

Item No.	Classification:	Date:	Meeting Name:
6.1	OPEN	5 March 2013	Planning Committee
Report title:	Development Management planning application: Application 13/AP/0369 for: variation / discharge of legal agreement Address: CHAMBERS WHARF, CHAMBERS STREET, LONDON SE16 4XQ Proposal: Proposed deed of variation to the existing S106 agreement of planning permission 07/AP/1262 dated 10 October 2010 (residential development comprising 587 dwellings) to vary the terms of provision of affordable housing so that the 18 x 1-bed and 71 x 2-bed dwellings will be provided at affordable rent (circa 65% of market rent) rather than at target rent as previously permitted. The remaining affordable housing remains as previously proposed (17 x 3 bed and 13 x 4 bed affordable dwellings to be provided at target rent and 49 x 1-bed and 12 x 2-bed dwellings as shared ownership).		
Ward(s) or groups affected:	Riverside		
From:	Head of Development Management		
Application Start Date 07/02/2013		Application Expiry Date 04/04/2013	

RECOMMENDATION

- 1 That approval is given to the proposed amendments to the affordable housing provision for this development subject to the applicant entering into an appropriate deed of variation to the existing legal agreement by 4 April 2013.

In the event that the deed of variation is not completed by 4 April 2013, the head of development management be authorised to refuse the application for the reasons set out in paragraph 29 of the report.

BACKGROUND INFORMATION

Site location and description

- 2 The application site, located adjacent to the River Thames, measures approximately 2 hectares and comprises two parcels of land, the largest to the north and a smaller parcel to the south of Chambers Street (where the affordable housing is proposed). The site was previously occupied by warehouses and industrial buildings, with a jetty fronting the Thames. These buildings were demolished in 2010 leaving the site vacant other than for areas of spoil remaining from the demolition and an open sided structure, both of which are located on the parcel of land to the north of Chambers Street.

- 3 The northern part of the site is adjoined by existing residential development on its western and eastern boundaries. St Michael's Secondary School is located adjacent to the western boundary of the south site, residential development exists to the south and an area of open grassland is located to the east.

Relevant planning history

- 4 Planning permission (07-AP-1262) was granted in 2010 for the erection of six residential buildings providing 587 residential units and 275m² of flexible Class A/B1 floor space at ground floor level along Chambers Street; 203m² of Class D1 floor space along Llewellyn Street; basement parking; service and access roads, works of hard and soft landscaping together with other works incidental to the application.
- 5 The approved development proposed 407 market units on the north site (north of Chambers Road in blocks A-G) and 180 affordable units on the south site comprising 119 socially rented units and 61 intermediate units for rent or shared ownership. The proportion of affordable housing provision amounted to 31% of the total residential development.
- 6 The s106 agreement also included total financial contributions of £4,132,096 including education, employment, health, community facilities, public open space, sports development and transport provision.
- 7 Applications have subsequently been permitted for non-material amendments to the scheme allowing:
 - i) Details pursuant to conditions to be discharged in phases related to the construction phases of the overall development (requiring a variation of the original s106 agreement), and
 - ii) Amendments to the two buildings located on the portion of the site to the south of Chambers Street (buildings F and G).
- 8 Since the granting of this planning permission, the northern part of the Chambers Wharf site has been purchased by Thames Water in connection with the proposed construction of the Thames Tunnel. It is expected that the residential development permitted on the north site will not take place until at least 2021 or until Thames Water declares it surplus to requirements. The development consent application for the Thames Tunnel is expected to be made to the Planning Inspectorate on 28 February 2013.
- 9 A previous application for a deed of variation in 2012 to vary the provision of affordable housing on the site was withdrawn by the applicant following concerns raised by Officers relating to reduced overall provision of affordable housing, the submitted viability information and the proposed detailed drafting of the deed. This previous application for a variation included not only a lesser amount of affordable housing (21%) but did not include any units at social rent, proposing instead that all the rented units would be affordable rent at an average of 65% of market rent. Further details of this application are provided below.

Details of proposed deed of variation

- 10 The applicant is seeking to implement the approved scheme by commencing development on the part of the site to the south of Chambers Street incorporating the affordable housing part of the scheme. When planning permission was originally

granted, the affordable housing then proposed by the applicant was based upon the availability of grant funding of approximately £20 million from the Homes and Community Agency (HCA). This funding is no longer available which has consequently affected the viability of the proposals.

