

MOUNT CLARE APPEAL APP/85960/W/25/3371729

LPA's Comments on the Unilateral Undertaking

1. The LPA's case is set out in its evidence (planning proof by Nik Smith) that an affordable housing contribution would be applicable to this development should the Inspector grant the Appeal.
2. The Appellant's position is that no Off Site Affordable Housing Contribution is applicable.
3. In the event that the appeal is granted and it is found that an Off Site Affordable Housing Contribution is applicable then, as no planning obligation to secure the Off Site Affordable Housing Contribution was in place, the appeal would have to be refused. To assist the Inspector in his decision the LPA suggested to the Appellant that a Section 106 Agreement was entered into which would provide the Inspector with both scenarios i.e. if the appeal was granted but the Inspector found no Off Site Affordable Housing Contribution was applicable or, alternatively, if the appeal was granted and the Inspector found an Off Site Affordable Housing Contribution was applicable (if the appeal was refused then the options would be otiose in any event).
4. It has always been the LPA's case that the Off Site Affordable Housing Contribution has to be secured by way of a Section 106 Agreement. It should be noted that the current appeal is not considering viability and no viability evidence has been submitted by the Appellant (it should also be noted that the issue of viability was raised by the Appellant at the CMC and the Inspector made it clear that if the Appellant wished to submit viability evidence then they should refer to Section 39 of the Inspector's CMC notes). The Appellant chose not to submit any viability evidence and therefore viability evidence is not before the Inspector.
5. If the Inspector finds that an Off Site Affordable Housing Contribution is applicable then the LPA relies on the report being prepared by BPS which can be found at Appendix 3 to the LPA's planning proof. This is the only evidence currently before the Inquiry in terms of how any affordable housing contribution, if applicable, would be applied.
6. The current policy is based on a contribution equivalent to 35% affordable housing and therefore the sum that the LPA wishes to secure in the Section 106 Agreement is £5,266,854 found at page 3 of the BPS Report, which is at page 89 of the Appendices to Nik Smith's Proof of Evidence [CD/H2] and is based on the current policy requirement of 35%. It should be noted that as part of that report BPS were also asked to consider the 50% policy – this is the policy forming part of the local plan partial review which is at an advanced stage. This partial local plan review has been through public examination and modifications and is due to be adopted later this year (currently anticipated to be late spring early Summer). It should be noted that the LPA's position at this moment is the current policy is 35%, and therefore it is seeking a contribution equivalent to 35% affordable housing.
7. The Appellant is seeking, by way of the unilateral undertaking (and previously in the discussions regarding the Section 106 Agreement), to introduce the concept of viability if the Inspector grants the appeal and finds that an Off Site Affordable Housing Contribution is applicable.
8. As previously stated there is no viability evidence in front of the Inquiry however, in order to assist the Inquiry and indeed the Appellant, the LPA has agreed that if a section 106 agreement was entered into with the LPA it would contain obligations to allow the Appellant to submit a Financial Viability Assessment (**FVA**) prior to commencement of development if

the Appellant was of the opinion that the Development did not support the Off Site Affordable Housing Contribution. The normal route for an Appellant would have been to submit viability evidence either with the application or with appeal documents and the Appellant has chosen to do neither and, therefore, the only other route would be for the Appellant to approach the LPA to seek a Section 73 permission on the appeal decision, if granted, to allow the LPA to consider any viability evidence to support a reduced affordable housing contribution.

9. The LPA requires a direct covenant from the Appellant to provide an Off Site Affordable Housing Contribution should the Inspector find that one is applicable. However, as set out above, it will, in these circumstances to assist the Appellant, agree an obligation as part of a bilateral S106 agreement only, which allows the Appellant then to submit the viability evidence prior to commencement, with a late stage review being triggered if there was a change to the amount of the Off Site Affordable Housing Contribution as a result of that FVA being submitted prior to commencement. This is as per policy which requires all shared living proposals to use the Viability Tested Route and if the contribution provided is less than that equivalent to 35% affordable housing a late review stage is applicable. We have attached the draft s106 agreement (that we thought was at advanced stage with the Appellant as of 21 January) that the LPA was happy to accept.
10. This draft provides for the inspector to decide whether an affordable housing contribution is applicable or not. If it is found that the affordable housing contribution is applicable then it provides a direct covenant by the Appellant to pay the contribution. The contribution has been assessed by BPS and attached at appendix N3 to the LPAs planning proof. This is the only evidence before the inquiry. The contribution would be a consideration as part of the wider planning balance if the development was considered acceptable in planning terms (assuming the appeal was granted).
11. This is not a viability scheme – there is no viability evidence before the inquiry. If the affordable housing contribution is found to be applicable and the Appellant wishes to introduce viability then it would have to do via the usual route of a s73 application. This would allow the LPA to consider the FVA in the usual way etc. If the Appellant wishes to rely on a UU then it cannot seek to incorporate viability evidence unilaterally as it cannot impose obligations on the LPA by way of a UU.
12. At this moment in time the LPA does not have any viability evidence before it from the Appellant, but to assist the Appellant was happy to agree an obligation to accept this could be submitted prior to commencement, to allow the LPA to consider whether the Off Site Affordable Housing Contribution (a) remains the same; (b) is reduced or (c) possibly even reduced to nil. This position has been set out to the Appellant on a number of occasions during Section 106 discussions (see emails of 16th, 20th and 21st January).
13. In the event that the FVA supports a reduced Off Site Affordable Housing Contribution this would then make the Development a non-compliant scheme and, in accordance with GLA and the LPA's policy, a Late Stage Viability Review would be applicable. Late Stage Reviews are carried out for non-compliant schemes that have been supported by viability evidence and they are reassessed at 75% occupation of the development to ascertain whether, at that stage, it can support an affordable housing contribution.
14. We comment now on the terms of the UU but would reiterate the LPA's position that the specific sum of £5,266,854 as the Off Site Affordable Housing Contribution must be secured as a minimum in the Section 106 Agreement or UU. The LPA is not a party to the UU and so as a matter of law the UU cannot impose obligations on the LPA such as the viability review mechanism proposed by the Appellant, the dispute provision (clause 9) and elements of clause 8 regarding conditions on the LPA's enforcement routes (e.g. clause 8.3). Therefore, all obligations on the LPA need to be removed as does the Recital which confirms the LPA is

satisfied the provision meet Regulation 122. Drafting that deals with the options and which ones do/do not apply can also be removed from Schedule 2 (as it is a repetition of clause 6) and the LPA does not accept the definitions relevant to Schedule 2.

