

Meeting: Planning and Development
Committee

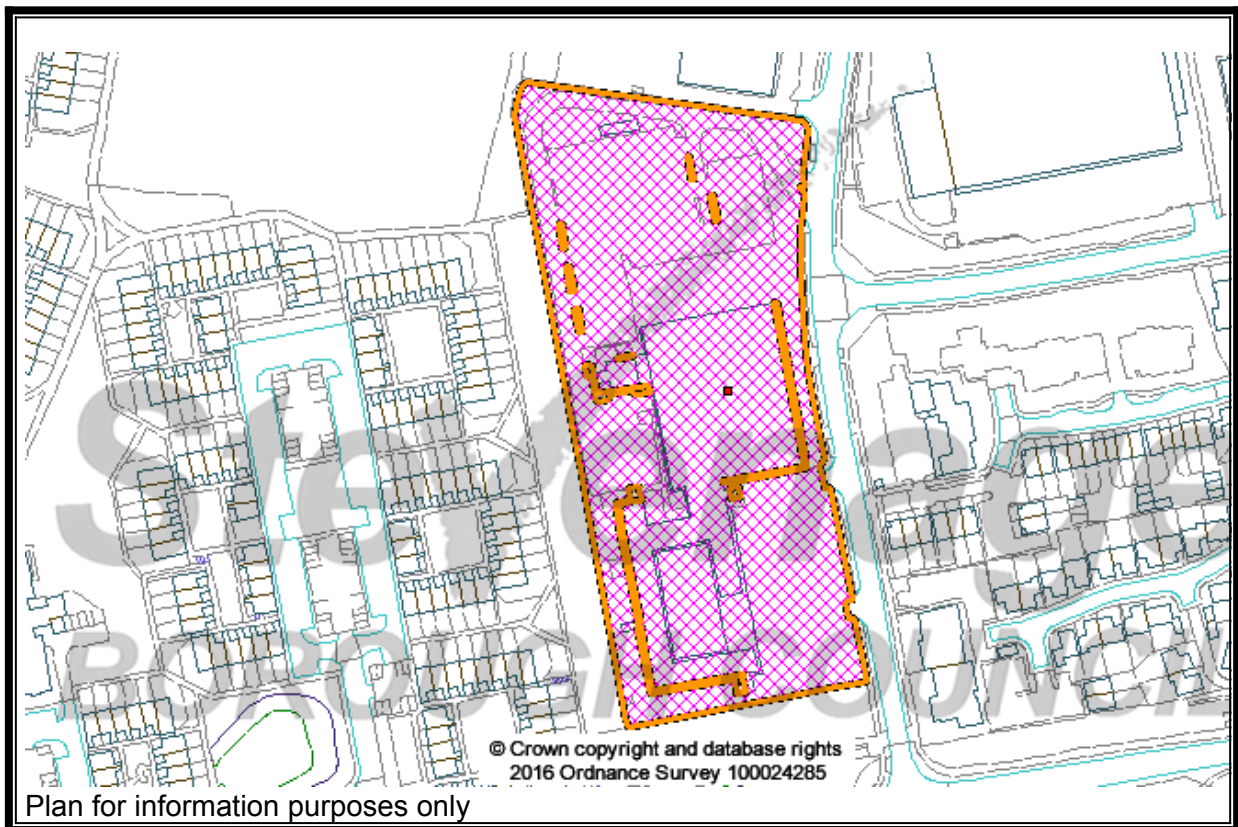
Date: 4 April 2018

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Application No:	16/00742/S106
Location:	The former DuPont site, Wedgwood Way, Stevenage.
Proposal:	Variation of clause 3.1.3.3 (affordable housing), clause 3.1.4.1 (affordable housing), clause 12.5 (obligation exclusion), clause 5.4 of schedules 2 and 4 and clause 8 of schedule 4 (mortgagee exclusion) of the original s106 agreement dated 11 August 2016.
Drawing Nos.:	Site location plan.
Applicant:	Frontier Estates (Bucks) Ltd
Date Valid:	24 October 2016
Recommendation:	AGREE VARIATION OF LEGAL AGREEMENT



