

Boyer

Former Nestle Factory, Block H and Block I (Canteen) S96a Application

REPORT CONTROL

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1. INTRODUCTION AND BACKGROUND

- 1.1 We are instructed on behalf of our client, BDW Trading Ltd (Barratt London), to submit an application pursuant to Section 96A (S96a) of the Town and Country Planning Act (non-material amendments) to amend planning permission ref.1331/APP/2022/2553 (referred to as the Canteen permission).
- 1.2 The Application Site is located within the Former Nestle Factory, Nestles Avenue, Hayes, UB3 4RF, in the southern part of London Borough of Hillingdon (LBH), west London (the Site). This is located approximately 500m to the south-east of Hayes Town Centre, bounded to the north by Great Western Rail Line and the Grand Union Canal and to the south by Nestles Avenue.
- 1.3 Block H and I were originally approved under planning permission ref. 1331/APP/2017/1883 and with subsequent Section 73 (S73) applications: ref. 1331/APP/2019/1666 and 1331/APP/2021/751. A 'drop-in' application with ref.1331/APP/2019/2314 and known as the "Additional Unit Scheme" was granted on 28th June 2021 in respect of some of the blocks. This permission included Block H within the red line but not the canteen building.
- 1.4 A further 'drop-in' application, to which this S96a relates, was approved on 5th July 2023 for the following development:

"Partial demolition and redevelopment of the former canteen building to provide a new healthcare facility (Class E(e)), nursery (Class E(f)) and reconfigured residential building (Block H) (Class C3) with a commercial unit at ground floor (Class E), including associated landscaping, access, car parking and other engineering works." (the Canteen permission).

- 1.5 Condition 1 of the Canteen permission requires the development to be begun before the expiration of three years from the date of the permission and therefore this permission will expire on the 5th July 2026.
- 1.6 This S96a is therefore required to separate out Block H and I into separate parcels one containing Block H and the other containing Block I so that Barratt London can proceed to implement the permission within the coming months and bring forward Block H.
- 1.7 It is intended that a third-party health care company will come on board to take Block I but in order to assist such operator to do this effectively there needs to be a clearer division between the residential and non-residential elements of this canteen permission in terms of conditions, S106 obligations, CIL and to ensure that the Canteen permission comprises a severable one in two distinct and deliverable parcels.
- 1.8 This will ensure flexibility in the implementation of the permission as each proposed parcel will be capable of being constructed, occupied and operated independently of the other.
- 1.9 The Canteen permission is subject to 32 conditions, 13 of which currently refer to "phases". The permission already envisages phasing of the development and there is no linkage between the two blocks in terms of conditions of S106 matters. The changes proposed in this application, however, ensure a clearer division for all conditions and in relation to CIL and S106 matters.

- 1.10 It is noted that simply phasing a development is not sufficient to make the permission severable applying the relevant caselaw, but if it can be demonstrated that taken as a whole, the development is intended to operate as a severable one taking account of relevant conditions, obligations and ancillary matters needed to deliver each component part then a permission can be constructed to be a severable one.
- 1.11 The changes proposed to the conditions ensure that the two parcels are treated separately and independently of one another, and this is made clearer in the proposed variations to the S106 agreement.
- 1.12 In terms of the development itself, the two parcels are not reliant upon each other for the delivery of matters such as the provision of access, amenity space, cycle parking or other infrastructure.
- 1.13 As such, it is considered that this is a development, including with the future changes proposed that can properly be treated as a severable one.
- 1.14 Details of the proposed changes are set out in more detail in Section 3 of this report. In summary, the proposed changes are to the wording of the conditions; and demolition and phasing plans. A Deed of Variation (DoV) is required to update the phasing plan, demolition plan and to make clearer the splitting out of the relevant obligations as between the two parcels.

2. PROCEDURAL MATTERS

- 2.1 As you will be aware, S96A empowers a local planning authority to make any change to a planning permission as long as it is satisfied “*that the change is not material*” (section 96A(1)). The S96a power extends to amendments to the description of development, changes to approved documents and amendments to conditions, including the imposition of new conditions or removal of existing conditions (section 96A(3)).
- 2.2 The materiality of the proposed change must be assessed having regard to the existing permission as a whole, including the effect of any existing conditions. In deciding whether the change is material, the local planning authority must take into consideration any previous changes under section 96A. This is the fifth s96a on the Site, and proper regard has been given to the amendments which have already been secured.
- 2.3 “Materiality” must be assessed by reference to whether the change is material in planning terms, i.e. whether it materially affects the planning merits or otherwise of the scheme. In this instance, the proposed change must be considered in the context of the proposed development. The scale of development directly correlates to the scale of amendments that can be made before those changes are considered material.
- 2.4 In the context of the permission, it is considered that the proposed changes are minor and in terms of “materiality”, the proposed changes would not tip the balance and therefore considered to be minor and acceptable to be changed via a S96a.
- 2.5 Further details as to why we consider the proposed amendments should be construed as non-material are provided in Section 4 below.

