OFFICER REPORT FOR DECISION UNDER DELEGATED AUTHORITY

APPLICATION NO:	**P1688.24**		
WARD:	Beam Park	**Date Received:**	19th December 2024
ADDRESS:	89-101 New Road Rainham		
PROPOSAL:	Application to modify planning obligations within the Section 106 agreement dated 01/11/18 for planning permission reference P0251.17, amended by deeds of variation dated 06/12/21 and 29/07/22, to remove the affordable housing and other financial contributions, and remove the affordable housing late-stage review mechanism.		
DRAWING NO(S):			
RECOMMENDATION:	It is recommended that **planning permission be REFUSED** for the reason(s) given at the end of the report		

BACKGROUND

Under the original planning permission (Ref: P0251.17), the proposed scheme included the provision of 13 affordable homes (22%), of which, 6 would be provided as 'Shared Ownership' and 7 would be provided at 'Affordable Rent' levels. In addition, the scheme included financial contributions of £78,176 towards the creation of a new linear park, £265,500 towards the provision of educational facilities, £120,771 as a carbon offset payment and £6,608 towards the provision and operation of a controlled parking zone, all of which were considered necessary to mitigate the harmful impacts of the development and were secured as planning obligations within the 106 agreement. Moreover, the s106 agreement for this permission secured early and late stage review mechanisms to capture any additional surplus generated by the development, to be used to fund additional affordable housing.

Under the first section 73 application (Ref: P1727.20), a Deed of Variation was signed to confirm that all of the obligations agreed between the applicant and the local planning authority under the original application, and which the Inspector concluded were necessary to allow the appeal, were carried over to this new permission.

Under the second section 73 application (Ref: P1949.21), the applicant sought to modify the terms of the s106 agreement in relation to the provision of on-site affordable housing by making very marginal amendments to the approved plans (increasing the footprint of Block C to increase overall floorspace by 44.6 sqm). This process; using a spurious s73 application to reduce the amount of affordable housing within the scheme (or in this case, remove it entirely and provide an in-lieu contribution of £350,000 instead) has historically been supported by the Planning Inspectorate as an appropriate way to reduce or remove planning obligations due to the specific wording of section 106 of the TCPA 1990 (e.g. Appeal Ref: APP/L5240/W/23/3332225), despite this being an obviously flawed approach which undermines the ability of local planning authorities to secure necessary planning mitigations.

However, this method of reducing or removing obligations from extant planning permissions through s73 applications no longer appears to be supported by government policies, and in a Written Ministerial Statement made by the Secretary of State for Housing, Communities and Local Government on the 23rd October 2025, the Secretary of State set out that:

"The Government intends to clarify the use of Section 73 of the Town and Country Planning Act 1990 so that an application under this section to vary a condition of a planning permission should no longer be used as an alternative means of reconsidering fundamental questions of scheme viability or planning obligations. To that end, the Government will update Planning Practice Guidance in due course to clarify the appropriate circumstances in which a Section 73 application can justifiably be used to modify obligations that are set out in a S106 agreement".

This was followed by a letter from the Minister of State for Housing and Planning to the Chief Executive of the Planning Inspectorate on the 18th December 2025, which further set out that:

"The Planning Inspectorate will want to note that, as a general rule, attempts to revisit fundamental issues of viability or planning obligations through Section 73 applications should be scrutinised carefully, and the applicant should provide a robust justification for any changes proposed for planning obligations associated with the original permission beyond those linked to the specific variation of condition being sought.

Where developers submit a Section 73 application that seeks to reduce affordable housing provision based on a new viability assessment, the decision maker should have regard to the harm that such a reduction may cause and give this appropriate weight in the overall planning balance, alongside the wider merits of the scheme."

As such, if application reference P1949.21 was submitted now, due to the change in approach at a national level in the way which s73 applications should be considered, it would likely be refused or not accepted as valid as it would be viewed as a clear attempt to circumnavigate the agreed position on planning obligations, noting that the marginal increase in floorspace proposed as the s73 amendment did not appear to have any link to the revised figures used in the applicant's amended Financial Viability Assessment.

