

Item No. 7.3	Classification: Open	Date: 3 February 2015	Meeting Name: Planning Committee
Report title:	<p>Development Management planning application: Application 14/AP/0024 for: Variation / discharge of legal agreement</p> <p>Address: LAND ADJACENT TO LAMBETH COLLEGE AND POTTERS FIELDS, LONDON SE1</p> <p>Proposal: Modifications to the S106 Agreement dated 21 April 2011 (LBS reg: 10-AP-1935) for: 45,075 sq metres (GEA) of Class C3 floorspace comprising 356 residential units and ancillary residential floorspace including an Estate Management facility; 6,554 sq metres (GEA) of cultural floorspace (Class D1/D2 to accommodate concert hall or gallery or exhibition space or museum uses); 1,827 sq metres (GEA) of commercial floorspace (to accommodate Class A1, A2, A3, A4, A5, D1, D2 and B1 uses, the latter not to exceed 500 sq metres); all accommodated within buildings of up to 11 storeys (45.505 AOD) and residential campanile of 20 storeys, plus roof garden and light box (79.3 AOD) together with 6,523.9 sq metres of communal and private amenity space, including an extension to and improvement of Potters Fields Park; 144 car parking spaces including two surface level parking spaces for car club use; 15 motorcycle spaces, cycle parking; together with associated highway, access and landscape works and other associated works and uses.</p> <p>The modifications comprise:</p> <ul style="list-style-type: none"> • Amend timing for the delivery of the affordable housing units • Amend timing for the submission of car club details and the delivery of the car club scheme • Delete requirement for submission of a car park management plan; • Replace Plan 8 (coach drivers facility) and Plan 1 (basement) with updated plans • Amend rights of access obligation to children's play area and communal areas for occupiers of the Corporation of London Development • Amend obligations concerning cultural use to reflect changes in the quantum of cultural floorspace • Corrections to education, and employment and training contributions • Amend timing for the completion of a section 278 highways agreement • Amend requirement for a supplementary deed concerning land transfer • Amend timing for the submission of a public open space management plan • Amend timing for the submission of a sustainability report • Revise list of wheelchair adaptable units to reflect updated dwelling mix. 		
Ward(s) or groups affected:	Riverside		
From:	Head of Development Management		
Application Start Date 07/01/2014		Application Expiry Date 04/03/2014	
Earliest Decision Date 06/03/2014			

RECOMMENDATION

- 1 That the planning committee grant planning permission to agree the proposed modifications and that a deed of variation is completed.

BACKGROUND INFORMATION

Site location and description

- 2 The detailed background information relating to this development is set out in the report on the original planning application 10-AP-1935 granted 21/04/2011 for:

45,075 sq metres (GEA) of Class C3 floorspace comprising 356 residential units and ancillary residential floorspace including an Estate Management facility; 6,554 sq metres (GEA) of cultural floorspace (Class D1/D2 to accommodate concert hall or gallery or exhibition space or museum uses); 1,827 sq metres (GEA) of commercial floorspace (to accommodate Class A1, A2, A3, A4, A5, D1, D2 and B1 uses, the latter not to exceed 500 sq metres); all accommodated within buildings of up to 11 storeys (45.505 AOD) and residential campanile of 20 storeys, plus roof garden and light box (79.3 AOD) together with 6,523.9 sq metres of communal and private amenity space, including an extension to and improvement of Potters Fields Park; 144 car parking spaces including two surface level parking spaces for car club use; 15 motorcycle spaces, cycle parking; together with associated highway, access and landscape works and other associated works and uses.

- 3 The development comprises Bblocks 1 to 8 of the 'One Tower Bridge' development and is under construction.

