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17 January 2011

To: All Members of the Planning Committee

Dear Member,

Special Planning Committee - Monday, 24th January, 2011

I attach a copy of the following report for the above-mentioned meeting which was not available at the time of collation of the agenda:

5. HALE VILLAGE, TOTTENHAM HALE, N17 - REVISING THE S106 AGREEMENT TO FUND LOCAL INFRASTRUCTURE WHILE SUPPORTING CONTINUED DEVELOPMENT (PAGES 1 - 26)


Report of the Assistant Director, Planning and Regeneration to recommend that the Hale Village s106 legal agreement signed in 2007 be revised.

Yours sincerely

Helen Chapman
Principal Committee Co-Ordinator

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Agenda item:



MARC DORFMAN 17-1-11

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Special Planning Committee**24 January 2011**

Report Title: **Hale Village, Tottenham Hale, N17 – Revising the s106 agreement to fund local infrastructure while supporting continued development**

Report of: **Marc Dorfman, Assistant Director Planning & Regeneration**

Wards(s) affected: **Tottenham Hale**

Report for: **Planning Committee**

1. Purpose

- 1.1 Granted planning permission in 2007 following the signing of a s106 legal agreement, the sharp downturn in the housing market has created major financial difficulties for the Hale Village development in Tottenham Hale. One of the consequences of this is that most of the 'triggered' funding obligations in the s106 funding obligations have not yet been paid.
- 1.2 This report recommends that the Hale Village s106 legal agreement signed in 2007 should be revised to secure the payment of much of what is currently owed and either re-profile or change the basis on which remaining payments will be made.

2. Summary

- 2.1 Outline planning permission for the residential-led mixed use redevelopment of the former GLS Depot site in Tottenham Hale – now known as Hale Village - was granted subject to conditions and signing a s106 agreement. That agreement was signed in October 2007 just prior to the sharp downturn in the housing market that has created major financial difficulties for this scheme.
- 2.2 The s106 legal agreement commits the developer to a range of obligations including the payment of £7.77m.(subject to indexation) towards local infrastructure. Due to the housing market downturn and the resulting very difficult cashflow position, the lead developer, Hale Village Properties, has only been able to pay a small part of the s106 funding obligations as they have been triggered by construction progress – £3.44m. of the original s106 sums is currently owed to the Council.
- 2.3 Based on an analysis of the financial position that has been verified by the Homes and Communities Agency, this report recommends that the Hale Village s106 legal agreement signed in 2007 be revised to:
- secure a firm date for payment of a large part of the 'triggered' funding obligations that are currently owed;
 - re-profile some of the remaining funding obligation payments;
 - make some of the funding obligation payments subject to achieving increased open market residential sales values;
 - clarify that specific plot leaseholders should have proportionate liability for some of the funding obligations; and
 - incorporate other appropriate amendments to reflect scheme changes and updated requirements.

3. Recommendations

It is recommended that the Committee:

- 3.1 notes the reasons for needing to revise the s106 funding and other obligations set out in para. 4.7 and the conclusion in Section 9 of this report ;
- 3.2 approves a Deed of Variation to the s106 agreement dated 9 October 2007 relating to land at Hale Village, Ferry Lane, London N17 based on the terms as outlined in this report and in more detail in the heads of terms attached as Appendix 1 and incorporating an agreement under s278 Highways Act 1980 to complete site access and junction improvements;
- 3.3 following the Committee's decision on 26 October 2010 to grant planning permission subject to a s106 legal agreement for two 10-storey residential buildings at Pavilions 1 & 2 in Hale Village (Appln. No. HGY/2010/1427), approves the incorporation into that agreement of the principle of proportionate liability for the Education, Transport, Local Transport Infrastructure and Bus Service Enhancement Contributions and for 50% of the Tottenham Hale Urban Centre Masterplan Contributions consistent with the proposed terms of the Deed of Variation in Recommendation 3.2; and
- 3.4 authorises the Assistant Director of Planning & Regeneration, in conjunction with the Head of Legal Services and in consultation with the Chair of the Committee, to finalise the detailed terms of the Deed of Variation and the s106 agreement approved in Recommendation 3.2 and 3.3, including consequential and any other changes necessary following continuing negotiations and detailed drafting, and to approve the completion of those agreements.

Report Authorised by:

Marc Dorfman
Assistant Director Planning & Regeneration

Contact Officer: **Marc Dorfman, Assistant Director Planning & Regeneration**
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4. Background & Current Position

- 4.1 Hale Village (the former GLS Depot site) just to the east of Tottenham Hale Station is part of a key regeneration area in the London Plan and the Council's Unitary Development Plan. The Hale Village development will deliver much-needed new homes and jobs securing regeneration benefits for the wider area and provide a catalyst for further development. The original outline planning permission in 2007 allows up to 1,210 homes, retail and office floorspace, a hotel and healthcare centre plus a site for a school. A s106 legal agreement is linked to the outline planning permission. That agreement provides, among other things, for the payment of £7.77m. (see para. 5.1 below for updated figures) towards the provision of local infrastructure to support the new development:

- **Education Contribution (£1m.)** – to fund additional school capacity;
- **Transport Contribution (£1m.)** – towards alterations to Tottenham Hale Gyrotory, bus service improvements and interchange enhancements at Tottenham Hale Station;
- **Local Transport Infrastructure Contribution (£440,000)** – for site access and pedestrian safety improvements;
- **Bus Service Enhancement Contribution (£330,000)** – for local bus service improvements
- **Tottenham Hale Urban Centre Masterplan Contribution (£5m.)** – for community and environmental infrastructure improvements identified in the Tottenham Hale Urban Centre Masterplan.

- 4.2 Major investment in site infrastructure was needed by the developer (Lee Valley Estates) funded by a bank loan and risk capital to prepare this brownfield site for development. Construction of a block of student accommodation started in 2008 but this coincided with the sharp downturn in the housing market making the provision of homes on the site a major challenge. This has created major financial difficulties for the Hale Village scheme.
- 4.3 One of the consequences of this is that, while that s106 legal agreement requires £7.77m. (subject to indexation) to be paid towards local infrastructure, the lead developer, Hale Village Properties, has not been able to make the required payments as they have been triggered by construction progress – £3.44m. of the original (non-indexed) total sum is currently owed to the Council. (One funding obligation of £380,000 was paid to the Council in 2007/8 towards the administration and monitoring of the s106 agreement).
- 4.4 Construction progress itself has only been possible with the direct intervention of the Homes and Communities Agency (HCA). In addition to providing additional social housing grant to Newlon Housing Trust to provide more affordable homes, the HCA has invested an extra £10m. by granting a loan to the scheme's lead developer and by taking an equity share in the whole development. The number of affordable homes in the scheme is now 542 (compared with the original 321 flats) but, with the lower sales values in the private housing market, the financial viability of the whole development remains difficult.
- 4.5 The Council has agreed two previous Deeds of Variation to the s106 agreement granting exemptions to specific s106 funding obligations for specific plot leaseholders (Unite on Block W and Newlon Housing Trust on Blocks C2, NW1 & SE) to support their involvement in the scheme. A further Deed of Variation was agreed by the Committee in January 2010 to limit Newlon Housing Trust's liability to the s106 funding obligations on a proportionate basis on Block C1 & N – however, this has not been executed pending agreement to the wider changes that are the subject of this report.
- 4.6 The student accommodation in Block W (see the site plan at Appendix 1) was occupied in September 2009 and the 542 affordable flats under construction will start to be occupied from the middle of this year. Subject to completing the recommended revisions to the s106 agreement, the first open market homes should start to be built in the Spring of this year together with (subject to the Committee's decision on the planning application reported elsewhere on this Agenda) the additional student accommodation in Block NW2.