3. PROPOSED AMENDMENTS

3.1 The proposed amendments seek to enable the permission for Block H and I (Canteen) to be submitted and delivered separately.

3.2 The proposed amendments include changes to the wording of a number of conditions to separate out Block H and Block I (Canteen) as well as changes to the demolition plan and phasing plan to allow these Blocks to come forward separately. The proposed changes are set out below.

Conditions

3.3 The first aspect of this involves the rewording of relevant Conditions. The existing and proposed wording is set out in **Table 1** below, with the changes highlighted in red.

Table 1 – Approved and Proposed Conditions

Condition	Approved Wording	Proposed Wording
2	<p>The development hereby permitted (comprising 2,091m² floorspace for the healthcare facility (Use Class E(e)), 521m² floorspace for the nursery facility (Use Class E(f)), 230m² floorspace for flexible Use Class E, 41 no. 1 bed 1 person units within a part 5, part 6 storey building and 20 no. car parking spaces), shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers:</p> <p>BLNEST-DMFK-DR-AR-00070 Rev. B; BLNEST-DMFK-DR-AR-00080 Rev. C; A10 Rev. A; BLNEST-DMFK-DR-AR-00100 Rev. B; BLNEST-DMFK-ZZ-BZ1-DR-AR-00101 Rev. B; BLNEST-DMFK-ZZ-L00-DR-AR-00102 Rev. B; BLNEST-DMFK-ZZ-BZ1-DR-AR-00101 Rev. B; BLNEST-DMFK-ZZ-L00-DR-AR-00102 Rev. B; BLNEST-DMFK-ZZ-05-DR-AR-00105 Rev. B; BLNEST-DMFK-ZZ-06-DR-AR-00106 Rev. B; BLNEST-DMFK-I0-ZZ-DR-AR-00150 Rev. B; BLNEST-DMFK-H0-ZZ-DR-AR-00151 Rev. B;</p>	<p>The development hereby permitted (comprising 2,091m² floorspace for the healthcare facility (Use Class E(e)), 521m² floorspace for the nursery facility (Use Class E(f)), 230m² floorspace for flexible Use Class E, 41 no. 1 bed 1 person units within a part 5, part 6 storey building and 20 no. car parking spaces), shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers:</p> <p>BLNEST-DMFK-DR-AR-00070 Rev. B; BLNEST-DMFK-DR-AR-00080 Rev. C; A10 Rev. A; BLNEST-DMFK-DR-AR-00100 Rev. B; BLNEST-DMFK-ZZ-BZ1-DR-AR-00101 Rev. B; BLNEST-DMFK-ZZ-L00-DR-AR-00102 Rev. B; BLNEST-DMFK-ZZ-BZ1-DR-AR-00101 Rev. B; BLNEST-DMFK-ZZ-L00-DR-AR-00102 Rev. B; BLNEST-DMFK-ZZ-05-DR-AR-00105 Rev. B; BLNEST-DMFK-ZZ-06-DR-AR-00106 Rev. B; BLNEST-DMFK-I0-ZZ-DR-AR-00150 Rev. B; BLNEST-DMFK-H0-ZZ-DR-AR-00151 Rev. B;</p>