15. In addition:

1. **Schedule 2 Part 1 Option A** – paragraph 2 can be removed and paragraph 1 is not agreed. The option should simply state that if no affordable housing contribution is found to be due then the remainder of the Schedule does not apply. For the avoidance of doubt no affordable housing is required on site.
2. **Schedule 2 Part 1 Option B** – paragraph 1 can be removed as it repeats clause 6. This option also needs to secure the direct covenant to pay an Off Site Affordable Housing Contribution in the event the Inspector determines one is due. The level of that contribution has already been assessed – as per the BPS report contained in the LPA's evidence – and so that figure needs to be secured. The LPA is prepared to agree the 35% affordable housing policy now (though still does not accept the rental calculation discussed) because that is the current policy if the obligation was secured in the S106. If, as suggested by the Appellant, (which is not accepted by the LPA) that the Off Site Affordable Housing Contribution could be determined prior to commencement of development prior to the submission of the Appellant's FVA then that would have to be determined in accordance with the policy that was in place at the time so, for example, if the partial review was adopted then the Off Site Affordable Housing Contribution would be 50% and not 35%. Any FVA would need to align with the following:

“means an openbook viability of assessment carried out in accordance with the Planning Practice Guidance, London Plan and relevant London Plan Guidance, including details of all costs and revenues associated with the scheme including but not limited to Existing Use Value, Benchmark Land Value, Build Costs and Gross Development Value with clear evidence provided for all assumptions included within the Financial Viability Assessment.” (and all associated definitions contained in the S106 agreement attached, rather than the UU).

3. As proposed by the Appellant, there is no restriction on commencement of development until the Off Site Affordable Housing Contribution is determined. It is standard practice and a requirement for the LPA that when an owner covenants an obligation to the LPA that they also covenant a negative restriction i.e. no commencement of development until Off Site Affordable Housing Contribution has been determined otherwise this allows the Appellant to submit the information and commence development. As FVAs can sometimes take a considerable amount of time, indeed months, and this would allow the Appellant to build on site with no restriction and no FVA agreed and this is unacceptable to the LPA
4. The current drafting in the UU also appears to misunderstand how a late stage review applies. The current drafting only provides a Late Stage Review if the FVA found that the Off Site Affordable Housing Contribution would be nil. It does not provide for a situation whereby the FVA could find that the development could support an affordable housing contribution but not a policy compliant one (i.e. a lower contribution equivalent to 20% affordable housing rather than a policy compliant 35% etc). In these circumstances - i.e. non policy compliant schemes – a late stage review would still be required as per policy. Finally, the UU appears to misunderstand how the Affordable Housing Cap operates – i.e. a 50% aspiration through late stage viability reviews in line with GLA and LPA policy and is not to be the 35% proposed by the Appellant. Therefore, the current drafting contained within the UU is not acceptable to the LPA.

5. **Schedule 2 Part 1 Option C** – needs to be removed completely. Paragraph 1 is repetition of clause 6 and paragraph 2 is not a planning obligation. There is no requirement for on site affordable housing (and what is proposed by the permission is not considered acceptable for affordable housing in any event – e.g. not self-contained units) and any rent setting is a lease management issue not a planning obligation.

APPENDIX 1

DRAFT SECTION 106 AGREEMENT

DATED _____ **2026**

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF WANDSWORTH**

and

AKA CAPABILITY LLP

and

A.S.K PARTNERS AGENT LIMITED

and

OAKNORTH BANK PLC

AGREEMENT BY DEED

**pursuant to Section 106 of the Town and Country Planning Act 1990
relating to the Development at**

**MOUNT CLARE CAMPUS
MINSTEAD GARDENS, ROEHAMPTON GATE, SW15 4EE**

2025/0074

APPEAL REFERENCE: APP/H5960/W/25/3371729

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- RECITALS:**

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The Owner is the registered freehold proprietor of the Site which is registered under Title Number TGL47292 and TGL160764 at the Land Registry free from encumbrances (subject to those matters listed in the Charges Register). Mortgagee 1 has registered charge against the Site dated 21 June 2024 and Mortgagee 2 has a registered sub-charge dated 21 June 2024.
- (C) The Planning Application was validated by the Council on 8 April 2025. The Council failed to determine the Planning Application within the statutory determination period and on 25 August 2025 the Owner submitted the Appeal.
- (D) The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act.
- (E) The Council is satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms directly related to the Development and fairly and reasonably related in kind to the Development.

NOW THIS DEED WITNESSES as follows:

1. Definitions and Interpretation

In this Deed its Schedules and Recitals the following expressions shall unless the context otherwise requires have the following meanings:

“Act” means the Town and Country Planning Act 1990

“Additional Off Site Affordable Housing Contribution” means a financial contribution for the provision of off-site Affordable Housing in the Council's administrative area determined in accordance with paragraph 5 of Schedule 2

“All Reasonable Endeavours” means that the obligor shall take all reasonable steps that are reasonably required to achieve the stated outcome and not merely some of them but shall not be obliged to take any step

beyond that which any reasonable or prudent commercial company would take to achieve the stated outcome or which involves beginning or becoming involved in legal proceedings