The Need to Revise the s106 Agreement

- 4.7 The need to revise some of the obligations in the s106 agreement arises from 5 factors:
- a) the economics of the scheme have changed substantially compared with the position when the s106 agreement was signed due to the sharp downturn in the housing market . To support the development, the Homes and Communities Agency injected additional investment which has substantially changed the housing tenure mix with 221 extra affordable homes in the scheme and fewer open market homes;
 - b) £3.44m. of the original (non-indexed) payments to the Council towards local infrastructure improvements have been triggered but, due to the reduced economic viability of the development, remain unpaid – new triggers need to be agreed for those outstanding payments;
 - c) the 'triggers' for some of the s106 funding obligations relate to the completion of specific numbers of open market homes which are superseded by the changed tenure mix;
 - d) as plots on the site are leased for development, the liability on those plot leaseholders for the s106 obligations needs to be clarified in a fair and reasonable way so as not to deter future construction investment in a continuing difficult financial environment; and
 - e) some s106 provisions need to be updated to reflect updated strategies and changes in the external environment.
- 4.8 As an alternative to agreeing these revisions, the Committee could seek to enforce the obligations in the current s106 agreement. £3.44m. of funding obligations have been 'triggered' but not paid and legal action could be taken to seek its payment. Then, if the development continues, action could be taken to seek payment of the other funding obligations as they are triggered. However, this course is not recommended for the following reasons.
- 4.9 Legal action to secure payment is very likely to be counter-productive. There is insufficient money in the scheme to make the s106 payments unless there are further land sales. Those land sale receipts also enable Hale Village Properties to make required loan repayments and to fund further on-site public realm infrastructure. Legal action will put the continuation of the whole scheme (and Hale Village Properties) in substantial jeopardy. Third party developers will be highly unlikely to buy land on the site as that will expose them to a potential liability for unpaid s106 sums. The development will very likely grind to a halt. The recommended s106 revisions give a much greater chance that development plot sales can continue and, therefore, that s106 payments can be made.
- 4.10 Legal action now will also prevent the Homes and Communities Agency from extending the term of its loan to Hale Village Properties. As is made clear in para. 5.5 below, it is this extension that will enable Hale Village Properties to make its first two substantial s106 payments to the Council totalling £3.1m.

5. Proposed Revisions to the s106 Agreement

- 5.1 As stated in para. 4.1, the s106 agreement (signed in October 2007) covers a range of provisions including £7.77m. to be paid to the Council to fund various measures under 5 headings. These payments are to be index-linked from 2007 so updating the sums to November 2010 produces a total of £8.436m. for the following individual contributions:

- Education Contribution (£1.086m.)
- Transport Contribution (£1.086m.)
- Local Transport Infrastructure Contribution (£478,000)
- Bus Service Enhancement Contribution (£358,000)
- Tottenham Hale Urban Centre Masterplan Contribution (£5.428m.).

- 5.2 The agreement also provides for a site to be leased to the Council on which to build a school – if the Council does not lease the site, the developer pays £1.5m. (and potentially up to £1.75m.) to the Council for off-site school improvements.
- 5.3 £3.735m. (indexed to Nov. 2010) of the updated s106 payments in para. 5.1 has been 'triggered' but, because of the financial difficulties presented by the falling housing market, this has not been paid by Hale Village Properties. Planning Committee in March 2009 agreed that no legal action would be taken to secure the overdue payments to allow a period within which to re-negotiate a re-profiling of the payment triggers to reflect the changed tenure mix and the much reduced scheme viability. This has taken substantially longer than anticipated but a revised package can now be recommended that takes appropriate cognisance of the very difficult market conditions and that:
- secures a firm date for payment of a large part of the 'triggered' funding obligations that are currently owed;
 - re-profiles some of the remaining funding obligation payments;
 - makes some of the funding obligation payments subject to achieving increased open market residential sales values;
 - clarifies that specific plot leaseholders should have proportionate liability for some of the funding obligations in the event of default by Hale Village Properties; and
 - incorporates other appropriate amendments to reflect scheme changes and updated requirements.
- 5.4 The revised s106 will, subject to conditions, secure the following payments to the Council:
- £2.6m. within 21 days of signing the revised agreement;
 - £0.5m. within 4 months of signing the revised agreement;
 - phased payments of up to £2.647m. linked to future land sales in the development;
 - the sale receipt from selling the 'School Site' for alternative development (residential &/or community use);
 - 60% of sales 'overage' receipts (subject to conditions) for the balance of s106 funding outstanding up to a total payment (for all headings) of £3.664m. (plus any under-payment of the other Contributions).
- 5.5 Before the s106 Deed of Variation can be signed (and the £2.6m. payment be made that is linked to the signing), the Homes and Communities Agency must release its charge (for a loan) on Pavilion 1, transferring it to Pavilion 5 (effectively extending the term of the loan). For this to happen, the Anglo Irish Bank (which has a charge on most of the site to secure its loan to the development) has to agree to relinquish its charge on Pavilion 5. While the Bank agrees this in principle, it will only formally release the charge when it is confident it will receive a planned repayment of about half of its outstanding loan debt from the proposed sale receipt for Block NW2. That receipt is dependent on planning permission being granted for the current application on Block NW2 as student accommodation – see the separate report on this Agenda. So, it is important to recognise that the signing of this recommended Deed of Variation is subject to the Committee's decision on that planning application for Block NW2.

- 5.6 Sales 'overage' will be paid to the Council (at 60%) only after both Hale Village Properties and the Homes and Communities Agency have broken even on their original equity investments, ie. not made a loss. The exception to this is on Pavilions 1 & 2 (now acquired by Bellway Homes) where the Council will be paid 60% of any overage paid to Hale Village Properties by Bellway Homes even if, at that time, Hale Village Properties and the HCA have not recovered their original investment.
- 5.7 It is currently projected that (taking account of the revisions to the s106 agreement) Hale Village Properties and the Homes and Communities Agency (as the two partners that have put 'risk capital' into the Hale Village development) will just break even or may make a very small profit on the completion of the whole development.
- 5.8 It is very important to stress that, when the s106 Deed of Variation is signed, the only payment that is virtually guaranteed is the £3.1m. (the first two payments of £2.6m. and £0.5m. in para. 5.4) linked to specific dates following the signing. Other payments are conditional either on future plot sales by the developer achieving certain minimum values (sales at lower amounts may result in the payment of lower s106 sums, or no payment at all as Hale Village Properties is obliged to prioritise the repayment of Bank loan debt from land sale receipts) or are dependent on open market residential flat sales achieving higher than specified 'baseline' values, ie. 'overage'. Hale Village Properties will also give priority to repaying Bank debt from land sale receipts. The Homes and Communities Agency will certify all land sale & overage receipts so the Council can have greater confidence that there will be a genuine 'open book' approach.
- 5.9 While the total potential s106 payments to the Council is £10.211m. (including indexation to Nov. 2010), it has to be acknowledged that, unless the private housing market picks up substantially, the Council is unlikely to receive this full sum. Subject to the conditions of the revised agreement having been met, the Council could not take legal action to recover any shortfall.

Revising the Definitions of Scope of Works

- 5.10 It is appropriate to update the scope of works for some of the s106 funding obligations to ensure they meet local needs related to the development:
- a) clarify the definition of the 'Transport Contribution' with respect to funding the Tottenham Hale Gyratory Scheme (including new bus station) – see para. 25 in Appendix 1;
 - b) broaden and clarify the scope of the Tottenham Hale Urban Centre Masterplan Contribution to cover funding for improvements to Down Lane Park (including providing an additional £25,000 specifically for Down Lane Park by re-allocating a sum originally allocated for local car washing during construction) and for the Tottenham Hale Gyratory Scheme – see para. 26 in Appendix 1; and
 - c) amend the Local Transport Infrastructure Contribution definition to clarify that the Council will determine the scope and specification of highway infrastructure works to be undertaken within the available funding (and to be included in the s278 Highways Act agreement) and to delete an obligation on the Council to adopt as public highway the Spur Road (though that road will continue to be owned by the Council following resurfacing) – see para. 27 in Appendix 1.

