acceptable use. The Council's Housing Service have expressed significant support for the proposal and have negotiated with the applicants in order to generate the current somewhat unusual arrangements. In addition, the proposal provides for an element of amenity space for occupiers of the new flats, either by courtyard gardens, patios on the roof of extensions, or balconies.

The application effectively defers the consideration of the parking impact of the proposal until a later date. Any possible shortfall (which would only be 1.5 parking spaces, using 2001 standards) would need to be considered in terms of the future CPZ, as well as planning policy, which is unlikely to require increased parking provision.

This recommendation is subject to the signing of a satisfactory Section 106 Agreement. The Heads of Terms need to ensure that the scheme under consideration is the scheme actually implemented on site. Consequently, there is a need to ensure simultaneous signature of Agreement and relevant contracts to ensure the development is available and effectively managed for affordable housing. The Council would not wish to see certain of the units being occupied whilst physical works remained uncompleted.”

## SUMMARY

Your Officers consider that the proposed amendments to the Section 106 legal agreement, as far as it relates to the provision of affordable housing on the site, are acceptable and that the changes can be dealt with under Section 106(1) of the Town and Country Planning Act 1990, as amended. The provision of a reasonable proportion of affordable housing on all sites remains the key aspiration of the Planning Authority, but on the basis of the assessment set out above, in terms of the quality of the existing accommodation and the benefits that an in lieu payment could provide for the wider South Kilburn area, Officers are content to consider the variation favourably. On this basis, it is recommended that authority be delegated to the Head of Area Planning to agree the exact terms of the deed of variation with the Director of Legal and Procurement.

## BACKGROUND PAPERS

London Plan 2011

Brent LDF Core Strategy 2010

Brent UDP 2004

South Kilburn SPD 2005

## CONTACT OFFICERS

Any person wishing to inspect the above papers should contact Andy Bates, Planning & Development, Brent House, 349 High Road, Wembley, HA9 6BZ (0208 937 5228).