

Case Officer: Shona King

Applicant: Keble Homes

Proposal: Modification of S106 to 18/01491/OUT - Planning obligation, specifically sections 1.1, 2.1, 2.3 of Part 5 Schedule 2 of the s106, dated 19/06/2019 (all sections referring to the existing water tower) (resubmission of 21/02503/M106)

Ward: Launton and Otmoor

Councillors: Cllr Coton, Cllr Holland and Cllr Patrick

Reason for Referral: Referred by the Assistant Director, Planning and Development

Expiry Date: 04 August 2022

Committee Date: 14 July 2022

SUMMARY OF RECOMMENDATION: APPROVE

1. APPLICATION SITE AND LOCALITY

- 1.1 The site is located to the rear of a row of dwellings which front onto the A4095 and following redevelopment of the former Country Club building and disused bowling green it comprises 10 detached dwellings with a LAP. Access to the highway is via an access road onto the A4095 at the western end of the site. The site is bounded to the north and west by countryside and to the east by an established nursery/garden centre.

2. DESCRIPTION OF PROPOSAL

- 2.1. An application has been made seeking a variation to the s106 Agreement to application 18/01491/OUT. The s106 required the demolition of a disused water tower adjacent to the site and the applicants now do not wish to carry out these works.

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:

14/01565/OUT

Outline - Development of eight houses and access improvements
Application Refused

14/02132/OUT

Outline - Development of eight houses and access improvements.
Application Permitted

17/02148/OUT

OUTLINE - Demolition of existing club house, bowling club pavilion and ancillary store. Erection of 10no dwellings and access improvements
Application Refused

18/01491/OUT

OUTLINE - Demolition of existing club house, bowling club pavilion and ancillary store. Erection of 10 no. dwellings and access improvements (further to outline planning permission 14/02132/OUT, dated 8th April 2016) and having a lesser proposed cumulative floor area than that permission.

Approved

19/01410/REM

Reserved matters to 18/01491/OUT - Seeking approval of layout, landscaping, appearance and scale. Access details approved as part of outline permission

Approved

20/01755/DISC

Discharge of Conditions 5 (finished floor levels); 6 (Arboricultural Method Statement); 7 (supervision measures); 8 (services and trenches); 9 (open space provision); 10 (means of access); 11 (visibility splays); 12 (internal access road details); 13 (refuse vehicle tracking); 14 (drainage details); 15 (Construction Traffic Management Plan); 16 (bat, bird, owl and invertebrate box details); 19 (facing materials) & 20 (Landscaping details) of 18/01491/OUT

Approved

20/01756/REM

Removal of Conditions 17 (Archaeological Written Scheme of Investigation), 18 (staged programme of archaeological evaluation and mitigation) and 27 (hardstanding) of 18/01491/OUT

Approved

20/01757/DISC

Discharge of Condition 2 (materials) of 19/01410/REM

Approved

20/01758/REM

Removal of conditions 3 (stone sample panel) & 4 (doors & windows) of 19/01410/REM

Approved

21/00904/DISC

Discharge of conditions 23 (Environmental Risk Assessment and Remedial Strategy), 24 (verification report) and 25 (remediation strategy) of 18/01491/OUT

Approved

21/00905/DISC

Discharge of Condition 14 (Drainage) of 18/01491/OUT

Approved

21/02503/M106

Request for variation to S106 for 18/01491/OUT

Withdrawn

4. PRE-APPLICATION DISCUSSIONS

- 4.1. No pre-application discussions have taken place with regard to this proposal.

5. RESPONSE TO PUBLICITY

- 5.1. This application has been publicised by way of a site notice displayed near the site, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was 6 July 2022.

- 5.2. 1 submission of support has been received.

6. RESPONSE TO CONSULTATION

- 6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 6.2. SHIPTON ON CHERWELL PARISH COUNCIL: No comment to date

7. RELEVANT PLANNING POLICY AND GUIDANCE

Section 106A and Section 106B of the Town and Country Planning Act 1990 (as amended)

8. APPRAISAL

Background

- 8.1. Planning permission was originally granted on the site for 8 dwellings in April 2016 (ref. 14/02132/OUT).
- 8.2. Officers recommended refusal of the scheme as it was considered to represent development within the countryside and constituted unsustainable, new build residential development in a rural location divorced from established centres of population, not well served by public transport and reliant on the use of the private car. It was considered to be contrary to saved Policies H18 and C8, of the Cherwell Local Plan 1996, Policy Villages 1 of the Cherwell Local Plan 2011-2031 and Government guidance contained in the National Planning Policy Framework.
- 8.3. Members, however, considered that, cumulatively, the public benefits put forward as part of the application outweighed the adverse impacts of the development and the application was approved.
- 8.4. The benefits put forward in the legal agreement were as follows:
- Contribution towards off-site provision of affordable housing - £40,000
 - Provision of a LAP on the site and commuted sum towards maintenance
 - Sewage treatment facility and 20 year service contract
 - New mains-fed water supply
 - Provision of a community building and £10,000 towards maintenance
 - Demolition of the obsolete water tower
- 8.5. With the exception of the LAP and commuted sum towards maintenance, none of the contributions were considered by officers necessary to make the development acceptable, but the decision of the Planning Committee as LPA was that they were necessary to make the development acceptable and formed the basis upon which the LPA made its decision.
- 8.6. Planning permission was subsequently granted for 10 dwellings on the site under application 18/01491/OUT and it is this permission that has been implemented. In approving the application the Planning Committee considered that cumulatively the public benefits put forward as part of the application outweighed the adverse impacts of the development and the application was approved.

