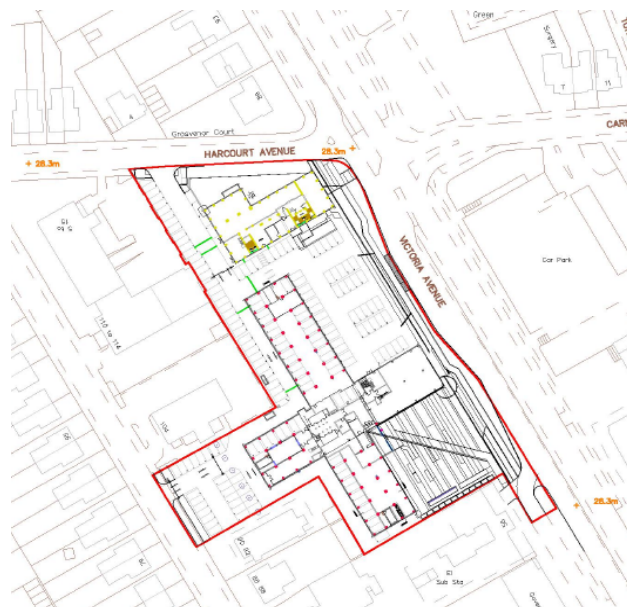


<b>Reference:</b>	18/00885/DOV	
<b>Application Type:</b>	Deed of Variation	
<b>Ward:</b>	Victoria	
<b>Proposal:</b>	Modification of Unilateral Undertaking dated 24th September 2007 (as amended by Deed of Variation dated 25th February 2016) pursuant to planning application 06/00598/FUL, to allow a change in the tenure of the affordable housing within Richmond House to either Shared Ownership or Intermediate Market Rent	
<b>Address:</b>	Richmond House, 73 Victoria Avenue, Southend-On-Sea, Essex	
<b>Applicant:</b>	Notting Hill Genesis	
<b>Agent:</b>	G L Hearn	
<b>Consultation Expiry:</b>	26 <sup>th</sup> June 2018	
<b>Expiry Date:</b>	5 <sup>th</sup> July 2018	
<b>Case Officer:</b>	Amanda Rogers	
<b>Recommendation:</b>	<b>Members AGREE A MODIFICATION OF THE UNILATERAL UNDERTAKING</b> dated 24 <sup>th</sup> September 2007 (as amended by Deed of Variation dated 25 <sup>th</sup> February 2016) pursuant to planning application 06/00598/FUL, to allow a change in the tenure of the affordable housing within Richmond House to either Shared Ownership or Intermediate Market Rent on the basis of the terms set out in this report	



## 1 The Proposal

- 1.1 Planning permission was granted at appeal on 30<sup>th</sup> July 2007 to (06/00598/FUL) to *“Redevelop site with part4/part8/part10/part11/part12 storey buildings comprising 280 flats with commercial uses at ground floor, provide 166 car parking spaces, cycle storage for 288 cycles, amenity space, refuse storage and form access onto Harcourt Avenue and Baxter Avenue.”*
- 1.2 This permission is subject to a Unilateral Undertaking (‘S.106’ agreement) 24<sup>th</sup> September 2007 (as amended by Deed of Variation dated 25<sup>th</sup> February 2016) to secure the following:
- **52 affordable housing units (Shared Ownership)**
  - Affordable housing contribution (£474,776)
  - Public Accessible Area
  - Management Strategy (Refuse, Car Parking, Public Access Area)
  - Victoria Avenue Bus Shelter Improvement Works (£20,000)
  - Victoria Avenue Improvement Works plus Maintenance Sum of £5,455 per year for 3 years following adoption (£16,365)
  - TRO and underpass improvements (£4,364)
  - Public Art
  - Residents Community Facility
  - Travel Plan

In the case of financial contributions these are all subject to inflation as set out in the S.106. Only the affordable housing provision highlighted in **bold** is the subject of this application. All other S.106 contributions set out above remain unchanged.