“Affordable Housing”	means low cost housing that will be available to persons who cannot afford to rent or buy houses generally available on the open market in perpetuity as defined in Annex 2 of the National Planning Policy Framework
“Affordable Housing Cap”	means the contribution that would equate to the financial cost of providing 50% (fifty per cent) of the total Dwellings across the site at 50% of Market Value compared to the provision of the total Dwellings at 100% of Market Value which shall be the maximum Off Site Affordable Housing Contribution payable following the operation of the Viability Review
“Appeal”	means the appeal against the non-determination of the Planning Application made by 25 August 2025 and given reference APP/H5960/W/25/3371729
“Appeal Decision”	means the final decision by the Inspector which determines the Appeal
“Benchmark Land Value”	Means the Existing Use Value plus the agreed level of premium between the parties, based in the condition of the site when the Planning Application was validated
“BCIS Index”	means the BCIS (All in) Tender Price Index of Construction Costs published by the Building Cost Information Service, 12 Great George Street, London, SW1P 3AD or (if such index ceases to be published or is otherwise unavailable for use) such alternative basis for indexation as may be agreed between the Owner and the Council most closely comparable to it
“Build Costs”	<p>means the actual costs committed or incurred associated with the Development comprising but not limited to: preliminaries, demolition, site clearance and preparation, base build costs, abnormal costs; on-site infrastructure and utilities, off-site infrastructure, contractor's overheads and profits, design fees, professional fees (including without limitation the costs of the External Consultant), any section 106 costs, any payment pursuant to the CIL Regulations 2010 (as amended), interest and finance costs and contingency costs and in each case supported by evidence of these costs to the Council's reasonable satisfaction including but not limited to:</p> <ul style="list-style-type: none"> (a) details of payments made or agreed to be paid in the relevant building contract; (b) receipted invoices; (c) costs certified by the Owner's quantity surveyor, costs consultant or agent

but for the avoidance of doubt build costs exclude:

- (i) all internal costs of the Owner including but not limited to project management costs, overheads and administration expenses;
- (ii) legal and marketing costs;
- (iii) any costs arising from Non-Market Transactions;

“Borough” means the administrative area of the London Borough of Wandsworth

“Borough Planner” means the Council’s Assistant Director (Planning and Development) for the time being or such other duly authorised Officer of the Council

“Commencement of Development” means the date that a material operation as defined in Section 56(4) of the Act is undertaken pursuant to the Planning Permission PROVIDED THAT for the avoidance of doubt the following shall not be taken to be a material operation and shall not amount to Commencement of Development:

- (a) construction of boundary fencing or hoarding including the erection of an enclosure for the purpose of site security;
- (b) archaeological investigation;
- (c) works of decontamination or remediation;
- (d) laying and diversion of services and service media;
- (e) construction of temporary access and/or highway works; and
- (f) the erection of temporary facilities for security personnel and temporary site welfare and project offices,

and the terms **“Commencement”** and **“Commence Development”** shall be construed accordingly

“Component” means a part of the Development including but not limited to:

- (a) Dwellings;
- (b) hostel accommodation;
- (c) commercial units;
- (d) any other floorspace;
- (e) property; and
- (f) land

Disposal	means: <ul style="list-style-type: none">• the Sale of a Component(s);• the grant of a lease for a term of less than 125 years of a Component;• where a Component has become subject to a tenancy agreement or any short term let ALWAYS excluding Non-Market Transactions and “Dispose” and “Disposals” and “Disposed” shall be construed accordingly;
“Deed”	means this deed of agreement as entered into between the Owner, the Council and the Mortgagee 1 and Mortgagee 2
“Development”	means the use as hostel accommodation (sui generis) with associated landscaping and cycle parking
“Dwelling”	means a dwelling (including a flat or maisonette) to be constructed pursuant to the Planning Permission
“Existing Use Value”	means the value of the land in the existing use, specifically when the Planning Application was validated, this is not the price paid for the land and must disregard hope value.
“External Consultant”	means an external consultant appointed by the Council to assess the Financial Viability Assessment
Financial Viability Assessment	means an openbook viability of assessment carried out in accordance with the Planning Practice Guidance, London Plan and relevant London Plan Guidance, including details of all costs and revenues associated with the scheme including but not limited to Existing Use Value, Benchmark Land Value, Build Costs and Gross Development Value with clear evidence provided for all assumptions included within the Financial Viability Assessment.
“First Occupation”	means the date of first Occupation of the Development
Gross Development Value	means Gross Development Value, as defined in the RICS Professional Standard of Valuation of Development Property, October 2019 (and any further updates) and “GDV” shall be construed accordingly;
“Index”	means the BCIS Index
“Indexed” “Indexation”	and means the index-linking of the Monitoring Fee and the Travel Plan Monitoring Fee to be increased in the same proportion

as the increase in the Index from the date of this Deed to the due date for payment by applying the following formula:

$D = A \times B/C$ where:

A = the sum specified in this Deed in pounds sterling;

B = the most recent value of the Index in publication at the date the relevant Contribution is payable as specified in this Deed;

C = the most recent value of the Index in publication at the date of this Deed; and

D = the amount of money in pounds sterling required to be paid to the Council

“Inspector”

means:

- (a) the inspector appointed to determine the Appeal on behalf of the Secretary of State; or
- (b) in the event that the Appeal is Recovered, the Secretary of State

“Interest Rate”

means 4% above the Bank of England base rate

“Market Value”

means the price at which the sale or lease of the relevant property interest would have been completed unconditionally for cash consideration on the Review Date based on detailed comparable market evidence, including evidence of comparable rental values achieved for any Component of the Development which has been Disposed but not Sold, to be assessed by the Council and assuming:

- (a) a willing seller and a willing buyer;
- (b) that, prior to the date of valuation, there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) for the agreement of the price and terms and for the completion of the sale;
- (c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and
- (d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion

“Monitoring Fee”

means a sum the sum of £5,587.50 (FIVE THOUSAND FIVE HUNDRED AND EIGHTY SEVEN POUNDS AND FIFTY PENCE) Indexed to cover the costs and expenses incurred by the Council in monitoring the Development to ensure the

Development is delivered in accordance with the terms of this Deed

“Non-Market Transaction”

means:

- (a) a transaction the purpose or effect of which is to artificially reduce the GDV and/or artificially increase the Build Costs; or
- (b) a Disposal that is not an arm's length third party bona fide transaction.

