



Appeal Decision

Hearing held on 27 January 2026

Site visit made on 26 January 2026

by **B Plenty BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 February 2026

Appeal Ref: APP/H5390/Q/25/3372844

Fulham Gasworks, Imperial Road, London SW6 2AD

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a failure to determine that a planning obligation should be modified.
 - The appeal is made by St William Homes LLP against the London Borough of Hammersmith and Fulham Council.
 - The development to which the planning obligation relates is '*Hybrid planning application for demolition of existing buildings and structures and redevelopment to provide a residential-led mixed use development comprising the erection of new buildings ranging from 1 to 37 storeys to provide up to 1,843 [including up to 646 (35%) Affordable Housing] residential units and ancillary residential facilities (C3 use) and non-residential floorspace in Use Classes A1, A2, A3, A4, B1, D1 and D2, the provision of new publicly accessible open space, new pedestrian and vehicle routes, access and amenity areas, basement level car park with integral servicing areas, interim works and other associated works.*'
 - The development to which the planning obligation relates to seeks a Deed of Variation to paragraphs 2.10, 2.11, 2.12 and 2.13, to revise affordable housing delivery triggers, of Schedule 12 of the Section 106 Agreement attached to planning permission (ref: 2018/02100/COMB) dated on 8 February 2019 (as varied by ref: 2024/00961/VAR dated on 3 December 2024).
 - The planning obligation, dated 8 February 2019, was made between the London Borough of Hammersmith and Fulham Council and National Grid Gas Plc, Cadent Gas Limited, National Grid Twenty-Seven Limited and St William Homes LLP.
 - The application Ref 2025/00852/VAPO is dated 21 March 2025.
-

Decision

1. The appeal is allowed. The planning obligation dated 8 February 2019 (as varied), made between the London Borough of Hammersmith and Fulham Council and National Grid Gas Plc, Cadent Gas Limited, National Grid Twenty-Seven Limited and St William Homes LLP shall have effect subject to the modifications as specified in the application.

Preliminary Matters

2. Section 106A(3) of the 1990 Town and Country Planning Act (The Act) enables an applicant to apply to the Local Planning Authority to discharge or modify a planning obligation. This appeal is made as the Council failed to determine the application for a modification under S106A(6)(c) of the Act. This states that:

“Where an application is made to an authority under subsection (3), the authority may determine-

- (a) *That the planning obligation shall continue to have effect without the 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 modification."

3. At the beginning of the hearing, I was handed several documents from both the appellant and the Council. These included a statement of rebuttal from the appellant including a table showing on site progress [Document A], a statement of rebuttal from the Council [Document B], an appeal decision in Chilmington Green (Ref.APP/W2275/Q/23/3333923 and APP/E2205/Q/23/3334094) [Document C] and an appeal decision in Dalton in Furness (Ref.APP/K0940/W/25/3371173) [Document D]. These act to provide further details on each party's submission and do not introduce new evidence. After collecting views from opposing sides, I agreed to accept these documents. As such, I shall take these into account without causing prejudice to any party.
4. A phasing plan, provided in the Council's Statement of Case at table 1, shows the distribution of phases and plots throughout the development. This shows 6 phases, each consisting of several plots. During my visit I noted that phases 1 and 2 are complete and occupied, phase 3 is ongoing with plots E1 completed and plots E2 and G1 having its basic structure completed, but only partially clad. Phase 4a is subject to a planning application. The remaining phases, being 5 and 6, are subject to pre-application discussion with the Council. For simplicity I shall refer to plots rather than phases where relevant.

Background

5. The appeal seeks to modify the terms of the planning agreement 'The Agreement', entered into in 2019 by the Council and the appellant (and others). The Agreement included a range of obligations. The scheme is required to deliver 35% of the dwellings as Affordable Housing (AH) units. Schedule 12 of the Agreement includes trigger points that regulate the provision of Open Market Housing (OMH) to ensure that AH is provided throughout the development in step with the OMH.
6. In summary, Schedule 12 of the Agreement currently requires 86 AH units to be provided prior to the provision of 346 OMH units, 196 AH units before 550 OMH units, 304 AH units before 650 OMH units (the third trigger), 400 AH units before 800 OMH units (the fourth trigger) and finally to make available the rest of the required AH units (to achieve 35%) prior to the delivery of 1,100 OMH units. The Council confirms that the provision of AH has been, to date, in accordance with the requirements of Schedule 12.
7. The modification for which approval is sought seeks to vary the third and fourth trigger points of Schedule 12 in the following manner:

"SCHEDULE 12

2. TIMING OF DELIVERY OF AFFORDABLE HOUSING

2.10 To construct and make available for occupation at least 329 Affordable Housing Units prior to the occupation of no more than 650 market housing units.

2.11 Not to Occupy or permit the occupation of more than 650 market housing units until at least 329 affordable housing units have been constructed and are capable of occupation

2.12 To construct and make available for occupation at least 460 Affordable Housing Units prior to Occupation of no more than 940 Market Housing Units.