- 4 A related planning application 10-AP-1923 on land adjacent to Bridgemaster's House, Tower Bridge Road was granted on 21/04/2011 for:

The construction of 4779 sq metres (GEA) of Class C3 floorspace comprising 43 affordable residential units, 368 sq (GEA) metres of commercial floorspace (to accommodate Class A1, A2, A3, A4, B1, D1 and D2) and 766 sqm (GEA) of workshop floorspace, all accommodated within a building of 8 storeys (34.104 AOD), 10 replacement car parking spaces, 1 motorcycle space, 80 cycle spaces and associated highway and access works, and other associated works and uses. The demolition of part of the compound wall and construction of new wall, and creation of new access at basement level at Bridgemaster's House.

- 5 The development, block 9, forms the affordable housing component of the One Tower Bridge development.

- 6 A number of non-material amendments have been approved since the aforementioned applications were granted planning permission. These are referred to, where relevant, in the main section of the report.

Details of proposal

- 7 The following modifications are proposed to the s106 agreement:
 - Amend timing for the delivery of the affordable housing units
 - Amend timing for the submission of car club details and the delivery of the car club scheme

- Delete requirement for submission of a car park management plan;
 - Replace Plan 8 (coach drivers facility) and Plan 1 (basement) with updated plans
 - Amend rights of access obligation to children's play area and communal areas for occupiers of the Corporation of London Development
 - Amend obligations concerning cultural use to reflect changes in the quantum of cultural floorspace
 - Corrections to education, and employment and training contributions
 - Amend timing for the completion of a section 278 highways agreement
 - Amend requirement for a supplementary deed concerning land transfer
 - Amend timing for the submission of a public open space management plan
 - Amend timing for the submission of a sustainability report
 - Revise list of wheelchair adaptable units to reflect updated dwelling mix.
- 8 A draft deed of variation has been prepared to reflect the proposed changes to the Principal Agreement.

KEY ISSUES FOR CONSIDERATION

Summary of main issues

- 9 The main issue to be considered in respect of this application is the acceptability of the proposed modifications to the s106 agreement.

Planning policy

- 10 The detailed planning policy relating to this development is set out in the report on the original planning application. Any specific policy considerations relating to the submitted details are set out below.

Acceptability of the submitted details

Timing for the delivery of Affordable housing

- 11 Paragraph 1.1.1 of Schedule 2 requires the affordable housing units to be constructed prior to occupation of the 61st dwelling. The Affordable Housing Units comprise Block 9 of the development located on the Corporation of London Site (ref. 10/AP/1923).
- 12 It is proposed to change the trigger point for the delivery of the affordable housing units to prior to occupation of the 64th dwelling. There have been a number of non-material changes approved since the grant of the original permission that have changed the dwelling mix for the first phases, in particular application refs. 12/AP/2843 and 13/AP/2364. The proposed amendment to the trigger point updates the legal agreement so that it is consistent with the latest approved dwelling mix. The proposal does not materially change the timing for delivery of the affordable housing on site and, as such, no issues are raised.

Timing for the submission of Car Club details

- 13 Paragraph 7.1 of Schedule 2 requires information relating to the Car Club (i.e. location and specification of the car club spaces; and details of the car club scheme) to be submitted to the council for approval within three months of Implementation. Occupation is not permitted until such details have been approved.
- 14 The applicant seeks to amend the trigger point for submission of the car club details to first occupation of the development. Implementation occurred some time ago and details had not been submitted within the required three months time period.
- 15 Since the submission of the deed of variation application, details of the car club spaces and car club scheme to discharge paragraph 7.1 have been approved on 10

July 2014 (ref. 14/AP/0805). Two car club spaces will be located on Potters Field Lane. The proposed amendment to the trigger will ensure consistency between the legal agreement and timing of when these details were submitted for approval.