“Occupation”

means occupation of any part of the Development authorised by the Planning Permission with the exception of occupation by personnel engaged in construction decoration or fitting out or for marketing or display or repair or for security operations and **“Occupy”**, **“Occupants”**, **“Occupier”** and **“Occupied”** shall be construed accordingly

“Off Site Affordable Housing Contribution”

means a financial contribution payable to the Council for the provision of Affordable Housing in the Borough and which shall comprise:

- (a) the Original Off Site Affordable Housing Contribution or the Revised Off Site Affordable Housing Contribution (as applicable); and
- (b) the Additional Off Site Affordable Housing Contribution

“Original Off Site Affordable Housing Contribution”

means the sum of £5,266,854 (FIVE MILLION TWO HUNDRED AND SIXTY SIX THOUSAND EIGHT HUNDRED AND FIFTY FOUR POUNDS) Indexed from the date of the Agreement to the date of payment for the provision of Affordable Housing in the Borough based on the delivery of 35 % Affordable Housing

“Plan 1”

means the plan at Schedule 1 showing the Site

“Planning Application”

means the application submitted to the Council seeking planning permission for the Development and allocated reference number 2025/0074

“Planning Permission”

means the full planning permission granted pursuant to the Appeal

“Recovered”

means the recovery of the Appeal by the Secretary of State under section 79 of the Act such that the Secretary of State makes the final decision on the Appeal

“Review Date”

means the date on which 75% of the Development is First Occupied

“Revised Off Site Affordable Housing Contribution”	means the sum determined by the Council following the review of the Financial Viability Assessment pursuant to paragraph [] of Schedule [] Indexed from the date of the Agreement to the date of payment for the provision of Affordable Housing in the Borough
“Site”	means the land shown for the purpose of identification only edged in red on Plan 1
“Secretary of State”	means the Secretary of State for Housing, Communities and Local Government or any other minister charged with performing the functions of the secretary of state under the Act
“Travel Plan”	means the travel plan submitted pursuant to Condition []
“Travel Plan Monitoring Fee”	means the sum of £1,490.00 (ONE THOUSAND FOUR HUNDRED AND NINETY POUNDS) Indexed to be paid by the Owner to the Council to be used by the Council towards monitoring of the Travel Plan
“Viability Formula”	means the Viability Formula included within Schedule 2
“Viability Review”	means an upwards review of the financial viability of the Development at the Review Date to determine whether an Additional Affordable Housing Contribution is payable [which shall take the form of a reassessment of the Financial Viability Appraisal on an open book basis based on updated Build Costs and Gross Development Value (estimated and actual) to include in each case supporting evidence (including receipted invoices, certified costs by the Owner’s quantity surveyor, costs consultant or agent, certified copies of sales contracts, best estimates of costs yet to be incurred and values on any unsold space and any other evidence reasonably required by the Council) applying the Viability Formula the Affordable Housing Cap
“Working Days”	means Monday to Friday inclusive but excluding days which are public holidays.

2. Interpretation

- 2.1 Reference in this Deed to a clause, paragraph, Part, Schedule or recital means a clause or paragraph, Part, Schedule or recital to this Deed.
- 2.2 Headings in this Deed are for ease of reference only and shall not affect construction or interpretation of any of the provisions of this Deed.
- 2.3 In this Deed where the context so admits:
 - 2.3.1 words importing one gender shall include all other genders; and
 - 2.3.2 words importing the singular shall include the plural and vice versa.

- 2.4 Any references to any particular statute or regulation (except for the Use Classes Order) include any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it.
- 2.5 Where under this Deed any notice, consideration, confirmation, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction is required to be given or reached or taken by any party or any response is requested any such notice, consideration, confirmation, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction or response shall not be unreasonable or unreasonably withheld or delayed and shall be made in writing.

3. Legal Basis

- 3.1 This Deed is made pursuant to:

3.1.1 Section 106 of the Act and in respect of any provision of this Deed which does not constitute a planning obligation under Section 106 of the Act:

3.1.1.1 Section 111 of the Local Government Act 1972;

3.1.1.2 Section 16 of the Greater London Council (General Powers) Act 1974; and

3.1.1.3 Section 1 of the Localism Act 2011,

and all other powers so enabling.

- 3.2 Where the obligations, covenants and restrictions in this Deed are planning obligations to which Section 106 of the Act and the other statutory provisions in clause 3.1 apply, they relate to the Site and are entered into by the Owner with the intent that, subject to clauses 3.3 – 3.5, they shall be enforceable by the Council:

3.2.1 in its capacity as local planning authority and highway authority and as a local authority generally;

3.2.2 subject to clause 9, without limit of time; and

3.2.3 not only against the Owner but also against its successors in title and any person corporate or otherwise claiming through or under them an interest in the Site or any part of it as if that person had also been an original covenanting party in respect of such of the obligations, covenants and restrictions which relate to the freehold or leasehold or other such interest or estate for the time being held by that person.

- 3.3 This Deed shall not be enforceable against any individual tenant or Occupier (other than the Owner) within any part of the Development pursuant to the Planning Permission nor against a mortgagee or chargee of such part or those deriving title from any of them.

- 3.4 This Deed shall not be enforceable against any statutory undertaker or utilities provider holding an interest in the Site.

- 3.5 This Deed shall not be binding upon or enforceable against any chargee or mortgagee with a charge over the Site or part thereof unless the mortgagee takes possession of the Site or seeks to exercise any power of sale in which case it too will be bound by the obligations (but only to the extent such obligations bind that part of the Site it has possessed) as if it were a person deriving title from the Owner.

4. Conditionality

4.1 This Deed shall come into effect upon:

4.1.1 delivery hereof and the grant of the Planning Permission;

4.1.2 Commencement of Development,

whichever shall be the last to occur but subject to clause 4.2.

4.2 Clauses 2 to 5 (inclusive), 6.2 to 6.5 (inclusive) and 8 to 21 (inclusive with the exception of clause 16.1) shall take effect immediately on completion of this Deed.