Condition	Approved Wording	Proposed Wording
	<p>BLNEST-DMFK-I0-ZZ-DR-AR-00150 Rev. B;</p> <p>BLNEST-DMFK-H0-ZZ-DR-AR-00151 Rev. B;</p> <p>BLNEST-DMFK-H0-ZZ-DR-AR-00160 Rev. B; and</p> <p>Shall thereafter be retained/maintained for as long as the development remains in existence.</p>	<p>BLNEST-DMFK-H0-ZZ-DR-AR-00160 Rev. B;</p> <p>Phasing Plan dMKF_2260_A700 Rev P3</p> <p>Shall thereafter be retained/maintained for as long as the development remains in existence.</p>
11	<p>Prior to the commencement of any works on site, the Canteen Building shall be recorded in full, internally and externally to Historic England level 2 and discs/ copies of the document shall be submitted to and approved in writing to the Local Planning Authority. Evidence should also be submitted to demonstrate that the Historic England level 2 document, has been submitted to the local library and Uxbridge Local History Library.</p>	<p>Prior to the commencement of any works to the Canteen Building, the building shall be recorded in full, internally and externally to Historic England level 2 and discs/ copies of the document shall be submitted to and approved in writing to the Local Planning Authority. Evidence should also be submitted to demonstrate that the Historic England level 2 document, has been submitted to the local library and Uxbridge Local History Library.</p>
17	<p>Prior to commencement of above ground works, details of all materials for Block H (residential building H and Block I (Canteen Building) shall be submitted to and approved in writing by the Local Planning Authority. Details should include information relating to make, product/type, colour and photographs/images.</p>	<p>Split into two separate conditions:</p> <ol style="list-style-type: none"> <li data-bbox="965 1372 1399 1888">Prior to commencement of above ground works for Block H (residential building), details of all materials for this phase shall be submitted to and approved in writing by the Local Planning Authority. Details should include information relating to make, product/type, colour and photographs/images. <li data-bbox="965 1911 1399 2100">Prior to commencement of above ground works for Block I (Canteen Building), details of all materials for this phase shall be submitted to and approved

Condition	Approved Wording	Proposed Wording
		in writing by the Local Planning Authority. Details should include information relating to make, product/type, colour and photographs/images.
18	<p>Prior to commencement of above ground works, elevation drawings (scale of 1:20) and vertical section drawings (scale of 1:2) for Block H (residential building) and Block I (Canteen Building) shall be submitted to and approved in writing by the Local Planning Authority. These should detail the following elements: windows and doors (including reveals); roof parapet; and balconies.</p>	<p>Split into two separate Conditions:</p> <ol style="list-style-type: none"> <li data-bbox="970 619 1383 1170">1. Prior to commencement of above ground works for Block H (residential building), elevation drawings (scale of 1:20) and vertical section drawings (scale of 1:2) for this phase shall be submitted to and approved in writing by the Local Planning Authority. These should detail the following elements: windows and doors (including reveals); roof parapet; and balconies. <li data-bbox="970 1215 1383 1754">2. Prior to commencement of above ground works for Block I (Canteen Building), elevation drawings (scale of 1:20) and vertical section drawings (scale of 1:2) for this phase shall be submitted to and approved in writing by the Local Planning Authority. These should detail the following elements: windows and doors (including reveals); roof parapet; and balconies.
19	<p>Prior to commencement of above ground works, details of the mitigation measures to be implemented to prevent healthcare facility overlooking the south-facing residential flats of Block H shall be submitted to and approved in writing by the Local Planning Authority.</p>	<p>Within 6 months of commencement of works for Block I, details of the mitigation measures to be implemented to prevent healthcare facility overlooking the south-facing residential flats of Block H shall be submitted to and approved in writing by the Local Planning Authority.</p>

Condition	Approved Wording	Proposed Wording
22	<p>Prior to the commencement of above ground works, a comprehensive Ecological Enhancement Scheme demonstrating net gains in biodiversity value for the development shall be submitted to and approved in writing by the Local Planning Authority (in consultation with the Ministry of Defence and Heathrow Airport Safeguarding). The scheme shall be made up of a plan (or plans) of the phase annotated with ecological enhancement measures to be included within the fabric of the buildings and the landscaping and accompanied by a report detailing the justification for such measures and how they will be maintained in perpetuity. The development must proceed in accordance with the approved plans.</p>	<p>Prior to the commencement of above ground works for each phase, a comprehensive Ecological Enhancement Scheme demonstrating net gains in biodiversity value for the development shall be submitted to and approved in writing by the Local Planning Authority for each phase (in consultation with the Ministry of Defence and Heathrow Airport Safeguarding). The scheme shall be made up of a plan (or plans) of the phase annotated with ecological enhancement measures to be included within the fabric of the buildings and the landscaping and accompanied by a report detailing the justification for such measures and how they will be maintained in perpetuity. The development must proceed in accordance with the approved plans.</p>
27	<p>The building(s) shall achieve 'Secured by Design' accreditation awarded by the Hillingdon Metropolitan Police Crime Prevention Design Adviser (CPDA) on behalf of the Association of Chief Police Officers (ACPO). No building shall be occupied until accreditation has been achieved.</p>	<p>The building(s) shall achieve 'Secured by Design' accreditation awarded by the Hillingdon Metropolitan Police Crime Prevention Design Adviser (CPDA) on behalf of the Association of Chief Police Officers (ACPO). No building shall be occupied until accreditation has been achieved in relation to that building.</p>
29	<p>Prior to the first operation of the development, a Parking Design and Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall set out:</p>	<p>Prior to the first occupation of each phase of the development, a Parking Design and Management Plan for that phase shall be submitted to and approved in writing by the Local Planning Authority. This shall set out:</p>