Timing for the delivery of the Car Club

- 16 Paragraph 7.2 of Schedule 2 relates to the delivery of the car club scheme and requires Berkeley Homes to deliver the car club scheme, or enter into an agreement with the car club operator to deliver the car club, prior to first occupation of the development. As noted earlier, the car club scheme would be located on Plotters Field Lane.
- 17 It is proposed to delay the delivery of the car club scheme due to public safety concerns and accordingly it is proposed to amend the agreement to ensure that no more than 319 dwellings could be occupied until the car club scheme has been delivered, or an agreement entered into with the car club operator.
- 18 Berkeley Homes advise that Potters Field Lane will still be in use by construction vehicles when first occupation of the early phases (Blocks 6, 7 and 8) is anticipated. Moreover, the final completion and re-surfacing of Potters Field Lane highway works is not scheduled until October 2016. It would therefore be dangerous for members of the public to access what will effectively remain a construction site to use the car club.
- 19 The applicant considers that the car club can't be delivered until occupation of the 320th dwelling within the development [excluding the Corporation of London development - Block 9] which is when most of the major construction works will have been completed. Only smaller vehicles associated with the internal fit out of the remaining units would be using Potters Field Lane at that point in time.
- 20 The applicant has explored the potential for temporary car club spaces to be located elsewhere on the development site but advises that this is not possible due to site constraints (including sole access to the development site being from Tooley Street) and space constraints. To mitigate the impact of the later delivery of the car club, first occupiers of the first 319 dwellings would be provided with information relating to existing car club facilities in the locality which could be used until the One Tower Bridge Car Club becomes available. When it does, the scheme will be publicised and promoted to existing occupiers of the first 319 dwellings as well as to first occupiers of the remaining dwellings within the development.
- 21 The delay of the car club scheme is a concern, but officers consider there are valid public safety issues arising from the potential conflict between construction vehicles and car club users on Potters Field Lane. The One Tower Bridge development is located in an area of excellent public transport accessibility and, as noted above, the occupiers of the 319 dwellings will have access to nearby existing car club facilities on a temporary basis. The provisions of the car club scheme to discharge Paragraph 7.2 were approved on 10 July 2014 (ref. 14/AP/0805) and the council would still ensure control over the delivery of the Car Club Scheme by restricting occupation to no more than 319 dwellings.
- 22 Paragraph 7.2 also includes provisions for discounted Car Club subscription membership being a 40% discount during the first two years and 20% discount during the third year of initial occupation of each dwelling. Accordingly, it is proposed to amend the wording to ensure that the discounted period starts on commencement of the Car Club Scheme rather than on initial occupation for the units occupied prior to the delivery of the Car Club Scheme.
- 23 Paragraph 7.4 sets out the requirements for promotion of the Car Club scheme to each new occupier. Additional wording is proposed to ensure that information about

existing car club facilities within the vicinity are promoted prior to commencement of the car club scheme. The car club scheme will be promoted once commenced as currently specified in the legal agreement.

Car Park Management Strategy

- 24 Paragraph 9.1 requires the submission of a draft car park management plan prior to Implementation.
- 25 It is proposed to delete this clause as Implementation has already occurred and Condition 44 of the permission requires the submission and approval of the car park management strategy prior to first occupation.
- 26 The proposed deletion removes unnecessary duplication and allows the council to retain control over the car park management details. No issues are raised.

Coach Drivers Facility and Basement Plans

- 27 Plan 8 shows the Coach Drivers Facility within Block 7 of the development. The facility provides a restroom and changing facilities for use by coach drivers and drivers of TfL regulated buses. The facility has since been moved to Block 6 as part of the non-material amendments approved under ref. 11/AP/2021. It is therefore proposed to replace the existing Plan 8 with a new drawing to update the legal agreement. No issues raised.
- 28 Plan 1 showing the Basement is proposed to be replaced with a new drawing to reflect changes to the basement agreed as part of non-material amendment applications ref. 11/AP/2021, 11/AP/2711 and 12/AP/2843. No issues raised.