1. SITE DESCRIPTION

- 1.1 The application site comprises the site of the former DuPont HQ building and its associated curtilage. The site is situated close to the junction of Wedgwood Way and Martins Way and is located approximately 2.8km to the north east of Stevenage town centre. The site previously housed the former DuPont offices, a former workshop building and the associated car park but is now being developed for residential development in accordance with the approvals set out below. The site is bounded to the north by industrial premises, to the east by Wedgwood Way and the Chrysalis Park development beyond, a grassed amenity area, cycle track and Martins Way to the south and by a tree belt and then Ely Close beyond to the west. The site is accessed by various access points off of Wedgwood Way to the east.
- 1.2 The application site comprises an area of 1.9 hectares and is broadly rectangular in shape.

2. RELEVANT PLANNING HISTORY

- 2.1 14/00553/CPA Prior approval for the change of use from Offices (Use Class B1 (a)) to 1no. 3 bed, 38no. 2 bed, 33no. 1 bed and 1no. studio residential units. Prior approval not required 25.11.2014.
- 2.2 15/00253/OPM Outline planning application for the demolition of existing buildings and provision of up to 200 new homes, up to 900 sqm of Use classes A1/A2/A3/D1, provision of residential amenity space and associated access and car parking. Outline planning permission granted 11.08.2016.
- 2.3 16/00782/RMM Reserved matters application pursuant to planning permission 15/00253/OPM for the erection of 38 no. two bedroom apartments, 42 no. one bedroom apartments, and 14 no. 3 bedroom dwellings, seeking approval of the appearance, landscaping, layout and scale. Reserved matters approval granted 21.02.2017.
- 2.4 17/00121/COND Discharge of conditions 6 (Code of Construction Practice), 8 (Travel Plan), 10 (Construction Method Statement), 11 (site layout drawing), 13 (tree protection fencing), 15 (scheme of external lighting), 16 (bird boxes), 20 (surface water drainage scheme), 21 (boundary treatment), 22 (materials) and 24 (drainage strategy) attached to outline planning permission 15/00253/OPM. Conditions discharged 21.04.2017.
- 2.5 17/00185/RMM Reserved Matters application pursuant to outline planning permission 15/00253/OPM for 37 no. one bedroom apartments, 67 no. two bedroom apartments and commercial space; seeking the approval of the appearance, landscaping, layout and scale. Reserved matters approval granted 09.06.2017.
- 2.6 17/00333/NMA Non material amendment to planning permission reference number 15/00253/OPM to alter the southern access into the site to utilise existing access. Non material amendment agreed 09.06.2017.
- 2.7 17/00376/FPM Erection of apartment building containing 70 apartments with associated access, parking and landscaping. Planning permission granted 21.12.2017.
- 2.8 17/00550/COND Discharge of condition 2 (Landscaping) attached to planning permission reference number 16/00782/RMM. Condition discharged 11.10.2017.
- 2.9 18/00057/FP Variation of condition 1 (Approved Plans) attached to planning permission reference number 17/00185/RMM. Currently pending consideration.