- 1.3 The application has been submitted on behalf of Notting Hill Genesis (NHG), who now own Richmond House (freehold retained by Randall Watts Construction Ltd who have developed the former Heath and Carby House site). Under section 106A of The Town and Country Planning Act 1990 (as amended) (TCPA) the applicant is proposing to have flexibility over a 5 year period for **30** unsold units (as at 13<sup>th</sup> August 2018) out of the secured 52 Shared Ownership dwellings to be either Shared Ownership or Intermediate Market Rent (IMR). When the application was submitted it originally requested that 43 unsold units had the flexibility to convert to IMR. However, a further 13 units have been sold since May 2018.

## 2 Site and Surroundings

- 2.1 The application site is in a prominent gateway location within the town centre and is surrounded by residential and commercial uses, including a significant number of former office buildings that have been or are being converted into residential use under permitted development rights.
- 2.2 The development is near to completion and partly occupied. The site incorporates Beaumont Court to the south (open market housing) and Richmond House to the north adjacent to Harcourt Avenue (affordable housing).

2.3 In accordance with the terms of the S.106 agreement set out above, an affordable housing contribution £474,776 (to be index linked from February 2016) is payable prior to occupation of the 250<sup>th</sup> residential unit in both Beaumont Court and Richmond House. And as at 13<sup>th</sup> August 2018, of the 52 Shared Ownership dwellings in Richmond House, the following units were sold/unsold:

- SO units sold (total no. 22):- 13, 19, 51, 48, 31, 6, 16, 28, 17, 40, 18, 9, 15, 24, 44, 21, 14, 25, 50, 10, 5, 7
- SO units unsold and to be potentially converted to IMR (total no. 30):- 8, 1, 2, 3, 4, 11, 12, 20, 22, 23, 32, 26, 27, 29, 30, 33, 34, 35, 36, 37, 38, 39, 46, 41, 42, 43, 45, 52 47,49

### 3 Planning Considerations

3.1 The material planning consideration in respect of this application is whether or not a change in affordable housing tenure from Shared Ownership to Intermediate Market Rent (IMR) would continue to serve the previously agreed planning purpose in the proposed modified way, and would meet the objectives of current planning policies.

3.2 Section 106A of the TCPA allows for an application to be made to a local authority to consider a proposed modification or discharge of a planning obligation.

3.3 Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. A planning obligation is enforceable as a contract and whether it is varied or not is at the local authority's discretion. Where there is no agreement to voluntarily renegotiate, and the planning obligation is over 5 years old, an application may be made to the local planning authority to change the obligation where it "*no longer serves a useful purpose*" or would continue to serve a useful purpose in a modified way (see Section 106A of the TCPA).

3.4 The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (as amended) set out the procedure for dealing with applications to modify or discharge a planning obligation that is more than 5 years old.

### 4 Appraisal

**The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG), Southend Core Strategy (2007) strategic objective SO7, and policies KP1, KP2, KP3 and , CP8; Development Management Document (2015) policy DM7; and A Guide to Section 106 & Developer Contributions (2015)**

4.1 In relation to planning obligations, paragraph 57 of the NPPF states the following:

*“It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.”*

And the NPPG requires that *“In decision making, the cost implications of all relevant policy requirements, including planning obligations...should be taken into account.”* Hence, in this instance it is reasonable for the local planning authority to reconsider the planning obligation relating to this scheme on viability and deliverability grounds due to a number of factors that are set out below.

4.2 Paragraph 62 of the NPPF sets out how planning policies should specify the type of affordable housing required applying the following definitions relating to different forms of affordable housing tenure:

**Affordable housing:** *housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:*

**a) Affordable housing for rent:** *meets all of the following conditions: (a) the rent is set in accordance with the Government’s rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).*

**b) Starter homes:** *is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household’s eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.*