Restriction on access to communal podium garden

- 29 Paragraph 11.1 of Schedule 2 obliges the developer to ensure that occupiers of the Affordable Housing Units contained within the CoL development (Block 9) are given the right to access and use the public open space, children's play area and communal areas at all times when these facilities are available to other occupiers of the One Tower Bridge development.
- 30 The main area of public open space and the children's play Area are provided to the front of Block 5. The communal area comprises a podium landscaped garden located between Blocks 3 and 4.
- 31 It is proposed to remove access rights for CoL residents to the podium communal area and amend the wording of the agreement to ensure these residents are given the right of access and use of "CoL Areas" at all times when such facilities are available to other occupiers. "CoL Areas" would comprise the public open space and children's play areas within the One Tower Bridge development.
- 32 Berkeley Homes advise that access for CoL residents to the podium garden needs to be removed for the following reasons:
- Right of access for CoL residents to the Communal Area is not free of charge
 - An additional service charge would be required
 - The service charge for CoL residents is already high (£2.97 per sqft) compared to other schemes
 - The cost of maintaining the podium garden would increase the CoL service charge from £2.97 to £3,54 per sqft
 - A further charge would also be levied to cover the cost of issuing access fobs, cleaning of common means of access, door entry maintenance, electricity or water
 - This would result in an unaffordable service charge for CoL residents. CoL residents would therefore maintain access to all other communal amenity space

other than the podium garden without raising their rents to an unaffordable level.

- 33 Berkeley Homes further assert that as the CoL scheme is a separate development (pursuant to ref. 10/AP/1923) then the affordable housing units within the block will be made available in accordance with the definition of affordable housing in that legal agreement (i.e. so that the total rent and service charges meet the targets for affordable homes). Reference to service charges in the agreement only relate to those charges derived from services and facilities provided as part of the CoL scheme itself. Any One Tower Bridge facilities within the wider scheme from which CoL residents would benefit will incur a separate service charge that would be additional to CoL specific service charges. As such, Berkeley Homes would be required to subsidise any increase in cost of the affordable housing units resulting from the provision of access to One Tower Bridge facilities which would be unduly onerous
- 34 Officers note that the CoL residents have direct access to 317 sqm of communal amenity space on the roof of Block 9 (as approved by non-material amendment application ref. 12/AP/0333). As a stand-alone development, this far exceeds the minimum standard for communal amenity space as set out in the council's Residential Design Standards SPD (2011), taking account of the level of private amenity space provided for each dwelling. Furthermore, the CoL residents would maintain access to the main public open space to the front of Block 5 of the wider One Tower Bridge development which includes 235 sqm of children's play area. There are also opportunities for informal play within the public realm provided throughout the wider development. This would be supplemented by other nearby open spaces, including the 1.35 ha Potters Field Park. As such, residents of Block 9 would benefit from a level of communal amenity space provision which exceeds that required for Block 9 in planning policy terms.
- 35 A key policy objective is to ensure that residential development is 'tenure blind' to help in achieving mixed and balanced communities. In this respect, the CoL scheme provides a high quality of residential accommodation and architectural design with the materials and external appearance used being a continuation of the design approach adopted for the neighbouring Blocks 6, 7, and 8 in the wider One Tower Bridge scheme.
- 36 In addition, Page 33 of the Residential Standards SPD states:
- It is recognised that management and maintenance issues associated with the affordable housing may impact on the level of integration that can be achieved whilst still ensuring affordability, particularly in flat developments.*
- 37 The podium communal amenity space would be accessed via lift and stairs at the southern end of Block 3 and therefore does not provide direct or necessarily convenient access to all CoL users. As clearly demonstrated above, access to the podium garden would result in more expensive rental charges for CoL residents to the extent that these units would become unaffordable.
- 38 Given the considerable amount of communal space provision that would still be accessible and convenient to the CoL residents, officers consider that these residents would not be disadvantaged by the proposed restriction of the podium garden and the scheme would continue to meet the policy objectives of securing tenure blind development.
- Cultural floorspace
- 39 Plans 6 and 7 appended to the legal agreement define the extent of the cultural floorspace. Schedule 5 sets out the heads of terms for the cultural space lease and requires a minimum of 6,554 sqm (GEA) Cultural Space to be provided.