5. General Provisions

5.1 It is hereby agreed and declared that:

5.1.1 the covenants on behalf of the parties and the Council hereto to be observed and performed under this Deed shall be treated as Local Land Charges and registered at the Local Land Charges Registry by the Council for the purposes of the Local Land Charges Act 1975;

5.1.2 nothing in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise by it of its statutory functions and the rights, powers, duties and obligations of the Council under private or public statutes, bye-laws, orders and regulations may be as fully and effectively exercised as if it were not a party to this Deed;

5.1.3 if any provision in this Deed shall in whole or in part be found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of any of the remaining provisions of this Deed;

5.1.4 the Owner covenants with the Council that it will not encumber or deal with the Site in a manner whereby any party to this Deed (or any successor in title) is materially prevented from carrying out the covenants and obligations in this Deed;

5.1.5 no waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default;

5.1.6 the Owner at its own expense shall provide the Council with such information and documentation as it may reasonably require in order to monitor the Owner's compliance with its obligations in and generally in relation to this Deed and insofar as any documentation is provided to the Council which is and is stated to be confidential or commercially sensitive then the Council shall not disclose such information other than as required by law (including complying with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and to any other legislation which may require disclosure of such information or the inclusion of it or reference to it in any public register) and for the avoidance of doubt prior to any disclosure in relation to the release of information marked "Confidential" the Council will consider any representations made by the Owner in relation to the requirement to disclose such information (including redaction where appropriate); and

- 5.2 If the Inspector determines that any obligation (or any part of an obligation) contained within this Deed is not:

- 5.2.1 necessary to make the Development acceptable in planning terms; and/or directly related to the Development; and/or
- 5.2.2 fairly and reasonably related in scale and kind to the Development; and/or
- 5.2.3 compliant in all other aspects with Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended

and states in the Appeal Decision that no weight should be attached to such obligation then the relevant obligation shall immediately (without any further act by the parties) cease to have any effect to the extent determined by the Inspector in the Appeal Decision and the Owner shall be under no obligation to comply with the obligation but the remainder of the obligations in this Deed (if any) shall remain legally effective and binding.

- 5.3 In the event that the Inspector imposes a condition upon the Planning Permission as a replacement for one or more of the obligations in this Deed and this is specified within the Appeal Decision, then the said provisions of this Deed shall thereafter have no legal effect to the extent determined by the Inspector in the Appeal Decision.

6. Owner Covenants and Council Covenants

- 6.1 The Owner covenants with the Council to observe and carry out the obligations, covenants and restrictions contained within this Deed and its Schedules.
- 6.2 The Owner agrees that it will give the Council written notice of any change in ownership of its legal interest in the Site before all the obligations under this Deed have been discharged to the extent that such change of ownership triggers a change of liability under this Deed and that such notice will be provided to the Council within 10 Working Days of the relevant change in ownership. Such written notice will give the Council details of the name and registered address (if a company or usual address if not) of the current and new owner of such interests together with details of the part of the Site to which each of their interests apply and by reference to a plan.
- 6.3 Nothing in this Deed shall prohibit or limit the Owner's right to develop any part of the Site in accordance with a planning permission other than the Planning Permission granted before or after the date of this Deed.
- 6.4 The Council covenants with the Owner to observe and carry out its obligations, covenants and restrictions contained within this Deed and its Schedules.
- 6.5 Wherever there is more than one person named as a party and/or where more than one person/party undertakes an obligation all their obligations can be enforced against all of them jointly and severally.

7. Verification and Enforcement

- 7.1 The Owner shall permit the Council and its authorised employees and agents upon reasonable prior written notice (being not less than 15 Working Days) to enter such parts of the Site and any buildings erected thereon and not yet Practically Complete and/or not Occupied as may be reasonably required at all reasonable times for the purpose of verifying whether or not any obligation arising under this Deed has been performed or observed subject to the Council making good at its own expense as soon as reasonably practicable to the reasonable satisfaction of the Owner any damage to the Site or

Development or other property caused as a result of it exercising its powers of entry and PROVIDED THAT the Council shall:

- 7.1.1 first report to the Owner's (or its contractor) designated site office before carrying out any such inspection or such other steps and shall allow a representative of the Owner (or its contractor) to accompany the Council whilst it is present on the Site;
 - 7.1.2 comply at all times with all relevant statutory and non-statutory health and safety requirements which the Owner (or its contractor) may reasonably require in respect of such entry; and
 - 7.1.3 act reasonably so as not to disrupt the progress of any works relating to the Development while present on Site.
- 7.2 Without prejudice to any other right, remedy or power contained within this Deed or otherwise available to the Council if there is a breach of a requirement in an obligation or covenant within this Deed to carry out any operations in, on, under or over the Site the Council may subject to clause 7.3:
- 7.2.1 enter the Site and carry out the operations; and
 - 7.2.2 recover from the Owner any certified expenses reasonably and properly incurred by the Council in doing so as a debt due and owing.
- 7.3 Before the Council exercises its powers under clause 7.2 it shall give notice of the matter or matters complained of pursuant to clause 7.2 to the Owner and a reasonable period within which the Owner should remedy the said matter or matters and where the said matter or matters have not been rectified the Council shall be entitled after serving on the Owner not less than 30 Working Days' notice in writing to enter upon such part of the Site as may be necessary in the reasonable opinion of the Council to carry out the relevant operations.