This is notwithstanding that the rationale for removing the on-site affordable housing and instead providing an off-site contribution was that the delivery of Beam Park Train Station was not certain, and that without its delivery, the scheme would not achieve its target sales values (which had previously been agreed by the council, the applicant and an Inspector at the appeal for application reference P0251.17). The delivery of Beam Park station was never certain, and was always outside the control of both the applicant and the council to provide, and so it is unclear why a different position was taken in regards to the impact of delivery or non-delivery of off-site infrastructure for the viability review of application reference P1949.21 compared to all previous applications, when the risk to the applicant of implementing their permission would have been the same at any time before the station has been fully built and is operational, recognising that the applicant has no control whatsoever over the station's delivery. It is further clarified in the officer's report for application reference P1949.21 that either permission P0251.17 or P1727.20 had already been implemented at the time of the second s73 application (and on-site work had subsequently ceased), and so it appears as if the applicant had already considered the risks of the station not being delivered at the time they commenced the development, and still chose to commence regardless.

THE PROPOSAL

As set out in the Cover Letter by Aardvark Planning Law (18/10/24), and supported by the Turner Morum 0% Residual Appraisal Model (undated), this S106A application seeks to modify the S106 agreement dated 01/11/18 in relation to planning permission reference P0251.17, which was subsequently varied through Deeds of Variations dated 06/12/21 and 29/07/22, in relation to permission references P1727.20 and P1949.21 respectively.

The modification sought relates to the complete removal of all remaining financial planning obligations, which relate to affordable housing, education infrastructure, green infrastructure and carbon offsetting, alongside the removal of the late-stage review mechanism for affordable housing.

The financial contributions are:

-£350,000 towards the provision of off-site affordable housing
-£265,500 towards the provision of education infrastructure
-£120,771 as a carbon offset payment
-£78,175.61 towards the provision of a new linear park at Beam Parkway

The submitted information has been reviewed by Newmark, acting on behalf of the council as its independent financial viability advisor, who also provided advice to the council on the previous applications for this site. Their written response will be published alongside this report for full transparency.

RELEVANT PLANNING HISTORY

P1229.17 - Outline planning application for the demolition of all buildings and redevelopment of the site for residential use providing up to 62 units with ancillary car parking, landscaping and access. Approved on 28/08/18.

P0251.17 - The demolition of all existing buildings and redevelopment of the site to provide 3 new buildings, ranging from 2 to 5 storeys, comprising 56no. self-contained flats (14 x 1-bedroom, 23 x 2-bedroom, 19 x 3-bedroom), and 3no. 4-bedroom houses, a small commercial unit to ground floor and associated landscaping, vehicle access, cycle and car parking. Allowed at appeal on 19/11/18 and associated S106 agreement dated 01/11/18.

P1727.20 - Variation of condition No. 24 (Contamination) of planning permission ref: P0251.17 dated 19/11/2018 to vary the wording of condition 24 to allow demolition of existing buildings, break up the hardstanding and removal of the existing petrol tanks (The demolition of all existing buildings and redevelopment of the site to provide 3 new buildings, ranging from 2 to 5 storeys, comprising 56no. self-contained flats (14 x 1-bedroom, 23 x 2-bedroom, 19 x 3-bedroom), and 3no. 4-bedroom houses, a small commercial unit to ground floor and associated landscaping, vehicle access, cycle and car parking. Approved on 07/12/21 and associated Deed of Variation to S106 agreement dated 06/12/21.

P1949.21 - Variation of Condition 2: Accordance with plans of application ref: APP/B5480/W/18/3202420 (as per planning officer email guidance dated 21 September 2021) - to increase ground floor footprint of Block C. Redevelopment of the site to provide 3 new buildings ranging from 2 to 5 storeys comprising 56 self- contained flats (14 x 1-bedroom, 23 x 2-bedroom and 19 x 3-bedroom) and 3 x 4 - bedroom houses, a small commercial unit on the ground floor and associated landscaping, vehicle access, cycle and car parking. Approved on 22/08/22 and associated Deed of Variation to S106 Agreement dated 29/07/22.

