

<b>Item No.</b>	<b>Report of the Corporate Director of Residents Services</b>
<b>Address:</b>	LAND TO THE EAST OF THE FORMER EMI SITE, BLYTH ROAD
<b>Development:</b>	Demolition of warehouse extension to Apollo House and erection of a part 4, part 5, part 6 and part 7 storey building comprising 132 residential units, cafe (Class A3), community room (Class D2), 5 x workshop units (Class B1, B8 or A2 uses), and associated car parking and landscaping.
<b>LBH Ref Nos:</b>	51588/APP/2011/2253
<b>Drawing Nos:</b>	AS PER ORIGINAL COMMITTEE REPORT
<b>Date applications approved at Committee</b>	Approved by Central and South Planning Committee 14 <sup>th</sup> February 2012

## **1.0 SUMMARY & CONSULTATIONS**

### **Summary**

Due to a number of changing circumstances since negotiation of the original legal agreement the developer of the site has requested a deed of variation to secure the following amendments to the original legal agreement:

- a) correct an erroneous plan attached to the original legal agreement);
- b) alter the affordable housing tenure so that all of the affordable housing units are provided as affordable rent, as opposed to a split of 4 social rent and 10 shared ownership.
- c) release the marketing suite from the requirement to become an incubator unit allowing it to remain as temporary community facility.
- d) alter timescale for the payments of commencement based obligations so that they are to be paid on occupation rather than commencement.

Having regard to the circumstances of the case the changes are consider appropriate, serving to secure the delivery of this key site which would ensure the delivery of the key site to the benefit of regeneration in Hayes while securing appropriate contributions and affordable housing. Approval of the Deed of Variation is therefore recommended.

## Internal Consultees

<b>Housing Officer</b>	No objection, subject to the affordable rent being capped at local housing allowance rates the proposal would secure appropriate provision of affordable housing.
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## 2.0 RECOMMENDATION

**That delegated powers be given to the Head of Planning, Green Spaces and Culture to enter into a deed of variation to the original legal agreement which would secure:**

- 1. That the Council enter into a deed of variation with the applicants under Section 106 of the Town and Country Planning Act 1990 (as amended) or other appropriate legislation to secure the following changes to the original legal agreement:**
  - a) correct an erroneous plan attached to the original legal agreement;**
  - b) alter the affordable housing tenure so that all of the affordable housing units are provided as affordable rent, with rental levels secured at local housing allowance rates;**
  - c) provide flexibility for the marketing suite to remain as a temporary community facility; and**
  - d) alter timescale for the payments of commencement based obligations so that they are to be paid on occupation rather than commencement.**
- 2. That Officers be authorised to negotiate and agree the amended terms for the Affordable Housing Schedule in the Deed of Variation.**

## 3.0 KEY PLANNING ISSUES

The current planning application was lodged on the 20<sup>th</sup> of September 2011 and reported to the Central and South Planning Committee on the 14<sup>th</sup> of February 2012.

The Committee determined to approve the application and the decision was released on the 12<sup>th</sup> of March 2012 after the s106 agreement had been signed.

Since this time a number of factors have changed in relation to the wider development context, including the grant of outline planning permission for the wider redevelopment of the Old Vinyl Factory, the successful use of the

marketing suite on Blyth Road as a community facility for a period of time and this particular development been taken on by a new developer (Be: here). Be: here specialise in the provision of private rented accommodation and therefore have a significantly different financial model to traditional developers.

As a result of these changes in circumstance a request have been received to alter some detailed aspects of the original legal agreement which are summarised below:

- a) correct an erroneous plan attached to the original legal agreement);
- b) alter the affordable housing tenure so that all of the affordable housing units are provided as affordable rent, as opposed to a split of 4 social rent and 10 shared ownership.
- c) release the marketing suite from the requirement to become an incubator unit allowing it to remain as temporary community facility.
- d) alter timescale for the payments of commencement based obligations so that they are to be paid on occupation rather than commencement.

It should be noted that the requests labelled a), b) and d) are relate to detailed aspects of the legal agreement and delegated authority was granted to the Head of Planning, Green Spaces and Culture to negotiate and agree such matters under the original resolution. However, the request is being reported in full so that a full understanding of the implications of the changes is available.

