



LONDON BOROUGH OF BRENT

MINUTES OF THE PLANNING COMMITTEE Wednesday 7 February 2024 at 6.00 pm

PRESENT: Councillor Kelcher (Chair), Councillor S Butt (Vice-Chair) and Councillors Akram, Begum, Dixon, Mahmood, Maurice and Rajan-Seelan

1. **Apologies for Absence and Clarification of Alternate Members**

None.

2. **Declarations of interests**

There were no declarations of interest made by Committee Members.

3. **Minutes of the previous meeting**

RESOLVED that the minutes of the previous meetings held on Wednesday 17 January 2024 be approved as a correct record of the meeting.

4. **Deed of Variation - Fairgate House, 390-400 & 402-408, High Road, Wembley, HA9**

PROPOSAL

Deed of Variation to the Deed of Agreement dated 3rd May 2023 under Section 106 under the Town and Country Planning Act, as amended, in relation to planning application reference 22 / 2225 to demolish the existing building and construct a building of part 13 storeys, part 17 storeys with purpose build student accommodation, communal facilities, flexible non-residential floor space (Class E), cycle parking, landscaping and associated works.

RECOMMENDATION:

- i) That the Committee resolve to enter into a Deed of Variation under Section 106A of the Planning Act to vary the Section 106 agreement associated with planning application reference 22 / 2225 and delegates authority to the Head of Planning and Development to agree the wording of the Deed of Variation.
- ii) The Deed of Variation would secure changes to the obligations secured through the legal agreement to require the payment of a financial contribution of £2.224 million (indexed from date of decision) towards the provision of additional low-cost rented Affordable Housing (within Use Class C3) and would remove the requirement to provide on-site Affordable Student Accommodation.

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Victoria McDonagh, Development Management Area Manager for North Planning Team, introduced the report and set out the key issues. Members were advised that the application the proposal related to had been subject to a Section 106 Agreement that secured a number of obligations, and the matter presented to Committee related to a deed of variation to make changes to some of those obligations. The changes would include the removal of the requirement to provide any on-site student bed spaces at affordable rent levels, and instead secure the provision of an off-site affordable housing payment in lieu, of £2.224m. This payment in lieu was to be used for the provision of the off-site delivery of additional low-cost affordable housing within the Council's administrative area. The variation would also mean there would be associated changes to the early-stage review mechanism and the introduction of a late stage review mechanism to require a further payment in lieu towards off-site provision of affordable housing in the event that viability improved.

The Committee's attention was drawn to the supplementary report which summarised comments received from the Greater London Authority (GLA) on the proposed changes as part of the Deed of Variation.

The Chair thanked Victoria McDonagh for introducing the report. As there were no Committee questions raised at this point, the Chair invited Mr Steve Harrington (applicant) to address the Committee in relation to the application.

The following key points were highlighted:

- The applicant began by informing the Committee that the Phase 2 Scheme had passed through the Mayor of London's Office.
- There had been a worsening of market conditions since consent was first secured in May 2023, and there was a need to make the changes being proposed in order to guarantee the overall delivery of the scheme, which would be unviable if the changes were not made.
- A viability assessment had been submitted and fully scrutinised by Brent Council Officers and advisers. A range of scenarios and options had been tested within that, and the proposal for an off-site payment in lieu had been agreed as the only viable option.
- The developers were committed to delivering the whole of the project, and preparation works had already started with demolition due to commence imminently on 26 February 2024. The developers wanted to keep moving

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quickly through the construction works to finish by mid-2027, which would enable students to move in ahead of the academic year that followed.

- The applicant highlighted that in just over 3 years from now the public benefits of the scheme would have been delivered, which included a community hub space in the Phase 2 building which would be managed by the building operator but bookable and available for the community to use free of charge. There would also be a public space between the two buildings.
- The commercial / retail space in the Phase 1 building was not yet fully defined, but the rent on that space was set at approximately £26 per square foot, which equated to approximately £75k per annum on average, which was considered affordable and accessible when considered against other similar spaces within Wembley.
- The applicant informed the Committee that the development would generate in excess of £20million to the local area overall through Community Infrastructure Levy (CIL), the £2.224m payment in lieu, and other Section 106 contributions. There would be expenditure in the area during the construction phase equating to approximately £3m per annum, and expenditure relating to the students who would live in the area equating to approximately £4m per annum. In addition to that, 400 construction jobs would be delivered, and it was estimated that around 60 jobs would be made available once the scheme was operational across both phases, which would likely be filled by local residents.

