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<b>Item No.</b> 7.3	<b>Classification:</b> Open	<b>Date:</b> 25 January 2023	<b>Meeting Name:</b> Planning Sub-Committee A
<b>Report title:</b>	<p><b>Development Management planning application:</b> Application 21/AP/4229 for: Variation of Legal Agreement</p> <p><b>Address:</b> The Workshop Site, Land Bounded By Gilkes Place Gilkes Crescent And Calton Avenue To The Rear Of 25 Dulwich Village, London</p> <p><b>Proposal:</b> Variation of Section 106 agreement relating to planning permission 14/AP/3104 (Redevelopment of the site to include the demolition of all existing buildings (Use Class B2) and the excavation and removal of fuel tanks and associated supply lines and the construction of 12 dwellings (Use Class C3), 1 x 2 bed and 2 x 1 bed affordable dwellings, 1 x 3 bed house (affordable, wheelchair accessible dwelling), 4 x 4 bed houses and 4 x 5 bed houses with ancillary living accommodation and car parking at basement level accessed from Gilkes Place and landscaping): to replace the proposed 4 onsite affordable housing units in approved scheme with a payment in lieu of affordable housing and requiring a six month period of marketing for a private wheelchair unit to be fitted out based on demand or a payment in lieu.</p>		
<b>Ward(s) or groups affected:</b>	Dulwich Village		
<b>From:</b>	Director of Planning and Growth		
<b>Application Start Date</b>	<b>30.11.2021</b>	<b>PPA Expiry Date</b>	
<b>Earliest Decision Date</b>			

## RECOMMENDATION

1. That the variation of the Section 106 agreement be granted.

## EXECUTIVE SUMMARY

2. The application is for decision by the planning sub-committee as the application is for variations of a Section 106 agreement.
3. The recommendation is that the planning committee agree the variation of the Section 106 legal agreement for an affordable housing payment of £1,991,470 in place of the of 2 social rent and 2 shared ownership dwellings on site and for an additional standard clause to be included in respect of the proposed private wheelchair unit to allow a six month period of marketing.

4. The variations would be appropriate as a viability appraisal has been submitted and officers consider that the amount of the affordable housing contribution of £1,991,470 is consistent with Policy P1 of the New Southwark Plan which requires that there should be no financial benefit to the applicant. Adequate marketing for the private wheelchair unit would in accordance with the Section 106 Planning Obligations and Community Infrastructure Levy (CIL) Supplementary Planning Document and policy P8 Wheelchair accessible and adaptable housing of the Southwark Plan.

## BACKGROUND INFORMATION

5. The S106 agreement of the original planning permission 14/AP/3104 was signed in October 2015 and secured the construction of 12 dwellings of which four dwellings, equivalent to 16 habitable rooms, would have been affordable. This equated to 25% in accordance with the affordable housing policy at the time. Two of these dwellings would have been social rent and the other two dwellings would have been shared ownership. Plot number 9 (three bedroom detached house) and plot number 10 (two bedroom semi-detached house) would have been social rent dwellings. Plot number 11 (one bedroom ground floor apartment) and plot number 12 (one bedroom first floor apartment) would have been shared ownership dwellings. The development of 12 dwellings had a total of 86 habitable rooms and the draft Affordable Housing SPD required 25% / 21 habitable rooms to be delivered on site. In addition to the on-site affordable housing units, the consented scheme thus required that the applicant contributed £400,000 to the Council's affordable housing fund. The £400,000 contribution was required to reflect the shortfall in affordable housing of four habitable rooms, as shown in an extract from the 2014 report below.