Granting Proportionate Liability for s106 funding obligations to leaseholders of Blocks C1, N & SW and Pavilions 1-5

- 5.11 In January 2010, the Committee agreed to grant proportionate liability for the s106 funding obligations to Newlon Housing Trust in relation to Blocks C1 and N. (Prior to that the Council had granted exemptions for s106 funding obligations to plot leaseholders – Newlon Housing Trust (Blocks SE, C2 and NW1) and Unite Group (Block W)).
- 5.12 As other plots on the site are sold, eg. the sites of Pavilions 1 and 2 have now been acquired by Bellway Homes, those leaseholders need clarity on the full extent of their liability for the s106 obligations. Legally, every owner of a site (or part of a site) is jointly liable wholly for s106 funding obligations. However, this means that each plot owner, eg. Newlon Housing Trust, Bellway Homes or Unite Group, is potentially liable for all the required financial contributions (ie. £8.436m.). This is a major disincentive to selling development plots on the site.
- 5.13 It is therefore recommended that the principle of proportionate liability granted to Newlon Housing Trust on Blocks C1 & N be extended to Bellway Homes (for Pavilions 1 & 2), to the Unite Group (for Block NW2 if their purchase of this site is completed) and to future leaseholders of, as yet, undeveloped plots, ie. Pavilions 3-5, Blocks SW and (see paras. 5.18-19 below) the 'school site' (and successors in title to plot leaseholders).
- 5.14 The basis of this proportionate liability should be as follows:
- **Education Contribution:** the number of residential bedspaces as a % of the total consented residential bedspaces in Hale Village;
 - **Transport, Local Transport Infrastructure and Bus Service Enhancement Contributions and the 50% payment of the Tottenham Hale Urban Centre Masterplan Contribution that is not payable only from 'overage' receipts:** the total gross building floorspace on the respective plot as a % of the total consented gross building floorspace in Hale Village;
 - Individual plot leaseholders will be granted an **exemption from any liability for the 50% payment of the Tottenham Hale Urban Centre Masterplan Contribution that is payable from overage receipts.**
- 5.15 It is proposed that each Contribution paid to the Council in full by Hale Village Properties as the site freeholder will remove any liability on leasehold owners for that specific Contribution. If there is any shortfall in a specific payment or non-payment by Hale Village Properties 3 months after the date that contribution is 'triggered', the Council will have the right to require payment of part (on the pro rata basis) of that Contribution by each relevant leasehold owner.
- 5.16 If a payment is sought from a plot leaseholder, the exact proportionate sum will be calculated by the Council at that time based on the consented development at Hale Village.

Healthcare Centre Rent Discount Payment

- 5.17 The existing s106 agreement includes an obligation on the Council that, should the healthcare centre be leased by a NHS primary healthcare provider, the developer should offer a lease on 35% discounted terms for 3 years. The developer could then reclaim a repayment of that discount from the Council. This exposes the Council to a potentially substantial financial obligation. It is recommended that this obligation on the Council be deleted from the s106 agreement.

'School Site'

- 5.18 The s106 agreement provides for an additional education payment to the Council should it decide not to use a small site within Hale Village for the construction of a new school. The site allocated is now too small to be developed in a cost effective way and, in conjunction with the Children and Young People's Service, it is proposed that the Council triggers the provisions relating to requiring the additional education payment.
- 5.19 However, lower land values mean that the basis of that additional payment has to be amended. It is proposed that the Council works with Hale Village Properties to identify an alternative development (potentially a ground floor youth/community use with residential flats above). Hale Village Properties then pays the Council the land sale receipt plus, if they are received by HVP, further payments from 'overage' receipts from other plots up to a combined total of £1.75m. (the existing agreement does not provide for indexation of that sum). The sum paid will be used by the Council towards off-site school provision.

Energy Generation and Distribution

- 5.20 The Hale Village scheme will deliver 20% carbon savings and is being designed to achieve Sustainable Homes Code level 4 and BREEAM 'excellent'. Achieving the carbon savings is via an on-site Combined Heat and Power plant using gas and biomass fuel. However, the slower pace of development caused by the difficult housing market, updated legal requirements and a re-assessment of the economic viability of delivering centralised cooling rather than individual buildings having their own cooling plant as necessary, means that some of the s106 obligations regarding energy need to be updated. Appendix 1 (para. 21) sets out the proposed changes.

6. Potential Benefits and Implications of Agreeing these s106 Revisions

- 6.1 The Hale Village development is an important first phase in the regeneration plans for Tottenham Hale. The housing market downturn has seriously threatened the future of this scheme. The Homes and Communities Agency has invested substantially to support the continuation of the development. There are now students living on the site and there is a major need within the borough for the 542 affordable homes that will start to be occupied from this summer. Some retail units have been built and negotiations are advanced in securing retail occupiers. Newlon Housing Trust will be occupying the office space in Block SE as their HQ offices. The shell of the healthcare centre is nearing completion but how that will be occupied remains uncertain as the Primary Care Trust cannot commit to a lease. Hale Village Properties is working to attract individual GPs and other health practitioners to the space. The space for a neighbourhood police base has also been built. A crèche is proposed in Block N. The first 140 open market homes should start to be built in the Spring subject to agreeing the s106 changes recommended in this report.
- 6.2 The difficult financial position has meant that Hale Village Properties as the freehold owner and lead developer has not been able to pay to the Council the major part of the s106 sums that are due. Agreeing these s106 revisions will provide for a first substantial payment towards the overdue sum and then additional payments linked to future plot sales. Subject to rising open market residential sales values, it is possible that further payments will be made linked to sales 'overage'. The Council's Cabinet has allocated £3.5m. of the appropriate s106 Contributions towards the Tottenham Hale Gyrotory Scheme. The first two payments of £2.6m and £0.5m. that will flow from the s106 revisions will provide £2.622m. of that required funding with the prospect of further payments towards that from future plot sales.

- 6.3 The Homes and Communities Agency is a financial partner in the Hale Village development and is closely involved in the financing of the whole scheme. On current projections (and taking account of the recommended s106 revisions), it is likely that the HCA and Hale Village Properties will only just recoup their original risk capital investment when the scheme is completed. The Council has been given significant financial information relating to the scheme as part of the negotiations on the s106 revisions and the HCA has confirmed the accuracy of the information.
- 6.4 The s106 revisions are needed to enable the scheme to continue. While these changes provide for some of the payments, the receipt of further payments is conditional either on future land sales (and the resultant cash receipts) or on rising housing market values. There is an element of risk here for the Council. The Council has to provide the school places for the eventual number of children that will live in Hale Village and there is an aspiration to fund other local infrastructure improvements. The revisions put in place the prospect of receiving a substantial part of the required s106 funding payments but they are not guaranteed. However, not to agree these revisions will mean that there is a much reduced prospect of receiving those payments. Currently, if the revisions are not agreed, the Council could take legal action to seek to recover the sums due as they are 'triggered' under the terms of the existing s106 agreement (assuming construction continues) but there is no guarantee it would be successful.
- 6.5 The s106 revisions are the result of lengthy negotiations and are recommended as the best way forward to secure funding for local infrastructure improvements while at the same time supporting the continuation of the Hale Village development to deliver the mix of homes, commercial and community uses and open space that will underpin a sustainable community and support Tottenham's continued regeneration.
- 6.6 This heads of terms in Appendix 1 is a complex set of revisions which, with one or two detailed exceptions that remain to be resolved, are agreed by Hale Village Properties and the Homes and Communities Agency. Transport for London has been consulted and is comfortable with the revisions especially as they seek to secure funding towards the Tottenham Hale Gytratory Scheme.

7. Comments by Head of Legal Services

Payment of contributions

- 7.1 It is noted that the revisions to the original section 106 agreement are necessary to enable the scheme to continue to be built out and for £3.1 million of the S106 contributions to be received imminently. Whilst the revisions to the section 106 agreement are not ideal and there is a real risk that the Council may not receive the total amount of contributions, the Head of Legal Services understands that the proposed amendments reflect the best efforts by the Council to agree a compromise with the developer/owners to enable the best chance of the development continuing - which in turn the client feels is the best way of the Council receiving S106 funds.
- 7.2 The amendments provide an upfront payment of £2.6million and a further payment shortly after of £0.5million. Of that total sum of £3.1m., approximately £2.6 million comes under the Transport Contribution and Tottenham Hale Urban Centre Masterplan Contribution "THUCM" (which will make up a major part of the £3.5

million funding to be paid to TFL for the Tottenham Hale Gyrotory scheme). The other £478,000 is to go toward the highway works.

