



COMMITTEE REPORT

Section 106 – Deed of Variation Request and Supplemental Deed Request

Planning Committee

13th August 2019

Item Number:

Application Number: S/11/0084 and S/RES/14/1289 as amended by S/AMEND/16/1774

Ward: Gorsehill & Pinehurst

Parish: Stratton St. Margaret

Original Development Proposal: Erection of up to 152 no. dwellings, including public open space, play facilities, sports pitch, associated works and retention of community and gymnastics facility and associated parking. (Outline) - Means of Access not reserved.

Reserved Matters Approval Proposal: Erection of 150no. dwellings, including public open space, play facilities, sports pitch, associated works and retention of community and gymnastics facility and associated parking - Reserved Matters from previous permission S/11/0084.

Site Location: Former Headlands Comprehensive School Site, Cricklade Road, Swindon

Agent:
N/A

Developer:
Bellway Homes Ltd (South West)

Officers Report

1 Recommendations

The Planning Committee is recommended to:

- 1.1 Agree to the Chief Legal Officer and Head of Planning Regulatory Services and Heritage entering into negotiations to secure a S106 planning obligation Deed of Variation and Supplemental Deed under delegated authority as follows:
 - 1.1.1 To amend the current legal agreement to allow the areas of open space that Stratton St. Margaret Parish Council (the Parish Council) have agreed directly with the developer to take on ownership and future maintenance of to be directly transferred to it;
 - 1.1.2 To amend the current legal agreement to allow the payment of the proportionate amount of the POS Maintenance Contribution to the Parish Council by the Council once it is received following the transfer of the relevant open space being completed directly to Parish for use by the Parish on maintenance of that area;

Further information on the subject of this report can be obtained from *Sarah Screen* on 466397 or Email sscreen@swindon.gov.uk.

- 1.1.3 To amend as necessary any other clauses in the original deed to ensure that the provisions of the deed read correctly (including those set out in Schedule 2 Parts 1, 2 and 3).
- 1.1.4 To enter into supplemental planning obligation clauses the purpose of which is to ensure that the future landowner(s) is indemnified by the current landowner and developer from being liable for any costs of remediation and repair associated with any future subsidence as a result of the settling or movement of made up ground as a result of the excavated and back-filled area of the site, known as the 'borrow-pit', that was excavated on site by the developers under what is now the play area and associated open space, in order to make up levels on other areas of the site.
- 1.2 That this s106 Deed of Obligation and Supplemental Deed be entered into before any agreement is signed to transfer the land direct into Parish Council ownership.
- 1.3 That this report be agreed as authority for the Chief Legal Officer to be instructed to enter into such obligations on behalf of the Council.

2. Purpose and Reasons

- 2.1 Under Section 106A of the Town & Country Planning Act 1990, the terms of a section 106 agreement may only be modified by written agreement by Deed entered into by the parties to the original Deed. This report seeks the authority and agreement of Planning Committee to enter into a combined S106 planning obligation Deed of Variation and Supplemental Deed.
- 2.2 Applications for minor variations of section 106 agreements can be dealt with by officers under the Council's Scheme of Delegation and delegated authority of the Director of Communities and Housing via the Head of Planning Regulatory Services and Heritage. Whilst some elements of the proposed amendment may be considered minor, the supplemental obligations are not considered to be so, thus they require the agreement of Planning Committee.
- 2.2 Since the original legal agreement was signed dated 15th May 2015, alongside the grant of the Outline planning permission once the land was sold, there has been a change to Council's position in respect of taking on the ownership and management of open space. Alongside the Community Governance Review (CGR), Property were given authority to discuss and agree the transfer or long-term lease of existing open space assets, including play areas and associated open space to Parish Council's, thus also passing the direct responsibility of the associated StreetSmart maintenance services to the relevant Parish.
- 2.3 The original s106 Deed contained obligations require the Council to take on the future ownership and maintenance of the new open space provided within the development. In the spirit of the CGR Asset Transfer proposals the Council's

Property officers entered discussions with Stratton St. Margaret Parish Council to reach agreement on what areas of open space provided within this development, the Parish Council would be prepared to take direct ownership and maintenance of.

- 2.4 That discussions then progressed directly between Stratton St. Margaret Parish Council and the developers directly up to the point of transfer documents being finalised. It was following an approach to the Local Planning Authority that the developer was advised that this would not be possible until such time as the current s106 obligation clauses are amended to allow such. The relevant clauses therefore require variation to support the agreement that is in place. The Council is in support of this.
- 2.5 Actions of the developer associated with its development of the site however, resulted in a significant change to original ground conditions on the land area where the open space on which the formal play facilities have now been constructed and the surrounding open space laid out.
- 2.6 In order to manage ground levels at the site the developer made a decision to excavate a pit disturbing land that had historically been used as playing pitches by the former school for many years. Given the name of a 'borrow pit' this resulted in an excavated pit which subsequently required backfilling with imported material.
- 2.6 Council planning officers and the land contamination officer were involved in discussion with the developer, their contractors and specialists and the Environment Agency to agree the method of backfilling this pit in order for the development to be completed. The borrow-pit and its impact in terms of ground disturbance has however raised concerns in relation to any agreement to have the land transferred to any third party, as the circumstances of this area of land are materially different to those in place at the time the original legal agreement was signed.
- 2.7 In order to mitigate those concerns, on behalf of the Parish Council, the Council proposes to only accept agreement of the transfer of the affected areas of land to the Parish Council or any other agreed third party (that is not the Developer and current landowner) providing supplemental clauses are included in the agreement to ensure that the Developer remains responsible in the future for any costs resulting from subsidence, settling and/or ground movement of the ground within and surrounding the borrow pit area
- 2.8 At present as the Parish Council is not a signatory to the S106 Deed the associated POS Maintenance Contribution has to be paid to the Council. Given that the intention is now to directly transfer a substantial portion of the open space to the Parish Council it is only fair and reasonable that the Parish Council receive the associated maintenance contribution.

