

## COMMITTEE REPORT

### Section 106 – Deed of Variation Request

Planning Committee

13<sup>th</sup> August 2019

**Item Number:**

**Ward:** St. Andrews

**Application Number:** T/98/0472

**Parish:** St. Andrews

**Original Development Proposal:** Proposed town expansion to include housing, employment, commercial uses, shopping, open space, roads, sewers and ancillary facilities.

**Approved Framework Plan:** VC3 Redhouse Village Centre

**Site Location:** Haydon 3 North Swindon - Redhouse

**Agent:**  
N/A

**Developer:**  
North Swindon Development  
Company

### 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 a S106 planning obligation Deed of Variation as follows:
  - 1.1.1 To amend the current legal agreement dated 16<sup>th</sup> June 2000 to allow the area of undeveloped land at Redhouse Village Centre (Village Centre 3 in the Deed as set out in Appendix 3) to also allow for its use as open space.

#### 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's to enter into a Deed of Variation in this instance.
- 2.2 Applications for minor variations of section 106 agreements can be dealt with by officers under the Council's Scheme of Delegation under the delegated authority of the Director of Communities and Housing via the Head of Planning Regulatory Services and Heritage. Given that the outcome of this change would result in

land intended to be developed for offices, restaurant and pub uses potentially coming forward for use as open space, it was considered that Members should be aware of and agree to the changes, having duly considered the implications associated discussion with intent to future use.

- 2.3 The original outline planning permission for Haydon 3 was granted in outline on 16<sup>th</sup> June 2000. It was accompanied by a large and complex s106 deed of planning obligation also dated 16<sup>th</sup> June 2000 ('the S106') the purpose of which was to manage both financial and non-financial obligations, control the use of land within the development area and all associated requirements in respect of such.
- 2.4 Village Centre 3 is specifically identified in the S106. Under the definitions it is defined as *'the area of land in the approximate location shown for the purposes of identification only on the New Master Plan as adjusted by any Framework Plans Reserved Matters Approvals / detailed planning permission from time-to-time and designated as 'Village Centre 3' to accommodate inter alia housing local shops serving local needs and other local facilities'*. The area of land in the subject of this S106 DoV is indicatively identified on the plan in Appendix 3 to this report. It is the last undeveloped area of land at Village Centre 3, the wider location of which within the northern expansion area of Haydon 3, is identifiable on the Illustrative approved New Masterplan in Appendix 1.
- 2.5 In accordance with the requirements of the planning permission T/98/0472 and other obligations in the Deed, the development came forward in Phases and Framework Plans and Design Codes were approved for specific areas separately. The Approved Framework Plan for Village Centre 3 is attached in Appendix 2.
- 2.6 The specific area of undeveloped land has been subject to two relatively recent planning applications in 2013 (which was withdrawn) and 2015 for mixed use in a 3-storey building containing retail with apartments which was refused by Planning Committee in January 2016.
- 2.7 It is unclear whether the land has ever been used as a temporary construction compound. It is currently laid to grass, and because it is surrounded by pedestrian footpaths and is not enclosed and appears as though it could be open space although it is still in private ownership. There has never been any formal planning application for change of use or development as public open space.
- 2.8 Following the creation of St Andrews Parish Council ('The Parish Council') in April 2017, the Parish Council has been in direct discussion with the landowner with respect to purchase of the land with a view to formalising it as open space.
- 2.9 The Parish Council has agreed a price with the landowner and both parties are keen to proceed with the transaction. It should be noted that the Council has already agreed in principle via Cabinet to allocate s106 receipts to the value of

£190,000 to support the Parish in funding the land purchase. It is possible that more s106 receipts soon to be received could be bid for once received for the same purpose. It is understood that the Parish Council will also be covering the land purchase price difference.

- 2.10 The Approved Framework Plan as set out in Appendix 2 of this report allocates the undeveloped area of land identified on the plan in Appendix 3 to be used for a pub, restaurants and offices. Economic factors have already lead to the grant of planning permissions for development on land in other areas of Village Centre 3 for uses not in accordance with the Framework Plan. The s106 allows for this to happen overriding the provisions of the s106 Deed.
- 2.11 Although the current wording of the S106 at clause 6.8.3 states that *'the provisions of any detailed planning permission or Reserved Matters Approvals shall take precedence over the Master Plan the New Master Plan or any Framework Plan'* to date there has been no approved planning permission for use of the land as open space. For this reason it would be necessary to ensure that the original s106 is amended to allow for use of the land as open space, and formalise the ability of this to be acceptable.
- 2.12 Formalising this by s106 Deed would clarify the position in the event the original proposed uses do not come forward. It would also be necessary for planning permission to be sought for the use of the land.