**c) Discounted market sales housing:** *is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.*

**d) Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.

- 4.3 Intermediate Market Rent (IMR) is not an affordable housing product that the Council has previously secured through S.106 agreements and there is no local development plan policy for this type of product in principle. Paragraphs 4.9 to 4.16 and Policy DM7 of the Development Management Development Plan Document relate to Affordable Tenure. This policy recognises three main types of affordable housing, which may be delivered to meet the Core Strategy affordable housing target:- social rented, intermediate affordable housing (as shared ownership), and affordable rent (up to 80% of market rent and capped by 'Homes England'). However, the NPPF now supports a wider variety of affordable rent products providing the affordable housing units are let "*at least 20% below local market rents (including service charges where applicable)*"; hence this proposal has been given careful consideration in this context. In addition, a key objective of the Council's Core Strategy is to deliver affordable housing to meet a known need. It is with this in mind that the Council has considered a change in tenure of the affordable housing in Richmond House as the Council does not wish to see vacant dwellings in a time of housing need.
- 4.4 Although not directly relevant in this instance, as NHG are not offering a financial contribution in lieu of on-site provision, the local Corporate Policy "*Interim Affordable Housing Policy – September 2016*" is pertinent to the current considerations. The policy reflects the fact that over the last few years economic pressures have meant that Social Rent and Affordable Rent has proved particularly difficult to deliver and therefore the Council has been working with Registered Providers to find different ways of meeting the Borough's affordable housing need.
- 4.5 Further definitions, to assist for comparison purposes, are set out below:

**Affordable Rent:** *Housing that is let by local authorities or Registered Providers to eligible households and which is subject to rent controls that require a rent of no more than 80% of the local market rent capped at local housing allowance levels (including service charges)*"

**Intermediate Market Rent (IMR):** *Housing that is let by local authorities or Registered Providers to eligible households that satisfy the Local Connection Criteria and which is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges)."*

*[N.B. Officers have negotiated the link to the Council's Local Connection Criteria as this is not a general requirement but represents a significant benefit over Shared Ownership for which there is no such local requirement in terms of potential purchasers]*

**Shared Ownership Dwelling:** *Affordable housing to be made available by a Registered Provider by means of a Shared Ownership Lease”*

**Shared Ownership Lease:** *A lease or sub-lease of an affordable housing unit whereby no less than twenty five per cent (25%) and no more than seventy five percent (75%) of the equitable interest in the Affordable Housing Unit is to be paid by the tenant or sub-tenant upon the initial completion of such lease or sub-lease or raised by mortgage or charge from a reputable bank or building society and which lease or sub-lease shall also include arrangements for rent but enable him to acquire the balance of the legal and equitable interest in the affordable housing unit at a future date or dates”*

4.6 In support of the submission, the applicant initially submitted the following information:

- Covering letter setting out reasons for proposal
- Lender Report by Censeo Financial (a financial services company specialising in arranging mortgages)
- GL Hearn viability assessment (Shared Ownership and Intermediate Market Rent Comparison)
- Accommodation Schedule including estimated Shared Ownership Market Values as at June 2018

4.7 Officers have since sought further evidence to assure the Council that the proposed IMR product is comparable to Shared Ownership in terms of affordability and security to the future occupiers.

4.8 Further information/comment has also been received from the applicant in respect of the following points raised during the course of considering this application:

- Evidence from potential lenders in respect of being unable to secure mortgages.
- Evidence from estate agents in respect of the market values of the properties.
- Details regarding the value of the initial equity sales from the Shared Ownership units.
- Table of Monthly Outgoings comparing Shared Ownership to IMR in terms of affordability for occupants.
- Details of sales and marketing activities.
- Plan in terms of the end of 5 year tenancy process for IMR occupants.

4.9 Central to NHG’s argument is the presumption that lenders are unwilling to provide mortgages to Shared Ownership units. The Lender Report provided highlights limited reasoning but common objections including:

- Over exposure to the Shared Ownership market
- Over 5 storeys in height
- Conversion from a former office building
- Mono tenure
- High ground rent

Whilst officers are aware of similar situations where mortgages have been difficult to obtain in mono tenure schemes it is surprising that the situation was not anticipated by a large and experienced Registered Provider such as NHG, and therefore discussed at the application stage. However, this is not considered to materially affect the outcome of this application as NHG have demonstrated how IMR is comparable to Shared Ownership in terms of affordability, and the proposed flexible tenure is only a temporary arrangement until Shared Ownership mortgages can be secured for all of the affordable units in Richmond House.