3.0 Detail

- 3.1 In respect of the original S106 Deed, clause 6.2 required the Owner to pay the POS Maintenance Contribution on the date on which the POS and Play Areas are transferred in accordance with Schedule 2 clause 1.13. Clause 1.13 of Schedule 2 currently requires the open space to be transferred to the Council. This will require amendment accordingly.
- 3.2 Clauses 6.3 and 6.4 relates to the timing at which the POS Maintenance contribution should be paid.
- 3.3 Clause 8.4 refers to use of the POS Maintenance Contributions solely by the Council, however this contribution would be transferred to the Parish Council.
- 3.4 The detail of Schedule 2 of the Deed, will need to be reviewed and the obligations in Part 1, 2 and 3 that cover the process for the POS and Play Areas inspection following construction, interim maintenance and subsequent transfer in ownership. To assist in expediting the transfer to the Parish Council, it remains the Council's intent at present to inspect the open space for delivery in compliance with the approved plan drawings, and establish what remedial works may be necessary accordingly.
- 3.5 The obligation will need to allow the transfer of the POS to Stratton St. Margaret Parish Council.
- 3.7 New obligation clauses will need to be drafted and agreed between the parties in respect of the matter of the 'borrow pit' excavation and backfilling. This will ensure that future landowners (e.g. the Parish Council) are not liable for costs associated with future damage caused in relation to the borrow pit including by ground movement, or subsidence.

4.0 Concluding Comments:

- 4.1 Officers consider that the amendments to the existing s106 obligation clauses combined with the addition of the supplemental obligations linked to the borrow pit, would be sufficient to protect the Council and the Parish Council or other 3rd Party landowners from risk and allow the relevant area of land to be successfully transferred to the Parish Council in this instance.

5.0 Recommendation:

That the request to agree to this combined Deed of Variation and Supplemental Deed be **approved** in accordance with the Recommendations listed above.

6.0 Alternative Options

- 6.1 The Planning Committee may not agree to enter into the S106 DoV and Supplemental Deed, but in doing so, the Council would remain obligated to complete the transfer of all of the open space constructed and provided as approved under the development directly to it. This transfer would take place with no protection clauses indemnifying it against potential future hidden costs and risks that could arise as a result of subsidence or settling. Further the lack of such a clause has the potential to undermine any agreement for the Parish Council to enter into a future lease for the long-term future maintenance of that area of land and the play facilities constructed on it.

7 Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 7.1 In completing a S106 Deed of Variation there should be no financial impact to the Council as the Council's costs of entering into such should be borne by the developer. In addition future responsibility for on-going maintenance of that relevant area of Land would become the direct responsibility of the Parish.
- 7.2 In the event that the S106 DoV and Supplemental Deed is not entered into the Council will be left with no option but to take on the relevant land ownership and long-term maintenance responsibility of the relevant area of open space and any potential financial risks associated with unknown potential hidden costs to repair damage as a result of ground movement.

Legal and Human Rights Implications

- 7.3 Legal and human rights implications have been taken into account in preparing this report.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 7.3 In completing this DoV and Supplemental Deed it will secure the longer-term retention of open space on site for the benefit of the residents and wider public in the interests of supporting a sustainable development and wider public health benefits derived from its everyday use.

7.5 Links to Council Plan 2016-2020, Strategic Objectives, Plans and Policies

This report relates to improving the quality of development to be constructed in the Borough and therefore it is aligned with the vision for Swindon which seeks to ensure Swindon has all the positive characteristics of a British city with one of the UK's most successful economies and a model of well managed housing growth which supports new and existing communities. This report supports the vision with respect to deregulation, facilitating local decision-making and helping to deliver economic growth. As such the proposal is fully aligned to our Corporate

Further information on the subject of this report can be obtained from *Sarah Screen* on 466397 or Email sscreen@swindon.gov.uk.

Objective around securing good economic growth and supporting the localism agenda and delivering public health benefit through development.

Diversity Impact Assessment

- 7.6 This report simply seeks to amend the content of an existing s106 planning deed of obligation that has previously been entered into. The securing of these amendments accords with regulation and will not create an adverse impact on the basis of age, disability, race, gender, sex, sexual orientation, religion or belief.

Risk Management

- 7.7 The amendments to the current planning obligations set out above are proposed to de-risk the financial burden on both the Council or any other 3rd party land owner that takes on ownership of the land, and reflect the actions of the Local Planning Authority acting reasonably and in the best interest of the Parish Council other interested parties in this instance.

Appendices

Appendix 1: Site location Plan

Appendix 2: Approved Planning Layout

Appendix 3: Approved Play Area Layout

Background Papers

- Original Signed S106 agreement with Bellway dated 12th May 2015
- Outline Planning Permission S/11/0084 and all associated documents
- Approved Plan Drawings and accompany information under detailed Reserved Matters application S/RES/14/1289 as amended by S/AMEND/16/1774 (the latter of which changed the Public Open Space detailed layout).
- Donor Site Risk Assessment & Working Controls Document dated 15th June 2016 by AA Environmental
- Site Location plan
- Approved Play Area and open space design & layout
- Borrow pit location plan

Appendix 1 Site location Plan for S/11/0084 and S/RES/14/1774



Appendix 2 Approved Planning Layout S/11/0084 and R/RES/14/1289

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Dr. No. 1359-PL01-RevH received by the Local Planning Authority on 26th February 2015



Appendix 3 Approved Play Area Layout under S/AMEND/16/1774

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