The applicant has provided additional financial information and information on the ongoing use of the marketing suite for community use in order to support the requested amendments.

The plan number correction simply seeks to ensure that the correct plan is included within the legal agreement. This amendment is necessary and raises no planning issues.

The amendment to the affordable housing would alter the tenure from 4 social rented and 10 shared ownership units to 14 affordable rented units. The units allocated for affordable housing remain unchanged, so the same size and mix of accommodation would be provided. It is noted that affordable rented units are sometimes of concern as the national definition of such accommodation allows rent levels which can be unaffordable in some borough, however the proposal addresses this issue as the amendment to the legal agreement would secure the rent level of the affordable rented units at local housing allowance. The affordable rented units provided would therefore be genuinely affordable for residents of the borough.

The proposed provision of affordable rented units is also considered to better meet the boroughs most immediate needs in terms of affordable housing.

In relation to the marketing suite on the wider old vinyl factory site, the original legal agreement south that this be provided as incubator start up unit so as to

provide an initial boost to employment opportunities prior to the delivery of employment floorspace within the wider old vinyl factory site.

Circumstances have changes since this agreement was originally negotiated in that there is now a planning permission for the redevelopment of the wider old vinyl factory site and that negotiation between the Local Planning Authority and developer alongside a loan from the Mayor of London has meant that employment generating floorspace within this development is being brought forward faster than was initially anticipated.

In addition, the former marketing suite was transformed to The Vinyl lounge in 2012, providing a community facility and a creative hub for the local community. In October 2012, Will Self Professor of Contemporary Thought at Brunel University and celebrated author, kicked off the first of a series of seminars focussing on contemporary innovation, culture and thinking. The space has also be used for topical and educational sessions on a variety of topics include an event called 'Our Hayes Our Future' which allowed students to share their views of Hayes as it currently stands.

The spaces has been booked for large scale community events by a number of organisations and for a number of purposes including the Met Film School, Rackspace, Kick-start youth music project, REAP (Refugees in Effective and Active Partnership), Creative Writing Workshops, Horn of Africa Youth Association, Job Fairs, Pre-school training, MEND project training, GCDA training, and Challenge Network. The space is used by many community organisations on a weekly basis and since January 2013 has provided a facility which has been used by community groups for over 326 hours with a number of the events focusing on training and employment.

Given that circumstances have changes such that employment generation is being brought forward without the conversion of the marketing suite and that in its current form the building is providing a valued community facility. It is considered that amending the agreement to enable its retention as a community facility would better meet the needs of the community and promote the positive regeneration of the area.

The fourth change seeks to alter the timing for payment of contributions so that they are provided on occupation rather than prior to commencement of the development. In considering this matter it is important to note that it is not uncommon for such payments to be phased or to be paid much later in the development process.

The current agreement secures a mixture of staged payments for the differing heads of terms with the majority to be paid in 3 equal instalments throughout the build period. However, the financial model that informed the discussions at the time was based on a traditional business model which anticipated that sales income would be generated through receipt of deposits throughout the duration of the construction process thereby helping to support the cash flow and offset interest payments required to deliver the scheme.

The development is now to be delivered by Be: here who specialise in the provision of property for the private rental Sector and affordable rented accommodation. Due to the nature of this development there is no receipt of any payments between commencement of development and the letting of the first residential units. This means that there is no income received through the development stage and significantly impacts on the financial model as interest is incurred throughout the entire construction phase. The applicant has provided financial information to demonstrate the impact on viability arising from this model.

The alteration would mean that the Local Planning Authority would not receive funding as early in the build process, theoretically this means the authority is not in a position to deliver enhanced facilities until a later stage. However, in reality the spending of S106 monies to provide enhanced facilities is a complex process linked to the timing of other Council projects and pooled funding from various developments. In reality it would be rare for enhanced facilities to be provided until some point after the occupation of a new development, and the current phasing arrangement would mean this situation arose in any event.