2.13 Not to Occupy or permit the Occupation of more than 940 Market Housing Units until at least 460 Affordable Housing Units have been constructed and are capable of Occupation”.

8. The modification is sought due to unforeseen changes required to phase 4 and the stated economic difficulties of delivering new homes in London. Problems in the delivery of housing, as stated by the appellant, include factors such as an increase in construction costs in recent years, labour shortages in the construction sector, the impact of higher interest rates, a shortage of national government funding, recent regulatory changes, market absorption rates and general economic uncertainty leading to some sites becoming stalled.
9. The first AH units have been provided in plots D1 and D2, consisting of 128 social rented units. The addition of plots E1 and G1 would create a cumulative total of 329 AH units. Plots H1 and H2 would provide OMH units only. The next element that includes AH units would be plot F1, reportedly delivering sufficient AH units to achieve the current fourth trigger. However, delays have meant that this may no longer be possible ahead of the completion of plot H2 which would exceed the number of OMH units allowed to be provided by the unmodified fourth trigger. Whilst the difficult economic climate is recognised, the appellant does not argue that the scheme is no longer viable and has not provided a financial appraisal to establish or explore such a claim.
10. A modified trigger three results in the requirement for 329 AH units to be delivered prior to the completion of 650 OMH units. This therefore brings forward the delivery of some AH units in comparison to the existing trigger point. Accordingly, this proposed modification is uncontested between main parties, and I find this modification would serve the purpose of this part of the Agreement equally well.

Main Issue

11. The main issue is whether the obligation continues to serve a useful purpose, and would serve that purpose equally well if it had effect subject to the modifications in the application.

Reasons

The purpose of affordable housing triggers in the Agreement

12. The Council's policy, with respect to affordable housing, is set out at policy H03 of the Hammersmith and Fulham Local Plan [2018](LP). This states that affordable housing should be located throughout a new development and should not be concentrated in only one part of the site. Supporting commentary of the policy explains that a key aim of the Council is to meet local housing need, particularly the supply of affordable housing.
13. The Agreement secures the provision of 35% of the residential properties as AH units. The Council's committee report explains¹ that the stepped triggers are designed to ensure “a continuous delivery of 35% affordable housing”. The purpose of these triggers is expanded upon within the Council's Statement of Case. This explains that these secure the timely and proportionate provision of affordable housing and regulates the rate of delivery of OMH. As such, the triggers

¹ 2018/02100/COMB Committee Report, para 8.4.46

ensure that the OMH is in step with the AH units and provides a mixed and inclusive community, and without which would otherwise entrench tenure segregation in early phases.

14. The Council explains that the triggers ensure that the timing, sequencing and tenure of units are fully integrated to maintain a step-by-step pace between OMH and AH units. The arrangement also provides enforceable incentives to bring forward affordable-led plots before full occupation of the market led plots, embedding mixed-tenure occupation.
15. The provision of affordable housing serves the useful purpose in helping to address the Council's demonstrable affordable housing needs with 2,941 households on the housing waiting list and 1,046 being homeless households. There is therefore an urgent need in the borough for affordable housing. A delay in the delivery of affordable housing, beyond the agreed triggers, would frustrate the Council's efforts to expeditiously accommodate such households.

Whether the proposed modification would serve the purpose equally well

16. The proposed modification seeks to alter the trigger points. These modifications would both bring forward delivery of some affordable housing in the third tranche and delay the provision of the fourth tranche of other AH units until later in the development process. This would therefore defer the supply of some affordable units. Nonetheless, the proposed modifications would continue to serve a useful purpose and would ensure that 35% affordable housing would be delivered in totality on site.
17. LP policy HO3, in seeking the delivery of affordable housing, does not specify that this should be provided in synchronicity with each plot or phase or a multi-phase development. Indeed, the Council's evidence shows, at table 3, that the AH percentage varies substantially as each plot has been completed, ranging from zero to 39%. By example, it is recognised that upon completion of plots D1 and D2 the scheme overall had delivered an AH provision of only 27%.
18. Consequently, affordable housing delivery has taken place either within entire blocks (such as plots D1, D2 and E1) or intermingled within blocks (such as plot G1). Appendix D of the Council's evidence demonstrates that the overall cumulative percentage of AH units to OMH units varies as each plot is completed, ranging from 20% to 43%. This demonstrates that the affordable housing provision is being successfully delivered throughout the site in accordance with the obligation's purpose. Nonetheless it includes substantial variance, at certain stages of the site's construction, depending on a number of factors.
19. The variance of delivery demonstrates that flexibility within the distribution of units across the site has been necessary to deliver the development as a whole. The effect of the modification would allow plots H1 and H2 (which now includes H3) to be completed for OMH units only, with the next tranche of AH units being provided within plot F1. Despite plots H1 and H2 providing only OMH units the arrangement would maintain a largely proportional delivery of AH units in overall terms. Based on the existing distribution of AH units throughout the first part of the site, the proposed modification and altered onward distribution, would continue to provide a mixed and inclusive community. Furthermore, I am unconvinced that the minor delay to the provision of some AH units would lead to an entrenched tenure segregation in early phases as these already include a broad mix of tenure types.