Dwelling type	Dwelling tenure	Number of habitable rooms (percentage of on-site provision)
3 bed house (wheelchair accessible)	Social rent	7 (44)
2 bed house	Social rent	4 (25)
1 bed flat (ground floor)	Intermediate	2 (12)
1 bed flat (first floor)	Intermediate	3 (19)
Total		16
Shortfall		4

6. A previous application 21/AP/2458, to vary the S106 legal agreement to replace the proposed 4 on-site affordable housing units in approved scheme with a £1,600,000 payment in lieu of affordable housing was refused on 27 August 2021 as it did not meet exceptional evidence test as insufficient information has been submitted to demonstrate that on-site affordable housing delivery is not practical, off-site options have been explored but are not acceptable and an offsite contribution would better deliver mixed and inclusive communities than an on-site contribution.
7. The applicant has marketed the on-site affordable housing units (2 social rent

and 2 shared ownership units) to 17 Registered Providers (RP) including 13 RPs included within the Section 106 Agreement and 4 additional RPs. The RP's were approached between February 2021 and April 2021 with the two most common responses being that the quantum of units was of insufficient scale to meet minimum requirements for a RP to take it on, or that the RP was not currently working in the area.

### **Details of proposal**

8. It is proposed to replace the four on-site affordable housing units in the approved scheme with a payment in lieu of affordable housing and to vary the following planning obligations:
9. The deletion of Schedule 2, clause 1 and the variation of schedule 3 in reference to affordable housing Schedule 6 relate to the approved list of registered social landlords (RSLs) / Registered Providers. Schedule 7 relates to the RSL mortgagee's duty.
10. The addition of a new definition of Off-site Affordable Housing Contribution as follows:

“Means the sum of to be paid by the Developer in accordance with hereof and to be applied by the Council towards the provision of off-site affordable housing within the London Borough of Southwark and which shall be subject to indexation...”. The indexation would apply from the date the deed of variation is signed.
11. The 3 bed house wheelchair accessible affordable dwelling would change to a private dwelling. Due to this change the legal agreement would be varied by adding clauses to require the applicant to obtain the written approval from the local planning authority that the marketing information is sufficient to show that there was no demand for a private wheelchair dwelling on-site. In addition the applicant would be required to provide a payment of £70,000 based on £10,000 per habitable room to be used towards adaptations for existing council homes.

### **Planning history of the site**

12. The planning history is in Appendix 3.

## **KEY ISSUES FOR CONSIDERATION**

### **Summary of main issues**

13. In determining this application, there are two main issues to consider. These are whether the submitted details are:
  - (a) acceptable in terms of policy, and

(b) sufficient to discharge the terms of the legal obligation and the reason for the imposition of the obligation.

14. These matters are discussed in detail in the 'Assessment' section of this report.
15. 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.
16. Community impact, equalities and human rights implications are relevant considerations, as is working proactively and positively with applicants and agents. These matters are discussed in the 'Assessment' section of this report.

## **Assessment**

### **Assessment of the proposed changes**

17. The original purpose of the Section 106 Agreement was to secure affordable housing on site. It is now proposed to make a payment in lieu.
18. The Affordable Housing Supplementary Planning Guidance 2011 sets out the sequential test approach. This is followed to make sure that the council secures as much affordable housing as possible. The sequential approach is as follows:
  1. 'All housing, including affordable housing should be located on the development site.
  2. In exceptional circumstances we may allow the affordable housing to be provided off-site. In these circumstances we require that affordable housing is provided on another site or sites in the local area of the proposed development.
  3. In exceptional circumstances we may allow a pooled contribution in lieu of on-site or off- site affordable housing. In these circumstances we require a payment towards providing affordable housing instead of the affordable housing being built as part of the proposed development.'
19. Planning permission 14/AP/3104 secured affordable housing on the development site in keeping with point 1 of the sequential approach. The applicant did not submit evidence with the above planning application that they have looked at alternative sites to provide affordable housing in the local area of the proposed development, as set out in point 2 of the sequential approach.
20. Point 2 of the sequential approach require that affordable housing is provided on another site or sites in the local area of the proposed development.
21. The applicant has undertaken a site search within the Dulwich Village Ward to establish if the affordable housing could be provided on an alternative site or sites. The only site identified in the Dulwich Village Ward is adjacent to the

application site; however, it is understood that the owner would not be selling the residential units as they will be retaining them as rental product. The applicant is therefore unable to purchase the units.