The Chair thanked Mr Harrington for addressing the Committee and invited the Committee to ask any questions they had in relation to the information heard. The Committee had questions around the reason the development became unviable following approval, the use of the community hub space and jobs this would generate, the amendments to the Section 73 Agreement, floor space, and community benefits.

The following responses were provided:

- In response to why the deed of variation was being requested so close to the development's initial approval, the applicant explained that the land had been acquired in early 2022 when the Phase 1 application was first envisaged. The developers had gone through the planning process throughout 2022 with the aim of bringing the application to Committee in November 2022, when there

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had been changes to the political environment nationally that led to a substantial rise in interest rates. By the time the application was then agreed in May 2023, some of the agreements that had been in place in 2022 had run off course in relation to interest rates and project viability. The developers had then submitted a planning application to officers in 2023 for a number of design changes under Section 73 but it was clear almost immediately after permission was granted that there would be a need to come back to change aspects of the application due to viability of the project overall. As such, various scenarios were tested, including the scheme which had initially received planning permission, and the Deed of Variation was concluded to be the only viable option.

- The Committee asked the applicant about the jobs the site would generate and whether they would employ local tradespeople. The applicant confirmed that there were planning obligations in place to use local procurement, local supply chains and work with Brent Works to provide apprenticeships as part of construction. The construction of the buildings would generate around 400 jobs during the construction phase, and a further 60 jobs would be created when the buildings were operational. Both student buildings would have management teams within them, and the commercial / retail space would also provide a number of jobs on site.
- In response to queries about the management of the community hub, the applicant advised that the most cost-effective way to provide management of the hub without putting any charity or community group at risk was for the student building operator to manage the hub. There would be a booking system available through management for members of the community to book the space. Further details on that would come forward as the scheme developed.
- In relation to the completion date of mid-2027, the Committee asked whether this would be for both Phase 1 and Phase 2 sites. The applicant explained that the plan was to demolish the existing buildings on the Phase 1 site, move on to piling and making good the land on the Phase 2 site, then the buildings would begin to come out of the ground together with the intention to have everything available and operational at the same time in mid-2027.
- The Committee asked about the Section 73 application to make amendments to conditions 2, 4 and 31. Members particularly wanted to know about the amendment to commercial floor space in condition 4 and the amendment to storey height in condition 31. In relation to condition 4, the commercial

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floorspace had allowances on the ground floor for planned space and, through efficiencies of the design, the developers had found a way to provide more commercial space, increasing it from 232 square metres to 348 square metres. The reason the floor space had increased was ancillary, such as plants that were considered part of that floor space which could be reassigned as commercial. In relation to condition 31, the applicant explained that the developers had added an extra half floor to one wing of the building, which took the height of that wing to 14 storeys from a previous height of 13. This addition, alongside looking at the mix of bedrooms, had generated an extra 10 student bedrooms, so the scheme had moved from 349 to 359 beds. In explaining this, the applicant confirmed that the viability assessment had appraised the scheme at 359 beds. There was no reduction in the size of accommodation for students, or the size of amenity space or bike provision.

- In response to how the community benefited from the development, the applicant advised members that the vision of the developers was to improve a part of the High Road that was tired. The developers were demolishing buildings that were end of life and putting new buildings back with a focus on the public realm. For example, there would be a new piece of public parkland which had been dedicated through a public right of way to the Council, there was the hub development and the community hub which was free of charge. As such, there was space for residents to enjoy inside and outside. There would also be uses on the ground floor commercial / retail space that would encourage community use.

The Chair thanked Mr Harrington for responding to the Committee's queries and proceeded to offer the Committee the opportunity to ask the officers any remaining questions or points of clarity they had in relation to the application. The Committee had questions in relation to the assertions in points 14 and 20 of the Committee report, whether the payment in lieu could be linked with a specific area or development, the timing of payments the Council would receive, use of commercial space if it was not lettable, confirmation that the payment in lieu could go towards traditional C3 dwelling houses, and whether the viability assessment took into account any revenue generated from short-term lets within the 14 weeks that the student bed spaces were not let out to students.