- 11 Following the withdrawal of the previous application to vary the affordable housing provision, continued discussions have taken place with officers and the applicant has now submitted a revised application after entering an agreement with Peabody Trust who it is now proposed will deliver the affordable housing. Peabody has confirmed that it is able to reallocate £10million of HCA grant funding from its existing programme to deliver the proposals. Subject to the approval of the deed of variation it is intended that construction will commence towards the end of March 2013.
- 12 The application now proposes a deed of variation to the existing s106 agreement to amend the affordable housing provision. The principal change is that the 18 x 1 bed and 71 x 2 bed units will be delivered at Affordable Rent equating to circa 65% of market rent rather than at social rent (40% or less of market rent) as previously permitted.
- 13 The remaining affordable housing provided will remain as previously permitted incorporating 17 x 3 bed and 13 x 4 bed family dwellings provided as social rent, and 49 x1 bed and 12 x 2 bed provided as shared ownership in accordance with the council's affordability criteria.
- 14 The proportion of affordable housing for the whole scheme remains as 31% as previously permitted, the key change being that the 1 and 2 bedroom units will be at higher 'Affordable Rent' levels in order to allow the remaining affordable housing to be provided at the levels previously agreed. No amendments are proposed to the layout or design of the proposed accommodation.
- 15 The draft deed of variation also includes a proposed clause to recognise that the early delivery of the affordable housing on the south site will be a material consideration in the determination of any future amended application submitted for the proposals on the north site. Additional clauses are proposed to ensure that the development of the affordable housing is commenced with one year of approval and completed within 3 years of commencement.
- 16 The following table sets out the affordable housing now proposed in relation to a) that previously approved and b) that proposed in the previous application which was withdrawn by the applicant.

	Permitted Scheme (2010)	Previous withdrawn application (2012)	Current proposal
Total units in scheme	587 Units	587 Units	587 Units
Total affordable units proposed	180 Units	129 Units	180 Units
Affordable Rented units proposed	119 Socially rented (40% or less of market rent)	119 'affordable rent' (all above target rent but below average of 65% of	119 social / affordable rent (comprising 17 x 3 bed and 13 x 4 bed at target rent, and 18 x 1 bed and 71 x 2

		market rent)	bed at 65% of market rent)*
Affordable Intermediate units proposed	61 shared ownership	10 shared ownership	61 shared ownership
% of Affordable accommodation proposed	31%	22%	31%

Planning history of adjoining sites

- 17 No relevant planning history.

KEY ISSUES FOR CONSIDERATION

Summary of main issues

- 18 The main issues to be considered in respect of this application are:
- a) The acceptability of the proposed revisions to the affordable housing within the development

Planning policy

- 19 Core Strategy 2011

Strategic Policy 5 - Providing new homes
Strategic Policy 6 - Home for people on different incomes
Strategic Policy 7 - Family Homes

- 20 Southwark Plan 2007 (July) - saved policies

Policy 4.4 - Affordable Housing

- 21 Southwark Supplementary Planning Documents (SPD)

Southwark Affordable Housing SPD (September 2008)
Draft Southwark Affordable Housing SPD (June 2011)

- 22 London Plan 2011

Policy 3.3 - Increasing housing supply
Policy 3.8 - Housing choice
Policy 3.9 - Mixed and balanced communities
Policy 3.10 - Definition of affordable housing
Policy 3.11 - Affordable housing targets
Policy 3.12 - Negotiating affordable housing on individual private residential and mixed use schemes

- 23 National Planning Policy Framework (NPPF)

Chapter Six - Delivering a wide choice of high quality homes.