- 7.3 Of the remaining £7.111 million worth of contributions then outstanding, receipt of £2.647million is conditional upon future land sales. This £2.647m is to cover the Education Contribution, a proportion of the THUCM Contribution, and a Bus Service Contribution. If the sale of land does not achieve the value in the relevant business plan, the Council is unlikely to receive the £2.647m in full. Scheduled payments from specific land sale receipts to Anglo Irish Bank or the Homes & Communities Agency will take priority over payments of contributions to the Council.
- 7.4 If Hale Village Properties is unable to pay these contributions (the £2.6m, £0.5m and/or £2.647m), the leaseholders will be responsible for a proportion of the shortfall. The proportionate liability would be calculated based on the whole of the Hale Village development. However, the amount the leaseholders would end up paying would not add up to 100% of any shortfall, as some leaseholders have previously been exempt from liability.
- 7.5 The remaining £3.664 million of contributions (although this sum could be higher if there is a shortfall in the upfront payments and payments from land sales) is to come from overage. The overage payments are not guaranteed and are dependent upon the sale of open market dwellings at values above the values estimated in the relevant business plan. There are limitations in relation to being able to oblige Hale Village Properties to enter into overage agreements under section 106, and further, the success of the overage mechanisms is dependent upon the private housing market. As the report states, unless the housing market does improve markedly, there is a real risk that the Council will not receive the full amount of contributions.
- 7.6 The money to be committed as the education contribution, part of the THUCM contribution, bus service enhancement contribution and school payment is reliant upon future sales and the property market. If these contributions are not received in full, it may fall to the Council to incur expenditure to provide the necessary school places, bus service improvements, infrastructure and transport.

Risk of Judicial Review

- 7.7 By agreeing to amend the original section 106 agreement, the council must accept that there is a significant risk that it may not receive payment of the contributions in full. Having payment of contributions reliant upon land sales and overage means that the amount of contributions will be more dependent upon land and housing values. The contributions were originally calculated in order to ameliorate the planning harm as a result of the scheme. If the amount of the contribution paid is lower because of the housing market, it does not follow that the planning harm has also been reduced. There is a risk of challenge from developers or other third parties on this issue.

Tottenham Hale Gyrotory

- 7.8 It is noted that the Council will not be required to pay TFL the £3.5m for the gyrotory until that sum has been received from this scheme pursuant to the section 106 agreement. Legal Services are instructed to prepare the funding agreement with TFL for the gyrotory and have ensured the money will not be committed to TFL until adequate funding has been received.

Enforcement

- 7.9 The proposed amendments to the section 106 agreement require the developer and leaseholders to pay the contributions, however, as the majority of payments are conditional upon future land sales or overage, there could be a situation in which the terms of the section 106 agreement are complied with but the contributions are not paid in full because projected land & unit sales have not been achieved. This would mean the Council would be unable to enforce the terms of the section 106 agreement in order to recover the contributions, as there would not be any actual breach of the agreement. The Council could enforce the two initial payments that are linked to specific dates and against leaseholders.

Section 278 Agreement for Highways Works

- 7.10 The cost to the Council of it carrying out the highway works is to come within £478,000 which is the Local Transport Infrastructure Contribution. As this amount was included as a fixed contribution under the original section 106 agreement, there is no scope to have the developer pay for any highways works over that sum. The Transport team are currently costing the necessary highway works. There is a possibility that the contribution will not be sufficient to cover the required highway works, in which case the Council may need to limit the scope of works to the available funds or incur expenditure to complete any necessary works.

General Comments from Legal Services

- 7.11 The proposed variations and link to payments with target sales and overage does carry a risk that payments may not ultimately be received by the Council and these further amendments to the original section 106 Agreement may make the section 106 agreements more difficult to enforce.
- 7.12 It is open to the Council to leave the existing s106 as is and, if the contributions were not paid, the Council could use its discretion to enforce or not. The report covers some of the problems that the planning service feels may be encountered with doing this (paras. 4.8 - 4.10).

8. Equalities Implications

- 8.1 In determining this report the Committee is required to have regard to its obligations under the Equality Act 2010. The equality implications of this report need to be considered. The key equalities protected characteristics include age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.2 Current construction at Hale Village is providing 542 affordable homes for which there is a major need by communities within the borough as well as office and retail space to provide a range of jobs. The Council's employment training programmes focus on supporting Tottenham residents in securing available jobs.
- 8.3 The s106 revisions help to support continued development of Hale Village to provide open market homes, a hotel and further retail and community space, as well as providing for funding towards local infrastructure improvements. These will help mitigate the impacts of the scheme and also provide benefits to the wider community, eg. improving local accessibility by the Tottenham Hale Gyratory Scheme.

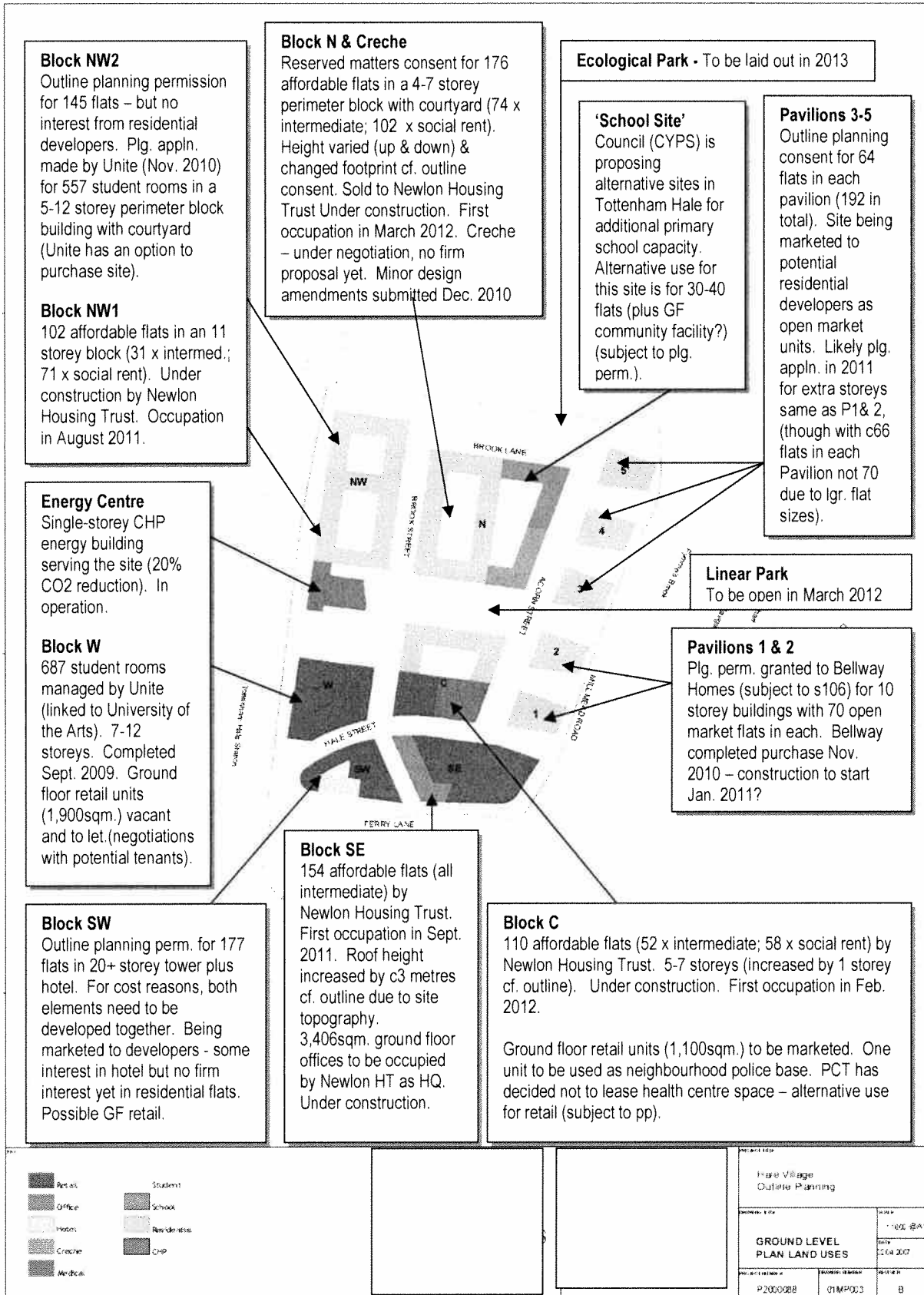
- 8.4 It is likely though that not all of the original s106 funding for infrastructure will be paid. Due to the property market downturn and the resulting financial difficulties this has created for the development, the s106 revisions aim to secure as much of this funding as possible whereas, if the revisions are not agreed, it is likely that even less of the s106 sums would be paid to the Council.
- 8.5 This means that there would then be less funding available for those infrastructure improvements than originally agreed in 2007 when the agreement was first signed. Of particular importance is the provision of sufficient school places for the children that will live in the development. The receipt of the Education Contribution is linked to future land sales and is not guaranteed but, as development continues, children will need to be allocated school places. If this payment is not received, it will add to existing pressures on local school capacity with a potential impact on the quality of education for those and other local children in this area of deprivation. However, there will be children living in the scheme from later this year and, without the revisions, the Education Contribution is not payable until 500 open market homes are completed. With the changed tenure mix, that 'trigger' is only likely to be reached when the whole Hale Village development is virtually completed. The revisions therefore seek to avoid that situation by enabling the education funding to be paid earlier thereby helping to improve local schooling.
- 8.6 The revisions also clarify the scope of works that can be funded from, for example, the Tottenham Hale Urban Centre Masterplan Contribution, to enable local infrastructure improvements that will benefit existing local residents as well as new residents in Hale Village itself, eg. by helping to fund improvements to Down Lane Park for which there is an expressed local need.
- 8.7 The continuation and successful completion of Hale Village will help to attract further new investment in Tottenham that will provide the potential to address local needs and to enhance community life for the benefit of all.
- 8.8 Having considered all relevant issues, it is concluded that, on balance, the recommendations in this report should have an overall positive equalities impact compared with the position that is likely to be faced if the s106 revisions are not agreed.