	<p>a) Allocation, Control and Enforcement of Parking</p> <p>i) How the car parking will be designed and managed, with reference to Transport for London guidance on parking management and parking design. It should also set out in the methodology behind the allocation/control of parking places which can be supported by enforcement structures that encourage the correct use of parking places which assists in ensuring that parking demand and allocation is properly managed.</p> <p>b) Designated Disabled Persons Parking</p> <p>i) How one designated disabled persons parking space could be provided upon request as soon as the existing non-provision for residential flats is insufficient; and</p> <p>ii) How an additional three designated disabled persons parking (to total four) could be provided upon request as soon as the one space provided for residential flats (under part (B)(i)) is sufficient.</p> <p>Thereafter the development shall be carried out and maintained in full accordance with the approved details.</p>	<p>a) Allocation, Control and Enforcement of Parking</p> <p>i) How the car parking will be designed and managed, with reference to Transport for London guidance on parking management and parking design. It should also set out in the methodology behind the allocation/control of parking places which can be supported by enforcement structures that encourage the correct use of parking places which assists in ensuring that parking demand and allocation is properly managed.</p> <p>b) Designated Disabled Persons Parking</p> <p>i) How one designated disabled persons parking space could be provided upon request as soon as the existing non-provision for residential flats is insufficient; and</p> <p>ii) How an additional three designated disabled persons parking (to total four) could be provided upon request as soon as the one space provided for residential flats (under part (B)(i)) is sufficient.</p> <p>Thereafter the development of each phase shall be carried out and maintained in full accordance with the approved details.</p>
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Condition	Approved Wording	Proposed Wording
New Phasing Condition		The development hereby approved, shall be undertaken in accordance with the approved phasing plan (ref. dMKF_2260_A700 Rev P3) to enable the two parcels of development (Block H and Block I) to come forward as two separate distinct and severable parcels.

Phasing and Demolition Plan

- 3.4 As set out in the updated wording for Condition 2, the demolition and phasing plans need to be updated to ensure that Block H can be regarded as its own separate chargeable development for CIL purposes and therefore brought forward without triggering the relevant CIL and S106 obligations for Block I (Canteen).
- 3.5 The approved demolition plans separate the demolition into two Phases: Phase 1 Demolition – to enable construction of Block H and Phase 2 covers the rest of the demolition, shown in green and red on Plans 15a and 15b.
- 3.6 In order to allow for Block H and the Block I (Canteen) to come forward separately, the demolition plan will need to be amended as part of the S96a application, incorporating an additional area of demolition to ensure there is no demolition of the “red area” of the canteen which would trigger the healthcare obligations
- 3.7 It is important to note that the demolition and phasing plans are also attached to the S106 and therefore a Deed of Variation (DoV) is required and will be submitted to amend the demolition and phasing plans.

4. S96A ASSESSMENT

- 4.1 Recognising the criteria set out in Section 1, we consider that the proposed amendments would constitute a non-material amendment application for the following reason:
- 4.2 There have been no previous S96a applications against the Canteen permission.
- 4.3 The application site is the same as the original application.
- 4.4 There is no change to the design, siting, layout or massing of the development. The changes are solely to amend the structuring of the planning conditions and delineate more clearly between the two parcels of development through the phasing plan and amendments to the demolition plan.
- 4.5 The proposed amendments are consistent with the original description of development and do not require it to be amended.
- 4.6 The proposed amendments do not alter the external details of the appearance of the buildings and as such have no effect on neighbouring occupiers, amenity or heritage considerations.
- 4.7 The diversion of the two parcels in terms of severability and phasing simply reinforces the original intention that the two blocks will come forward independently of one another and recognised by the absence of any linkages between the two in terms of conditions, S106 matters or delivery of associated infrastructure.

5. APPROVED AND PROPOSED PLANS

5.1 Condition 2 of the decision notice lists the approved drawings relating to the development at Block H and Block I (Canteen). The approved and proposed drawings are set out in **Table 2** below.

