

Committee date	Wednesday, 29 July 2020
Application reference Site address	17/00470/FULM - 37-39 Clarendon Road
Proposal	Variation of Section 106 agreement of planning permission 17/00470/FULM for the proposed mixed use development comprising up to 11,180 sqm of Class B1(a) office space on 8 floors, 154 residential units on 23 floors, up to 496 sqm of Class A3 café/restaurant space on the ground and 9th floors, 1st floor gym, basement car and cycle parking, access, landscaped rooftop amenity space and associated works.
Applicant	Clarendon Road Developments Ltd
Agent	Woolf Bond Planning
Type of Application	Variation of Section 106 agreement
Reason for committee Item	Major development
Target decision date	None
Statutory publicity	None required
Case officer	Paul Baxter, paul.baxter@watford.gov.uk
Ward	Central

1. Recommendation

That the Section 106 agreement be varied as set out in Section 7 of the report.

2. Site and surroundings

- 2.1 The site is located on the western side of Clarendon Road close to the junction with Beechen Grove. It is rectangular in shape and has an area of 0.40 hectare. It adjoins Jury's Inn to the south and has a rear boundary that adjoins Beechen Grove. It comprises a 4 storey office block on the frontage (Hannay House) which dates from the 1960s and is currently occupied. To the rear is a second, 3 storey office block (Millbuck House) which has been vacant since 1997.
- 2.2 The site is located in the Town Centre SPA in the Core Strategy and within an allocated employment area (E7a) in the Watford District Plan 2000. There are parking restrictions, including Residential Control Parking Zone along the roads within the vicinity of the site. The site is not within a conservation area and there are no listed or locally listed buildings within or adjoining the site.

3. Summary of the proposal

3.1 Proposal

Planning permission 17/00470/FULM was granted on 1st May 2018 following the completion of a Section 106 agreement to secure the following planning obligations:

- i) To secure a financial contribution to the Council of £1,400,000 towards the provision of affordable housing in the Borough of Watford;
- ii) To secure a review mechanism of the viability of the scheme to secure additional contributions up to a maximum total contribution of £6,156,313 towards the provision of affordable housing in the Borough of Watford, subject to the review demonstrating the improved viability of the development;
- iii) To secure a financial contribution to the Council of £600,000 towards the environmental improvement of Clarendon Road;
- iv) To secure a financial payment to the Council of £2,000 towards the variation of the Borough of Watford (Watford Central Area and West Watford Area) (Controlled Parking Zones) (Consolidation) Order 2010 to exclude the site from the controlled parking zone, thereby preventing residents' parking permits being issued to this site;
- v) To secure the provision of fire hydrants to serve the site as required by Hertfordshire County Council;
- vi) To secure a financial payment to Hertfordshire County Council of £6,000 for the long term monitoring of the proposed Travel Plan for the site.

3.2 This application seeks to vary planning obligations (i) and (ii) above as follows:

- i) To secure a financial contribution to the Council of £1,650,000 (index-linked) towards the provision of affordable housing in the Borough of Watford. This is to be paid on practical completion of the development.
- ii) Requirement for a review mechanism to be deleted.

Planning obligations (iii), (iv), (v) and (vi) remain unchanged.

3.3 Conclusion

The proposed variation to the Section 106 will mean that a greater minimum affordable housing contribution will be paid to the Council. It is also proposed that this payment will be made at an earlier time, upon practical completion of the development, rather than after the completion of the sale of the 125th residential unit and the completion of a viability review, as currently proposed within the agreement. This is considered to be a significant benefit as it would reduce the risk of a significant delay in securing the contribution in the event of that sales of the new homes fail to progress in a timely manner. The compromise is that there will be no prospect of any additional affordable housing contribution arising from the review. However, the viability review undertaken as part of the assessment of the request to vary the Section 106 agreement indicates that this would be very unlikely. A further benefit arising is that the removal of the late stage review would reduce uncertainty around the cost of delivering the scheme increasing the likelihood that the scheme will be funded and delivered providing significant new office floorspace, supporting job creation, and 154 residential units, which has not commenced in over 2 years and will expire on 1st May 2021. On balance, it is considered that the benefits of varying the Section 106 agreement will significantly outweigh the dis-benefits and that the request should be granted.

4. Relevant policies

- 4.1 Members should refer to the background papers attached to the agenda. These highlight the policy framework under which this application is determined. Specific policy considerations with regard to this particular application are detailed in section 6 below.

5. Relevant site history/background information

- 5.1 17/00470/FULM - Proposed mixed use development comprising up to 11,180 sqm of Class B1(a) office space on 8 floors, 154 residential units on 23 floors, up to 496 sqm of Class A3 café/restaurant space on the ground and 9th floors, 1st floor gym, basement car and cycle parking, access, landscaped rooftop amenity space and associated works. Planning permission granted 1st May 2018.