9. Conclusion

- 9.1 The original s106 agreement for Hale Village was based on a scheme that has now evolved significantly and in a different economic climate. The scheme now includes an extra 221 affordable homes making the total around 50% compared to the originally approved 26% (based on dwelling numbers). This reduces the potential number of open market homes and with their reduced sales values with the market downturn, the economic viability of the whole development has become marginal. Additional public sector investment from the Homes and Communities Agency has supported the continuation of development and the extra affordable homes will be a further help in meeting housing need. The Homes and Communities Agency now has a 44% equity investment stake in the whole scheme.
- 9.2 The financial difficulties presented by the housing market downturn has meant that 'triggered' s106 payments have not been made and agreement on future payments can only be secured based on future land sales. The changed tenure mix also means the triggers for future payments need to be amended.

- 9.3 The recommended s106 revisions now secure payment of a large part (£3.1m.) of the currently owed sum. That funding is being allocated to local access improvements and, in accordance with Cabinet's decision in Sept. 2010, the Tottenham Hale Gyrotory Scheme.
- 9.4 The s106 revisions also enable future payments related to land sale receipts for remaining development (Pavilions 3-5, Block SW, Hotel and the sale of the commercial investment portfolio). These can fund education, bus service and local infrastructure improvements. Further payments are linked to residential flats achieving above defined 'baseline' sales values which, if received, will fund further local infrastructure improvements.
- 9.5 The changes support future investment in the site by giving owners of individual development plots clarity on their proportionate liability for specific payments, thereby increasing the chances that the Council will receive the s106 payments linked to plot sales.
- 9.6 The s106 revisions are a realistic response to the difficult economic climate and the changes that have been made to the Hale Village scheme. While the revisions do not guarantee that all the funding obligations will be met, they provide the most effective way forward as Hale Village develops into a sustainable and vibrant community, laying the foundations for Tottenham Hale's continuing regeneration.

HALE VILLAGE – Block Plan with current position (December 2010)



APPENDIX 1

HALE VILLAGE

Draft Heads of Terms for 3rd. s106 Deed of Variation

Parties: Hale Village Properties LLP/Ferry Boat Properties Ltd. (HVP)
 Anglo Irish Finance plc (AIF)
 Transport for London (TfL)
 Haringey Council (the Council)
 Newlon Housing Trust (NHT)
 Homes and Communities Agency (HCA)
 Other plot leaseholders as necessary

Site: Hale Village Ferry Lane London N17 (the 'Site')

Powers: s106 Town & Country Planning Act 1990 (as amended)
 s111 Local Govt. Act 1972
 s16 Greater London Council (General Powers) Act 1974
 s278 Highways Act 1980
 s72 Highways Act 19..

Development: Construction of up to 1,210 dwellings, student accommodation, hotel, retail and office floorspace, health centre, primary school, amenity space, car parking and landscaping ('the Development') as granted planning permission in the following applications:

- Outline planning permission granted 9 October 2007 (HGY/2006/1177)
- Extension of time for outline planning permission (HGY/2010/1897)
- All reserved matters consents linked to the outline permission
- Pavilions 1 & 2 application for 140 flats (HGY/2010/1427)
- Block NW2 application for student accommodation (HGY/2010/2090)

Heads of Terms

These provisions form the principal heads of terms of a proposed Deed of Variation of the s106 agreement dated 9 October 2007 (as varied on 23 July 2008 and 8 January 2009) relating to the Site.

All the terms of this Agreement (as varied) will continue to apply with future planning permissions (and reserved matters consents) granted on the Site unless it is specifically agreed between the parties that all or some provisions do not apply.

General

1. Economic conditions have had a significant impact on the financial viability of the Development. As such, the parties agree that it is appropriate to vary the s106 to:
 - increase the number of affordable homes provided in the Development;
 - allocate liability for financial payments to the Council on a pro rata basis for Blocks C1, N, NW2 & SW and Pavilions 1-5;
 - amend the timing of, and triggers for, specific funding obligations;
 - amend the basis on which other funding obligations are payable related to achieving land sales of specific Plots on the Site;
 - amend the extent and the operational phasing of on-site energy generation and distribution;
 - secure the provision of an on-site crèche;
 - promote the accessibility of the Site for pedestrians and cyclists;

- determine the basis of promoting an alternative development on the site provisionally allocated for a school;
- amend the basis of the payment towards off-site school provision
- re-allocate the funding obligation for the Considerate Contractor scheme to fund local park improvements
- delete the obligation on the Council to pay part of the rent of the healthcare centre space.

Affordable Homes

2. The parties agree that the number of affordable homes in the Development should be increased to improve scheme viability and deliverability. Schedule 2 in the s106 agreement will be amended to allow the construction of 542 affordable homes. Appendix 3 (Affordable Housing Schedule of Accommodation) will be amended to show the following tenure mix:

Block	Dwelling size	No. of dwellings	Affordable tenure
SE	1B 2P	55	Intermediate
	2B 3P	40	Intermediate
	2B 4P	59	Intermediate
NW1	1B 2P	18 / 4	Intermediate / Social rent
	2B 3P	1 / 10	Intermediate / Social rent
	2B 4P	11 / 20	Intermediate / Social rent
	3B 5P	1 / 4	Intermediate / Social rent
	3B 6P	24	Social rent
	4B 7P	3	Social rent
	5B 8P	3	Social rent
	5B 9P	3	Social rent
N	1B 2P	18 / 40	Intermediate / Social rent
	2B 3P	12 / 14	Intermediate / Social rent
	2B 4P	35 / 35	Intermediate / Social rent
	3B 5P	9 / 13	Intermediate / Social rent
C1	1B 2P	35	Intermediate
	2B 3P	5	Intermediate
	2B 4P	12	Intermediate
C2	1B 2P	2	Social rent
	2B 3P	1	Social rent
	2B 4P	24	Social rent
	3B 5P	12	Social rent
	3B 6P	4	Social rent
	4B 7P	15	Social rent
TOTALS		311 / 231 542	Intermediate / Social rent Total

3. The definition of intermediate tenure dwellings shall include dwellings for shared ownership, other forms of part ownership/part rent and intermediate rent.