8.7. The s106 agreement required:

- Contribution towards off-site provision of affordable housing
- Provision of a LAP on the site with a commuted sum for maintenance
- Sewage treatment facility
- Improvements to the water supply
- Contribution towards Shipton-on-Cherwell Millennium Hall
- Demolition of the obsolete water tower
- Contribution to OCC towards increasing frequency of buses on A4260
- New bus stop flag and timetable signage on the A4260
- Contribution towards the cost of administering a Traffic Regulation Order to enable the relocation of the existing 40mph/de-restricted speed limit on the A4095 Bunkers Hill from its current location immediately south of the proposed access to a point 50m southwards.
- Contributions towards off-site indoor and outdoor sports facilities

8.8. At the time of determination of the planning application the water tower was considered to be in an unsafe condition and the removal of it, along with the other benefits put forward by the applicant, was considered necessary to outweigh the harm of allowing the two additional dwellings.

8.9. Additional contributions had been required for the second scheme given it was for 10 or more dwellings and met additional triggers, whereas the first scheme was for less than 10 dwellings.

Legislation

8.10. Under s106A of the Town and Country Planning Act 1990 (as amended) the application falls to be determined in one of three ways:

- a) The obligation continues to have effect without modification
- b) If the obligation no longer serves a useful purpose it should be discharged
- c) If it continues to serve a useful purpose but would serve that purpose equally well if the s106 had effect subject to the modification in the application, it should be modified

8.11. The legislation requires that the s106 must be over 5 years old for consideration to be given to a modification. However, the Council's Legal Team has advised that such a modification can be considered earlier with the agreement of the parties to the s106. Officers recommend that consideration be given to this proposed change.

8.12. If the Council concludes that the s106 should not be modified there is no right of appeal in this instance as the application has been submitted within 5 years of the date into which the obligation was entered.

Assessment

8.13. In determining the application, it is necessary to consider whether anything has changed in respect of the condition of the water tower and its appearance or impact in the wider landscape and whether there are any other consequences with regards to the completed s106 arising from the proposed modification.

8.14. The modification sought is to release the developer from the requirement to demolish the water tower and to replace this modification with:

"To supply and install a filtration tank and system to the landowners current water supply and to commission the existing pump".

- 8.15. Notably, the filtration tank and system has already been installed and the pump commissioned. It is currently housed below the water tower, where the previous system was located, and is under the control and ownership of the Bunkers Hill Management Company (BHMC). The deed of variation as proposed has been signed by BHMC prior to the submission of the application.
- 8.16. In effect, therefore, the proposal is simply to remove from the s106 agreement the obligation to remove the water tower.
- 8.17. The Council's Environmental Protection Team is satisfied that the water supply is acceptable.
- 8.18. The applicant advises that the reasons for the application to modify the s106 and to retain the water tower are:
- BHMC has requested that the water tower is retained.
 - It is on BHMC land and access to it is over 3rd party land
 - BHMC decided that they did not wish to be part of the same water supply as the new development
 - The applicant has provided a new upgraded independent water system to the same specification and this was agreed by BHMC and recommended by the installer
 - BHMC wishes to retain the water tower for personal reasons
 - Access to the tower has been prevented by a resident who purchased the land around it and blocked access to the water tower
 - BHMC has installed services around the tower which prevents its demolition.
- 8.19. No information has been provided to support the application in terms of the condition of the water tower.
- 8.20. Officers note (1) there has been a recent campaign by a resident seeking to retain the water tower, due to personal circumstances and the potential impact on wildlife/habitat, which involved the placing of a camper van on the top of the tower; and (2) the new water infrastructure has been placed immediately below the tower which may make the demolition of the water tower more difficult than it might otherwise have been.
- 8.21. It is also noted that the water tower has the potential to provide habitat for bats and as such further consents may be required under the Wildlife and Countryside Act 1981 if the tower is to be demolished, though this was the case at the time of the previous decisions which required the removal of the water tower.
- 8.22. As stated in the committee report for 14/02132/OUT, the water tower is not prominent in public views as it is surrounded by mature trees and vegetation which screens it, and it does not significantly detract from the visual amenities of the area. This remains the case. Its demolition would not be of particular benefit to the wider public community, though it was considered at the time of previous decisions that its demolition would provide public benefit to the local community.

9. CONCLUSION

- 9.1 The site has a complex planning history and the Council approved its redevelopment subject to a package of public benefits to mitigate the harm of allowing development in an unsustainable location. The demolition of the water tower was put forward by the applicant (supported by BHMC) as one of these benefits. However, it is considered that circumstances have changed since the determination of 18/01491/OUT and the

completion of the s106 agreement. BHMC no longer wishes the water tower to be demolished and has signed the Deed of Variation to this effect and access to enable the demolition of the water tower has been prevented by the sale of the land surrounding the water tower and the siting of water supply equipment below the water tower.

- 9.2. In accordance with s106A of the Town and Country Planning Act 1990 (as amended) it is considered that the s106, as modified, continues to serve a useful purpose, delivering the other benefits of the development regarded as necessary at the time of determination to make the development acceptable in planning terms. The modified s106 is considered to serve that purpose equally well as the demolition of the water tower is not considered to be of great benefit to the wider public. The water tower is not prominent in public views, is screened from view by mature trees and it does not significantly detract from the visual amenities of the area.
- 9.3. It is therefore recommended that the application, to modify the s106 agreement with the retention of the water tower and the provision of the new water infrastructure in accordance with the submitted Deed of Variation, is approved.

10. RECOMMENDATION

- 10.1 That the obligation is modified in accordance with the Deed of Variation dated 1st July 2021, submitted with this application on the basis that circumstances have changed since the s106 to 18/01491/OUT was completed. The s106, as modified, continues to serve a useful purpose, delivering the other benefits of the development regarded as necessary at the time of determination to make the development acceptable in planning terms.