8. Disputes

- 8.1 In the event of any dispute or difference arising out of or in connection with this Deed the parties to this Deed agree to refer such dispute or difference to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement between the parties within 10 Working Days of the dispute or difference arising) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute ("**Expert**").
- 8.2 The Expert shall act as an expert, not an arbitrator, whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 8.3 The terms of reference of any Expert appointed to determine a dispute or difference arising shall include the following:
 - 8.3.1 the Expert shall call for representations from the parties to the dispute within 30 Working Days (or such shorter time as the Expert may reasonably specify having regard to the nature of the dispute or difference) of a reference to him under this Deed and require the parties to exchange representations within this period;

- 8.3.2 the Expert shall allow the parties to the determination 15 Working Days from the expiry of the period referred to under clause 8.3.1 to make counter representations;
 - 8.3.3 any representations or counter-representations received out of time may be disregarded by the Expert;
 - 8.3.4 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 8.3.5 the Expert shall not take oral representations from the parties without giving all parties the opportunity to be present and to give evidence and to cross-examine each other;
 - 8.3.6 the Expert shall use All Reasonable Endeavours to provide the parties with a written decision (including his reasons) within 20 Working Days of the last date for receipt of counter representations under clause 8.3.2; and
 - 8.3.7 the Expert's costs and the costs of any independent expert advice called for by the Expert shall be included in his award in accordance with clause 8.2.
- 8.4 The provisions of this clause shall not affect the ability of the Council or the Owner to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

9. Limit of Liability

The Owner shall not be liable for any breaches of the obligations or other covenants contained in this Deed after it has parted with any relevant interest in the Site or the relevant part of it but without prejudice to the liability of the Owner for any breach subsisting prior to parting with such interest PROVIDED THAT the release contained in this clause shall not become effective in favour of any such person unless they have given written notice to the Council (if required) in accordance with the provisions of clause 6.2.

10. Service of Notices

- 10.1 Any notice, letter, approval, consent, certificate or other document given or served under the terms of this Deed shall be:
- 10.1.1 in writing; and
 - 10.1.2 sufficiently served if sent by pre-paid recorded delivery or registered post addressed in the case of the Council at the address shown in this Deed to the Borough Planner or in the case of service on the Owner at the address shown in this Deed or such other address as may be notified to the Council in writing from time to time.
- 10.2 Any notice, consent or approval given pursuant to this Deed shall be deemed to have been validly served:
- 10.2.1 if personally delivered at the time it is handed over; and
 - 10.2.2 if sent by recorded delivery at the time it is recorded as having been delivered.

11. Monitoring

11.1 The Owner covenants to give the Borough Planner not less than 15 Working Days prior written notice of its intention to Commence Development.

11.2 The Owner shall serve advance written notice on the Council of at least 15 Working Days of the following:

11.2.1 Commencement of Development;

11.2.2 First Occupation

11.2.3 the Review Date

12. Monitoring Fee

12.1 The Owner shall pay to the Council the Monitoring Fee on Commencement of Development Date and shall not Commence Development unless and until it has paid the Monitoring Fee to the Council.

12.2 The Council shall use the Monitoring Fee to cover the costs and expenses it incurs in monitoring the Development to ensure that the Development is delivered in accordance with the terms of this Deed.

13. Interest

The Owner covenants to pay interest at the Interest Rate on any payment which is paid late by it under this Deed for the period from the date on which the payment fell due until the date on which the payment is actually made.

14. Contracts (Rights of Third Parties) Act 1999

A person who is not named in this Deed (other than successors in title to the parties to this Deed) does not have any right to enforce any term of this Deed under the Contracts (Rights of Third Parties) Act 1999.

15. Termination

15.1 This Deed shall determine and cease to have effect forthwith if any of the following events occur:

15.1.1 the Planning Permission expires, lapses, is withdrawn or is revoked or (without the consent of the Owner) is modified by any statutory procedures; or

15.1.2 the Planning Permission is quashed as a result of any legal proceedings.

16. Value Added Tax

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable and at any time that value added tax is or becomes chargeable in respect of any consideration paid in accordance with the terms of this Deed and to the extent that such value added tax has not been previously charged and/or paid the person making the supply shall issue a value added tax notice to the person to whom the supply was made and the value added tax shall be paid accordingly.

17. Costs

- 17.1 The Owner covenants that on or before completion of this Deed they shall pay to the Council its reasonable and proper legal costs and disbursements for preparing and completing this Deed

18. Good Faith

The parties to this Deed agree with one another to act reasonably and not to take any steps to deliberately undermine the fulfilment of the provisions of this Deed.

19. Jurisdiction

This Deed is governed by and interpreted in accordance with the law of England and Wales.

DRAFT

SCHEDULE 1

Plans

Plan 1 – Site

DRAFT

SCHEDULE 2

[Part One]

[Off Site Affordable Housing Contribution]

1. In the event that the Inspector states in his Decision Letter that no Off Site Affordable Housing Contribution should be applied to this Appeal then parties agree that the remainder of Part One this Schedule in relation to any Off Site Affordable Housing Contribution is deemed to have no effect]
2. [In the event that the Inspector determines that an Off Site Affordable Housing Contribution is applicable to the Development then the following provisions of this Schedule shall apply.
3. The Owner shall pay the Original Off Site Affordable Housing Contribution or Revised Off Site Affordable Housing Contribution (as applicable) to the Council prior to First Occupation of the Development and shall not First Occupy the Development until the Original Off Site Affordable Housing Contribution or Revised Off Site Affordable Housing Contribution (as applicable) has been paid.
4. Subject always to paragraph 3 above:
 - 4.1. Prior to Commencement of the Development the Owner can submit a Financial Viability Assessment for approval to the Council if it considers that the Development cannot support the Original Off Site Affordable Housing Contribution;
 - 4.2. In the event that the Owner submits the Financial Viability Assessment to the Council then the Council may instruct an External Consultant to assess the Financial Viability Assessment and the Owner shall pay the costs of such external consultant's assessment;
 - 4.3. The Council and if instructed its External Consultants will consider the Financial Viability Assessment and confirm in writing
 - 4.3.1. whether the Original Off Site Affordable Housing Contribution is to be reduced, due to the Development not supporting the Original Off Site Affordable Housing Contribution; and
 - 4.3.2. the amount of the Revised Off Site Affordable Housing Contribution AND FOR THE AVOIDANCE OF DOUBT any reduction in the Original Off Site Affordable Housing Contribution is at the Council's absolute discretion and in the event that the Revised Off Site Affordable Housing Contribution is determined by the Council to be zero then no contribution shall be payable pursuant to paragraph 3 above; and
 - 4.4. In the event that the Council confirms to the Owner that the Revised Off Site Affordable Housing Contribution is reduced or is zero (as applicable) then a Viability Review will be carried out at the Review Date and the provisions of paragraphs 5 and 6 below shall apply.