- 40 The cultural space has since been reconfigured and reduced in size from 6,554 sqm to 5,934 sqm (GEA) as part of non-material amendments approved under refs. 12/AP/2843 and 11/AP/2711 on 23 October 2012 and 3 November 2011 respectively. The proposed amendments therefore seek to update the legal agreement to reflect approved changes in the quantum of cultural floorspace. No issues raised.
- 41 It is noted that a full planning application has recently been submitted (ref. 14/AP/4538) proposing amendments to the cultural and commercial floorspaces that would involve a further reduction of the cultural floorspace to 2,650 sqm. The application is currently being considered and a separate deed of variation would be secured in relation to the cultural floorspace as part of that application.

Highway works

- 42 Paragraph 12.1 of Schedule 2 requires the landowner and developer to enter into and complete a Section 278 Agreement prior to Implementation. It is proposed to amend this clause to require a Section 278 Agreement to be entered into prior to Occupation and that the development shall not be occupied until completion of the Section 278 Agreement.
- 43 As noted earlier, Implementation has already occurred. The Section 278 Agreement specifying the highway works for the site was not completed until July 2014. The proposed change will ensure consistency between the legal agreement and the completion of the Section 278 highways agreement.
- 44 Schedule 12 of the legal agreement details the highway works for the site. Paragraphs 1.8 and 1.10 of Schedule 12 concern the relocation of an existing coach parking bay.
- 45 It is proposed to delete these clauses as part of the Section 278 process, it was agreed that it was not technically feasible to provide a relocated coach parking bay and therefore it has been omitted from the approved design. The highway improvement works have now been agreed with the council and TfL. As such, no planning issues are raised with this proposed change.

Discrepancies in figures

- 46 The Developer's Contributions cited in Paragraphs 1.2.1 and 1.2.3 of Schedule 3 for Education and Training and Employment Contribution do not accord with the figures cited in the officer report for permission ref. 10/AP/1935. For clarity the figures should read:

Paragraph 1.2.1 of Schedule 3 - Education Contribution - 2 x payments of £176,430.50 (Total £352,861); and
Paragraph 1.2.3 of Schedule 3 - Training and Employment Contribution - 2 x payments of £12,607.50 (Total 25,215).

Land Transfer

- 47 Ownership of the One Tower Bridge site is split between Berkeley Homes and the Council. The legal agreement currently binds Berkeley's half of the site. At the time that the legal agreement was entered into, it was envisaged that the council's half would be transferred to Berkeley, at which point Berkeley would enter into a supplemental deed to ensure that the Section 106 agreement bound all of its interest in the site (i.e. both halves of the site). Paragraph 4.4 of the agreement currently reads:

"The Landowner and Developer covenant not to Implement the Planning Permission on the Property unless and until the Supplementary Deed has been entered with the Council confirming that the provisions of this Deed shall apply to and shall be binding upon the Additional Land".

48 Berkeley Homes advise that the council's interest in the site has never been transferred to them and so the One Tower Bridge development continues to be administered by the joint venture between the Berkeley's and the council. It is understood that this arrangement will continue and that there are no foreseeable plans for the council's interest to be transferred to Berkeley. Berkeley's therefore assert that it is legally impossible to comply with Paragraph 4.4 (as currently worded) as the permission has long been implemented and also the requisite supplementary deed cannot be entered into if the transfer from the Council has not happened.

49 It is therefore proposed to amend the wording to the following:

"In the event that the Landowner or the Developer acquires the Additional Land, the Landowner and the Developer covenant to enter into the Supplementary Deed with the Council confirming that the provisions of this Deed shall apply to and shall be binding upon the Additional Land".