- 4.10 In 2016 the Council accepted a substantially reduced affordable housing contribution to that secured in 2007 on financial viability grounds. A reduced contribution of 52 Shared Ownership units plus £474,776 affordable housing contribution was agreed instead of the originally secured 30% affordable housing (either social rented or intermediate (shared ownership)). Hence, considerations in respect of the proposed further change are twofold:- i) would the change in affordable housing tenure from Shared Ownership to IMR adequately meet local housing need; and ii) would the proposed S.106 modification increase the viability of the development such as to warrant discussion around further affordable housing provision.
- 4.11 In this instance, as the affordable housing units have already been agreed as Shared Ownership, it would not be reasonable for the Council to require the affordable housing to revert back to Affordable Rent (i.e. with rents capped at local housing allowance levels). Hence, consideration relates only to whether IMR is a suitable alternative product to Shared Ownership.
- 4.12 Given the concession that has previously been made in relation to the affordable housing provision within this development, the Council has sought expert advice on the matter from BPS Chartered Surveyors (BPS) to establish if the proposed S.106 modification increases or decreases the value of the development. BPS has undertaken a valuation of the scheme based on the proposal, and prepared a Shared Ownership and IMR Comparison Report to test NHG's assertion that the value of the development significantly decreases with the change in tenure. The conclusion of this report is that the proposed change in tenure will result in a less valuable property for NHG.
- 4.13 Aside from the conclusion that IMR is a less valuable product for NHG, and evidence to demonstrate that IMR rents will be lower than Shared Ownership rents, officers are keen to ensure that further costs are not incurred by IMR tenants in terms of service charges to cover repairs/management. Therefore, it is proposed that any Deed of Variation clearly sets out that the IMR rents are inclusive of service charge and only adjusted on an inflation basis (also to be set out in any Deed of Variation).
- 4.14 The Council has received evidence to demonstrate that IMR rents will be lower than Shared Ownership rents. However, officers have expressed some potential reservations to NHG in terms of long term affordability and in relation to whether it is realistic that IMR tenants, who are benefiting from lower rents, will use this as an opportunity to raise a sufficient deposit to be able to convert to a Shared Ownership dwelling.

To ensure that occupants are adequately supported and encouraged in this respect, it has been agreed that NHG will submit annual reports including details of their tenant engagement and any incentives/assistance offered in relation to tenants securing a shared ownership mortgage to purchase the property. This is considered adequate to address this concern.

4.15 Following detailed negotiations with officers, the applicant has agreed to the heads of terms set out below for any Deed of Variation completed pursuant to this application. This includes clauses that will protect tenants in terms of affordability and end of tenancy arrangements i.e. to avoid unreasonable evictions after the 5 year flexibility period ends. The terms also ensure that the situation remains under review by the Council. These are as follows:

- For a period of 5 years from the date of any Deed of Variation, 30 specific units within Richmond House that are currently unsold can be occupied as either Shared Ownership or IMR dwellings.
- Intermediate Market Rent (IMR) to be defined as *"Housing that is let by local authorities or Registered Providers to eligible households that **satisfy the Local Connection Criteria** and which is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges)."* The Council's Local Connection Criteria will be appended to any Deed of Variation.
- Agreed IMR rents that are only adjusted on the basis of the maximum annual rent increase being the Consumer Price Index (as published by the Office for National Statistics) plus 1% to ensure affordability. This is similar to the Homes England provision for Rent to Buy.
- Shared Ownership units only to be released on a standard Red Book Valuation price basis at the time of sale (i.e. stable and reasonable purchase prices based on a number of local comparable prices and not subject to fluctuations caused by bidding wars etc.) to ensure affordability.
- Annual Reports to be provided to the Council during the 5yr flexible period to cover:
  - Update on rents and Shared Ownership Release Prices
  - Details of IMR conversions to Shared Ownership
  - Summary of tenant engagement (including information re: IMR tenants' intentions to purchase units and their ability to do so)
- Inclusion of details regarding the end of tenancy process:
  - After the 5 year period, any existing tenants can continue to occupy units on an IMR basis until such time as the tenancy is either terminated or fails to be renewed; should there be a change in tenancy after the 5 year flexible period then any units that are re-let or void must revert to Shared Ownership units.
  - At the end of the 5 year flexible period NHG must provide a report to the Council to include an outline of the current position in respect of IMR/SO numbers and an updated strategy regarding existing IMR tenants who have not yet switched to Shared Ownership. Further reporting may be required hereafter.
- After the 5 year flexible period NHG must serve notice to the Council each time there is a change in tenancy of any remaining IMR units.
- A requirement for NHG to meet with the Council if deemed necessary after the 5 year flexible period to discuss the contents of the last annual report and future strategy for Intermediate Market Rent to Shared Ownership Dwelling conversions. Any Deed of Variation will also make provisions for subsequent annual reporting as deemed necessary to ensure maximum effort is made in terms of securing IMR to Shared Ownership conversions.



