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<b>Item No.</b>  6.1	<b>Classification:</b>  OPEN	<b>Date:</b>  21 March 2022	<b>Meeting Name:</b>  PLANNING COMMITTEE
<b>Report title:</b>	<b>Development Management:</b> Deed of Variation to a Section 106 Agreement.  <b>Address:</b> CANADA WATER SITES C AND E, SURREY QUAYS ROAD, LONDON SE16 2XU  <b>Proposal:</b> Deed of Variation to the s106 legal agreement signed as part of application 12/AP/4126 (as amended under applications 17/AP/3694, 16/AP/0200, 15/AP/2821).		
<b>Ward(s) or groups affected:</b>	Rotherhithe		
<b>From:</b>	Director of Planning and Growth		

## RECOMMENDATION

1. AGREE delegated authority to negotiate and complete a Deed of Variation to the legal agreement signed as part of planning consent 12/AP/4126 (as amended).

## BACKGROUND INFORMATION

### Site history

2. In December 2013, the Council granted outline (hybrid) planning permission to redevelop sites C and E of the Canada Water Area Action Plan. Planning consent was granted for a four phase/five building development under reference 12/AP/4126 (and amended under applications 17/AP/3694, 16/AP/0200, 15/AP/2821) as set out below:
3. **Phase 1** - Building C1 was approved in detail and provided 235 new homes in addition to a new Decathlon store and underground town centre car parking. Buildings range in height from seven to 14 storeys. Phase 1/building C1 has been completed and is now fully occupied.
4. **Phase 2** - Building E1 was approved with Class D1 floorspace, which was intended to form a new health centre, as well as office (Class B1), retail (Class A1-A4), and residential accommodation (Class C3) with capacity for up to 231 new homes. Building E1 was approved in outline only with building heights of between 37.8m (AOD) and 23.8m (AOD) to the north, west and south of the site

adjacent to Surrey Quays Road and opposite the Water Gardens development. Heights of a maximum of 31.5m (AOD) and a minimum of 17.8m (AOD) were proposed to the east of the site. A central courtyard area was also proposed at podium level at a maximum height of 13.6m (AOD) or minimum height of 5.6m (AOD). It was agreed that this building would be used to accommodate all of the affordable housing for the scheme.

5. **Phase 3** - Buildings C2 and C3 had full details submitted for siting, scale, vehicular access and appearance. Landscaping, layout of the basement car park and the internal layouts of individual buildings were reserved for subsequent applications. Together, buildings C2 and C3 would have capacity for 292 new market homes in buildings of eight and 20 storeys respectively. In addition to residential use, this phase would also provide a small cinema and some retail floorspace.
6. **Phase 4** - Building C4 had full details submitted for the siting, scale, vehicular access and appearance. Landscaping, layout of the basement car park and the internal layout of the building was reserved for subsequent applications. Building C4 would have capacity for up to 273 new homes and some retail floorspace in a tower of up to 40 storeys in height.
7. The planning consent for Site C&E therefore anticipated up to 1030 new homes in addition to new retail space, offices, health centre and a cinema. Overall affordable housing provision was agreed at 22.5% due to viability reasons and the significant costs associated with relocating Decathlon which included buying out the remainder of their lease, relocating them to a temporary store to continue trading during building works and providing a permanent store within the first phase of the development. Given the significant costs associated with the relocation of Decathlon, as verified at the time by the District Valuer Service (DVS) on behalf of the Council, it was agreed that the affordable housing provision was the maximum amount that could be provided without compromising the deliverability of the scheme. The affordable housing was secured to be delivered on site as part of Phase 2 taking into account the significant costs of delivering Phase 1 as a result of the Decathlon relocation set out above.
8. Phase 1 of the planning consent was implemented in 2015 and has since been fully completed and occupied. The remaining phases have not been implemented and the matters reserved by the parent consent remain outstanding.
9. In June 2020 the landowner/developer sold the remainder of the site to AIRE UK Canada Water GP PROPCOS Limited who intend to redevelop the site for commercial purposes. As AIRE seek to redevelop the remainder of the site for commercial purposes (offices) it is not expected that the remaining phases of the 2013 consent will be implemented or that the housing contained within those phases, including the affordable housing, will be delivered.

