

# **Cherwell District Council**

## **Planning Committee**

**24 May 2018**

**Graven Hill: MOD Bicester Sites D & E  
Ambrosden Road Upper Arncott.  
Deed of Variation to Section 106 Legal Agreement**

### **Report of the Interim Director Planning and Regeneration**

This report is public

#### **Purpose of Report**

The purpose of this report is twofold:

- (a) To inform Planning Committee of the proposed amendments to the signed Section 106 Agreement, set out in the report below and as part of a draft Deed of Variation, relating to the outline planning permission approved under 16/01802/OUT and relating to the development at Graven Hill.
- (b) To seek delegated authority from Planning Committee for Officer's to continue any required negotiation and arrange for the Deed of Variation to be signed by all parties.

#### **1.0 Recommendations**

The meeting is recommended:

- 1.1 To note the proposed amendments to the Section 106 Agreement explained as detailed in the report.
- 1.2 To agree the proposed amendments to the Section 106 Agreement set out in the report and to form a draft Deed of Variation to the signed Section 106 Agreement.
- 1.3 To agree authority be delegated to Officers for the final negotiation of the detailed Deed of Variation and signing by all parties.

#### **2.0 Introduction**

- 2.1 Outline planning permission was originally granted under planning reference 11/01494/OUT and the Section 106 agreement signed on 8 August 2014. A report

detailing the Heads of Terms of the original agreement was presented to Planning Committee on 27 February 2014 and at this meeting it was agreed by Planning Committee for authority to be given to officers for the final negotiations of the Section 106, before it was signed on 8 August 2014.

2.2 The signed Section 106 agreement secures the following items:

- Affordable Housing
- Sports Pitches
- Allotments
- Amenity Space
- Play areas
- Woodland future maintenance
- Public Art
- On site Refuse and Recycling
- Cemetery
- Thames Valley Police
- SUDs and Balancing Ponds
- Primary School
- County Council Financial Contributions
- On site Highway Works
- Off site Highway Works
- County Council Transport Contributions
- Bond

2.3 At the time the agreement was signed it was unclear as to whether the development would come forward as a standard market housing development or as a site which would deliver self-build housing. In order to allow for both scenarios the final signed agreement included a definition at paragraph 9.1 which defines occupation triggers in respect of self-build as being at the point the serviced self-build plot is sold to the self builder. In relation to any standard market housing delivered on the site, occupation triggers would be in the standard sense, at the point the property was complete and ready for occupation.

2.3 Since the original agreement was signed on the 8<sup>th</sup> August 2014, a Local Development Order has been adopted for the delivery of self-build development at the site and development is well under way on phase 0 and phase 1 of the development. Therefore, it is now clear that the development is intending to deliver a large proportion of self-build and custom build housing at this site.

### **3.0 Report Details**

3.1 The development has now commenced on site, with the development well under way and nearing completion on phase 0 and development under way on phase 1. It has become clear that the development being delivered on the site is a mixture of pure self build housing (a self builder purchasers the serviced plot and erects a dwelling themselves) and custom build housing (an individual who engages a custom build company to carry out and complete the construction of a dwelling for use as their primary residence).

- 3.2 Currently under the existing signed Section 106 Agreement all the self-build and custom build units that are sold are triggering obligations at the point of sale, based on the current definitions within the Section 106 agreement. However, it is likely that actual complete occupations of these plots would take place 12 - 24 months following the sale of the land. Therefore, the obligations secured under the current Section 106 agreement are in some cases being triggered too early. The current Section 106 agreement does not comprise definitions for self-build and custom build and therefore this is one of the main amendments proposed as part of the draft Deed of Variation.