The Local Planning Authority secured the maximum possible level of affordable housing on the original application and development viability is important to secure delivery of this important site. Accordingly, the shortfall arising from the differing financial model must be accommodated and it is considered that delaying payment of the obligations is preferable to the alternative which would likely manifest in a necessary reduction of affordable housing delivery at the site. The alterations to the phasing of payments is therefore considered acceptable.

Approval of the requested alterations to the legal agreement is recommended.

#### **4.0 OBSERVATIONS OF BOROUGH SOLICITOR**

##### General

Members must determine planning applications having due regard to the provisions of the development plan so far as material to the application, any local finance considerations so far as material to the application, and to any other material considerations (including regional and national policy and guidance). Members must also determine applications in accordance with all relevant primary and secondary legislation.

Material considerations are those which are relevant to regulating the development and use of land in the public interest. The considerations must fairly and reasonably relate to the application concerned.

Members should also ensure that their involvement in the determination of planning applications adheres to the Members Code of Conduct as adopted

by Full Council and also the guidance contained in “Probity in Planning, 2009”.

#### Planning Conditions

Members may decide to grant planning consent subject to conditions. Planning consent should not be refused where planning conditions can overcome a reason for refusal. Planning conditions should only be imposed where Members are satisfied that imposing the conditions are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. Where conditions are imposed, the Council is required to provide full reasons for imposing those conditions.

#### Planning Obligations

Members must be satisfied that any planning obligations to be secured by way of an agreement or undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 are necessary to make the development acceptable in planning terms. The obligations must be directly related to the development and fairly and reasonably related to the scale and kind to the development (Regulation 122 of Community Infrastructure Levy 2010).

#### Equalities and Human Rights

Section 149 of the Equalities Act 2010, requires the Council, in considering planning applications to have “due regard” to the need to eliminate discrimination, advance equality of opportunities and foster good relations between people who have different “protected characteristics”. The “protected characteristics” are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The requirement to have “due regard” to the above goals means that members should consider whether persons with particular “protected characteristics” would be affected by a proposal when compared to persons who do not share that protected characteristic. Where equalities issues arise, members should weigh up the equalities impact of the proposals against the other material considerations relating to the planning application. Equalities impacts are not necessarily decisive, but the objective of advancing equalities must be taken into account in weighing up the merits of an application. The weight to be given to any equalities issues is a matter for the decision maker to determine in all of the circumstances.”

Members should also consider whether a planning decision would affect human rights, in particular the right to a fair hearing, the right to respect for private and family life, the protection of property and the prohibition of discrimination. Any decision must be proportionate and achieve a fair balance between private interests and the public interest.

## **5.0 OBSERVATIONS OF THE DIRECTOR OF FINANCE**

The report indicates that the costs of the development will be fully met by the developer, and the developer will make a Section 106 contribution to the