22. The applicant also identified a second site, located on Gibbon Road, Nunhead and Queen's Road Ward, which was granted planning permission in March 2021 for five houses and two apartments above retail space. The applicant approached the selling agent for the site who indicated that as of 22 October 2021, the vendor had already received offers in excess of the full asking price. It was therefore considered to be too late to submit an offer for the site.
23. The applicant has also searched Dulwich Hill and Dulwich Wood wards and have been unable to identify any additional alternative sites.
24. Point 3 of the sequential approach and Policy P1 of the Southwark Plan also allows payment in lieu in exceptional circumstances. The applicant was not able to find a Registered Provider (as defined in the Section 106 Agreement) willing to deliver the affordable housing as contemplated by the Section 106 Agreement. The reasons why it has not been possible is due to the small number of shared ownership units not being attractive in terms of management cost to the Registered Providers. In this case the inability to find a Registered Provider acceptable to the Council to deliver the affordable housing on-site is an exceptional circumstance. The Affordable Housing Supplementary Planning Guidance 2011 requires a minimum pooled contribution of £100,000 per habitable room of affordable housing. In this case the four affordable dwellings equate to sixteen habitable rooms and a contribution of £ 1,600,000.
25. Policy P1 of the Southwark Plan 2022 says that there should be no financial benefit to the applicant. A viability appraisal was provided by the applicant's consultant (BNPP). It was based on a development providing 100% private housing and the methodology took into account the actual costs and realisable value of a 100% private housing scheme. The total commuted sum that could be afforded, whilst still generating the necessary developer's profit, was £1,576,183. This sum was arrived at using a 16.9% developer's profit.
26. The applicant's viability appraisal was reviewed by the council's consultant (Avison Young). The main difference between the applicant and the council's commuted sum calculation was that the applicant contributed a lower cost to residential gross development value (GDV) and higher costs to sales fees and marketing fees. Avison Young concluded that the commuted sum was £1,991,470.
27. Officers consider that the amount of the affordable housing contribution of £1,991,470 is consistent with Policy P1 of the Southwark Plan which requires the maximum viable amount of affordable housing. The applicant agreed to a contribution of £1,991,470.
28. The proposal to substitute the obligation to deliver on site affordable housing with the alternative of a payment of a financial contribution of £1,991,470 would be

acceptable as it would enable the provision of affordable housing off site.

29. The legal agreement would be varied by adding a clause to require the applicant to submit marketing information over a period of six months to demonstrate that there was no demand from any perspective purchaser wanting a wheelchair unit and obtain written approval from the local planning authority that the information provided was sufficient to discharge the clause. In addition a payment of £70,000 is required to mitigate the loss of the wheelchair unit.

## **Consultations**

30. Details of consultation and any re-consultation undertaken in respect of this application are set out in the appendices.

## **Summary of consultation responses**

31. None.

## **Community impact and equalities assessment**

32. The council must not act in a way which is incompatible with rights contained within the European Convention of Human Rights
33. The council has given due regard to the above needs and rights where relevant or engaged throughout the course of determining this application.
34. 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.
35. The protected characteristics are: race, age, gender reassignment, pregnancy and maternity, disability, sexual orientation, religion or belief, sex, marriage and civil partnership. The lack of provision of affordable housing has a disproportionate impact on individuals from BAME backgrounds. Whilst council policy prioritises on site provision, in circumstances such as these where it has no proved possible to achieve that, the provision of the maximum viable in lieu payments is acceptable. The payment will help to fund the delivery of the council's own housing programme.
36. The legal agreement would be varied by adding clauses to require the applicant to submit marketing information for written approval from the local planning authority should there be no demand for a private wheelchair dwelling on-site. Furthermore a payment of £70,000 would be required to mitigate the loss of the wheelchair unit. This would comply with the Section 106 Planning Obligations and Community Infrastructure Levy (CIL) Supplementary Planning Document and policy P8 Wheelchair accessible and adaptable housing of the Southwark Plan 2022.