50 No issues are raised given that the proposed change seeks to ensure the terms of the legal agreement are binding on all relevant parties for the entire site.

Sustainability

51 Paragraph 15.4 of Schedule 2 requires a Sustainability Report to be submitted for approval prior to the Implementation of any building and within six months of completion of the construction of the development.

52 The applicant seeks to amend the trigger for submission of the report to within six months of completion of construction of any building within the development. The applicant advises it was not practical to provide the report prior to Implementation because the detailed design process was still on-going at that stage and so information was not yet available. The detailed design has progressed on a block-by-block basis and therefore a separate Sustainability Report (including Code for Sustainable Homes Assessment) will be prepared and submitted for each block. The final stage Code report for each block cannot be finished until that block has been fully completed and hence the trigger proposed is six months within completion.

53 Given the phased nature of the development, officers consider it sensible for a Sustainability Report to be submitted on a block-by-block basis and it is accepted that the final Code for Sustainable Homes can't be issued until the block is fully completed. Applications to discharge Sustainability Reports for Blocks 6 and 7 have already been approved under refs. 14/AP/3020 and 14/AP/4469 respectively. The proposed amendment is therefore considered acceptable.

Public Open Space Management Plan

54 Paragraph 16.1 of Schedule 2 requires a Public Open Space Management [POS] plan to be submitted before Implementation.

55 It is proposed to delay the trigger for submission of the POS plan until before occupation because Implementation has already taken place and the public open space won't be available until first occupation.

56 The POS management plan has since been approved in July 2014 under ref. 14/AP/0805. The proposed amendment would ensure consistency between the legal agreement and the timing of submission of details.

Wheelchair Homes

57 A list of the dwellings capable of adaptation for occupation by a wheelchair user is attached to the agreement at Schedule 10. Overall, there are 35 flats (31 x 1-bed and 4 x 2-bed) within Blocks 2, 3 and 7 which are to be wheelchair adaptable.

- 58 An amended housing mix has since been agreed as part of non-material amendments approved under refs. 12/AP/2843 and 13/AP/2364. The proposed changes therefore reflect the changes to the internal layout approved since the original grant of permission. No changes are proposed to the overall quantum and size of wheelchair units to be delivered.

Other matters

- 59 With the exception of the aforementioned proposed changes, the provisions set out in the principal agreement remain in full force and effect.

Community impact statement

- 60 The impacts of this application have been assessed as part of the application process with regard to local people in respect of the “protected characteristics”, as set out in the Equality Act 2010, the council's Community Impact Statement and Southwark Council's approach to equality: delivering a fairer future for all, being age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex (a man or a woman), and sexual orientation.
- 61 It is not considered that the deed of variation application raises any issues in this respect that have not already been considered and taken into account when granting planning permission.

Consultations

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

Consultation replies

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

Summary of consultation responses

No concerns were raised by the Transport Planning team

Human rights implications

- 64 This planning 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.
- 65 This application has the legitimate aim of making revisions to the S106 legal agreement pursuant to ref. 10/AP/1935. 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.

Conclusion on planning issues

- 66 It is recommended that the amendments to the legal agreement are agreed and a deed of variation completed.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Site history file: TP/26-G Application file: 14/AP/0024 Southwark Local Development Framework and Development Plan Documents	Chief Executive's Department Southwark Council 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 5349 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	Helen Goulden, Planning Officer	
Version	Final	
Dated	20 January 2014	
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	No	No
Director of Regeneration	No	No
Date final report sent to Constitutional Team		22 February 2015

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: Transport Planning Team

Statutory and non-statutory organisations consulted: N/A

Neighbours and local groups consulted: N/A

Re-consultation: None

APPENDIX 2

Consultation Responses Received

Internal services

Transport Planning Team - no concerns raised.

Statutory and non-statutory organisations

N/A

Neighbours and local groups

N/A