10. The construction of Phase 1 of the development gave rise to a requirement to deliver affordable housing in Phase 2 of the Development when that was built out. This was secured in the legal agreement however it did not provide for a situation whereby the development is not progressed beyond Phase 1. Unless the Phase 2 scheme is implemented there is therefore no means to require affordable housing to be delivered on this site under the terms of the agreed s106 agreement.
11. The current landowner recognises the strategic importance of the delivery of affordable housing and considers it reasonable to make provision for a contribution to Affordable Housing in the event that the remainder of the 2013 consent is not progressed beyond Phase 1 but an alternative development is instead brought forward in its place. As such the landowner wishes to amend the legal agreement to make provision for a financial contribution of £25 million towards the delivery of affordable housing in the event that an alternative development comes forward on the remainder of the site. Given that there is currently no mechanism to secure an affordable housing contribution within the legal agreement of the parent consent, the payment would be secured through a Deed of Variation (DoV) to the 2012 permission.

### **Site location and description**

12. The site is formed of two plots separated by Surrey Quays Road. Site C is bounded by the Canada Water Basin to the west, the Albion Channel to the north, Surrey Quays Road to the east and the Surrey Quays Shopping Centre site to the south. The western portion of Site C, adjacent to the Albion Channel, is occupied by Phase 1 of the Site C&E redevelopment (known as Building C1). The eastern portion of Site C accommodates Unit 1 of the Canada Water Retail Park, occupied by Dock X on a temporary basis, along with surface level parking. In the permission, this was described as plots C2, C3 and C4.
13. The land defined as Site C occupies an area of 2.31 hectares and was previously occupied by the Decathlon retail store, located in two large retail sheds erected in the 1980s in addition to a car park for 224 surface parking spaces with associated service areas. The western portion of Site C is now occupied by the first phase of the Canada Water C&E redevelopment. This is the only part of the permission to have been built out. This first phase, known as building C1, accommodates a new Decathlon Store over the bottom two floors (with mezzanine). A total of 235 homes have also been provided. The majority of these homes are provided at upper levels above the retail units albeit there are townhouses fronting the Albion Channel. The residential blocks take the total buildings heights to a maximum of 17 storeys. A residential central courtyard, (at podium level) is provided at 4th storey level, with the residential blocks enclosing the courtyard space. The podium also contains a MUGA 'Ball Court' area, for use by customers of the Decathlon Store, residents of building C1 and the wider public (by arrangement with Decathlon).
14. Site E is located to the east of Surrey Quays Road and adjacent to the Harmsworth Quays Printworks site. Under the permission, Site E would have provided up to 231 affordable homes. This would have equated to around 22.5%

of the total development of 1030 homes, including the requirement for Plots C2, C3 and C4 which have not been commenced.

## Details of proposal

15. The landowner seeks a Deed of Variation to the original s106 Legal Agreement in order to provide a £25 million financial contribution towards affordable housing delivery in the event that an alternative development comes forward on the remainder of the site.
16. Under the terms of the current legal agreement, affordable housing would only be delivered on site in the event that Phase 2/3/4 come forward for implementation. There is no mechanism in the current legal agreement to secure an affordable housing contribution in the event that the later phases of the planning consent are not implemented.
17. The proposed amendment to the legal agreement would allow the Council to secure a financial contribution in the event that Phases 2/3/4 do not come forward and an alternative development is carried out on the site.
18. The proposed £25 million payment would be index linked from the date that the Deed of Variation is signed, or 1st May 2022, whichever is earlier. In terms of payment schedule, the £25 million payment would include a £2.5 million payment made on implementation of the alternative development followed by three additional payments linked to 25% occupation of each phase of the alternative development.
19. The proposed deed of variation would include new definitions as set out below:
20. **Alternative Development** - means a development for Plot E1 and Plot C2-C4 comprising more than 50% Commercial Floorspace, for which planning permission shall have been granted;
21. **Commercial Floorspace** - means net internal area (expressed in sqm) in the Alternative Development for use within Class E of the Use Classes Order 1987 as amended;
22. **Affordable Housing Contribution** - means the sum totalling £25 million (indexed) to be calculated for each phase of the Alternative Development in accordance with clause 4.16 of Schedule 3, to be applied by the Council towards the provision of Affordable Housing in the Borough
23. **Occupation** - The first date upon which any part of the Site (or as the context so permits any Building within the Development) is physically occupied but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or operations in relation to security operations or any interim or temporary uses and the phrases "Occupy" "Occupied" shall be construed accordingly;

24. **Dispose** - means the grant of any legal interest in any part of the Commercial Floorspace including but not limited to the sale and/or lease of a part of the Commercial Floorspace and/or the assignment of a contract for the sale and/or lease of Commercial Floorspace and/or the Exchange of Contracts in respect of any part of the Commercial Floorspace and “Disposal” and “Disposed” shall be construed accordingly.