REPRESENTATION SUMMARY

PLANNING POLICIES

OFFICER APPRAISAL

Under Section 106A of the Town and Country Planning Act 1990 (as amended), a planning obligation, once entered into, may not be modified or discharged except by agreement between the local planning authority and the person(s) against whom the obligation is enforceable. A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the local planning authority for the relevant obligation(s) to be modified or discharged. In such circumstances, the local planning authority may determine that:

(a)the planning obligation shall continue to have effect without modification;
(b)if the obligation no longer serves a useful purpose, that it shall be discharged; or
(c)if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

As such, the principle test for whether a local planning authority should allow the removal or modification of planning obligations rests on whether the relevant obligation still serves a useful purpose.

In R (Mansfield DC) v Secretary of State for Housing, Communities and Local Government EWHC 1794 (Admin), the judge referred to the correct approach to considering an s106A application as that articulated in R (The Garden and Leisure Group Ltd) v North Somerset Council EWHC 1065 (Admin), in that the local planning authority need to consider four fundamental questions;

(1)What is the current obligation?
(2)What purpose does it fulfil?
(3)Is it a useful purpose?
(4)If it does perform a useful purpose, would the obligation serve that purpose equally well subject to the proposed modifications?

This case law established that 'useful purposes' is not only limited to "useful planning purposes" as suggested in the cover letter by Aardvark, citing R (Batchelor Enterprises Ltd) v North Dorset DC EWHC 3006 (Admin), as this point was considered and clarified under the Mansfield DC judgement, where it was concluded that "the statute itself contains no qualification to the expression of 'useful purpose'" and "the critical question is whether the obligation serves some useful function, the absence of which makes the maintenance of the obligation pointless", and therefore the relevant question for the decision maker is "whether the obligation served any useful purpose, not any useful planning purpose".

The proposal seeks the complete removal of all remaining financial obligations entered into under the S106 agreement dated 01/11/18, and later modified under the s106 agreement dated 29/07/22 (which altered the provision of on-site affordable housing to an off-site contribution), and is seeking to achieve these removals through the submission of an application submitted under section 106A of the Town and Country Planning Act (1990) (as amended).

The current application seeks the complete removal of all remaining financial planning obligations, which relate to affordable housing, education infrastructure, green infrastructure and carbon offsetting, alongside the removal of the late-stage review mechanism for affordable housing. The reasoning provided by the applicant is essentially the same argument put forward under application reference P1949.21 in that the non-delivery of Beam Park station negatively affects their sales values. It is further stated in the Cover Letter that these obligations "prevent occupation of the residential units" and that the development is now being operated under a 'build-to-rent' model which "means there is no capital sum from sales receipts to fund payments". The revised Turner Morum appraisal further sets out that build costs were higher than anticipated and would like these higher build costs reflected in the FVA after the fact.

Put simply, the applicant is contending that because the costs of development were higher than anticipated and the sales values from the units are lower than anticipated, they were not able to achieve their target rate of return (profit) of 17.5% on GDV, and instead made a profit of approximately 6% on GDV. Now that the scheme has been fully built and is at least partially occupied, the applicant appears to be suggesting that their failure to meet their target rate of return, because of free market conditions and the delivery of infrastructure neither they nor the council had any control over delivering, means that the obligations secured under the previous s106 agreement, which were considered necessary to mitigate the development and provide planning benefit, no longer serve a useful purpose.

Firstly, because the development has been fully completed, the changes presented in the Turner Morum appraisal reflect realised development risk rather than the theoretical risk presented in FVAs for proposed applications. Any risks taken by the developer in implementing their permission after it has been granted are their risks alone, and the council as local planning authority has absolutely no responsibility to ensure that a development achieves its target rate of return. There is nothing intrinsic within the planning system which promotes or supports developer profit, and the legislation and guidance on financial viability seek only to provide a balanced and reasonable framework for viability assumptions when an application is being assessed, to establish whether a surplus is likely to exist, and whether the scheme can support affordable housing using that surplus. One of these viability assumptions is developer profit, which the Mayor's Viability SPG sets out should be between 15-20% on GDV for the vast majority of applications, and 17.5% was used for this application, which is in line with standard practice.