The following responses were provided:

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- In relation to point 14 of the Committee report which stated that the greatest quantum of affordable housing would be provided by the deed of variation proposed, the Committee heard that the scheme had gone through extensive viability testing with 2 consultants. While doing a robust test of viability, Brent Council's consultants concluded that there was a deficit of £4.96m, which was under the gross development value profit of 15%, including the payment in lieu, which did demonstrate the maximum viable amount. In conducting those tests, there were a number of assumptions that were tested that could affect the outcome such as yield, finance rate, rent, operational costs, build costs, and benchmark land value.
- Point 20 of the Committee report stated that the deed of variation was of greater public benefit from the C3 affordable housing the Council would get compared to the affordable student accommodation that was previously proposed. The Committee heard that there was a recognition of the London-wide need for student accommodation, and affordable accommodation as part of that, but the payment in lieu proposed instead gave the Council the capacity to provide money towards delivering additional low-cost affordable housing for residents within Brent. Brent had a significant housing need, with many people on the housing waiting list and in Temporary Accommodation. The payment in lieu would help with projects the Council had in the pipeline to get that additionality to increase the number of affordable homes the Council could deliver beyond what had already been secured on them.
- It was confirmed that the Council would receive the payment in lieu relatively early, within 12 months of material start. CIL payments would be made in instalments. CIL payments were based on floor space calculations at £40 per commercial square metre.
- In response to the Committee querying whether it was possible to make a condition to ringfence the payment in lieu to an area near the development or to a particular development, officers explained that the payment in lieu could not be secured to a particular project or geographical area due to the timings of when projects came through and whether they completed. There were a number of projects within the local area where that payment could potentially be of use, such as the Wembley Housing Zone, but officers would not want to secure it to a particular project or area at the outset as there was a risk of losing that money if the project did not go ahead.

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- In response to a Committee query in relation to whether the payment in lieu could be made towards infill opportunities that had been put on hold due to a lack of funding, officers explained that this would not be possible. The payment in lieu could only be used to provide additional affordable housing. If a viability assessment had found that the Council could not deliver a project, then the payment in lieu could not be used to make that scheme viable. The payment in lieu was required to go towards schemes that were viable to go ahead to provide additional affordable homes within that scheme. Officers added that if a scheme had already secured 100% affordable accommodation then the payment in lieu could not be used towards that as it would not be seen as additional.
- In response to whether the commercial space could be turned into residential at any point if it was found to be hard to let, officers confirmed that planning permission would be required to do that.
- Members expressed disappointment that the payment in lieu equated to only approximately 5% of provision and requested assurances that every effort had been made to increase that, and that there would be a late-stage review mechanism in place. Officers assured the Committee that viability had been thoroughly tested and sensitivity tested, and this was the conclusion agreed on. The scheme would have a mechanism for both an early and late-stage review to further test viability. The early-stage review could be triggered if the development had not materially started within 24 months of consent, where viability could be reviewed and if it was found to have improved then the Council could secure a further payment in lieu. The late-stage review mechanism was triggered once the site had reached 75% occupation, which gave time for build costs to be known and key factors to be established so that the figures could be modelled for viability assessments. If the late-stage review found there had been an increase in finances and there was found to be a surplus then the Council could secure an additional payment in lieu for affordable off-site accommodation.
- Officers confirmed that the payment in lieu could be used for the provision of C3 additional low-cost rented accommodation. This would be defined in the legal agreement, which would add in the relevant definitions of dwelling houses and state that the developers were doing this payment towards additional C3 affordable homes as defined within the deed of variation. All

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references to affordable student accommodation would be removed as that was no longer applicable. The legal agreement would also add in the late-stage review mechanism and amend the early-stage review mechanism that was viability tested.

- The Committee asked whether the financial viability assessments had taken into consideration revenue generated from any potential short-term lets in the 14 weeks that students were not occupying the accommodation and the student let length of 38 weeks instead of a traditional 52 weeks. Officers explained that the viability consultants would be aware of the let lengths and were experts in how those models worked. The Phase 2 scheme was also robustly tested by the GLA.

As there were no further questions from members the Chair moved on to the vote. In establishing that one member had not been able to follow the entire discussion, it was agreed that they should not participate in the vote.

DECISION

Resolved to enter into a Deed of Variation under Section 106A of the Planning Act to vary the Section 106 agreement associated with planning application reference 22 / 2225 and delegate authority to the Head of Planning and Development to agree the wording of the Deed of Variation.

(Voting on the above decision was unanimous).

5. Any Other Urgent Business

None.

The meeting closed at 6:50 pm
COUNCILLOR MATT KELCHER
Chair