Planning considerations

- 24 Strategic Policy 6 (Homes for people on different incomes) of the Southwark Core Strategy (2011) states that development will provide homes including socially rented, intermediate and private for people on a wide range of incomes. Development should provide as much affordable housing as is financially viable with a minimum target of 35%.
- 25 The National Planning Policy Framework 2012 (NPPF) recognises affordable rent (requiring a rent of no more than 80% of the local market rent) as a form of affordable housing though this is not mirrored in Southwark's policies that recognise socially rented and intermediate housing as acceptable forms of social housing. The NPPF also recognises that local authorities should plan for a mix of housing which should take account of market trends and that planning policies should be sufficiently flexible to take account of changing market conditions over time. The Mayor's housing supplementary planning guidance was published in November 2012 and recognises affordable rent within the definition of affordable housing. A report to Southwark's planning committee in December 2011 noted that Southwark has previously raised concerns at the inclusion of Affordable Rent as affordable housing noting that housing at up to 80% of market rent is unlikely to be affordable to the majority of current housing applicants, particularly those requiring large family homes.
- 26 The December 2011 report set out three options that could be applied in light of the national changes introducing affordable rent along with the reduction in grant funding and changes to the welfare system.
- Developing properties at a percentage of market rent that is significantly less than 80% by use of cross subsidy
 - Providing the majority of new build (e.g. 75%) at 'affordable rent', to enable the provision of some social rented homes (e.g. 25%)
 - Concentrating on providing one and two bed homes at up to 80% market rent level on the basis of providing three bed plus homes at social rent
- 27 The variation proposed by this application follows the third of these options, whereby the 89 one and two bed units will be provided at 'affordable rent' equating to circa 65% of market rent in order to allow the 30 three and four bed family units to be provided as socially rented units at target rents as originally approved. This reflects current housing demand where there is a particularly acute shortage of affordable family units. It is also recognised that the proposal would facilitate the early delivery of 180 affordable homes, a significant and much needed contribution to the affordable housing stock in the borough.
- 28 The current proposal represents a significant improvement on the previous application for a variation to the affordable housing provision which was withdrawn following concerns raised by officers. This previous application included not only a lesser amount of affordable housing (21%) but did not include any units at social rent, proposing instead that all the rented units would be affordable rent at an average of 65% of market rent. In comparison, the current proposal maintains the quantum of affordable housing as previously approved (31%) and retains the family units at social rent (for which there is a particularly high demand) and the intermediate shared ownership units as previously agreed.

- 29 A viability summary has been submitted with the application based upon the current viability of the south site. Given the complexity of issues associated with the Thames Tunnel project, an assessment to include the north site has not been submitted. The viability summary satisfactorily demonstrates why the variation is required given the loss of approximately £10million of grant funding in relation to the situation that existed when the scheme was originally granted planning permission in 2010. In contrast to the previously withdrawn application for a variation to the affordable housing provision, the current proposal does not include private housing on the south site and there is consequently no issue in relation to the values attributed to the sale of private units – these being a particularly concern with the previous submission.
- 30 Notwithstanding that works are intended to commence in March 2013, the applicant has agreed to clauses in the deed of variation requiring that works commence within 12 months of approval of the deed and are completed within three years of the commencement date. As such, there is no requirement for a reassessment of viability provided these clauses are met.
- 31 The applicant has requested that an additional clause is inserted into the agreement that the delivery of 180 affordable homes will be acknowledged as a material consideration in the determination of any amended proposals for the remainder of development on the north site. The development of the north site is dependent on the proposed Thames Tideway Tunnel scheme meaning that the remainder of the planning permission for the residential development will not be able to be progressed for at least six years. The developer would be able to implement the proposals for the remainder of the site in accordance with the existing planning permission. However, should the developer subsequently seek an amendment to the existing permission which increases the quantum of residential development, it is reasonable that the early provision of the affordable housing on the south site would be a material consideration in the determination of such a revised application. The detailed wording of this is being discussed with Officers as it is important that the wording of the s106 does not fetter the future determination of any application which may, for example, be determined to a different policy framework to that which currently exists.
- 32 On-going discussions on the detailed drafting of the deed of variation are taking place between the applicant and officers based upon the proposals set out in this report. In the event that agreement on the final wording of the deed of variation is not reached by 4 April 2012 (the expiry date for this application) it is recommended that the head of development management be authorised to refuse the application under delegated powers as it has not been demonstrated that the amended provision of affordable housing can be secured through an appropriate legal agreement and in accordance with Strategic Policy 6 (Homes for people on different incomes) of the Southwark Core Strategy 2011, saved policy 4.4 (Affordable Housing) of the Southwark Plan 2007 and Policy 3.12 (Negotiating Affordable Housing) of the London Plan 2011.
- 33 Based on the proposed construction programme it is likely that the affordable units on the south site will be built and occupied before construction of Thames Tunnel scheme is substantially underway. Given the proximity of the residential units to the Thames Tunnel work, it will important that the Thames Tunnel proposals include appropriate mitigation to prevent adverse impacts upon the living conditions of the occupiers. The applicant is also currently reviewing design solutions to mitigate the possible noise impacts from the construction site.

