

Planning Committee

Request for a variation of the S106 Agreement relating to the proposed development at Heyford Park – Application 10/01642/OUT

16 August 2012

Report of Head of Development Control and Major Developments

PURPOSE OF REPORT

To enable Members to consider a request to vary the S106 Agreement in relation to the development at Heyford Park and determine whether or not to accept the variation of the Agreement.

This report is public

Recommendations

The Planning Committee is recommended:

- (1) To agree to vary the s106 agreement

Appraisal

1. At its meeting on 24 March 2011 Planning Committee considered an outline application (ref 10/010642/OUT) for a new settlement for 1075 dwellings, together with associated works and facilities, including employment uses, a school, playing fields and other physical and social infrastructure at the former RAF/USAF Upper Heyford base. This application was similar to the scheme for the settlement area approved at appeal (ref 08/00716/OUT) in January 2010 but does not include the flying field where the appeal decision has been implemented. The major difference was the retention of the majority of the existing dwellings, a slight expansion of the red line development area to the west, with a remodelling of the master plan resulting in a revamped central commercial area with the centre of the settlement based around a new “village green”.
2. Committee resolved to grant planning permission subject to conditions and to the applicant entering into a legal agreement with the District and County Councils.
3. The Agreement was entered into by the site owners, the District Council and the County Council and provided for the provision of infrastructure and facilities necessary to serve the development proposed. The Heads of Terms were set

out in the report and included, inter alia, 30% of the units to be affordable; substantial financial contributions towards transport and education; provision of a Heritage Centre; and highway improvements. The agreement was secured and the planning permission issued on 22 December 2011.

4. Subsequently a request was made in January 2012 to vary the agreement not in terms of the provisions (the requirements for infrastructure and contributions remain as set out in the principal agreement) but with regard to which part of the development funds the contributions towards new infrastructure. This has arisen because of the difficulty found by the developer in securing funding for the scheme and problems pertaining to the site being a complex mix of proposed and retained uses. It was requested that the financial liability of parts of the site (the retained existing housing and the commercial change of use land) be capped, with responsibility for the remainder of the payments falling on the new build elements.
5. Whilst it is regrettable to have to consider the amendment of a recently completed agreement the housing market has been hit hard by the recent recession. The developer's position is that it has struggled to get funding under the existing agreement and funding can only be obtained by splitting the site into its different elements. Despite the current economic climate there remains a need for housing to be delivered and the development at Heyford Park could make a valuable contribution to this
6. The County Council (to whom the bulk of the contributions in question are payable) has been consulted on the revised supplemental agreement and has agreed to cap the liability of the retained existing housing and commercial change of use land at £2,650,000. This reflects the figures negotiated in connection with a parallel planning application for retention of the existing housing. It has additionally been agreed that the bond already required from the developer to secure County education contributions will also cover the balance of contributions over and above the capped sum, thus providing additional security to make up for the fact that the balance of the contributions is secured on a smaller part of the site.
7. S106A of the Town & Country Planning Act 1990 (as amended) allows for S106 Agreements to be modified by agreement between the authority by whom they are enforceable and the persons against whom the obligation is enforceable. S106B allows for applications to be made for modification and allows for a right of appeal but such requests can not be made within 5 years of a S106 agreement being entered into. The modification of the current agreement can therefore only be done by agreement between the parties at the present time.
8. If the Council do not agree to the variation there is some doubt as to whether the development will go ahead in its approved form or possibly at all. This could result in delays to the refurbishment of the bungalows and other dwellings on site, and to the provision of affordable housing and delays in construction of new housing and the new commercial centre.
9. In terms of housing delivery, this site is planned to provide 43 units per annum commencing in 2013. The Annual Monitoring Report has highlighted the potential difficulties that the district is facing with regard to housing delivery and if there is a delay in strategic sites coming forward such as Heyford then it may be necessary to release other sites to maintain housing supply and the provision of social housing.

Conclusion

The proposed changes to the S106 agreement do not affect the level of affordable housing, contributions and facilities previously agreed. While they cap the liability of parts of the site, this cap reflects the infrastructure requirements of those parts; and additional security is provided by the extension of the County bond to cover additional contributions. On balance it is therefore considered that the proposal to vary the S106 agreement is acceptable and is therefore recommended for approval as outlined above

The following options have been identified. The approach in the recommendations (Option Two) is considered to be the best way forward

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| Option One | Refuse the modification of the S106 which is likely to delay the start of development and could lead to a further application being submitted to enable an appeal with regard to planning obligation requirements. |
| Option Two | Approve the modification of the S106 Agreement to enable work to commence of the development. |
| Option Three | Seek to negotiate different modifications to the S106 Agreement to enable development to commence. |

Implications

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| Financial: | <p>There will be no reduction in contributions secured towards mitigating the impact of the development though the burden of financing the greater part of the contributions will now fall on the new build residential elements of the scheme only. Provided there is no additional delay in providing the new build development this is not considered to have a significant impact on the delivery of infrastructure or facilities or on the Councils' security</p> <p>Comments checked by Karen Muir Technical & Project Accountant 01295 221559</p> |
| Legal: | <p>Formal modification of the S106 Agreement will be necessary to give effect to the variations proposed. The legal costs of the modification will be met by the developer.</p> |
| Risk Management: | <p>While the changes proposed in this report cap the liability of parts of the site and thus potentially reduce the Councils' security, the cap agreed reflects the infrastructure requirements of those parts; and additional security is provided by the extension of the County bond to cover additional contributions.</p> <p>Comments checked by Ross Chambers Principal Solicitor 01295 221690</p> |

Wards Affected

The Astons and Heyfords

Document Information

Background Papers	
Planning Application 10/01642//OUT	
Planning Obligation dated 19 December 2012	
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