Indexation of s106 Contributions

4. The original Agreement provides for all financial contributions (with the exception of the 'School Payment') to be linked to the All Items Retail Prices Index. This Deed of Variation will apply this indexation to the original sums and then indexation will continue to apply from the date of this Deed until the sums are paid. The indexation will be

calculated for the month this Deed is signed. For illustrative purposes, applying this indexation to November 2010 (the latest month for which an index figure is available) produces the following sums (calculated as Nov. 2010 Index of 226.8 divided by October 2007 Index of 208.9):

- Education Contribution - £1m. increases to £1.086m.
- Transport Contribution - £1m increases to £1.086m.
- Local Transport Infrastructure Contribution – £440,000 increases to £478,000
- Bus Service Enhancement Contribution - £330,000 increases to £358,000
- Tottenham Hale Urban Centre Masterplan Contribution - £5m. increases to £5.428m.

Allocating liability for financial payments to the Council on a pro rata basis for Pavilions 1-5 and Blocks C1, N, NW2 & SW (including Hotel)

5. To assist the delivery of the additional affordable homes in Blocks C1 & N and to clarify the extent of liabilities for s106 obligations on new owners of other Blocks, the parties agree to a cap related to a share of the cash funding payments due to the Council proportionate to the scale of development within each Block or Pavilion.

6. The liability of new leasehold owners of specific Blocks – currently Newlon Housing Trust (Blocks C1 & N), Bellway Homes (Pavilions 1 & 2) and, subject to contract completion, Unite (Block NW2) - will be capped for the following payment obligations:
 - Education Contribution (Schedule 1)
 - Transport Contribution (Schedule 6)
 - Local Transport Infrastructure Contribution (Schedule 4)
 - Bus Service Enhancement Contribution (Schedule 13)
 - Tottenham Hale Urban Centre Masterplan Contribution (Schedule 9).

The intention is also that future leasehold owners of Block SW, Hotel and Pavilions 3-5 will be granted similar proportionate liability for these s106 funding obligations.

7. The proportionate share for which each Block/Pavilion leasehold owner will be liable is calculated differently according to the specific contribution:
 - a) **Education Contribution** – the pro rata liability for an outstanding payment of the Education Contribution will be calculated based on the **number of residential bedspaces** in the specific Block/Pavilion as a proportion of the revised total number of bedspaces consented in the whole Hale Village development at the time the payment is required from that Block/Pavilion owner.

 - b) **Transport, Local Transport Infrastructure, Bus Service Enhancement Contributions and the 50% part of the Tottenham Hale Urban Centre Masterplan Contribution that is not payable only from ‘overage’ receipts** – the pro rata liability for any outstanding payments of any of these Contributions will be calculated based on the gross floorspace of the Block/Pavilion as a proportion of the total consented floorspace in the whole Hale Village development (currently 150,755sqm. including current appln. for Block NW2).

 - c) Individual plot leaseholders will be granted an exemption from any liability for the 50% payment of the Tottenham Hale Urban Centre Masterplan Contribution that is subject only to payment from overage receipts.

For Blocks/Pavilions with reserved matters or detailed planning permission (and including proposed floorspace in the current appln. for Block NW2) as at the date of this Agreement, this proportionate liability (excluding indexation) equates indicatively to the following sums:

Obligation	Total Sum Due	Newlon Hsg. Trust (Blocks C1 & N)	Bellway Homes (Pavilions 1 & 2)	Unite (Block NW2)
Education	£1,086,000	21.7% - £235,600	11.9% - £129,200	0 - £0
Transport	£1,086,000	14.5% - £157,400	7.7% - £83,600	9.8% - £106,400
Local Transport Infrastructure	£478,000	14.5% - £69,300	7.7% - £36,800	9.8% - £46,800
Bus Service Enhancement	£358,000	14.5% - £51,900	7.7% - £27,500	9.8% - £35,000
Tottenham Hale Urban Centre Masterplan	£5,428,000 (exclgd. £25,000 re-allocated funding)	14.5% of £2.714m.- £393,500 (there is no liability for any shortfall on 'overage' payments)	7.7% of £2.714m.- £208,900 (there is no liability for any shortfall on 'overage' payments)	9.8% of £2.714m.- £265,900 (there is no liability for any shortfall on 'overage' payments)
Total (as at Nov. 2010)	£8,436,000	£907,700	£486,000	£454,100

The actual sums due will be re-calculated at the time that payment is required (applying indexation to the original sum). It is acknowledged that the sums required may increase or decrease dependent on total consented floorspace/residential bedspaces in the whole development at that time.

8. It is agreed that the Council will first seek payment of each specific contribution from Hale Village Properties as the principal freeholder of the Site. Each contribution paid to the Council in full by Hale Village Properties will remove any liability on leasehold owners for that specific contribution.
9. If there is any shortfall or non-payment of the first two sums to be paid by HVP (£2.6m and £0.5m.- see the table in para. 15 below) the appropriate proportion of the Contributions which those payments represent (see the table in para. 15 below) will be recoverable from the Block/Pavilion owners 3 months after the date payment was due (with the proportionate sum required to be calculated at that time).
10. If there is any shortfall or non-payment of any other applicable Contributions (ie the total payment of £2.647m. in the table in para. 15 below) the appropriate proportion of that shortfall or non-payment of the unpaid Contribution(s) when the Hale Village development is completed (defined as 6 months after practical completion of all Blocks and Pavilions) will be recoverable by the Council from Block/Pavilion owners and their successors in title (with the proportionate sum required to be calculated at that time).

'Newlon Security Plots'

11. Nothing in the original s106 agreement shall be binding on NHT as mortgagee of the Newlon Security Plots provided that this exclusion shall not apply in the event of NHT becoming a mortgagee in possession of any of the Newlon Security Plots.

Application of Obligations

12. Schedules in the 2007 Agreement shall only bind specific plot leaseholders as lessees of those plots (eg. C1, N, NW2, SW, P1-5 & NE) to the extent that such provisions relate to those plots but not otherwise.
13. HVP agrees to para. 2.3 of the original Agreement being changed to the effect that, after granting a lease of more than 99 years for any part of the Hale Village development, HVP will retain a liability for s106 obligations/payments as the freeholder of that part.

Phasing of Payments

14. It is necessary to revise the payment triggers to:
- bring them into line with the changed dwelling tenure mix within the Scheme;
 - set out new dates by when payments that are already overdue will be paid to the Council; and
 - amend the basis on which some payments will be made related to land sale completions and construction of buildings. Given the property market downturn:
 - some funding obligations totaling £2.647m. (including indexation to Nov. 2010) will be changed to be payable only upon completion of the sale of specific plots on the Development to third party developers or investors;
 - specific other funding obligations (up to £3.664m. including indexation to Nov. 2010) will only be payable if specific sale values are exceeded on land &/or residential flat sales and, in most circumstances, where existing equity investment in the scheme has been recovered.
15. The following table sets out revised funding/site provision triggers (the £ sums stated include indexation increases to Nov. 2010 where applicable). In summary the blocks of payments will constitute the following obligations:

£2.6m. payable within 14 days of signing the Agreement	<ul style="list-style-type: none"> ▪ Transport Contribution (£1.086m.) ▪ Tottenham Hale Urban Centre Masterplan Contribution (£1.036m.) ▪ Local Transport Infrastructure Contribution (£0.478m.) (alternatively, £0.478m. THUCM Contribution or any other appropriate balance between those two Contributions).
£0.5m. payable on 31 May 2011	<ul style="list-style-type: none"> ▪ Part of the THUCM Contribution
£2.647m. payable linked to land sale completions	<ul style="list-style-type: none"> ▪ £1.086m. Education Contribution ▪ £1.203m. THUCM Contribution (alternatively, £0.478m. Local Transport Infrastructure Contrbn. and £0.725m. THUCM Contribution or any other appropriate balance between those two Contrbns.) ▪ £0.358m. Bus Service Contrbn.
£0.8m payable on sale of 'Block NE' (former School Site')	<ul style="list-style-type: none"> • Part of School Payment
Overage – up to £3.664m. (plus any under-payment of the other Contributions)	<ul style="list-style-type: none"> • £2.714m. THUCM Contrbn. • £0.95m. School Payment (or less by the amount that the sale receipt paid to the Council for the 'School Site' exceeds £0.8m.) • any under-payment of other Contributions; • the Council to determine at the time which Contribution (up to the relevant maximum) is being paid by any individual overage payment.
Total sum payable	Up to £10.211m. (including indexation to Nov. 2010)