### 3.0 Detail

- 3.1 On review of the S106 it would appear that this very simple amendments would be necessary that are likely to include:
  - 3.1.1 The amendment of the definition of Village Centre 3; and
  - 3.1.2 Clause 6.10 under the heading of 'Village Centre' as the developer obligation in clause 6.10.1 is *'to reserve those parts of Village Centre 3 which are located on the Development Area and to use all reasonable endeavours having regard to market conditions to ensure that those parts shall be used for (inter alia) the purposes of housing local shops serving local needs and other local facilities following the identification of the relevant land uses through Reserved Matters Approvals.'*
- 3.2 The alteration suggested is that this simply needs to insert reference to may also 'which may also include use of land as open space or public open space' or words to that effect.
- 3.3 The Framework Plan for Redhouse Village Centre was approved around a decade ago. Whilst a substantial area of Village Centre 3 (VC3) was constructed in broad accordance with the land uses set out on the approved Framework Plan and it does contain retail units and convenience store and some offices were

built, the later phases suffered from a lack of interest from the relevant development sector.

- 3.4 on 6<sup>th</sup> March 2013, the Council granted planning permission under **S/12/0711** for Erection of 33 no. 1, 2, 3 and 4 bedroom dwelling and a community building (Use Class D1) with associated roads, car parking and amenity space. The Council purchased the land and funded the construction of the Community Centre which is now the also the St Andrew Parish Council office. This community centre is immediately east of the area land proposed as open space, separated by a footpath. The community centre was constructed on what allocated as the Church site and Community Homes site in the original approved Framework Plan. As part of the same application residential development was built on another area of land identified for Pub use.
- 3.5 In 2013 a planning application was submitted reference **S/13/1724**: Erection of a 12 no. bedroom Learning Disability Care Unit (Use Class C2) and 3 no. Retail Units, (Use Classes A1, A2, A3 and A4) including parking, access and associated works. This was on the area the land the Parish Council wish to purchase. It was consequently - WITHDRAWN dated 8<sup>th</sup> May 2014
- 3.6 Subsequently on the same area of land in 2015 under application reference **S/15/1585** development was applied for the erection of 3 storey building comprising ground floor retail (Class A1) and 14 no. apartments (Class C3) with access, parking, and amenity areas and associated works. The officer recommendation to approve was overturned by Planning Committee on 12<sup>th</sup> January 2016 and permission was REFUSED Decision dated 15<sup>th</sup> January 2016. It was not subsequently appealed.
- 3.7 The land remains vacant. With the wider development of Haydon 3 nearing completion, the North Swindon Development Company are keen to draw a conclusion to matters that remain outstanding. Furthermore the Parish Council are very keen to progress with the land purchase. Given the proximity of the land to the Community Centre at the south-eastern corner of the Village Centre 3 officers are not objectionable to the potential loss of the developable land as the proposed use would offer additional local amenity use that would be complementary to adjacent landuses. Furthermore residents in the area that overlook the land have become used to its open nature as a consequence of the lapse of time.

#### **4.0 Concluding Comments:**

- 4.1 Officers consider that the amendments to the existing s106 obligation clauses should be supported.

#### **5.0 Recommendation:**

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

That the request to agree to a S106 Deed of Variation be **approved** in accordance with the Recommendations listed above.

## **6.0 Alternative Options**

- 6.1 The Planning Committee may refuse to enter into the S106 DoV and Supplemental Deed. The s106 however appears to provide options to allow this alternative use to be approved and override the provision of the s106 in any case. In refusing to support the variation, there is a risk that the land may remain undeveloped. Should that become the case, it could be seen as detrimental in the long-term to the wider environment of Redhouse Village Centre and its residents and users.

## **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 following land purchase as the purchase would take place direct.

### Legal and Human Rights Implications

- 7.2 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 it will ensure that there is no risk of a s106 breach occurring as a direct result of the land purchase. Furthermore in the event that formal open space is created, this could be seen to enhance immediate health benefits for residents and wider public in the interests of supporting a sustainable development and wider public health benefits derived from its everyday use, and greater certainty of what may happen with the land.

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

- 7.4 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. As such the

proposal is fully aligned to our Corporate Objective around securing supporting the localism agenda and delivering public health benefit through development.

### Diversity Impact Assessment

- 7.5 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

- 7.6 There are no identifiable risks in entering into this s106 DoV.