18/00895/FUL - Erection of a substation at rear of site adjacent to Beechen Grove (amended description). Planning permission granted 5th November 2018.

18/00894/NONMAT - Non-material amendments to planning permission 17/00470/FULM for various amendments to the building and the variation of

the wording of Conditions 4, 23 and 24. Application granted 30th November 2018.

20/00600/NONMAT - Non-material amendments to planning permission 17/00470/FULM as amended by 18/00894/NONMAT for increase in height of the office building, ground floor layout amended and office area revised, increasing the office floor area by 1065sqm. Application granted 7th July 2020.

6. Main considerations

- 6.1 The only issue to be considered in this case is the variation of planning obligations (i) and (ii) of the Section 106 agreement. No physical amendments are proposed to the site or building or the proposed uses.
- 6.2 The difference between the commuted sum figures of £1,400,000 and £6,156,313 used in the Section 106 agreement arose out the different benchmark land values for the site attributed by the applicant's consultant and the Council's consultant respectively. As this difference could not be resolved at application stage, it was agreed as part of the review mechanism in the Section 106 that an independent third party consultant would be jointly appointed to determine the benchmark land value to be used in the review. This consultant concluded that a value higher than that proposed by the applicant's consultant should be used. This figure has been used in the current appraisals.
- 6.3 The proposed changes are requested by the applicant due to the uncertainty created around the review mechanism and the potential increase in the affordable housing contribution up to £6,156,313. It is stated that this requirement is hindering the investment funding required to bring the development forward. The planning permission is already over 2 years old and needs to be commenced before 1st May 2021. The applicant is in the process of securing a development partner to build out the scheme but is currently unable to secure the necessary funding due to the requirement for a review mechanism and the uncertainty this creates around the cost of the scheme.
- 6.4 A new viability appraisal has been submitted to demonstrate that a one-off payment of £1,650,000 (to be index-linked from the date of the original permission) towards affordable housing, to be paid upon practical completion of the development, is viable together with the other approved obligations of £608,000, making a total contribution of £2,258,000. This is also in addition to a Community Infrastructure Levy payment of £1,697,178. This has been based upon the higher benchmark land value of the third party consultant. The

appraisal has been reviewed by consultants Aspinall Verdi on behalf of the Council and has been agreed. They have concluded:

“Based on our assessment, we conclude that the maximum reasonable commuted sum payment towards affordable housing is £1.65m as suggested by the Applicant in addition to a CIL payment of £1.7m and a s106 contribution of £608,000. Further to this, given the viability and outputs of the sensitivity analysis we recommend that the requirement for a review mechanism (or additional payment) be dropped in return for the guaranteed sum of £1.65m.”

- 6.5 Under the terms of the current agreement, the viability review mechanism was due to be undertaken upon the completion of the sale of the 125th residential unit. Following approval of the viability review by the Council, the affordable housing contribution was to be paid to the Council subject to it not being less than £1,400,000 and not more than £6,156,313. With a predicted pre-construction and construction period of 32 months, it is anticipated that this payment would be made 3-4 years after the commencement of the development.
- 6.6 With the proposed removal of the viability review mechanism, the applicant has agreed to bring forward the timing of the affordable housing contribution, to now be made upon practical completion of the development. This would mean the payment is likely to be made at least 12 months earlier than before depending on the rate of sales.
- 6.7 The increase in the minimum payment from £1,400,000 to £1,650,000 (index-linked) and the payment being made upon practical completion of the development, rather than after the completion of the sale of the 125th unit and the required viability review, is considered to be a significant planning benefit and will contribute towards the timely delivery of much needed affordable housing within the borough. The compromise of the removal of the late stage viability review is that there will be no prospect of any additional affordable housing contribution arising from the review. However, the viability review undertaken and the sensitivity testing carried out indicates that this would be very unlikely, particularly in terms of achieving a significant uplift in the contribution. A further benefit arising is that this will facilitate the implementation of the development which will provide significant new office floorspace, supporting new jobs, and 154 residential units, which has not commenced in over 2 years and will expire on 1st May 2021. On balance, it is considered that the benefits of varying the Section 106 agreement will outweigh the dis-benefits and that the request should be granted.

7. Recommendation

That the request to vary the Section 106 agreement of planning permission 17/00740/FULM be approved and the agreement be varied as follows:

- i) Clauses 3.6 and 3.8-3.13, which refer to the requirement for a viability review, be deleted.
- ii) Clause 3.7, which refers to a minimum affordable housing contribution of £1,400,000 to be paid following a viability review be varied to refer to a single payment to the Council of £1,650,000 (index-linked), to be paid on practical completion of the development.
- iii) All other associated clauses and definitions be varied accordingly.