**Appellant’s justification for affordable cascade in Section 106 Agreement**

1. Without the inclusion of a cascade, there is a risk that the development could be stalled at 50% occupation if an affordable provider cannot be secured and, further, the lack of a cascade could be problematic in the context of trying to secure funding for the development.
2. Whilst the Appellant could apply for a modification to the Section 106 Agreement if an affordable housing provider could not be secured, if such an application is made within 5 years of the date of the Section 106 Agreement, it is entirely at the Council’s discretion as to whether such a modification is agreed.
3. Even if a modification were to be agreed by the Council, the Appellant is aware that to negotiate and complete a deed of variation could take many months. For example, a deed of modification was sought in relation to the development at Flamingo Park Club, Sidcup, Bypass Road, Chislehurst, BR7 6HL (planning permission reference DC/17/04478/FULL1 issued by Bromley Council) in August 2020 and the deed of variation was not completed until 29 November 2021 (15 months later).
4. It is the Appellant’s view that flexibility should be built into the Section 106 Agreement to cater for a circumstance whereby an affordable provider cannot be secured, to avoid the need to vary a planning permission and/or enter into a deed of modification down the line which would likely cause significant delay and – further – the Appellant (or any funder) would have no guarantee that any variation/modification would be approved by the Council.
5. The proposed cascade sets out a number of requirements which the Appellant must comply with in its attempts to secure an affordable provider. It is only if, following compliance with these requirements, an affordable provider has still not been secured that the Appellant may offer to transfer the affordable units in question to the Council. If such an offer is refused, then the Appellant shall pay a commuted sum in lieu of on-site provision and the Council shall expend this sum towards the provision of affordable housing within its administrative borough.
6. The Appellant wishes to draw attention to the following schemes (one within Bromley and one in a neighbouring borough) where cascades have been agreed:
	1. Henry William House – planning permission reference - 06/01528/FULL2, issued by Bromley on 10 January 2007. No cascade included in original section 106 agreement and deed of variation had to be agreed (in conjunction with amendment application 14/01590/MATAMD) a number of years later (completed on 3 September 2024) to introduce a cascade. The lack of flexibility in the original section 106 agreement led to the developer being unable to bring the scheme forward for a number of years.
	2. Denmark Hill Neighbourhood Housing Office, 161 Denmark Hill, London SE5 8EF – planning permission secured at appeal (reference APP/A5840/W/18/3206258) on 30 April 2019. London Borough of Southwark. The Inspector stated in her decision that whilst the appellant had consistently stated both in writing and at the hearing that they wished to deliver affordable housing on site, although they have not obtained an affordable provider’s commitment without planning permission. Further, she concluded that the only exceptional circumstance for providing a payment in lieu of affordable provision for this particular site would be the appellant’s inability to secure an affordable provider and so allowance is made within the section 106 to secure a payment in lieu in these specific circumstances.

**Appellant’s justification for inclusion of provisions relating to Affordable Workspace in Section 106 Agreement**

1. The Appellant’s position is that the Affordable Workspace should come forward as a benefit of the proposed development.
2. The Appellant acknowledges the importance of affordable workspace for supporting new businesses. Further, Affordable Workspace is an important tool for the Council to safeguard existing jobs as well as bring new jobs to the borough by attracting businesses and creating conditions for residents to start their own enterprises.
3. The inclusion of Affordable Workspace is something that is supported by the GLA.
4. The Section 106 Agreement includes, at Schedule 5, unilateral obligations to provide 257 sq/m within the Commercial Floorspace to be delivered as affordable, flexible and managed workspace as part of the Development for the benefit of small and medium enterprises operating in, or wishing to move to, the Council’s administrative area and shall be provided at a rent which is at least 20% below Open Market Rent.