

APPEAL REF: APP/T5720/W/20/3250440

265 Burlington Road, New Malden, KT3 4NE

Summary of the unilateral planning obligation

1. Introduction

- 1.1 This note has been prepared to summarise the provisions of the proposed planning unilateral obligation to be entered into pursuant to Section 106 of the Town and Country Planning Act 1990 (**the Obligation**) in respect of the above appeal.
- 1.2 Save where expressly stated, defined terms used in this note should be interpreted in accordance with Clause 3 of the Obligation.
- 1.3 Clause, Paragraph, Schedule, and Annex references are (unless expressly stated otherwise) references to the Obligation.
- 1.4 The Obligation binds the part of the Land upon which the built form development authorised by the Planning Application which has been agreed with the LPA.
- 1.5 As is usual, the Obligation has been drafted so that it comes into effect subject to the following conditionality:
 - 1.5.1 The obligations set out therein come into effect upon:
 - 1.5.1.1 planning permission being granted by the Inspector appointed by the Secretary of State; and
 - 1.5.1.2 the said planning permission being implemented by way of Commencement of Development (which is a defined term and is subject to a number of commonplace carve-outs to works which would ordinarily constitute implementation under S56(4) of the Town and Country Planning Act 1990 sense) (*see clause 5.3*)
 - 1.5.2 The usual 'blue pencil test' is included which allows for the Inspector to delete or amend certain obligation as they see fit whilst allowing the rest of the Obligation to remain extant (*see clause 5.4*). In light of the above mentioned conditionality, any such amendments would be known prior to the deed coming into effect, and would be noted in any decision letter issued by the Inspector.
- 1.6 The Obligation is also subject to a number of carve-outs from enforceability (as is usual) against a number of persons, including:
 - 1.6.1 individual owners and/or occupiers of residential units within the Development (including both open market units and affordable units) and successors in titles, mortgagees thereto etc;
 - 1.6.2 a mortgagee or chargee of the Registered Provider of the Affordable Housing Units;
 - 1.6.3 future mortgagees of the Land unless they become mortgagee in possession of the Land; and

1.6.4 statutory undertakers with an interest in the site for the purposes of their relevant statutory undertaking (see *clause 12.2*).

These carve-outs are all market standard.

1.7 The Obligation also contains a requirement that the financial contributions due under the Obligation shall be paid within the timescales in the Obligation on the condition that the Council gives an undertaking to Tesco and Redrow (in the form at Schedule 3 of the Obligation) to confirm that the Council will use the contributions for the purposes specified in the Obligation and return an unspent contribution (or part thereof) within 5 years of the date of payment of the relevant contribution (see *clause 13*)

1.8 The obligations secured can be stated to fall (in general terms) within the following broad categories in Schedule 1 of the Obligation:

1.8.1 Affordable Housing

1.8.2 Viability Review (early stage)

1.8.3 Contributions

1.8.4 Car Club and Parking Permits

1.8.5 Travel Plan

1.8.6 Landscaping;

1.8.7 Highways; and

1.8.8 Alternative frontage to the ground floor western elevation.

2. Affordable Housing

2.1 143 Affordable Housing Units are secured as both London Affordable Rent (85 units) and London Shared Ownership (58 units).

2.2 The Obligation secures the units as the relevant Affordable Housing tenure in perpetuity (subject to the usual proviso in respect of fully staircased London Shared Ownership Units or those exercising the right to buy in respect of the London Affordable Rented Units).

2.3 The Obligation makes provision as to Eligible Purchasers (in respect of the London Shared Ownership Units) – i.e persons whose Household Income does not exceed the relevant London Plan AMR upper limit (currently £90,000).

2.4 The income criteria for the London Affordable Rented Housing accords with the GLA standard, and the rent is fixed in the usual manner at 80% of local market rents (inclusive of service charge) and the benchmark rents included within the Mayor of London's Funding Guidance (exclusive of service charge).

2.5 The Obligation includes an occupation restriction which secures the delivery of the affordable housing prior to occupation of 70% of the market housing units, so as to prevent solely market housing being delivered.

2.6 The Obligation also requires a nominations agreement to be entered into between the Council and Registered Provider in respect of the London Affordable Rented Housing within 12 months of Commencement (using reasonable endeavours).

3. Viability Review

3.1 The Obligation incorporates the key principles from the GLA's standard viability review mechanism, which provides for an early stage review in the event that Substantial Implementation does not occur within 36 months from the date of grant of any Permission.

3.2 Substantial Implementation requires:

3.2.1 Commencement of Development; and

3.2.2 construction of the ground floor slab across the building footprint of the Development.

3.3 In the usual way, this operates so as to secure additional on site provision under the early stage review through an Additional Affordable Housing Scheme in the event that Substantial Implementation is not achieved within 36 months of the grant of the Permission.