16. For the avoidance of doubt:
- a) prior to committing to any land/property sale, HVP & HCA will notify the Council of the proposed sale receipt and the amount of the s106 payment that is intended to be made to the Council from that receipt;
 - b) where, in exceptional circumstances, HVP and HCA decide that a plot of land/block of property must be sold at less than the business plan July 2010 values, they will inform the Council in writing of the reasons prior to committing to

the disposal. At the same time, HVP & HCA will provide the Council with an updated timescale for future plot/property disposals and updated estimates of sales values of remaining plots;

- c) s106 payments to the Council constituting part of the £2.647m. may not be made by HVP from specific land sale receipts where any Anglo Irish Bank or, in relation to the site for Pavilion 5, Homes and Communities Agency loan debt is scheduled to be repaid from that specific land sale receipt nor (to maximise future site disposal values) if additional site infrastructure works are approved by the HCA unless that receipt is sufficient to make that scheduled payment;
- d) where a s106 payment cannot be made in full from the sale receipt from a specific land/property sale, the balance of the s106 sum due will transfer to be paid from the sale receipt from the next plot of land/property (listed in the relevant row in the table below) to be sold. That process will continue until the s106 sum due has been paid in full;
- e) where a sales receipt exceeds Business Plan values and is not required to repay outstanding Bank or HCA loans, infrastructure costs or site disposal fees then that receipt will be used by HVP to contribute to paying any outstanding s106 payments up to the cap of £2.647m. (including indexation to Nov. 2010);
- f) where two or more Contributions are due to be paid from a specific land/property sale receipt but the available receipt is insufficient to pay the required sums in full, the Council will decide which Contribution(s) the sum paid will be used for;
- g) if any of the s106 payments that constitute part of the total payment of £2.647m. are not made from a plot/property sale as listed in the table below, any sum that remains outstanding will increase by the same amount the total sum that is payable from plot/property sale and residential sales value 'overage', ie. it will increase the £3.664m. 'overage' cap.

Obligation (incl'dg. indexation to Nov. 2010 where applicable)	Original s106 'trigger'	Recommended Revised 'Trigger' (including sums indexed to Nov. 2010)
Education Contribution- £1.086m. to Council	By completion of 500 private sale homes	1. £1.086m. on land sale completion or start of construction of Pavilion 3, Pavilion 4, Pavilion 5, Block SW or completion of commercial floorspace investment sale (in all cases whichever is earlier)
School Transfer Notice Land to be leased to the Council	On or before the School Date (21 February 2013) the Council may serve this notice. If served, HVP shall grant a lease to the Council of the School Land no earlier than 6 months after practical completion of 300 open market homes but no later than the occupation of 850 open market homes	2. The Council does not intend to lease the School Site.
School Payment Notice £1.5m. to the Council plus potential additional payment (subject to land value) of £0.25m.)	On or before the School Date (21 February 2013) the Council may serve this notice. If served, HVP shall pay £1.5m. to the Council no earlier than 6 months after practical completion of 300 open market homes but no later than the occupation of 850 open market homes. Provision for an additional payment of £0.25m. also applies.	3. HVP will pay to the Council a minimum sum of £0.8m. (or the actual sale receipt if higher – less disposal costs) on completion of the sale of the 'School Site' to a third party. 4. HVP will make additional payments to the Council of up to a total of £0.95m. as part of the overage payment system detailed below. 5. HVP to progress the disposal of the 'School Site' aiming to secure a completed sale by July 2012 at the latest. The site shall be re-designated for residential or residential and youth/community use (to be agreed) with the type and mix of development to be promoted on this site to be agreed with the Council (subject to planning) prior to marketing.
Transport Contribution- £1.086m. to Council	Prior to first occupation	6. HVP to pay £1.086m. within 21 days of the date of this Agreement.
Local Transport Infrastructure Contribution £478,000 to Council (for site access improvements)	Start of construction of Building C, SE or SW – Jan. 2010 (C & SE)	7. HVP to pay £0.478m. (less any agreed cost of resurfacing works to the Spur Road undertaken by HVP) within 21 days of signing this Agreement. Specification for works to be prepared by HVP for approval by the Council (and the Council can vary the specification at its discretion as highway authority including matching the scope of works to the available funding). 8. The Council to determine the scope and specification of highway infrastructure works to be undertaken within the available funding and there will be no obligation on the Council to adopt as public highway the Spur Road.

Obligation (incl'dg. indexation to Nov. 2010 where applicable)	Original s106 'trigger'	Recommended Revised 'Trigger' (including sums indexed to Nov. 2010)
<p>Bus Service Enhancement Contribution £358,000 to Council (for payment to TfL)</p> <p>Tott. Hale Urban Centre Masterplan Contribution £5.428m. payable to Council</p>	<p>Before occupation of 500 homes (any tenure)</p> <p>5 payments - April 2008, April 2009, then 300, 400 & 600 private sale homes. In any event, pay full sum by Feb. 2013</p>	<p>9. HVP to pay to the Council £0.358m. on land sale completion or start of construction of Block SW or completion of commercial floorspace investment sale (in both cases whichever is earlier).</p> <p>10. HVP to pay to the Council £1.036m. within 21 days of the date of this Agreement .</p> <p>11. HVP to pay to the Council £0.5m. within 4 months of the date of this Agreement.</p> <p>12. This Contribution is increased by £25,000 (making the total Contribution payable £5.453m. including indexation to Nov. 2010) to fund open space, play, safety, maintenance and/or amenity works in Down Lane Park in Tottenham Hale (to which, at the Council's discretion, may be added additional sums from this THUCM Contribution).</p> <p>13. HVP to pay to the Council £1.203m.. on land sale completion or start of construction of Pavilion 3, Pavilion 4, Pavilion 5, Block SW or completion of commercial floorspace investment sale (in all cases whichever is earlier).</p> <p>14. HVP will make additional payments to the Council of up to a total of £2.714m.. as part of the overage payment system detailed below.</p>
<p>'Overage' Payment System</p>	<p>Not included in the original Agreement</p>	<p>15. Overage payments are defined as any payments to HVP &/or HCA by third parties in excess of the Business Plan land/investment value forecasts (July 2010) &/or receipts by HVP following the triggering of overage provisions with 3rd party developer(s) related to the sales values achieved for individual open market dwellings. In all cases, these provisions will apply to the completion of individual land deals for Pavilions 1-5, Plots NW2 and SW, Hotel, the commercial floorspace investment portfolio and any other open market dwellings granted planning permission on the site, eg. Block NE (former 'School Site'). HCA to certify the terms of all land sales.</p> <p>16. HVP to make a potential succession of further payments up to a cumulative cap of £3.664m. (including indexation to Nov. 2010) subject to receiving 'overage' receipts as detailed below. This cap will be reduced by the amount that the actual payment to the Council following the disposal of the 'School Site' exceeds £0.8m. At the same time, the cap will be increased by an equivalent amount if the cumulative payments received for the 5 Contributions (Education, Transport, Local Transport Infrastructure, Bus Service Enhancement and Tottenham Hale Urban Centre Masterplan) total less than £5.747m.</p>