Table 2 – Approved and Proposed Drawings

Approved Drawing	Proposed Drawing
Demolition Plans BLNEST-DMFK-DR-AR-00070 Rev A	Demolition Plans BLNEST-DMFK-DR-AR-00070 Rev B
Demolition Elevations BLNEST-DMFK-DR-AR-00080 Rev B	Demolition Elevations BLNEST-DMFK-DR-AR-00080 Rev C
	Phasing Plan dMKF_2260_A700 Rev P3
BLNEST-DMFK-DR-AR-00100 Rev. B	As approved
BLNEST-DMFK-ZZ-BZ1-DR-AR-00101 Rev. B	As approved
BLNEST-DMFK-ZZ-L00-DR-AR-00102 Rev. B	As approved
BLNEST-DMFK-ZZ-05-DR-AR-00105 Rev. B	As approved
BLNEST-DMFK-ZZ-06-DR-AR-00106 Rev. B	As approved
BLNEST-DMFK-I0-ZZ-DR-AR-00150 Rev. B	As approved
BLNEST-DMFK-H0-ZZ-DR-AR-00151 Rev. B	As approved
BLNEST-DMFK-H0-ZZ-DR-AR-00160 Rev. B	As approved

6. S106

6.1 A seventh Deed of Variation (DoV) will be submitted alongside this S96a application. The DoV will incorporate the changes to the Demolition and Phasing Plans as well as more clearly splitting out the relevant obligations for each block to ensure that once Block H has been implemented, this would not trigger the need for the healthcare obligations to be paid and/or discharged.

6.2 It is proposed to split out the obligations relating to Block I into separate schedule and to make it clear that these binds only the Block I land reflecting the severable nature of the permission and that both Block H and I can be brought forward independently.

6.3 It will be noted that the DoV also incorporates and proposed the deletion of one of the offsite highways works for Junction capacity, road safety improvements and provision for vulnerable road users at the Dawley Road / Botwell Common Road Priority Junction. This has been agreed separately with the Council and is unrelated to this S96a but as an agreed variation it can be wrapped up in the DoV sought by this S96a. It will be replaced by a financial contribution towards Healthy Streets improvements.

6.4 The proposed changes are set out in the **Table 3** below.

Table 3 – DoV Proposed Amendments

Obligation / Definition	Proposed
Definition of “Former Canteen Building Obligations”	New defined term: means the obligations set out in Schedules 16B and 16C of this Deed
Definition of “Healthy Streets Contribution”	New defined term: means financial contribution in the sum of [TBC] pounds (£[TBC]) towards the cost of such work in the vicinity of the Property that comply with TfL's Healthy Streets Approach.
Definition of “Offsite Highway Works”	Means the following offsite highway works to be carried out by the Residential Owner in accordance with Schedule 3 to this Deed: <ul style="list-style-type: none"> (a) Dawley Road/Botwell Common Road Priority Junction capacity, road safety improvements and provision for vulnerable road users as shown on the Offsite Highway Plan 1 (b) Dawley Road / Kestral Way / Vetam Road / Blyth Road Roundabout – junction capacity, road safety improvements and provision for vulnerable road users as shown on the Offsite Highway Plan 2:

	<p>(c) Harold Avenue / North Hyde Road Priority Junction – introduction of a right turn refuse in the centre of North Hyde Road shown on the Offsite Highway Plan 3; and</p> <p>(d) Station Road / North Hyde Road changes to signal staging or such alternative scheme at this junction agreed with the Council at an equivalent cost.</p>
Definition of “Residential Land Planning Obligation”	Means the obligation set out at Schedules 3 to 16B 16A of this Deed.
Clause 5 – The Residential Owner and Industrial Owner’s Covenants and Enforceability	<p>New clause 5.1.3 and 5.1.4:</p> <p>5.1.3 The residential Owner covenants and agrees with the council to observe and perform the Former Canteen Building Obligations in respect of the Former Canteen Building.</p> <p>5.1.4 The council and the Residential Owner agree that the Former Canteen Building Obligations shall be binding and enforceable against the Residential Owner and its successors in title of the Former Canteen Building only subject to Clause 12 of this Deed (and shall not for the avoidance of doubt be binding or enforceable against the residential Owner’s successors in title of the remainder of the Residential Land or against the Industrial Owner or its successors in title of the Industrial Land).</p>
Schedule 3, Part 1, paragraph 1 – Highways Agreement and Offsite Highway Works	<p>New paragraph 1.1.4:</p> <p>To pay to the Council the Healthy Streets Contribution on or before the date of the Seventh Supplemental Deed.</p>
Schedule 3, paragraph 3A – Former Canteen Building Parking Permit Restrictions	Obligation moved to new Schedule 16C (Former Canteen Building)
Schedule 8, Part 1, paragraph 1.7 – Air Quality Mitigation	Obligation moved to new Schedule 16C (Former Canteen Building)
Schedule 8, Part 2, paragraphs 3-5 – Carbon Offset Fund	3. The Residential Owner shall within three (3) months of Commencement of each Residential Phase of the Development (except for Residential Phase 6b) to submit