AND FOR THE AVOIDANCE OF DOUBT in the event that no Financial Viability Assessment is submitted by the Owner prior to Commencement of the Development the provisions of this paragraph 4 and paragraphs 5 and 6 below shall have no further effect and the Original Off Site Affordable Housing Contribution shall be payable in accordance with paragraph 3 above.

5. Viability Review

- 5.1. On the Review Date the Owner shall submit to the Council the Viability Review thereby confirming whether in the Owner's view any Additional Off Site Affordable Housing Contribution is payable and if so, how much.
- 5.2. The Council shall assess any submitted Viability Review pursuant to paragraph 5.1 above and assess whether in its view an Additional Off Site Affordable Housing Contribution is payable subject to the Affordable Housing Cap and for the avoidance of doubt the Council will be entitled to rely on its own evidence subject to such evidence also being provided to the Owner and the Owner shall have an opportunity to comment thereon and the Council shall have regard to those comments but for the avoidance of doubt shall in no way be bound by the Owner's comments.
- 5.3. The Council may appoint External Consultants to assess any Viability Review they receive under this paragraph 5.3 of Schedule 2.
- 5.4. In the event that the Council or any External Consultant requires further information in the Viability Review or supporting evidence of the same then the Owner shall provide any reasonably required information to the Council or any External Consultant (as applicable and with copy to the other parties) within 10 Working Days of receiving the relevant request and this process may be repeated until the Council or any External Consultant (as applicable) has all the information it reasonably requires to assess whether in its view any Additional Off Site Affordable Housing Contribution is required subject to the Affordable Housing Cap.

6. Payment of Affordable Housing Contribution

- 6.1. The Council will notify the Owner in writing of its intended decision as to whether any Additional Off Site Affordable Housing Contribution is due under Viability Review and if so how much.
- 6.2. The Owner shall not Occupy more than 85 per cent of the Development until any Additional Off Site Affordable Housing Contribution required pursuant to paragraph 6.1 of this Schedule has been paid to the Council in full.

Viability Formula

X = Additional Off Site Affordable Housing Contribution

$$X = (((A + B) - C) - ((D + E) - F) - P) \times 0.6$$

A = GDV achieved on leasing 75 per cent of residential units and GDV from other parts of the development sold / let and other income receipts (£)

B = Estimated GDV for parts of the development that are yet to be sold/ let and other income sources (£)

C = GDV determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review) (£)

D = Build costs incurred at the time of review (£)

E = Estimated build costs for remainder of the development (£)

F = Total build costs determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review) (£)

P = (A + B - C) * Y; Developer profit on change in GDV (£)

Y = Developer profit as a percentage of GDV as determined at the time planning permission was granted (%)

Notes: (A + B) - C = The change in GDV from the grant of planning permission (or previous review) to the late stage review (£)

(D + E) - F = The change in build costs from the grant of planning permission (or previous review) to the late stage review (£)

P = Developer profit on change in GDV (£)

0.6 = Any surplus profit, after deducting the developer profit (P), will be shared between the LPA and the developer with 60 per cent used for additional affordable housing.

Part Three

Travel Plans

The Owner hereby covenants with the Council to pay the Travel Plan Monitoring Fee prior to Commencement of Development to the Council and not to Commence Development unless and until it has paid the Travel Plan Monitoring Fee.

DRAFT

IN WITNESS to the above the parties to this Deed have executed it as a deed and it is delivered on the day and year above written.

THE COMMON SEAL of THE MAYOR AND)
BURGESSES OF THE LONDON BOROUGH)
OF WANDSWORTH was affixed to this **DEED**)
BY ORDER:)

Authorised Officer:

Seal Register No:

SIGNED as a **DEED** by **AKA** }
CAPABILITY LLP acting by
[] a director
in the presence of

Signature

Signature of witness

Name (IN BLOCK CAPITALS)

Address

Occupation

SIGNED as a **DEED** by **A.S.K**)
PARTNERS AGENT LIMITED acting by)
[] a director
in the presence of

Signature

Signature of witness

Name (IN BLOCK CAPITALS)

Address

Occupation

SIGNED as a **DEED** by **OAKNORTH**)
BANK PLC acting by)
[] a director
in the presence of

Signature

Signature of witness

Name (IN BLOCK CAPITALS)

Address

Occupation

APPENDIX 2

EMAILS RE SECTION 106 AGREEMENT

From: Colette McCormack <cmccormack@wslaw.co.uk>
Sent: Wednesday, January 21, 2026 3:32 pm
To: Rebecca Crosdil <rebecca.crosdil@cripps.co.uk>
Cc: Julie Ridgley <jridgley@wslaw.co.uk>; Andrew Moore <amoores@wslaw.co.uk>; Molly Madden <mmadden@wslaw.co.uk>; Matthew Steinbrecher <msteinbrecher@wslaw.co.uk>
Subject: : Mount Clare Section 106 Agreement LPA comments 21 January 2026

Dear Rebecca

Thank you for your time earlier today when we discussed your instructions on the current draft Section 106 Agreement. We discussed our respective client's positions and agreed that it would be helpful for the Inspector to have a Section 106 Agreement before him which provides for both scenarios i.e. if he grants the appeal and finds that an affordable housing policy is applicable or if he grants the appeal and finds that an affordable housing is not applicable (if he refuses the appeal then the matter is otiose in any event).

I am pleased that the majority of the draft is agreed subject to the following points:-

1. **Off Site Affordable Housing Contribution** – your client does not want to commit to an Off Site Affordable Housing Contribution in the S106 Agreement and, instead, would rather carry out a viability assessment to see if one is payable at later stage .

We discussed the fact that there is no viability evidence from your client before the inquiry at the moment (although there is a BNP Report on the calculation of the Off Site Affordable Housing Contribution attached at Appendix 3 to the LsPA's planning proof). If the Inspector finds that an Off Site Affordable Housing Contribution is payable then your client will need to deliver that obligation. There is still a putative reason for refusal in terms of no s106 Agreement/planning obligation.