<p>Obligation (inclg. indexation to Nov. 2010 where applicable)</p>	<p>Original s106 'trigger'</p>	<p>Recommended Revised 'Trigger' (including sums indexed to Nov. 2010)</p>
		<p>(including indexation to Nov. 2010). Each 'overage' payment (if triggered) will be paid on the following basis:</p> <ul style="list-style-type: none"> a) HVP & HCA agree to provide full financial information to the Council at all stages, with the HCA to certify the accuracy of all financial information supplied. Any additional information reasonably requested by the Council will be provided by HVP/HCA. b) Apart from the payments detailed for each Contribution above (totalling £5.747m. including indexation to Nov. 2010), HVP/HCA will not be liable for any additional s106 payments (except in relation to any overage receipt from residential sales in Pavilions 1 & 2 – see below) until their respective original equity investments are recovered (to be certified by the HCA). HVP & HCA agree that, as soon as one organisation's original equity investment has been recovered by that organisation, 100% of any additional overage receipts relating to land/investment sales will go to the other organisation until that organisation's original equity investment has also been recovered. c) 60% of any revenue sales overage payments (gross) following completed residential flat sales received by HVP &/or HCA on Pavilions 1 & 2 will be paid to the Council. For the avoidance of doubt, these payments will be made to the Council regardless of whether HVP &/or HCA have recovered their respective original equity investments as set out in point b) above; d) 60% of any revenue sales overage payments (gross) following completed residential flat sales received by HVP &/or HCA on Pavilions 3-5, Block SW & any other open market flats that may be granted planning permission will be paid to the Council subject to point b) above; e) 60% of any land /investment sale receipt by HVP/HCA in excess of the July 2010 Business Plan value for that Block/portfolio will be paid to the Council subject to point b) above; f) no payments will be made to the Council once the Council has received under these overage payment provisions a cumulative total of £3.664m. (inclg. Indexation to Nov. 2010 – but further indexation increases will be applicable in accordance with the original agreement) - or less by the amount that the actual payment to the Council following the disposal of the School Site exceeds £0.8m.

Obligation (incl'd. indexation to Nov. 2010 where applicable)	Original s106 'trigger'	Recommended Revised 'Trigger' (including sums indexed to Nov. 2010)
Other funding – not payable to Council		
Local Labour - £50,000 towards employment & training initiatives	Landowner to provide a budget prior to start of construction	As existing agreement
Television Reception - £25,000 towards TV reception improvements (if needed)	Pre-construction reception survey done. Need for works to be assessed following scheme completion	As existing agreement
Considerate Contractor - £25,000 (incl'd. free car washing & window cleaning for local residents within 100m. of site)	Landowner to allocate budget	The obligation will continue on HVP to comply with the Considerate Contractor Scheme for the whole Development but £25,000 is reallocated from car/window washing (this obligation ends) to Down Lane Park improvements (also see point 12 above in this table under the THUCM Contribution).

Pedestrian/cyclist bridge support and landing rights on CHP Energy Centre

17. HVP and Dalkia agree to grant to the Council free of charge the right to construct on the roof of the CHP Energy Centre any structures necessary (subject to agreement on the detailed design and structural implications with HVP and Dalkia – such agreement not to be unreasonably withheld or delayed) to support a bridge for pedestrians and cyclists.
18. HVP and Dalkia to grant to the Council and its contractors free of charge and in perpetuity reasonable rights of access (subject to reasonable notice) to the roof of the CHP Energy Centre where access is required to inspect or maintain the bridge structure and to erect any apparatus, eg scaffolding, required for those inspections, maintenance or renewal.
19. HVP also agrees to grant to the Council free of charge the right for that pedestrian and cyclist route to return to ground level from the CHP Energy Centre building in the vicinity of the local open space east of the Energy Centre (subject to agreement on the detailed design and landing position – such agreement not to be unreasonably withheld or delayed).

Designated use for Block NE (former 'School Site')

20. The site provisionally allocated adjoining Block N for a school is not suitable and it is agreed to pursue the development of this site for residential use or mixed residential and youth/community use (subject to the grant of planning permission).

Energy Generation and Distribution

21. It is agreed to amend Schedule 12 of the original agreement as below:
 - a) Para. 2 to be changed to (or similar):

'Prior to practical completion of more than 150 dwellings the equipment in the Energy Centre (set out in paras. 3 & 4) shall have been installed. Prior to the practical completion of more than 30 dwellings that equipment shall be fully operational and will provide energy for the Development for the lifetime of the Development.'
 - b) Para. 3 to be changed to (or similar):

'HVP shall provide a central Energy Centre ('the Energy Centre') as part of the first phase of the Development located under the ramp located at the western end of the Linear Parkas indicated on the CHP Plan.'
 - c) Para. 4 to be changed to (or similar):

'HVP will provide an energy centre comprising a combined heating and power plant (CHP) fuelled by:

 - *natural gas fired combined heat and power plant*
 - *biomass fired boilers*
 - *gas fired boiler back-up and top-up plant*
 - *thermal store.'*
 - d) Para. 5 to be deleted (this para. required the provision of a 'private wire' network to serve all consumers within the Development. The European Court of Justice has since ruled that 'private wire' networks are contrary to competition laws as they restrict consumers' rights to switch energy companies).
 - e) Para. 6 to be changed to (or similar):

'The heat distribution network and Energy Centre will be configured to allow the possibility of exporting low carbon heat to future developments in the surrounding area.'
 - f) Para. 9 to be changed to (or similar):

'All residential buildings in the Development will achieve a Code for Sustainable Homes level 4 rating and all other buildings will achieve BREEAM 'Excellent' ratings unless not feasible in relation to design considerations.'
22. NOTE: The above changes still maintain the essential requirement that the Development will make a 20% carbon saving as per the outline planning permission.

Provision of On-Site Nursery

23. HVP and Newlon agree that a minimum of [xxxxsqm. GIA] on the ground floor of [Block N] will be made available for occupation and use as day nursery for part-time and full-time day care for [no.] children from 6 months up to 4 years old. This space will be fitted out and operated (subject to the grant of planning permission) to meet all relevant statutory childcare requirements in relation to size of premises, facilities to be provided, outdoor play provision and staffing levels.

Healthcare Centre

24. Para. 3 of Schedule 3 in the original Agreement is deleted.

Transport, Tottenham Hale Urban Centre Masterplan and Local Transport Infrastructure Contributions

25. It is agreed that the definition of the Transport Contribution be amended to be:
'a contribution towards the costs of the provision of:
- *bus service and bus passenger facility improvements; and/or*
 - *Tottenham Hale Station, bus, taxi and cycle interchange enhancements (including public realm improvements in the vicinity of Tottenham Hale Station and bus station); and/or*
 - *alterations to any part of the Gyrotory for two-way traffic flow.'*
26. It is agreed that the definition of the Tottenham Hale Urban Centre Masterplan Contribution be replaced by:
'a contribution to be used at the Council's discretion towards the cost of:
- *the same works as are covered by the Transport Contribution (as amended); and/or*
 - *improvements to open space, outdoor recreation, sport, amenity and/or play facilities in the Tottenham Hale area (including the whole of Down Lane Park); and/or*
 - *pedestrian/cyclist accessibility improvements within Tottenham Hale; and/or*
 - *implementing social, community, environmental and public realm infrastructure improvements in the Tottenham Hale area.'*
- For the purposes of this Agreement, Tottenham Hale is defined as the Wards of Tottenham Hale and Tottenham Green'.*
27. It is agreed that the scope of works to be undertaken using the Local Transport Infrastructure Contribution will be determined at the Council's discretion as local highway authority (subject to entering into a s278 Highways Act agreement as part of this agreement), including works that may be undertaken directly by HVP on unadopted roads (subject to appropriate indemnities when carrying out work on Council land) and that there will be no obligation on the Council to adopt as public highway the Spur Road.

Considerate Contractor/Down Lane Park improvements

28. It is agreed that Part 2 of Schedule 11 will be amended such that HVP will pay £25,000 to the Council upon the land sale completion as set out in the above table towards open space, play, safety, maintenance and/or amenity works in Down Lane Park in Tottenham Hale. It is agreed that, upon payment of this sum, the obligation on HVP to offer local residents free car washing facilities will end (though the obligation to comply with the Considerate Contractor scheme for the Development will continue).

Index Linking

29. Existing index-linking provisions in main agreement to remain. All payments (other than the School Payment which is specifically excluded from indexation in the original agreement) to be index-linked related to the dates in the original agreement.

Legal Fees

30. HVP agree to pay the Council's reasonable legal fees in the negotiation, drafting and completion of this Deed of Variation – payable on signing the Agreement.