### **Definitions**

- 3.3 The Deed of Variation to the signed S106 agreement at Graven Hill seeks to include the following definitions of Self Builder, Custom Builder and Custom Build Company. This will allow the self build triggers set out at paragraph 9.1 of the Section 106 agreement to relate only to pure self-build units. Custom build units will trigger the obligations at the point the plot is finished and ready for occupation.
- The definition of “Self Builder” in clause 1 shall be deleted and replaced with the following: “ “Self Builder” means an individual or group of individuals who intend to carry out and complete the construction of a Dwelling or Dwellings on Self Build Plots for use as their primary residence and who will become a freehold owner, or owner of a long lease of not less than 99 years duration, of the Self Build Plot and the term “Self Builder” shall be construed accordingly provided that this term shall not include a Custom Builder;”
  - A new definition of “Custom Builder” shall be included in clause 1 after the definition of “Construction Start Date” and shall include the following: “ “Custom Builder” means an individual or group of individuals who engage a Custom Build Company to carry out and complete the construction of a Dwelling or Dwellings for use as their primary residence and who will become a freehold owner, or owner of a long lease of not less than 99 years duration. This could include a fully commissioned home or fitting out a previously constructed shell. The term “Custom Build” shall be construed accordingly.”
  - A new definition of “Custom Build Company” shall be included in clause 1 after the definition of “Custom Builder” with the following: “ “Custom Build Company” means the owner, or a company authorised by the Owner, which supplies and erects dwellings for Custom Builders”.
- 3.4 The existing signed Section 106 agreement at page 2 under ‘Definitions’ sets out a definition for “Bond”. This definition is to be amended to allow for a letter of guarantee to be used in place of a bond in the event the owner is a wholly owned company of the District Council. The requirement for a letter of guarantee has been introduced here because the District Council as land owner are unable to put a bond in place with GHVDC as a Council owned company, as the District Council

would be putting a bond in place with themselves. The definition shall therefore read as follows:

- ““Bond” means a bond from a reputable financial institution *(or from the District Council in the event the Owner is a wholly owned company of the District Council)* satisfactory to the County Council or the District Council in the form of or substantially in the form of the drafts appended at Appendix 6 and the term “Replacement Bond” shall mean any Bond given by a subsequent owner to the District Council and the County Council respectively and shall be interpreted in accordance with the meaning of Clause 13 of this Agreement;”

- 3.5 The Proposed amendments to the definitions within the Section 106 Agreement set out within the draft Deed of Variation are considered acceptable and meet the requirements of paragraph 204 of the National Planning Policy Framework.

### **Phase 0**

- 3.6 The Deed of Variation seeks to introduce a new clause to exclude Phase 0 of the development, from any obligation within the Section 106 agreement. Phase 0 comprises 10 pioneer plots which were identified as plots which could be delivered early as a way of testing the process involved in delivering self-build on the site and applying the Local Development Order.
- 3.7 The Development Company identified that the early delivery of phase 0 was triggering a number of obligations at the point the development commenced on this part of the site. However, with a very small number of units on this phase and due to the self-build nature of these units, with actual occupations of the units potentially taking place 12-24 months after the plot is sold, the required obligations under the current Section 106 agreement, were not considered to be justified at this early stage. The removal of phase 0 from the occupation triggers is therefore considered acceptable.

### **Schedule 3 (Affordable Housing)**

- 3.8 Amend the definitions of “Lifetime Homes Standards” and “Wheel Chair Standard” to ensure reference to up to date standards.

### **Schedule 4 (Sports Pitches)**

- 3.9 Schedule 4 is proposed to be amended to secure the submission of the changing pavilion specification and sports pitch specification before construction on Land Transfer Area 2.
- 3.10 Under the current S106 Agreement these two specifications are required before any construction on the site, but the Development Company do not get the land where the sports pitches are proposed until Land Transfer Area 2 is within their ownership (post summer 2019). Therefore, the amended timing of these specifications coming forward before construction on Land Transfer Area 2 is considered acceptable and more effective.