### **Human rights implications**

37. 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.
38. This application has the legitimate aim of extending and refurbishing an existing office building. 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.

### **Positive and proactive statement**

39. The council has published its development plan and Core Strategy on its website together with advice about how applications are considered and the information that needs to be submitted to ensure timely consideration of an application. Applicants are advised that planning law requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
40. The council provides a pre-application advice service that is available to all applicants in order to assist applicants in formulating proposals that are in accordance with the development plan and core strategy and submissions that are in accordance with the application requirements.

## Positive and proactive engagement: summary table

Was the pre-application service used for this application?	NO
If the pre-application service was used for this application, was the advice given followed?	N/A
Was the application validated promptly?	YES
If necessary/appropriate, did the case officer seek amendments to the scheme to improve its prospects of achieving approval?	N/A
To help secure a timely decision, did the case officer submit their recommendation in advance of the agreed Planning Performance Agreement date?	YES

## Conclusion

41. Officers consider that the amount of the affordable housing contribution of £1,991,470 is consistent with Policy P1 of the Southwark Plan which requires the maximum viable amount of affordable housing. The proposal to substitute the obligation to deliver on site affordable housing with the alternative of a payment of a financial contribution would be acceptable as it would enable the provision of affordable housing off site. The variation to the legal agreement to require the submission of marketing information for written approval from the local planning authority that there was no demand for a private wheelchair dwelling on-site. Should it be determined that there was no demand a contribution of £70,000 would be required, consistent with the Section 106 Planning Obligations and Community Infrastructure Levy (CIL) and Policy 8 Wheelchair accessible and adaptable housing of the Southwark Plan.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Site history file TP 2292-2 Application file 21/AP/4229 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 0254 Council website: www.southwark.gov.uk

## APPENDICES

No.	Title
Appendix 1	Recommendation (draft decision notice)
Appendix 2	Relevant planning policy
Appendix 3	Planning history of the site and nearby sites
Appendix 4	Consultation undertaken
Appendix 5	Consultation responses received

## AUDIT TRAIL

<b>Lead Officer</b>	Stephen Platts, Director of Planning and Growth	
<b>Report Author</b>	Andre Verster, Team Leader	
<b>Version</b>	Final	
<b>Dated</b>	4 January 2023	
<b>Key Decision</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	No	No
Strategic Director of Environment and Leisure	No	No
Strategic Director of Housing and Modernisation	No	No
<b>Date final report sent to Constitutional Team</b>		11 January 2023

## APPENDIX 1

### RECOMMENDATION

This document shows the case officer's recommended decision for the application referred to below.

This document is not a decision notice for this application.

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<b>Applicant</b>	Mr John Strange Aquinna Homes plc	<b>Reg. Number</b>	21/AP/4229
<b>Application Type</b>	Variation/discharge of Legal Agreement		
<b>Recommendation</b>	Agreed - for App Types VLA & VNMC	<b>Case Number</b>	2292-2

### Draft of Decision Notice

#### The variation is **AGREED** for the following development:

Variation of Section 106 agreement relating to planning permission 14/AP/3104 (Redevelopment of the site to include the demolition of all existing buildings (Use Class B2) and the excavation and removal of fuel tanks and associated supply lines and the construction of 12 dwellings (Use Class C3), 1 x 2 bed and 2 x 1 bed affordable dwellings, 1 x 3 bed house (affordable, wheelchair accessible dwelling), 4 x 4 bed houses and 4 x 5 bed houses with ancillary living accommodation and car parking at basement level accessed from Gilkes Place and landscaping): to replace the proposed 4 onsite affordable housing units in approved scheme with a payment in lieu of affordable housing

The Workshop Site Land Bounded By Gilkes Place Gilkes Crescent And Calton Avenue To The Rear Of 25 Dulwich Village London

**In accordance with application received on 29 November 2021 and Applicant's Drawing Nos.:**

Existing Plans

Proposed Plans

Other Documents

Site location plan 679-SL01 received

**PLANNING POLICY**

**Adopted planning policy**

**National Planning Policy Framework (NPPF)**

The revised National Planning Policy Framework ('NPPF') was published in July 2021 which sets out the national planning policy and how this needs to be applied. The NPPF focuses on sustainable development with three key objectives: economic, social and environmental.