I did explain that the LPA was prepared to assist the Inquiry and your client here by allowing your client to introduce some viability evidence before commencement of development – any viability discussions post commencement of development would require a Section 73 application (in the usual way) and, at this stage, if the LPA approved viability evidence it can reduce the Off Site Affordable Housing Contribution.

The simple point being that if the Inspector finds that the Off Site Affordable Housing Contribution is payable then an obligation needs to be given. This is still the LPA's position.

2. **Instalments** – your client's instructions were that if an affordable housing contribution is applicable either by way of the obligation or following the viability review then your client wants to pay that amount by way of instalments and preferably by four instalments i.e. 25%. The LPA will not accept 4 instalments and they have considered your suggestion of other instalments but the LPA requires the affordable housing contribution (not the late stage contribution) to be paid in full before occupation.
3. **Late Stage Review** – again you raised the fact that your client will not accept a Late Stage Review.

The Late Stage Review is only applicable if your client chooses the viability route and the Off Site Affordable Housing Contribution is reduced i.e. your scheme then becomes a non policy compliant scheme supported by viability. In these cases it is Wandsworth and GLA policy that non affordable housing policy developments have a late stage review. We very much follow the same mechanism as the GLA as this is standard practice and the LPA will require this. If your client pays the Off Site Affordable Housing Contribution in full before occupation of development then no Late Stage Review will be applicable.

4. **New Obligation** Off Site Affordable Housing Contribution- in our call you confirmed that your client had a new obligation and wanted to insert an obligation that if the Inspector finds that the Off Site Affordable Housing Contribution is payable then you want to restrict the use to temporary accommodation and also restrict the payment of the rents to 80% of the open market rents including service charges. As discussed, the use of the Development is dealt with by condition and would not be required in the Section 106 Agreement (at the time of our meeting you were not aware that it would be dealt with by condition but agreed that if it was then it should not be in the Section 106 as that is Government policy. I have had confirmation that it is dealt with by condition). The LPA also does not consider that the rents need to be restricted in the Section 106 Agreement as this is not a planning obligation and instead is a matter for management of the hostel with the operator either by way of your lease or your management plan.
5. **Costs** – finally, you again confirmed that you would not be paying the LPA's legal costs in negotiating the Section 106 etc. I again displayed by disappointment with this as it is standard practice and, if this was the case, then we would make our representations to the Inspector and he would take a view on this. You also said that you had been instructed to remove any reference in the Section 106 Agreement to your client paying the LPA's costs, so, for example, reviewing viability evidence, and, again, I said that the LPA expects . This is standard practice in all viability cases and supported by the PPG. If your client is seeking to reduce its planning obligations because of viability and needs the LPA to review complex viability evidence which has to be reviewed by an external consultant then again it is usual practice that the LPA should not be put to the cost of this and indeed the Appellant should pay. This is still the LPA's position.

I trust this is helpful and I look forward to receiving your confirmation that you agree with the LPA's position. I am also conscious, as I know you are, that if we do not have an agreed position today then you will need to produce a unilateral undertaking to the Inspector tomorrow.

For completed transparency I have set out on a number of occasions and in our Teams meeting today what the LPA's position would be and we will be putting those points to the Inspector in the event of a UU being submitted tomorrow.

Finally , the monitoring fee is £5,587.50 and the definition of Indexed need to include the Transport Planning Monitoring fee as it currently only include the monitoring fee

Kind regards

Colette

Colette McCormack
Partner she/her

From: Colette McCormack
Sent: 16 January 2026 15:40
To: 'Rebecca Crosdil' <rebecca.crosdil@cripps.co.uk>
Cc: Andrew Moore <amoore@wslaw.co.uk>
Subject: Wandsworth S106 Response

Dear Rebecca

Thank you for your revised draft Section 106 Agreement received at 4.10pm on Tuesday 13 January. We have now taken instructions from our client on the revised proposal and are in the process of marking up the draft drafting for your review. However, we thought it would be helpful for you to understand the LPA's position.

- It has always been the LPA's position that an affordable housing contribution is applicable on this scheme and we also note your client's position i.e. no affordable housing contribution is applicable.
- We agreed it would be helpful for the Inspector to have an agreement before him that deals with both scenarios and we note that the Agreement has been drafted in this way.
- We note that your revised proposal refers to a viability review. There is no viability evidence before the Inquiry as part your client's case (although your client did raise it at the CMC). We note now your client's proposal that if an affordable housing contribution is applicable then they want the opportunity to submit viability evidence to the LPA.
- In order to be helpful to the Inquiry and your client, the LPA will accept that the scheme can be viability tested if the Inspector finds that an affordable housing contribution is applicable, but not on the basis of a review, as put forward in your the draft s106 provided this week. If your client now wants to rely on viability evidence then a full viability review would be required due to the unique attributes and complexities of the site (without any viability evidence before the LPA assuming the appeal was granted and the inspector found the contribution was payable, then your client would have to come back to the LPA with a S73 to reassess the affordable housing contribution applicable and agree the viability position).
- The LPA's position remains the same and an affordable housing contribution is required but will allow your client to submit viability evidence and agree a position in regard to any affordable housing contribution before commencement of development in the standard way for the LPA to approve. If an affordable housing contribution is to be paid then it must be paid in full before occupation of the development.
- As is usual in viability matters the LPA would also require a late stage review so a similar process in terms of submission of viability evidence would need to be submitted prior to 75% of the occupation of the Development and if a further amount is required then that must be paid on 80% occupation of the Development.

For confirmation, we have some slight tweaks on the main body of the Agreement but the main changes will be to remove your clients drafting in Schedule 2 (and definitions) so that the drafting reflects the LPA's position on the planning obligation and allowing a full viability testing on the appeal scheme.

Finally, we understand the Travel Plan is to be dealt with by condition but we will keep in the Travel Plan Monitoring Contribution.

Kind regards

Colette

Colette McCormack
Partner she/her

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