### **Schedule 9 (Woodland)**

- 3.11 The existing signed Section 106 Agreement secures a Woodland commuted sum for the future management and maintenance of the hill top woodland at Graven Hill which is shown on drawing A-L-040 Rev G.
- 3.12 Following remapping of the woodland area across the site it was found that the original woodland area used to calculate the woodland commuted sum in 2014 was mapped to areas of woodland outside the hilltop which were not intended to be captured by schedule 9. Schedule 9 was to secure management and maintenance of the hilltop woodland only. The new mapping now shown on drawing A-L-040 Rev AB shows the hill top ancient woodland covering an area of 276,400m<sup>2</sup>. Also in addition to this since the woodland commuted sum was calculated in 2014 the contract rates have reduced. Therefore a new calculation has been carried out and reduced the total woodland commuted sum to £2,595,393. Therefore, Schedule 9 is therefore to be amended to remove reference to £6,619,440 and replace it with the revised figure of £2,595,393.
- 3.13 Schedule 9 is also to be amended to introduce a phased approach to submitting the detailed scheme for the layout and maintenance of the woodland and approval by the District Council. This phased approach will ensure the detail of the woodland management and maintenance being provided to the District Council at an appropriate time in the developments delivery. The amendments proposed to Schedule 9 have been discussed with the District Councils Landscape Services Manager who is content with the position set out above.

### **County Council Obligations**

- 3.14 Schedule 15 (Primary School), Schedule 16 (County Council Contributions – Non Transport), Schedule 17 (On Site Highway Works and Schedule 18 (Off Site Highway Works) are all secured obligations with the County Council. The County Council have been involved in the negotiations that have taken place regarding the proposed amendments to the Section 106 Agreement and the preparation of a draft Deed of Variation and the paragraphs below will deal with these County Council matters.

### **Schedule 15 (Primary School)**

- 3.15 The signed Section S106 Agreement current secures the letting of the building contract for the Primary School Works to be in place before the occupation of 150 dwellings. As part of the proposed Deed of Variation negotiations are taking place between Graven Hill Village Development Company (GHVDC) and Oxfordshire County Council and Cherwell District Council in respect of the timing and delivery of the Primary School.
- 3.16 The draft Deed of Variation seeks to introduce a new definition of Primary School Delivery Programme and seeks to secure the primary school delivery in accordance with the approved Primary School Delivery Programme. Discussions are continuing between the Graven Hill Development Company, the County Council and the

District Council to reach an acceptable position for all parties in relation to the primary school provision.

### **Schedule 16 (County Council Contributions – Non Transport)**

- 3.17 The draft Deed of Variation seeks to reduce the commuted sums secured in relation County Council Contributions. This reduction is sought because the original calculations in 2014 were based on the total delivery of 1900 units on the site. Since then the Masterplan has been approved and shows the delivery of 1741 units across the residential phases of Graven Hill. Therefore, reductions are sought within the financial contributions payable to the County Council to represent the reduction in unit numbers to be delivered. The principle of reducing the commuted sums is therefore acceptable in principle. However, discussions are taking place to finalise appropriate reduced figures which represent the approximate 10% reduction in unit numbers.

### **Schedule 17 (on site highway works)**

- 3.18 Schedule 17 of the signed Section 106 Agreement currently secures the on-site highway works which includes the delivery of a spine road, including buses, through Land Transfer Area 1 (before 100 occupations) and a spine road, including buses, through Land Transfer Area 2 (within 18 months of obtaining vacant possession of Land Transfer Area 2).
- 3.19 The draft Deed of Variation seeks to introduce new definitions and new plans to define the following:
- Final Bus Route (Drawing A-L-550 Rev H)
  - Temporary Bus Route Phase 1(a) to be provided before the 61<sup>st</sup> occupation (drawing A-L-556)
  - Temporary Bus Route Phase 1(b) to be provided before the 176<sup>th</sup> occupation (Drawing A-L-549 Rev B)
  - Land Transfer Area 1 Phase 1(a) Spine Road to be provided before the 100<sup>th</sup> occupation (shown pink on drawing A-L-553 Rev D)
  - Land Transfer Area 1 Phase 1(b) Spine Road to be provided before the 176<sup>th</sup> occupation (shown green on drawing A-L-553 Rev D)
  - Land Transfer Area 1 Spine Road shall comprise of Land Transfer Area Phase 1(a) Spine Road and Land Transfer Area1 Phase 1(b) Spine Road. These new definitions are being introduced to allow for a temporary spine road and bus routes arrangements on the early phases prior to the Land Transfer Area 1 Spine Road being provided and the Land Transfer Area 2 Spine Road being provided.