20. The appellant indicates, in Document A, that the development would provide around 1743 residential units. The current AH provision is proportionate, the underdeveloped parts of the site also include an undeveloped proportionate quantum of AH units. The modified fourth trigger and the final trigger would ensure that the affordable housing distribution would continue to be delivered in a proportionate manner. This would maintain a clear financial incentive to complete the development and provide the remaining AH units, despite the Council's concerns in this regard. Accordingly, I am unconvinced that the proposed modification would materially reduce the commercial incentives to progress development of plots F1 and J1.
21. Therefore, whilst the modification may introduce some uncertainty for later phases, such uncertainty would be modest and enable greater flexibility for the appellant to cross-subsidise tenure types. Moreover, the modified fourth trigger would still ensure that 460 AH units are delivered prior to the completion of 940 OMH units which would be proportionate to the required balance.
22. Furthermore, clause 2.14 of the Agreement requires the provision of all remaining AH units prior to the provision of 1,100 OMH units. This would be earlier than was originally anticipated. Furthermore, the Council demonstrates (at table 3) that the revised fourth trigger would maintain the same AH percentage as the unmodified version, albeit marginally later in the construction timeframe. As such, the revised trigger points would continue to ensure that an equitable proportion of AH units would be delivered throughout the site.
23. The application of trigger points, across the development site, set precise and enforceable requirements that can be measured and recorded, demonstrating compliance on a plot-by-plot bases. The proposed modification would remain equally effective at providing measurable outcomes for enforceability.
24. Accordingly, the proposed modifications would ensure that the development continues to provide a proportionate distribution of AH units across the site, serving the purpose of the obligation equally well. I have also found that in agreeing to the modification that the alteration would not give rise to a significant risk that the purpose could not be met. Consequently, I find that the modifications sought to the planning obligation dated 8 February 2019 (as varied), would continue to serve a useful purpose and that this purpose would be served, equally well, subject to the modifications sought.

Other Matters

25. At the hearing the Council reacted to the appellant's implication that the modification is required due to the viability of the scheme, through the submission of the Chilmington Green appeal decision (Document C). The appellant also provided an appeal decision (Document D) and reiterated that viability is not a ground of the appeal and has not been advanced as a reason for the proposal.
26. The submitted appeal decisions discuss matters of viability within S106B cases and whether or not this can form a material consideration in such cases. Nonetheless, in the proposal the subject of this appeal I have found that the financial climate of London, in conjunction with a range of other factors and discussed in the background part of this decision, provide reasons for the context of the modification sought. These factors are not directly related to the proposed modification which require me to instead consider whether the proposed

modifications would serve the purpose of the relevant parts of the Agreement equally well. As a result, the referenced appeal decisions have had only a limited bearing on this proposal due to relevance.

27. The Council has demonstrated that assurances were provided by the appellant in August 2023 that plot F1 would be delivered in advance of the completion of plots H1 and H2. Nonetheless, the appellant has explained, at the hearing, that regulatory delays have since occurred resulting in the need to apply for this modification. Although this explains partly why the modification is sought, it is not a consideration of great weight when considering whether the proposed modifications would serve the purpose of the AH triggers of Schedule 12 equally well.
28. The Council has offered alternative solutions to the proposed modification, suggesting the delivery of the AH units within committed phases of the development by exploring alternative tenures. However, the appellant explained at the hearing that this would not be possible due to existing commitments. Although not central to the main issue I see no reason not to accept this position.

Conclusion

29. I therefore conclude that the obligation would continue to serve a useful purpose and would serve that purpose equally well if it had effect subject to the modifications specified in the application.
30. For the reasons given above, I conclude that the appeal should be allowed.

B Plenty

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

- Jenny Wigley KC - Landmark Chambers
- Duko Frankhuizen - Development Director, St William Homes
- Simon Lewis - Planning and Development Director, St William Homes
- Simon Slatford - Senior Director, Lichfields
- Meeta Kaur - Partner, Town Legal
- Matt Speed - Senior Associate, Town Legal
- Archie Hunter - Paralegal, Town Legal.

FOR THE LOCAL PLANNING AUTHORITY:

- Joel Semakula - Landmark Chambers
- Catherine Slade - Planning Officer, London Borough of Hammersmith and Fulham.
- Ieuan Bellis - Planning Team Leader, London Borough of Hammersmith and Fulham
- Mrinalini Rajaratnam - Legal Officer, London Borough of Hammersmith and Fulham
- Jesenka Oezdalga - Senior Planning Officer, London Borough of Hammersmith and Fulham