Paragraph 212 states that the policies in the framework are material considerations which should be taken into account in dealing with applications.

Chapter 5 Delivering a sufficient supply of homes

**Southwark Plan (2022)**

The relevant policies within the Southwark Plan is:

- P1 Social rented and intermediate housing
- P8 Wheelchair accessible and adaptable housing

**Supplementary Planning Documents (SPDs)**

Of relevance in the consideration of this application are:

- Southwark's Affordable Housing Supplementary Planning Guidance 2011
- Southwark's Viability Supplementary Planning Guidance 2017
- Southwark's Section 106 Planning Obligations and Community Levy (CIL) Supplementary Planning Document April 2015
- Mayor of London Homes for Londoners Affordable Housing and Viability Supplementary Planning Guidance 2017

**APPENDIX 3****RELEVANT PLANNING HISTORY OF THE SITE**

<b>Reference</b>	<b>Status</b>	<b>Date</b>	<b>Proposal</b>
14/AP/3104	Granted with Legal Agreement	14/10/2015	Redevelopment of the site to include the demolition of all existing buildings (Use Class B2) and the excavation and removal of fuel tanks and associated supply lines and the construction of 12 dwellings (Use Class C3), 1 x 2 bed and 2 x 1 bed affordable dwellings, 1 x 3 bed house (affordable, wheelchair accessible dwelling), 4 x 4 bed houses and 4 x 5 bed houses with ancillary living accommodation and car parking at basement level accessed from Gilkes Place and landscaping.
18/AP/0508	Not Agreed	05/04/2018	Variation of Section 106 Agreement dated 9 October 2015 attached to planning permission 14-AP-3104 for the redevelopment of the site to include the demolition of all existing buildings (Use Class B2) and the excavation and removal of fuel tanks and associated supply lines and the construction of 12 dwellings (Use Class C3), 1 x 2 bed and 2 x 1 bed affordable dwellings, 1 x 3 bed house (affordable, wheelchair accessible dwelling), 4 x 4 bed houses and 4 x 5 bed houses with ancillary living accommodation and car parking at basement level accessed from Gilkes Place and landscaping. Variation to make a payment in lieu for affordable housing instead of providing on site.
21/AP/2458	Not Agreed	27/08/2021	Variation of Section 106 agreement relating to planning permission 14/AP/3104 (Redevelopment of the site to include the demolition of all existing buildings (Use Class B2)

			and the excavation and removal of fuel tanks and associated supply lines and the construction of 12 dwellings (Use Class C3), 1 x 2 bed and 2 x 1 bed affordable dwellings, 1 x 3 bed house (affordable, wheelchair accessible dwelling), 4 x 4 bed houses and 4 x 5 bed houses with ancillary living accommodation and car parking at basement level accessed from Gilkes Place and landscaping.) to replace the proposed four onsite affordable housing units in approved scheme with a payment in lieu of affordable housing
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**CONSULTATION UNDERTAKEN**

**Site notice date:** n/a.

**Press notice date:** n/a.

**Case officer site visit date:** n/a

**Neighbour consultation letters sent:**

**Internal services consulted**

**Statutory and non-statutory organisations**

**Neighbour and local groups consulted:**

**Re-consultation:**

**CONSULTATION RESPONSES RECEIVED**

**Internal services**

**Statutory and non-statutory organisations**

**Neighbour and local groups consulted:**