	<p>an Energy Strategy to the Council for that Residential Phase.</p> <p>4. In the event that the Energy Strategy demonstrates that a 100% reduction (zero carbon in C02emissions cannot be achieved for a relevant Residential Phase the Residential Owner shall pay to the Council the Zero Carbon Contribution for that Residential Phase prior to Occupation of that relevant Residential Phase PROVIDED ALWAYS that the Zero Carbon Contributions shall not exceed (in total across all Residential Phases except for Residential Phase 6B) the sum of £1,594.574 (one million five hundred and ninety four thousand five hundred and seventy four pounds) [TBC]</p> <p>5. In relation to Residential Phase 6a only the Residential Owner shall, if a Zero Carbon Contribution calculated pursuant to paragraph 4 above is payable, pay a further contribution prior to Occupation of each respective Residential Phase 6a calculated as follows:</p> <p>In relation to each of Residential Phase 6a and Residential Phase 6b only the sum (A) payable to the Council towards its Carbon Offset Fund and applied within the Authority's Area and calculated by the following formula:</p> <p>$A = £35 \times 30 \times B$.</p> <p>Where is the cumulative annual tonnes of C02 short of the Zero Carbon target (i.e. a 100% reduction in C02, emissions from regulated energy demands) for each of Residential Phase 6a and Residential Phase 6b.</p>
Schedule 9, Part 2 – Former Canteen Building Travel Plan	Obligation moved to new Schedule 16C (Former Canteen Building)
Schedule 9, Part 3 – Travel Plan Bond	Obligation moved to new Schedule 16C (Former Canteen Building)
Schedule 16C – Former Canteen Building	New Schedule to be inserted picking up the Former Canteen Building Obligations as above:

	<p>SCHEDULE 16C – FORMER CANTEEN BUILDING</p> <p>1 Parking Permit Restrictions</p> <p>1.1 The Residential Owner shall procure that prior to Occupation of any unit in the Former Canteen Building each tenant and/or employee is informed that they shall not be entitled to be granted a Parking Permit to park a vehicle in a Parking Management Scheme zone currently operating (or operating in the future) in the vicinity of the Former Canteen Building (unless the Occupant is a holder of a disabled person's badge pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or is a healthcare worker entitled to a mobile parking permit or extended waiver parking permit) and to acknowledge for itself and any successor in title to the Former Canteen Building that this provision will remain permanently in place.</p> <p>1.2 The Residential Owner shall not permit Occupation of any unit in the Former Canteen Building unless and until such tenant and/or employee has waived all rights and entitlement to a Parking Permit issued by the Council to park a vehicle in the Parking Management Scheme zone or otherwise to apply to park (unless the Occupier becomes entitled to a disabled person's badge pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or is a healthcare worker entitled to a mobile parking permit or extended waiver parking permit), and where such person has been notified by the Residential Owner in accordance with paragraph 1.1 above that person shall thereby be taken as having waived all rights and entitlements to a Parking Permit or otherwise to apply to park as required by this paragraph 1.2</p>
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	<p>1.3 If a Parking Permit is issued in respect of any unit in the Former Canteen Building it shall be surrendered to the Council within seven (7) days of written demand.</p> <p>1.4 Where the Residential Owner has notified tenants and/or employees of the Former Canteen Building of the restriction pursuant to paragraph 1.1 the Residential Owner's obligation shall be discharged and if such tenant and/or employee has applied or obtained a Parking Permit the Council may only be entitled to take action against that tenant and/or employee and not against the Residential Owner.</p> <p>1.5 That in respect of every freehold or lease granted, assigned, transferred or otherwise provided in respect of the unit of the Former Canteen Building the following covenant shall be imposed:</p> <p><i>"transferee/lessee for himself and his successors in title being the owner or owners for the time being [of [plot No. []/the terms of years hereby granted] hereby covenant with the transferor/lessor and separately with the Mayor and Burgesses of the London Borough of Hillingdon ('the Council') not to apply for nor knowingly permit an application to be made by any person occupying a unit in the premises to the London Borough of Hillingdon for a parking permit (save for the display of badges on motor vehicles used by disabled persons issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 as amended or mobile parking permits or extended waiver parking permits used by healthcare workers) and if such a permit is issued then it shall be surrendered within seven (7) days of written request to do so from the Council and this covenant shall also be enforceable by the Council under the Contracts (Rights of Third Parties) Act 1999, section 1"</i></p>
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	<p>2 Air Quality Mitigation</p> <p>2.1 The Residential Owner shall pay to the Council an instalment of £17,701 (seventeen thousand, seven hundred and one pounds) of the Air Quality Contribution prior to Demolition of the Former Canteen Building</p> <p>3 Carbon Offset Fund</p> <p>3.1 The Residential Owner shall within three (3) months of Demolition of the Former Canteen Building submit an Energy Strategy to the Council for Residential Phase 6b</p> <p>3.2 In the event that the Energy Strategy for Residential Phase 6b demonstrates that a 100% reduction (zero carbon) in CO2 emissions cannot be achieved for Residential Phase 6b the Residential Owner shall pay to the Council the Zero Carbon Occupation for Residential Phase 6b prior to Occupation of Residential Phase 6b PROVIDED ALWAYS that that contribution shall not exceed the sum of £[TBC]</p> <p>3.3 The Residential Owner shall, if a Zero Carbon Contribution calculated pursuant to paragraph 3.2 above is payable, pay a further contribution prior to Occupation of Residential Phase 6b calculated as follows:-</p> <p>In relation to Residential Phase 6b only the sum (A) payable to the Council towards its Carbon Offset Fund and applied within the Authority's Area and calculated by the following formula:-</p> <p>A = £35 x 30 x B</p> <p>Where B is the cumulative annual tonnes of CO2 short of the Zero Carbon target (i.e. a 100% reduction in CO2 emissions from regulated energy demands) for Residential Phase 6b</p> <p>4 Former Canteen Building Travel Plan</p>
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	<p>4.1 The Residential Owner shall submit the Former Canteen Building Travel Plan to the Council for approval prior to Occupation of the Former Canteen Building</p> <p>4.2 The Residential Owner covenants with the Council:-</p> <p>4.2.1 To procure compliance with the approved Former Canteen Building Travel Plan as soon as reasonably practicable;</p> <p>4.2.2 Not to Occupy or permit Occupation of the Former Canteen Building until a Travel Plan Co-Ordinator(s) has been appointed in respect of the Former Canteen Building; and</p> <p>4.2.3 That the terms of the Former Canteen Building Travel Plan shall remain in place for not less than the Travel Plan Monitoring Period</p> <p>4.3 The Residential Owner shall procure that the Travel Plan Co-Ordinator(s) shall monitor and review the Former Canteen Building Travel Plan and shall undertake the following:-</p> <p>4.3.1 An initial monitoring survey no later than 3 months from first Occupation of the Former Canteen Building;</p> <p>4.3.2 Further monitoring surveys on the third and fifth anniversaries of the first monitoring survey;</p> <p>4.3.3 To make available to the Council as soon as reasonably practicable after each monitoring survey the following:-</p> <p>4.3.3.1 Travel Plan monitoring reports which shall be based on surveys using the TRAVL methodology;</p> <p>4.3.3.2 statistical summaries of the modes of transport used by Occupiers of the Former Canteen Building;</p> <p>4.3.3.3 identifiable excesses in car ration when measured against the Former Canteen Building Travel Plan targets;</p>
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	<p>4.3.3.4 results of any consultation that have taken place with Occupiers of the Former Canteen Building where applicable;</p> <p>4.3.3.5 reports produced in iTRACE approved format; and</p> <p>4.3.3.6 any other information as agreed in writing by the Council</p> <p>5 Travel Plan Bond</p> <p>5.1 Prior to Demolition of the Former Canteen Building the Residential Owner shall pay the Travel Plan Bond in order to secure the due performance by the Residential Owner of its monitoring survey and reporting obligations, or the achievements of the targets as contained in the Former Canteen Building Travel Plan</p> <p>5.2 The Council shall not be entitled to drawdown (or access, as applicable) any of the Travel Plan Bond except in the event of a default by the Residential Owner to submit one or more monitoring surveys, as shall be detailed in the Former Canteen Building Travel Plan, within the timetable specified in the Former Canteen Building Travel Plan or failure to achieve the targets and the Council shall only be entitled to drawdown (or access, as applicable) any of the Travel Plan Bond as is necessary in order to cover the reasonable cost the Council incurs in carrying out the said Former Canteen Building Travel Plan monitoring surveys or implementing measures to achieve compliance with the aims of the Former Canteen Building Travel Plan, to include implementing measures to achieve the targets</p> <p>5.3 The Travel Plan Bond shall be released in full (or retained in full to the Residential</p>
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	Owner, as applicable) following the expiration of the Travel Plan Monitoring Period
Appendix 2 – S106 Plans	Residential Phasing Plan to be updated Demolition Plans to be updated Offsite Highways Plan 1 to be deleted.