3. THE CURRENT APPLICATION

- 3.1 This application has been made under S106A part 6(b) of the Town and Country Planning Act 1990 (as amended) to seek permission to vary the wording of the S106 agreement which was attached to planning permission reference 15/00253/OPM. The proposal seeks a number of minor amendments to the wording of the original S106 agreement and also to 'future-proof' the agreement to allow for possible further variation applications without the need for S106 variations, in line with best practice. Specifically, the current application seeks to vary clauses 3.1.3.3, 3.1.4.1, 12.5, schedules 2 and 3 of clauses 5.4 and clause 8 of the nominations agreement.
- 3.2 In relation to clause 3.1.3.3 there are restrictions on the use of the social rented units as affordable housing in clause 3.1.3 and there is also a mortgagee exclusion in the proviso at clause 3.1.3.3. This exclusion provides for at least three months' notice to be given to the Council under sub-clauses (i) and (ii), with up to a further three months from expiry of the notice to "Dispose". This then leaves a period of up to six months which means that the value would be restricted to the existing use value for social housing. The applicant is seeking an amendment to clause 3.1.3.3 such that point (i) refers to one month and (ii) refers to two months giving a total period of three months and not six months as originally specified in the agreement. The applicant has stated that this will ensure that the value is not restricted to the lower social housing existing use value.
- 3.3 Additionally in clause 3.1.3.3, the word "Dispose" is in upper case but it is not a defined term in the agreement so it should simply be in lower case throughout the agreement.
- 3.4 Finally in relation to clause 3.1.3.3, this clause refers to a "RPSH" (Registered Provider of Social Housing) but the applicant states that this unnecessarily duplicates the definition of "Affordable Housing Provider" which is used elsewhere in the agreement. As such it is proposed to delete the unnecessary definition of RPSH and replace references to RPSH with "Affordable Housing Provider" throughout the agreement.
- 3.5 With regard to clause 3.1.4.1 this cross references clauses 3.1.5.2 to 3.1.5.4 but it should refer to clauses 3.1.4.2 to 3.1.4.4. This is just a typographical mistake and can be rectified using the correct references 3.1.4.2 to 3.1.4.4.
- 3.6 In relation to clause 12.5 there is an exclusion from the positive obligations in this clause for the registered provider and its mortgagee but this does not include successors in title. The applicant wishes to include the term "or their successors in title" such that the value is not restricted to the existing use value for social housing.
- 3.7 In the Nominations Agreement at the back of the S106 agreement, schedule 2 and schedule 3 clauses 5.4 and schedule 4 clause 8 do not include administrative receivers or, more importantly, administrators, including housing administrators. Section 103 of the Housing Planning Act 2016 does not cover Nominations Agreements and therefore administrators should be specifically included in the mutual execution of contract otherwise the value will be restricted. As such it is proposed to add the reference to "administrators, including housing administrators, fixed charge receiver (including administrative receiver appointed pursuant to the law of Property Act 1925) administrative receiver or any other person

appointed under any security documentation to enable such mortgagee or charge to realise its security.”

- 3.8 Finally, the applicant has requested that the existing S106 agreement is ‘future-proofed’ to allow for possible variations to the planning permission without the need to formally vary the S106 agreement further. This would then be in line with best practice and can be easily rectified by altering the definition of planning permission to include the phrase “any other planning application covering all or part of the Application Site for any of the uses comprised in the Planning Application whether granted by variation, alteration, substitution, addition or replacement.”

4. PUBLIC REPRESENTATIONS

- 4.1 A site notice has been erected at the site in accordance with Section 5 (1) of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulation 1992. This notice expired on the 27th December 2016 and no representations have been received.

5. CONSULTATIONS

5.1 Housing

- 5.1.1 Agreeable to the proposed amendments.

6. RELEVANT PLANNING POLICIES

6.1 Background to the Development Plan

- 6.1.1 In the determination of planning applications development must be in accordance with the statutory development plan unless material considerations indicate otherwise. For Stevenage the statutory development plan comprises:

- Hertfordshire Waste Development Framework 2012 and Hertfordshire Waste Site Allocations Development Plan Document (adopted 2012 and 2014);
- Hertfordshire Minerals Local Plan 2002 – 2016 (adopted 2007); and
- The Stevenage District Plan Second Review 2004.