- 3.20 Positive discussions are taking place between Graven Hill Village Development Company, the County Council and the District Council to finalise the wording in relation to the amendments to Schedule 17. The amendments proposed in relation to the spine road and bus routes delivery on phase 1a and phase 1b are considered acceptable in relation to paragraph 204 of the National Planning Policy Framework.

#### **Schedule 18 (off site highway works)**

- 3.21 Schedule 18 of the signed Section 106 Agreement secures the off-site highway works required to mitigate the impact of the development. These works comprise the improvements to the Rodney House roundabout to provide safe vehicle and pedestrian access to the site from the A41/A4421/B4100 junction.
- 3.22 The draft Deed of Variation seeks to introduce new definitions into Schedule 18 to include the following:
- Temporary Off Site Pedestrian and Cyclist Crossing
    - Temporary Crossing Plan shown on drawing 1545 and 1546

This is a temporary crossing arrangement at the Rodney House roundabout for the duration of the off-site highway works and is to be provided prior to the first occupation on the Graven Hill Development. This is to ensure that suitable crossing arrangements are provided for the duration of the works and prior to the crossing provision provided as part of the approved Rodney House roundabout works.

- 3.23 Schedule 18 is also to be amended at paragraph 1.2 to ensure the off-site highway works at Rodney House roundabout are completed prior to the 110<sup>th</sup> dwelling being occupied on the Graven Hill site. The amended timing to provide the off-site highway works at Rodney House roundabout and the provision for a temporary crossing arrangement is considered acceptable and positive discussions are continuing between Graven Hill Village Development Company, Cherwell District Council and the County Council regarding the detailed wording of Schedule 18.

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 The proposed amendments to the signed Section 106 Agreement relating to land at Graven Hill, set out in the report above, are considered appropriate to mitigate the impacts of the proposed development in accordance with test within paragraph 204 of the National Planning Policy Framework and the CIL Regulations. This report seeks authority from Planning Committee to agree the changes as set out above and to authorise Officer's to continue further discussion and negotiation as required between Graven Hill Village Development Company, Cherwell District Council and Oxfordshire County Council to finalise the draft Deed of Variation and arrange signing by all parties.

## **5.0 Alternative Options and Reasons for Rejection**

- 5.1 The following alternative option has been identified and rejected for the reasons as set out below.

- 5.2 Alternative Option 1 – To not agree the proposed amendments to be set out in a Deed of Variation to the Section 106 Agreement and explained above. Option 1 has been rejected as continuing to deliver development at Graven Hill in accordance with the signed Section 106 Agreement would lead to occupations at Graven Hill triggering obligations and payments too early in the development. This is due to the self-build nature of the development which triggers obligations at the point the plot is sold and occupations of those self-build plots actually taking place between 12 months and 24 months later.

## **6.0 Implications**

### **Financial and Resource Implications**

- 6.1 There are no financial and resource implications identified.

Comments checked by:

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### **Legal Implications**

- 6.2 The proposed amendments are necessary to allow custom build on the scheme, to deal with the situation that the Council cannot bond with itself and to allow for the phased transfer of the site from the MOD. Officers consider that the amendments meet the tests in the NPPF and the CIL Regulations. The County Council have agreed the proposed amendments to their schedules. Both Councils' legal teams have been involved in the drafting of the deed of variation."

Comments checked by:

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### **Risk Management**

- 6.3 There are no risks arising from accepting the recommendation.

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## **7.0 Decision Information**

### **Wards Affected**

Bicester South and Ambrosden



## Links to Corporate Plan and Policy Framework

A district of opportunity

### Lead Councillor

Councillor Colin Clark, Lead Member for Planning

## Document Information

Appendix No	Title
None	
Background Papers	
None	
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