## **KEY ISSUES FOR CONSIDERATION**

### **Summary of main issues**

25. The main issues to be considered in respect of this application are:
- a) whether the information and outcomes are sufficient to warrant altering the terms of the legal obligation without undermining the original reason for imposing the obligation; and
  - b) whether the altered terms of the legal agreement would remain compliant with the legal tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (directly related to the new development, fairly and reasonably related in scale and kind to the new development etc.).
26. Other matters that require consideration are:
- Community impact and equalities assessment; and
  - Human rights implications;

### **Planning policy**

27. The detailed planning policy relating to the previously consented development is set out in the committee report for the original planning application (12/AP/4126). As such, the report should be referred to if clarity on the policy background is required.

## **ASSESSMENT**

28. The consented development was approved in 2013. The consented scheme approved the delivery of up to 1030 new homes; retail space; offices; cinema; and a health centre within five buildings ranging in height from five to 40 storeys and delivered across four distinct phases with only Phase 1 being approved in detail and the remaining three phases being approved with matters reserved either in whole or in part.
29. Phase 1 contained a new Decathlon store as well as 235 market homes. Phase 2 would accommodate up to 231 affordable homes as well as a new health centre. Phases 3 and 4 would contain up to 565 new homes as well as offices, retail and a small cinema.
30. The scheme was approved with 22.5% affordable housing, all of which would be delivered in Phase 2 (on Site E). The decision to grant permission with this level of affordable housing was based on a submitted financial viability assessment (FVA), which had been reviewed on the Council’s behalf by the District Valuer

Service (DVS). The DVS had concluded that this was the maximum amount of affordable housing that could be delivered without compromising the deliverability of the development. This was largely a result of the costs associated with land acquisition together with the need to meet the requirements of Decathlon by decanting them from the existing site to allow them to continue trading during the construction of Phase 1 and then re-install them in the new retail unit. This added significant costs to the development which were accepted by the DVS reasonable inputs to the FVA.

31. To date, only Phase 1 has been delivered, having been completed and occupied around 2018. Phases 2/3/4 remain outstanding and as they were approved in outline, various matters are reserved that would require additional approval. The ownership of the site changed in 2020 and the new landowner is a commercial developer who seeks to redevelop the site for a new office development.
32. It is therefore expected that an alternative development will come forward on the site and that Phase 2/3/4 of the 2013 consent will not be built out. Under the terms of the current legal agreement, affordable housing would only be delivered on site in the event that Phase 2 came forward for implementation. There is no mechanism in the current legal agreement to secure an affordable housing contribution in the event that the later phases of the planning consent are not implemented.
33. As mentioned previously, the current landowner understands and recognises the strategic importance of the delivery of affordable housing and considers it reasonable to make provision for a contribution to affordable housing in the event that Phases 2/3/4 of the 2013 consent are not implemented but an alternative commercial development is brought forward in its place.
34. The landowner therefore seeks to amend the legal agreement to make provision for a financial contribution of £25 million towards the delivery of affordable housing in the borough in the event that an alternative development comes forward instead of the remaining phases of the 2013 consent. Given that there is currently no mechanism to secure an affordable housing contribution within the legal agreement of the parent consent, this would be secured through a deed of variation to the original 2013 s106 agreement
35. In order to provide a reasonable and proportionate payment, the landowner has used the Council's Affordable Housing SPD as a guide to calculate the relevant sum. The Affordable Housing SPD sets out three value areas for the Borough. The purpose of these value areas is to identify the level of contributions that a developer would have to pay in circumstances where it is found that an in lieu payment is the most appropriate way of securing affordable housing. The number of affordable habitable rooms that would have be provided on site is used as the basis for calculating in-lieu payments. Canada Water lies in Value Area 2 which sets out an in lieu contribution of £100,000 per habitable room.
36. It is important to note that the £25 million offered by the landowner is not an in lieu payment, as the legal agreement on the consented scheme does not contain mechanisms to compel the landowner to make a payment for the affordable housing on Phase 1. Instead, the payment is a contribution towards the delivery of affordable housing and the SPD has been used as a guide rather

than as an instrument of planning policy.