The Council has now commenced work on the new Stevenage Borough Local Plan 2011-2031. The draft version of the Plan was published in January 2016 and is used as a material consideration in the determination of all planning applications registered on or after Wednesday 6 January 2016. The Site Specific Policies DPD, the draft Gunnels Wood Area Action Plan (AAP), the draft Old Town AAP, the Pond Close Development SPG, Stevenage West Masterplanning Principles SPG, the Gunnels Wood Supplementary Planning Document and the Interim Planning Policy Statement for Stevenage are no longer material considerations in the determination of all planning applications registered on or after Wednesday 6 January 2016.

- 6.1.2 Where a Development Plan Document has been submitted for examination but no representations have been made in respect of relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted. The converse may apply if there have been representations which oppose the policy. However, much will depend on the nature of those representations and whether there are representations in support of particular policies.

6.1.3 In considering the policy implications of any development proposal the Local Planning Authority will assess each case on its individual merits, however where there may be a conflict between policies in the existing Development Plan and policies in any emerging Development Plan Document, the adopted Development Plan policies currently continue to have greater weight.

6.2 Central Government Advice

6.2.1 In March 2012 the National Planning Policy Framework (NPPF) was published and in doing so it replaced many documents including all Planning Policy Guidance Notes and Planning Policy Statements. The NPPF sets out the Government's planning policies for England and how these are expected to be applied. Annex 1 of the NPPF provides guidance on how existing local plan policies which have been prepared prior to the publication of the NPPF should be treated. Paragraph 215 of the NPPF applies which states that only due weight should be afforded to the relevant policies in the adopted local plan according to their degree of consistency with it.

6.2.2 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is itself a material consideration. Given that the advice that the weight to be given to relevant policies in the local plan will depend on their degree of consistency with the NPPF, it will be necessary in the determination of this application to assess the consistency of the relevant local plan policies with the NPPF. The NPPF applies a presumption in favour of sustainable development.

6.2.3 In addition to the NPPF advice in the Planning Practice Guidance (March 2014) also needs to be taken into account. It states that, where the development plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

6.3 Central Government Guidance

- National Planning Policy Framework (2012) (NPPF)
- Town and Country Planning Act 1990 (as amended)
- Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992
- National Planning Practice Guidance (2014)

7. APPRAISAL

7.1 The main issue for consideration in the determination of this application is whether the proposed variations as set out in section 3 above are acceptable to the Local Planning Authority.

7.2 Land Use Policy Considerations

7.2.1 Through Section 106a part 6(b) of the Town and Country Planning Act (1990), an application can be made to the Local Planning Authority to seek to vary the terms of a Section 106 agreement. This application has therefore been submitted, in accordance with the Town and Country Planning (Modifications and Discharge of Planning Obligations) Regulation 1992, to seek the amendments to the original S106 agreement attached to planning permission reference 15/00253/OPM as described above.