### **Appendices**

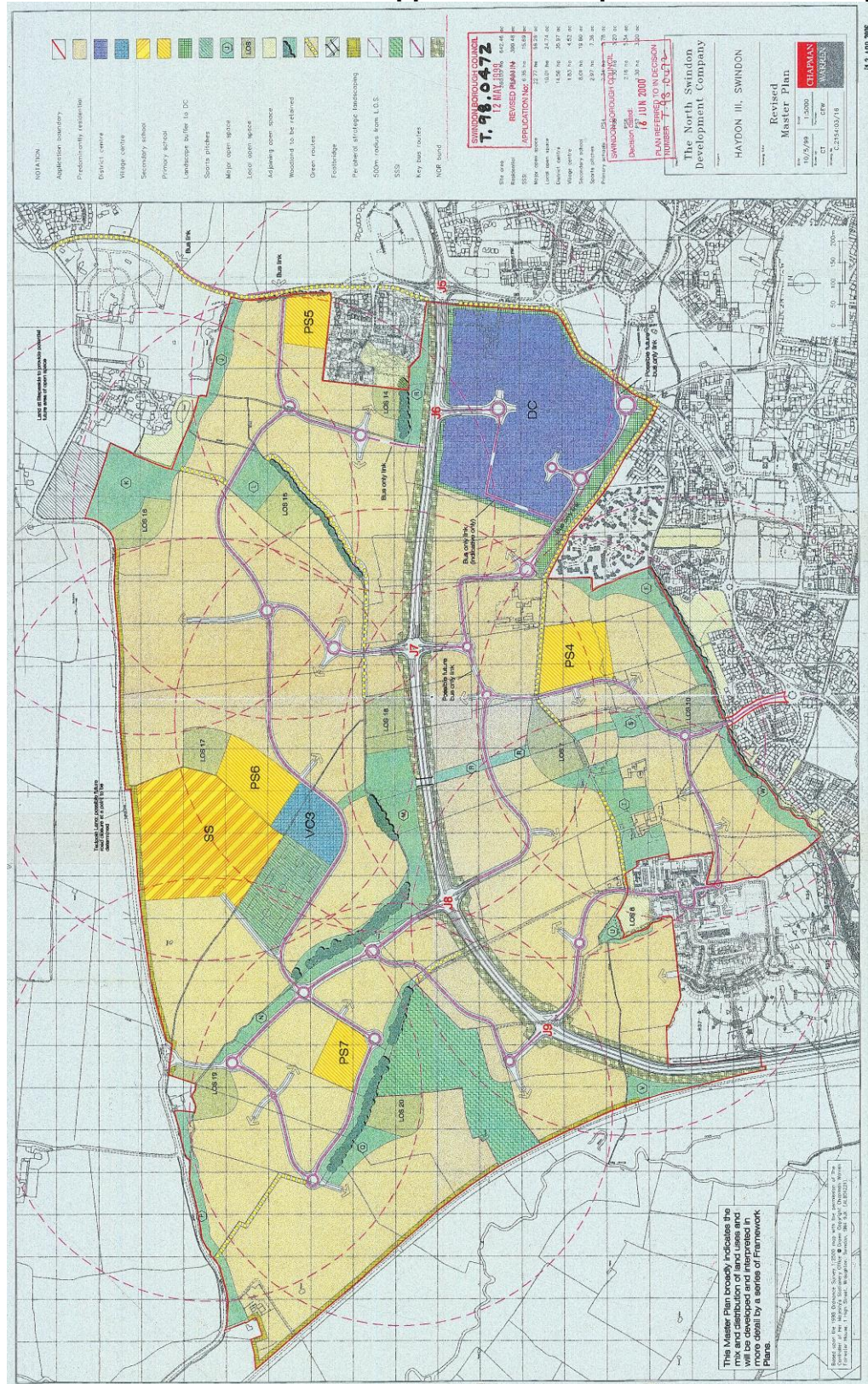
- **Appendix 1: Site location Plan with approved Masterplan for T/98/0472 Haydon 3**
- **Appendix 2: Original Approved Framework Masterplan for Haydon 3 VC3**
- **Appendix 3: Plan showing indicative area of land under discussion for purchase by and transfer to St. Andrews Parish Council**

### **Background Papers**

- Original Signed S106 agreement for T/98/0472 dated 16<sup>th</sup> June 2000 (as amended)
- Approved Framework Plan for Village Centre 3 - Redhouse
- Site Location plan



Further information on the subject of this report can be obtained from *Sarah Screen* on 0166397 or Email [sscreen@swindon.gov.uk](mailto:sscreen@swindon.gov.uk).





**LEGEND**

- RESIDENTIAL
- RETAILS
- OFFICES
- PUBLIC HOUSE
- RESTAURANT
- SHELTERED APARTMENTS
- FLEXIBLE USES
- EDUCATION CAMPUS
- BOUNDARY OF MIXED USE LOCAL CENTRE

**EDUCATION CAMPUS (ILLUSTRATIVE LAYOUT)**

Labels on the plan: Main Street, High Street, Market Square, Church Square, Formal Square, Sheltered Apartments, Medical Centre, Retail, PUB, REST., OFFICE, NURSERY, EDUCATION CAMPUS, LOS 18.



**Appendix 3 Plan showing indicative area of land proposed for purchase by and transfer to St. Andrews Parish Council for use as Open Space**