4. Financial Contributions

4.1 Financial Contributions have been secured in respect of the following matters:

Contribution and Purpose	Amount	Trigger
Air Quality Impact - towards the Council's Air Quality Action Plan	£9,000	Within 28 days of Commencement of Development
Air Quality Impact Service - towards the employment of a dedicated air quality officer	£22,000	Within 28 days of Commencement of Development
Bus Capacity Enhancements – towards additional capacity for Bus Route 131 by providing an extra journey in each peak period	£450,000	In five equal instalments of £90,000, the first required prior to Occupation and the remaining instalments thereafter on subsequent anniversaries of the first instalment
Carbon Offsetting – towards the LPA's carbon offset fund or behavioural change/energy monitoring and non- infrastructure based projects	£651,060	50% within 28 days of Commencement of Development 50% prior to Occupation
CPZ Contribution – towards the consultation and implementation (if required following any consultation)	£40,000	Within one calendar month of the receipt of the Petition Notification by the Owner

on changes to the CPZ		provided that Commencement of Development has occurred and the Petition Notification is received no later than three (3) years of the actual date of First Occupation of the Development
Pedestrian Crossing Facility and Junction Improvement Contribution – towards the provision of pedestrian crossing facility and junction improvements at the Burlington Road/Claremont Avenue junction	£100,000	50% within 28 days of Commencement of Development 50% prior to Occupation
Pedestrian and Cycle Infrastructure Contribution – towards improving pedestrian and cycle infrastructure in the surrounding area of the Land	£150,000	50% within 28 days of Commencement of Development 50% prior to Occupation
Play Space Contribution – towards provision of play space provision within the administrative area of the Council	£24,600	50% within 28 days of Commencement of Development 50% prior to Occupation
Monitoring contribution (general) – towards monitoring the requirements in the Obligation	£33,550.53	Prior to Commencement of Development
Residential Travel Plan Monitoring Fee – towards implementation of the Residential Travel Plan	£2,000	Prior to Occupation

4.2 All financial contributions are indexed in line with RPI.

5. Car Club

5.1 The Obligation also secures provision of free car club membership for a period of 3 years for each initial occupier of a Residential Unit.

6. Car Parking Permits

6.1 The Obligation secures the development as car free (save for blue badge holders), and precludes applications for parking permits for both the Residential Units and the Business Units.

7. Travel Plan

7.1 The Obligation requires a Residential Travel Plan to be submitted and approved prior to Occupation. The Residential Travel Plan must be implemented thereafter.

7.2 Reports on progress in achieving the objectives set out in the Residential Travel Plan must be submitted at six monthly intervals for the first twelve months from the date of Occupation and thereafter annual reports are required for a period of two years.

8. Landscaping

8.1 The Obligation makes provision for an alternative landscaping scheme for the northern boundary of the Land to be provided in the event that:

8.1.1 the Council's the emerging Local Plan is adopted;

8.1.2 Site RP3 is retained in the Local Plan for residential-led mixed-use development; and

8.1.3 the Council grants the planning permission for Site RP3; and

8.1.4 that permission is Substantially Commenced (i.e all works to above ground floor slab for each and every building approved by that permission are completed)

after which the Council may serve the ANB Landscaping Notice (which shall confirm that the Council has granted the planning permission for Site RP3 and that the Alternative Northern Boundary Landscaping Scheme is to be delivered).

8.2 In the event that the Council serves the ANB Landscaping Notice then the Obligation requires an Alternative Northern Boundary Landscaping Scheme to be submitted to the Council and once approved delivered within 12 months of the date of approval of the scheme.

8.3 The Alternative Northern Boundary Landscaping Scheme is not required to be submitted:

8.3.1 before Commencement of Development and until the requirements of set out in paragraphs 8.1.1 to 8.1.4 of this note have been satisfied; or

8.3.2 where the Council has not served the ANB Landscaping Notice within fifteen (15) years of the date of this Obligation

after which the obligations to provide any alternative landscaping scheme cease to apply.

9. Highways

9.1 The Obligation requires the Highway Works Agreement to be entered in prior to Occupation of the Residential Units and Occupation is restricted unless and until the Highway Works Agreement has been completed

9.2 The Highway Works Agreement seeks to secure accessibility improvements for the following three bus stops:

9.2.1 Stop R (no. 9154) – Cavendish Road

9.2.2 Stop C (no. 9155) – Burlington Road/Shannon

9.2.3 Stop E (no. 27392) – West Barnes Level

with such works to be confined to land within the public highway and limited to extension of bus cage road markings, upgrade to bus shelters and relocation of bus shelter, bus stop and in the case of Stop E relocation of the Council lamp column.

10. Alternative frontage to Western Elevation

10.1 The Obligation includes flexibility for alternative uses for the ground floor western elevation to come forward in the event that:

10.1.1 the Council's the emerging Local Plan is adopted;

10.1.2 Site RP3 is retained in the Local Plan for residential-led mixed-use development; and

10.1.3 the Council grants the planning permission for Site RP3; and

10.1.4 that permission is Substantially Commenced (i.e all works to above ground floor slab for each and every building approved by that permission are completed).

10.2 If the above criteria are met and unless otherwise agreed in writing with the Council, the Owner is required to submit a planning application for alternative uses for part of the ground floor western frontage to the Development.

10.3 However, this further planning application is not required

10.3.1 before Commencement of Development and until the requirements of set out in paragraphs 10.1.1 to 10.1.4 of this note have been satisfied; or

10.3.2 more than 15 years has passed after the date of the Obligation upon which the obligation falls away.

10.4 Following the submission of any change of use application for the western elevation and subject to:

10.4.1 the Council granting the permission for alternative uses;

10.4.2 the Owner deciding to provide the alternative uses pursuant to that permission;

the Owner is required to submit a marketing plan for those new uses and once approved, implement the same (to show that those uses would be occupied if an alternative frontage was provided).

10.5 Therefore, subject to the Owner deciding to implement the alternative use permission and undertaking the appropriate marketing successfully, then the Owner has covenanted to provide the alternative frontage pursuant to any permission for alternative uses that may granted.

Winckworth Sherwood LLP

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