However, an assumption used in an assessment of a scheme's viability through a planning application is not a guarantee of that outcome being achieved, nor is it the council confirming that a rate of return at 17.5% on GDV is the 'target', merely that the council consider that figure to be within the reasonable range they expect a developer to be able to achieve, based on comparable applications and supported by the evidence base underpinning the London Plan and its supporting documents. Planning Practice Guidance is clear that development risk is already captured within this viability assumption and that the subsequent realisation of that risk does not justify reopening agreed obligations. PPG for Viability explicitly states:

"As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism."

Furthermore, when the permission in question has been implemented, reached practical completion, and appears to have been occupied at or near capacity since at least late 2024, there does not appear to be any logic to an argument that a reduced level of profitability from a scheme actually amounted to a fundamental barrier to development, because if it had, then logically the development could not have been completed, nor occupied.

Secondly, based on the incorrect conclusion that the council is somehow responsible for maintaining developer profit after the development has been completed, the applicant seeks to establish through a revised FVA that when developer profit is maintained at 17.5% on GDV, and assuming all obligations are maintained, the scheme as built generates a deficit of £2,176,054, and therefore the obligations no longer serve a useful purpose because they prevent occupation. Putting aside the principle concern that it is not the council's responsibility to ensure the developer achieves their target rate of return, it is not understood how generating a deficit when applying a target rate of return of 17.5% means that the proposal is not "viable", nor is it clear how this has any bearing on the principle test under an S106A application, which is whether the obligations still serve a useful purpose, as clarified under the Mansfield DC decision, nor is it understood how these obligations prevent occupation.

The scheme, as presented in the applicant's submission, remains viable in that it generates a developer profit, and if the asset were to be sold, it would reasonably be expected to achieve a receipt broadly equivalent to the GDV less any agreed planning obligations, estimated to be in the region of £20 million. The scheme is therefore viable with the obligations included, however the applicant appears to have taken the view that any rate of return below 17.5% renders the scheme unviable, which is an incorrect understanding of viability assessments and associated guidance.

The cover letter states that "because the contributions are not viable, they no longer serve a planning purpose, because all they do is prevent occupation of the residential units at a time when are forms of housing are much needed". As set out above, the judgement in Mansfield DC confirmed that the test for whether an obligation should be removed or modified is whether the obligation serves a useful purpose, and is not only limited to useful planning purposes.

Noting that 'useful purpose' is not only limited to useful planning purposes, and using the normal application of the phrase, there is no clear justification for the removal of these obligations given that these obligations are clearly defined, would fund infrastructure of benefit to all, and would fund projects and measures which address issues caused by climate change, thereby demonstrating clearly useful purposes. If the test were only linked to useful 'planning' purposes, the same conclusions would be reached in any event, noting the London Plan and Havering Local Plan both contain policies which support the provision of affordable housing, necessary supporting infrastructure, and payments to offset carbon emissions produced by the development, and all obligations are considered to meet the tests set out under Regulation 122 of the Community Infrastructure Levy Regulations (2010).

Moreover, the proposed modifications (removal of all of the remaining financial obligations) would render the obligations completely useless, as the totality of the usefulness of these obligations is linked to the payments being made.

As such, taking into account the four questions outlined under the Mansfield DC decision, it is the view of the local planning authority that all of the outstanding financial contributions have clearly defined purposes, these purposes are useful in delivering benefit and mitigating harm from the development, and these obligations would stop providing a useful purpose altogether if they were subject to the proposed modifications. As such, it is the view of the local planning authority that the proposed modifications are unacceptable.

Moreover, having regard to PPG which sets out that "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", the argument that these obligations no longer serve a useful purpose simply because they reduce the profits to the developer has no merit, as even if it was accepted that an FVA submitted post completion of a development could be used to offset realised risk and reduce affordable housing contributions (which it is not), developer profit is not relevant to the tests of a useful purpose.