- 7.2.2 The amendments are required as the site has now been purchased by the Housing Association Metropolitan and the original provisions as set out in the S106 agreement are not acceptable to their lenders. The amendments as described in section 3 above are now considered in turn.
- 7.2.3 In relation to clause 3.1.3.3 there are restrictions on the use of the social rented units as affordable housing in clause 3.1.3 and there is also a mortgagee exclusion in the proviso at clause 3.1.3.3. This exclusion provides for at least three months' notice to be given to the Council under sub-clauses (i) and (ii), with up to a further three months from expiry of notice to "Dispose". As set out in paragraph 3.2 above, the applicant is seeking amendments to clause 3.1.3.3 of the existing S106 legal agreement such that point (i) refers to one month and (ii) refers to two months giving a total period of three months and not six months as originally specified in the legal agreement. This issue relates to the ability of the mortgagee to dispose of the site as market housing should the current owner (Metropolitan) go into administration. The proposed amendment would not affect the position of the Council as if Metropolitan were to go into administration then the requirement to provide affordable housing would be lost in any case. As such whether it is three months or six months that the site is restricted to an affordable housing value would not materially affect the position of the Council.
- 7.2.4 Additionally, in clause 3.1.3.3 the word "Dispose" is in upper case but it is not a defined term in the agreement so it should be in lower case throughout the agreement. This is simply a drafting error and its correct lower case use does not raise any issues.
- 7.2.5 Finally in relation to clause 3.1.3.3, this clause refers to a "RPSH" (Registered Provider of Social Housing) but the applicant states that this unnecessarily duplicates the definition of "Affordable Housing Provider" which is used elsewhere in the agreement. The applicant proposes to delete the unnecessary definition of RPSH and replace references to RPSH with "Affordable Housing Provider" throughout the agreement. Again, this is simply a drafting error in the original S106 agreement and this change would not fetter the position of the Council.
- 7.2.6 With regard to clause 3.1.4.1 this cross references clauses 3.1.5.2 to 3.1.5.4 but it should correctly refer to clauses 3.1.4.2 to 3.1.4.4. This is just a typographical mistake and can be rectified using the correct references 3.1.4.2 to 3.1.4.4 and this is not considered to raise any issues.
- 7.2.7 In relation to clause 12.5 there is an exclusion from the positive obligations in this clause for the registered provider and its mortgagee but this does not include successors in title. The applicant wishes to include the term "or their successors in title" such that the value is not restricted to the existing use value for social housing. This proposed amendment is not considered to weaken the position of the Council and can be accepted.
- 7.2.8 In the Nominations Agreement at the back of the S106 agreement, schedule 2 and schedule 3 clauses 5.4 and schedule 4 clause 8 do not include administrative receivers or, more importantly, administrators, including housing administrators. Section 103 of the Housing Planning Act 2016 does not cover Nominations Agreements and therefore administrators should be specifically included in the mutual execution of contract otherwise the value will be restricted. As such, the applicant proposes to add the reference "administrators, including housing administrators, fixed charge receiver (including administrative receiver appointed

pursuant to the law of Property Act 1925) administrative receiver or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security.” Again this issue relates to the issue of disposing the site should the owner go into administration and just ensures that administrators are specifically defined in the nomination agreements. The proposed change does not affect the Council’s position as, again, if the owner has gone into administration the requirement to provide affordable housing will have been lost in any case. As such this amendment can be accepted.

- 7.2.9 Finally, the applicant has requested that the existing S106 agreement is ‘future-proofed’ to allow for possible future variations to the original planning permission without the need to formally vary the S106 agreement further. This would be in line with best practice and can be easily rectified by altering the definition of planning permission to include the phrase “any other planning application covering all or part of the Application Site for any of the uses comprised in the Planning Application whether granted by variation, alteration, substitution, addition or replacement.” Omitting this phrase in the original S106 agreement was a drafting error and it is now considered to be industry best practice to include such a phrase to ensure that future variation applications continue to be bound by the original covenants of the S106 agreement.

8. CONCLUSION

- 8.1 All of the proposed changes to the S106 agreement as described above are either minor in nature that correct original drafting errors or are changes required by the Metropolitan Housing Association to satisfy their lenders and relate to the hypothetical position should the owner of the site go into administration. The changes and are not considered to weaken the Council’s position in any way. As such the proposed changes are considered to be acceptable and it is therefore recommended that this deed of variation can be agreed.

9. RECOMMENDATIONS

- 9.1 That the Committee agree the variation of clauses 3.1.3.3, 3.1.4.1, 12.5, 5.4 of schedules 2 and 4 and clause 8 of schedule 4 of the S106 agreement dated 11 August 2016 and delegate authority to the Assistant Director of Planning and Regulation in conjunction with an appointed Solicitor on behalf of the Council to agree the precise wording of the variations to the original S106 agreement.

10 BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents having the reference number relating to this item.
2. Stevenage District Plan Second Review 1991-2011.
3. Stevenage Borough Local Plan 2011-2031 Publication Draft.
4. Responses to consultations with statutory undertakers and other interested parties referred to in this report.
5. Central Government advice contained in the National Planning Policy Framework March 2012 and National Planning Policy Guidance March 2014.