7. OVERLAPPING PERMISSION

7.1 The extant Block H and Block I (Canteen) permission (ref.1331/APP/2022/2553) is a standalone, detailed 'drop-in' permission that overlaps the wider Nestle masterplan which is:

- (i) currently under construction by Barratt London pursuant to the Additional Units Scheme application ref. 1331/APP/2019/2314 with Block C left to build out; and
- (ii) Already constructed by Barratt London pursuant to the Section 73 (S73) permission with ref. 1331/APP/2019/1666 (the S73 permission). The Block H and Block I (Canteen) permission has not yet been implemented.

7.2 LBH has previously considered the effects of the caselaw on overlapping permissions (including Hillside Parks) in relation to the implementation of this Canteen permission and its effect on the wider masterplan when the application was taken to committee. The officers report for permission ref.1331/APP/2022/2553 dated 18 May 2023 stated at section 6 – Consultations (page 64) that "*the underlying masterplan permission shall not be affected by the additional unit schemes as the planning permissions are severable (Hillside Parks Ltd (Appellant) V Snowdonia National Park Authority UKSC) enabling the implementation of the masterplan and the drop-in application for phase 6a and 6b*".

7.3 Whilst the permission was granted before the *Dennis* case (which gave further judicial guidance on what "severability" means identifying that this must be more than just a phased permission) the Council has already considered the effects of the implementation of the Canteen permission on the wider masterplan and formed the view that it would not affect the delivery of the underlying permissions.

7.4 We therefore seek the Council's confirmation, through its delegated report into the S96a that this remains its view, as we consider, in any event that the difference between the Block H developments as permitted by the canteen permission and permission ref.1331/APP/2019/2314 (the Additional Units Scheme) can be described as minor, that it does not create any conflict with Hillside and raises no concern in terms of the construction of Block C should the Canteen permission be implemented.

7.5 In addition to the above , and as set out earlier in this report, it is considered, with the further changes proposed in this NMA, that the canteen permission can be treated as a severable one. This ensures that the two blocks can be delivered separately, with each block subject to its own conditions, s106 obligations, CIL treatment and onsite infrastructure and not linked to the other.

7.6 It also means that a prospective purchaser of Block I (Canteen) wish to submit a further 'drop-in' application for Block I (Canteen) that makes changes to the block to implement the health cere use the implementation of this permission would not affect the continued construction and delivery of Block H.

8. SUMMARY

- 8.1 This S96a application is for amendments to planning permission ref. 1331/APP/2022/2553 in relation to the changes to the wording of the conditions, phasing and demolition plans and associated changes to the relevant S106 obligations to allow for Block H to come forward separately to Block I (Canteen) and to ensure that the permission can be regarded as a severable one.
- 8.2 We have assessed what this means in terms of overlapping permissions (Hillside caselaw) and consider as the Council has previously confirmed that the implementation of the Canteen permission would not affect the delivery of the remaining block of the masterplan.
- 8.3 The proposed amendments are considered to not result in a material change to planning permission ref. 1331/APP/2022/2553 and therefore can appropriately be dealt with as an S96a application.
- 8.4 The planning application fee of £383 has been paid online. Please find the following information and supporting documents submitted via the Planning Portal under reference PP-1456991.
 - Application Form;
 - Demolition Plans BLNEST-DMFK-DR-AR-00070 Rev B;
 - Demolition Elevations BLNEST-DMFK-DR-AR-00080 Rev C; and
 - Phasing Plan dMKF_2260_A700 Rev P3.