Thirdly, it is incredibly spurious to suggest that that these obligations "prevent occupation of the residential units", and it is assumed that this is a reference to the 30% occupancy trigger for the affordable housing contribution. The site appears to be nearly fully occupied, with the submitted documents setting out that notice was served on 48 of the 59 units within the scheme (81% of the units), whilst council tax records appear to confirm that 48 units are currently occupied. Moreover, the building appears to have been at least partially occupied as seen in photos of the site from October 2024, and as evidenced by personal belongings, drying clothes on balconies, and parked cars in the forecourt. It is considered that the 30% limit on occupancy of the market sales units is reasonable, and levers which prevent full occupancy of new developments until obligations have been secured (including for the provision of affordable housing) are recommended as being appropriate in Planning Practice Guidance. In any event, this legal limit on occupation of the market sale units as set out in the s106 agreement appears to have been largely ignored by the developer, and to suggest that a legal limit which has been ignored by one party of the agreement somehow also acts as a barrier to that same party is disingenuous at best.

Fourthly, the cover letter sets out that the reasons for the proposed removal of these obligations is based on the scheme's viability, which the Turner Morum appraisal sets out is negative (and as such there is no available surplus to be used for affordable housing). The rationale provided is that sales values (in £/sqft) are lower than anticipated in 2022, when the s73 scheme (Ref: P1949.21) was approved and implemented, which coupled with higher than anticipated build costs have reduced developer's profit from 17.5% to approximately 6% (assuming all obligations remain as intended). The submitted information seeks to demonstrate that the lower-than-expected sales values are a direct result of the "cancellation of Beam Park Station" (the same argument put forward for the reduction in affordable housing under application reference P1949.21), and a cooling housing market.

The 2022 review of the application already accounted for the potential non-delivery of beam park station and applied a 5% discount to GDV to reflect this risk (in addition to the risks inherently reflected in the assumptions of viability). As such, further revising the inputs into the FVA to reduce obligations, when the previous assumptions already directly addressed this risk, does not have any merit, and would essentially be applying a double discount. Moreover, a new station at Beam Park has never been certain but has always been something which has strong support from the council and the Mayor, and its creation could be used as a driver of regeneration in the wider area with improved access to central London. However, with the station's delivery being outside of the control of the council and the applicant, unless the station had been built (or was at least under construction), there would seemingly always have been quite a high element of risk in proceeding to implement before the station, if the development's overall viability was so intrinsically linked to the station's delivery.

In any event, the delivery of a new station at Beam Park is likely in the short to medium term, with planning permission for a ticket office recently approved in late 2025 and renewed government support for its creation, in part to allow for continued residential development in the wider area. As such, assuming all of the previously discussed assumptions were agreed and the delivery or non-delivery of Beam Park station was the only point of contention, this argument would not be accepted because there has been no material change in circumstances related to the delivery of Beam Park station since 2022 (when the obligations were agreed), and if anything, its likely delivery has gained momentum recently.

In addition, there is mention of the site being operated under a 'Build-to-rent' model. This appears to be a commercial decision made entirely at the behest of the applicant and the council is not responsible or liable for any additional costs, or loss of revenue or short-term capital sums the applicant experiences as a result of their own commercial decision. There are no planning restrictions on the permission which would usually be applied to BTR schemes and the legal agreement only refers to market sale units, so in planning terms, the assessment will continue to be made based on market sales, which is how the Turner Morum appraisal has been set out.

In terms of the actual inputs used in the Turner Morum appraisal, and reviewed by Newmark on behalf of the council, there is some dispute in respect of the private residential Gross Development Value (GDV) in relation to sales values, which Turner Morum have set out as £19,589,475 (£411/sqft) and Newmark have concluded is £20,620,500 (£433/sqft).

Newmark's appraisal sets out that in 2022, Newmark reviewed the Applicants' assumption on GDV equating to £400/sqft and found evidence supporting values of £434/sqft for the subject scheme at the adjacent Countryside Beam Park development and at Knightswood Place (Dover's Corner) by Persimmon. Newmark then applied the Land Registry House Index (Havering) as a cross check to the previously agreed £425/sqft. A discount was then applied to this to reflect the risk of the Beam Park Station not coming forward (5%). This cross-check equated to £433/sqft which was in line with the GDV pricing arrived at through reviewing comparable evidence. As such, £434/sqft was adopted within the 2022 appraisal and agreed by the applicant.