- 4.16 Aside from the tenure of the affordable housing, all other contributions set out in paragraph 1.2 remain unchanged from the original S.106 agreement (as previously varied).

## **5 Conclusion**

- 5.1 As set out previously, the Council does not wish to see vacant dwellings in a time of housing need. And it is considered that sufficient evidence has been provided to demonstrate that if the units were to remain as only Shared Ownership in the short term they are likely to remain vacant. The terms negotiated in relation to the flexible tenure are therefore deemed to be the best possible outcome on this occasion.
- 5.2 On the basis of the terms set out in paragraph 4.15 above, it is considered reasonable to agree the proposed modification to the S.106 agreement 24<sup>th</sup> September 2007 (as amended by Deed of Variation dated 25<sup>th</sup> February 2016) pursuant to planning permission ref. 06/00598/FUL. This will allow 30 out of the 52 affordable housing units in Richmond House to be occupied on either a Shared Ownership or IMR basis for a period of 5 years from the date any Deed of Variation pursuant to this application is completed.

## **6 Planning Policy Summary**

- 6.1 National Planning Policy Framework (NPPF) 2018 and National Planning Practice Guidance (NPPG).
- 6.2 Development Plan Document 1 (2007): Core Strategy strategic objective SO7, Policies KP1 (Spatial Strategy), KP2 (Development Principles), KP3 (Implementation and Resources) and CP8 (Dwelling Provision).
- 6.3 Development Management Document (July 2015): DM7 (Dwelling Mix, Size and Type).
- 6.4 Supplementary Planning Document 2: A Guide to Section 106 & Developer Contributions (2015).

## **7 Representation Summary**

- 7.1 Planning has liaised with **Strategic Housing** throughout the negotiations in relation to this application and they concur with the recommendation.

## **8 Public Consultation**

- 8.1 Site notice posted.
- 8.2 One letter of representation received on behalf of the freeholder noting that certificate of ownership was incorrect – *this has now been corrected and the appropriate notification sent to the freeholder of the application site.*

## 9 Member Comments

- 9.1 Councillor Borton requested that this application be determined by Development Control Committee.

## 10 Relevant Planning History

- 10.1 25<sup>th</sup> February 2016 (15/02019/S106BA): Modification of planning obligation (Section 106 agreement) dated 24<sup>th</sup> September 2007 pursuant to application 06/00598/FUL allowed on appeal to vary the requirement to provide affordable housing on the site – **agreed**.
- 10.2 25<sup>th</sup> February 2016 (15/02020/DOV): Modification of planning obligation (Section 106 agreement) dated 24<sup>th</sup> September 2007 pursuant to application 06/00598/FUL allowed on appeal to vary relevant clauses and definitions pertaining to the delivery of affordable housing on the site and the proposed Victoria Avenue Improvement Works – **agreed**.
- 10.3 30<sup>th</sup> July 2007 (06/00598/FUL): **Conditional planning permission granted** at appeal to *“Redevelop site with part4/part8/part10/part11/part12 storey buildings comprising 280 flats with commercial uses at ground floor, provide 166 car parking spaces, cycle storage for 288 cycles, amenity space, refuse storage and form access onto Harcourt Avenue and Baxter Avenue.”*

## 11 Recommendation

- 11.1 **Members are recommended to AGREE A MODIFICATION OF THE UNILATERAL UNDERTAKING** dated 24<sup>th</sup> September 2007 (as amended by Deed of Variation dated 25<sup>th</sup> February 2016) pursuant to planning application 06/00598/FUL, to allow a flexibility in the tenure of 30 of the affordable housing units within Richmond House as either Shared Ownership or Intermediate Market Rent on the basis of the terms set out in paragraph 4.15 of the committee report.