Environmental impact assessment

- 34 An environmental impact assessment was submitted and assessed through the

original planning application (07-AP-1262). This current proposal to amend the s106 agreement through a deed of variation to alter the affordable housing provision does not require a further EIA.

Impact of proposed development on amenity of adjoining occupiers and surrounding area

- 35 The amendments to the proposed affordable housing provision do not have any adverse impacts upon the living conditions of existing properties in the vicinity of the site.

Design issues

- 36 No physical alterations are proposed through this application. The layout and appearance of the proposed residential accommodation remains as previously approved.

Planning obligations (S.106 undertaking or agreement)

- 37 Other than the revisions outlined above there are no further implications for the s106 agreement. The financial contributions remain as previously approved.

Conclusion on planning issues

- 38 The proposed deed of variation, amending the affordability levels of the eighty nine rented 1 and 2 bedroom units within the originally approved scheme, is required for the viability of the scheme following a reduction in approximately £10 million of funding available for the development. The overall amount of affordable housing remains as previously approved (31% of the overall residential development). The thirty 3/4 bed family units remain as socially rented units at Local Authority target rents as in the original approval, and the 61 1/2 bed shared ownership units also remain unchanged from those originally approved.
- 39 The early delivery of the 180 affordable units, in advance of the remainder of the private dwellings on the north site, represents a significant contribution towards the affordable housing provision in this part of the Borough. Subject to the completion of a satisfactorily worded deed of variation, it is concluded that the variations proposed are acceptable and in accordance with the council's current position on the delivery of affordable housing.
- 40 The proposed deed of variation is concluded to accord with the relevant planning policies, in particular with Strategic Policy 6 (Homes for people on different incomes) of the Southwark Core Strategy 2011, saved policy 4.4 (Affordable Housing) of the Southwark Plan 2007 and Policy 3.12 (Negotiating Affordable Housing) of the London Plan 2011.

Community impact statement

- 41 In line with the council's community impact statement, the impact of this application has been assessed as part of the application process with regard to local people in respect of their age, disability, faith/religion, gender, race and ethnicity and sexual orientation. Consultation with the community has been undertaken as part of the application process.

Consultation

- 42 Details of consultation and any re-consultation undertaken in respect of this application are set out in Appendix 1.

Consultation replies

- 43 Details of consultation responses received are set out in Appendix 2.

Human rights implications

- 43 This application engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant.
- 44 This application has the legitimate aim of seeking approval for variations to the existing s106 agreement. The rights potentially engaged by this application, including the right to a fair trial and the right to respect for private and family life are not considered to be unlawfully interfered with by this proposal.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

- 45 **Strategic Director of Housing and Community Services**

Housing Services is supportive of the proposal and noted that the Deed of Variation needs to make clear that the revised rent levels will be in perpetuity and include the requirement to advise the council when re-basing rents on re-letting.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Site history file: TP/231-A Application file: 13/AP/0369 Southwark Local Development Framework and Development Plan Documents	Chief Executive's Department 160 Tooley Street London SE1 2QH	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: planning.enquiries@southwark.gov.uk Case officer telephone: 020 7525 4351 Council website: www.southwark.gov.uk

APPENDICES

No.	Title
Appendix 1	Consultation undertaken
Appendix 2	Consultation responses received
Appendix 3	Recommendation

AUDIT TRAIL

Lead Officer	Gary Rice, Head of Development Management		
Report Author	David Cliff, Team Leader, Major applications team		
Version	Final		
Dated	19 February 2013		
Key Decision	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments Sought	Comments Included	
Strategic Director of Finance and Corporate Services	No	No	
Strategic Director of Environment and Leisure	No	No	
Strategic Director of Housing and Community Services	Yes	Yes	
Director of Regeneration	No	No	
Date final report sent to Constitutional Team		21 February 2013	

APPENDIX 1

CONSULTATION UNDERTAKEN

Site notice date: N/a

Press notice date: N/a

Case officer site visit date: N/a

Neighbour consultation letters sent: N/a

Internal services consulted:

- Housing Services
- Planning Policy

Statutory and non-statutory organisations consulted:

N/a

Neighbours and local groups consulted:

N/a

Re-consultation:

N/a

APPENDIX 2

CONSULTATION RESPONSES RECEIVED

Internal services

Housing Services: Support the proposals. The Deed of Variation needs to make clear that the revised rent levels will be in perpetuity and with the requirement to advise the council when rebasing rents on re-letting.

Statutory and non-statutory organisations

N/a

Neighbours and local groups

N/a