Following a review of comparable sales in 2026, Newmark have concluded that the sales values presented by Turner Morum of £411/sqft are not representative of local market conditions and that a rate of £433/sqft is more appropriate, based on comparable developments at Beam Park (Phase 1) and Knightwood Place (Dovers Corner). There is further no evidence of house prices falling since the most recent assessment of viability for this site (in 2022), and the House Price Index indicates that there has been growth in flat prices, albeit marginal at 3.2%, since 2022.

In addition, there is disagreement about the Benchmark Land Value, which Turner Morum state should be the same as the Residual Land Value, whereas Newmark state it should be £657,000.

Under the 2022 assessment of viability, the appraisal produced a residual land value of £657,000, compared to a benchmark land value of £305,000, leaving a surplus of £350,000, which was agreed by the Applicant and Newmark, and used to fund an affordable housing contribution. Whilst the RLV was not formally adopted as the BLV, it represents a previously agreed policy compliant viability outcome, and, in accordance with RICS Guidance Note: Financial Viability in Planning and PPG, it is appropriate to use previously agreed RLVs as a comparative threshold later reviewed, as this allows a
like-for-like assessment of whether current market conditions and costs genuinely impact the scheme's ability to deliver the agreed policy compliant obligations, whilst maintaining consistency and transparency.

The applicant is suggesting that the benchmark land value should equal the residual land value of the proposed scheme (which has been completed), because the planning permission has been implemented. However, not only is this approach not consistent with standard viability practice, it again seeks to justify that the developer's rate of return is the only input which must remain consistent, with all other inputs and assumptions altered to reflect realised risk (e.g. build costs, sales values), which are risks inherent with building any form of residential development in any location. In any event, a benchmark land value is intended to represent the minimum value a reasonable landowner would require to release the land for development, taking into account the site's existing use, market evidence, and a suitable incentive, and it is not intended to be used as a lever to influence development output into achieving the desired landowner return.

In addition, Newmark have requested further evidence of build costs, however on the basis that this would not affect the council's overall conclusions on the merits of the application, the view has been taken that build costs are disputed until evidence of invoices have been provided, at which point, they could likely be agreed (however this agreement would be moot based on the in principle objection discussed above).

In respect of the request to remove the affordable housing late-stage review, there appears to be no justification for this as it still serves a useful purpose and could probably be discharged under a separate S106A application, assuming a viability review is submitted which accords with the Mayor's guidance on late-stage reviews. In this respect, PPG for Viability States that "Review mechanisms are not a tool to protect a return to the developer, but to strengthen local planning authorities' ability to seek compliance with relevant policies over the lifetime of the project. They should not be used to avoid policy compliance or reduce agreed contributions."

CONCLUSION

The application is considered wholly unacceptable, and it is considered that the following financial contributions, secured as planning obligations, continue to serve a useful purpose and are necessary to mitigate the development.

-£350,000 towards the provision of off-site affordable housing

-£265,500 towards the provision of education infrastructure
-£120,771 as a carbon offset payment
-£78,175.61 towards the provision of a new linear park at Beam Parkway

In addition, there is no justification for the removal of the late stage affordable housing review.

As such, the planning obligations shall continue to have full effect without modification.

The submitted information in relation to viability has been reviewed by Newmark, acting on behalf of the council as its independent financial viability advisor, who also provided advice to the council on the previous applications for this site. They cite a number of concerns, both in terms of process, deviation from standard practice and disagree with several of the inputs used in the revised FVA, whilst also highlighting that the developer is trying to offset their realised risk through the removal of obligations which is not something which has any basis in legislation or financial viability planning guidance.

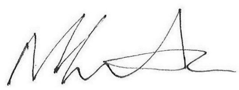
RECOMMENDATION:

It is recommended that **planning permission be REFUSED** for the following reason(s)

1 REFUSAL REASON 1

The proposed modification of the S106 Agreement Dated 01/11/18 in relation to planning permission reference P0251.17, which was subsequently varied through a Deed of Variation dated 06/12/21 in relation to permission reference P1727.20, and a Deed of Variation dated 29/07/22 in relation to permission reference P1949.21, are considered unacceptable, because the obligations proposed to be removed still serve a useful purpose, and these obligations would not serve their useful purposes equally well if the proposed modifications were approved. As such, the planning obligations shall continue to have full effect without modification.

Authorising Officer:



Neil Goate 24th April 2026