37. The landowner has applied a 35% requirement to the 707 habitable rooms delivered on Phase 1. This equates to 250 habitable rooms which would result in a £25 million payment when the per-habitable room contribution of £100,000 is applied. This is far in excess of the 22.5% affordable housing secured on the original scheme.
38. Officers have undertaken a further review the schedule of accommodation for the completed Phase 1. In line with the planning guidance that was in place at the time of the 2013 application, rooms that measure 27.5sqm or larger should count as two habitable rooms. Applying this standard to Phase 1, the habitable room count would be 775. In this instance, the £25 million payment would equate to 32% affordable housing which is still a significant improvement on the original 22.5% of the 2013 consent. Officers therefore consider that the £25 million payment would be a reasonable and proportionate payment towards affordable housing based on the housing delivered as part of Phase 1.
39. The proposed £25 million payment would be index linked to the date that the deed of variation is signed or 1<sup>st</sup> May 2022, whichever is earlier. In terms of payment schedule, the £25 million payment would include a £2.5 million payment made on implementation of the alternative development followed by three additional payments linked to either 25% occupation of commercial floorspace of each phase (or the first three phases where more than three phases of development are proposed) of the alternative development; or the full remaining payment would become payable on 25% occupation of overall commercial floorspace should the development not be phased.
40. The payment will be index linked and as such the overall payment will rise in line with inflation, ensuring that the value of the payment does not diminish even if the later payments are received some years away..
41. Officers are satisfied that the wording of the new definitions would be effective in securing the payments, and would not contradict or in any other way undermine the reasons for imposing the various original obligations contained within the original legal agreement.
42. Officers advise that, in their reasonable opinion, the nature, scope and finalised wording of the Deed of Variation provisions are:
  - necessary to make the development acceptable in planning terms;
  - directly related to the development; and
  - fairly and reasonably related in scale and kind to the development;in accordance with the Community Infrastructure Levy Regulations.
43. The monies would be used by the council to support the delivery of housing in the borough under the New Homes programme.

### **Community impact and equalities assessment**

44. The council must not act in a way which is incompatible with rights contained within the European Convention of Human Rights



45. The council has given due regard to the above needs and rights where relevant or engaged throughout the course of determining this amendment.
46. The Public Sector Equality Duty (PSED) contained in Section 149 (1) of the Equality Act 2010 imposes a duty on public authorities to have, in the exercise of their functions, due regard to three "needs" which are central to the aims of the Act:
1. The need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
  2. The need to advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to:
    - Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
    - Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
    - Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
  3. The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.
47. The protected characteristics are: race, age, gender reassignment, pregnancy and maternity, disability, sexual orientation, religion or belief, sex, marriage and civil partnership. The shortage of affordable housing disproportionately impacts people from BAME backgrounds. Securing this affordable housing contribution would enable the council to address that.

## **Human rights implications**

48. 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.
49. This application has the legitimate aim of providing new offices. 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**

50. The proposed amendment to the legal agreement would allow the Council to secure a financial contribution towards affordable housing in the event that an

alternative commercial development comes forward on the site. Without amending the legal agreement, there would be no mechanism to secure a financial contribution towards the delivery of affordable housing if Phase 2/3/4 do not come forward in line with the existing consent.

51. The proposed financial contribution would be index linked and this would ensure that the overall payment would rise in line with inflation, ensuring that the value of the payment does not diminish. Officers are satisfied that the proposed payment is proportionate and reasonable, equating to at least 32% affordable housing based on the Phase 1 provision and that this would be a significant improvement on the 22.5% affordable housing secured on the original consent.
52. The amendment to the legal agreement is a necessary and beneficial way to protect the Council's ability to deliver affordable housing from the redevelopment of site C&E in the event that an alternative development is brought forward. Having regard to the provisions of the existing legal agreement, the development plan and all appropriate guidance, it is recommended that officer be authorised complete a deed of variation based on the terms set out in this report.

## BACKGROUND INFORMATION

### BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
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: 0207 525 0254 Council website: www.southwark.gov.uk

### AUDIT TRAIL

<b>Lead Officer</b>	Stephen Platts, Director of Planning and Growth		
<b>Report Author</b>	Terence McLellan, Team Leader		
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Strategic Director of Finance and Governance	No	No
Strategic Director of Environment and Leisure	No	No
Strategic Director of Housing and Modernisation	No	No
Director of Regeneration	No	No
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