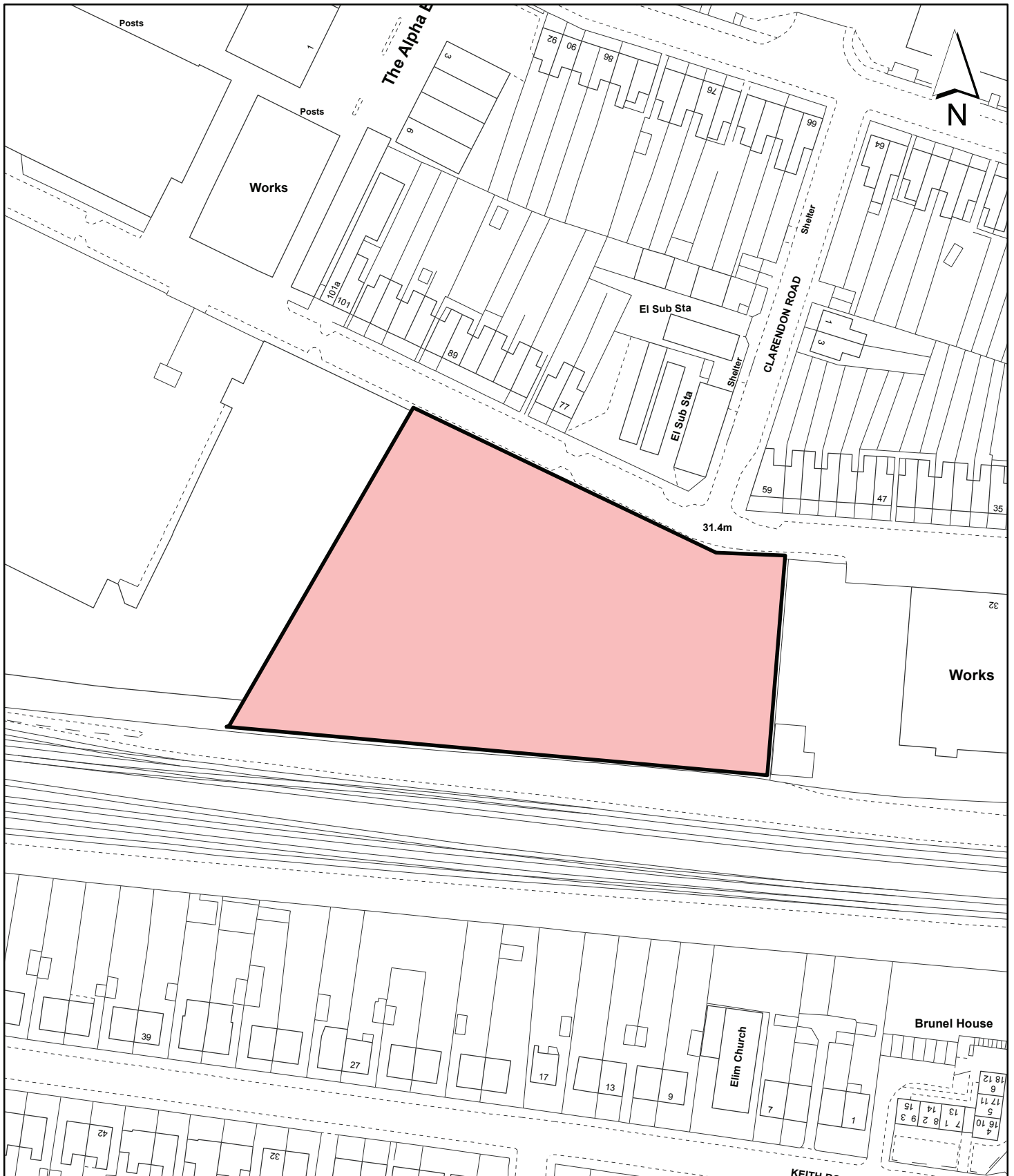
Council towards associated public facilities. The developer will also meet the reasonable costs of the Council in the preparation of the Section 106 agreement and any abortive work as a result of the agreement not being completed. Consequently, there are no financial implications for this Planning Committee or the Council.



## **6.0 CONCLUSION**

Having regard to the circumstances of the case the changes are consider appropriate, serving to secure the delivery of this key site which would ensure the delivery of the key site to the benefit of regeneration in Hayes while securing appropriate contributions and affordable housing. Approval of the Deed of Variation is therefore recommended.

**Contact Officer:** ADRIEN WAITE

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<p><b>Notes</b></p> <p> Site boundary</p> <p>For identification purposes only.</p> <p>This copy has been made by or with the authority of the Head of Committee Services pursuant to section 47 of the Copyright, Designs and Patents Act 1988 (the Act).</p> <p>Unless the Act provides a relevant exception to copyright.</p> <p>© Crown copyright and database rights 2013 Ordnance Survey 100019283</p>	<p>Site Address</p> <p><b>Land East of the Former EMI Site Blyth Road, Hayes</b></p>		<p><b>LONDON BOROUGH OF HILLINGDON</b></p> <p><b>Residents Services</b></p> <p>Civic Centre, Uxbridge, Middx. UB8 1UW Telephone No.: Uxbridge 250111</p>
	<p>Planning Application Ref:</p> <p><b>51588/APP/2011/2253</b></p>	<p>Scale</p> <p><b>1:1,250</b></p>	 <p><b>HILLINGDON</b> LONDON</p>
	<p>Planning Committee</p> <p><b>Major Application</b></p>	<p>Date</p> <p><b>March 2014</b></p>	