

Planning Committee: 3 March 2021

Urgent Item

Application No: W/14/0681

Town/Parish Council: Kenilworth

Case Officer: Dan Charles

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Land South of Gallows Hill / West of Europa Way, Warwick, CV34 6SP

Residential development up to a maximum of 450 dwellings: Provision of two points of access (on from Europa Way and one from Gallows Hill); Comprehensive green infrastructure and open spaces including potential children's play space; Potential footpaths and cycleways; Foul and surface water drainage infrastructure, including attenuation pond; Ancillary infrastructure and ground modelling. (Outline application including details of access)

FOR: L&Q Housing Trust

Proposed Deed of Variation to the signed Section 106 Agreement

RELEVANT POLICIES

- National Planning Policy Framework
- DM1 – Infrastructure Contributions

INTRODUCTION

This report relates to outline planning permission W/14/0681 which was allowed on appeal on 14 January 2016. As part of the appeal process, a Section 106 Agreement to secure a range of obligations was agreed prior to the determination of the appeal.

The applicants have actively pursued the permission and the Reserved Matters have been approved and conditions discharged accordingly. Works have recently commenced on site. In reviewing the Section 106 Agreement, the applicants have requested a revised payment schedule for the Section 106 contributions.

It should be made clear that there is no change to the overall contribution amounts, only the payment schedules are proposed to change.

This report is being brought forward as an urgent item and cannot wait until the next meeting of the Planning Committee because the agreement needs to be updated as speedily as possible, to give all relevant parties clarity in respect of the revised requirements of the agreement and in the wider sense to assist with the ongoing delivery of this site.

PROPOSED CHANGES TO SCHEDULES

Indoor Sports Facilities

Schedule 1 Part 9 currently requires:

"The Owner shall pay 50% of the Indoor Sports Facilities Contribution attributable to a particular Area to the District Council prior to the Occupation of 50% of the Dwellings in that Area and shall pay the remaining 50% of the Indoor Sports Facilities Contribution to the District Council Prior to Occupation of 90% of the Dwellings in that Area."

Requested amendment:

The Owner shall pay ~~50%~~ **25%** of the Indoor Sports Facilities Contribution attributable to a particular Area to the District Council ~~prior to the~~ **upon** Occupation of ~~50%~~ **20%** of the Dwellings in that Area and shall pay the remaining ~~50%~~ **balance** of the Indoor Sports Facilities Contribution to the District Council ~~Prior to~~ **in equal instalments upon** Occupation of ~~90%~~ **40%, 70% and 90%** of the Dwellings in that Area.

Outdoor Sports Facilities

Schedule 1 Part 9 requires:

"The Owner shall pay 50% of the Outdoor Sports Facilities Contribution attributable to a particular Area to the District Council prior to the Occupation of 50% of the Dwellings in that Area and shall pay the remaining 50% of the Outdoor Sports Facilities Contribution to the District Council Prior to Occupation of 90% of the Dwellings in that Area."

Requested amendment:

The Owner shall pay ~~50%~~ **25%** of the Outdoor Sports Facilities Contribution attributable to a particular Area to the District Council ~~prior to the~~ **upon** Occupation of ~~50%~~ **20%** of the Dwellings in that Area and shall pay the remaining ~~50%~~ **balance** of the Outdoor Sports Facilities Contribution to the District Council ~~Prior to~~ **in equal instalments upon** Occupation of ~~90%~~ **40%, 70% and 90%** of the Dwellings in that Area.

Education Contribution

Schedule 2 Part 1 requires:

"The Owner shall pay 10% of the Education Contribution attributable to a particular Area to the County Council on Occupation of the first dwelling in that Area; The Owner shall pay 50% of the Education Contribution to the County Council upon Occupation of the 50% of the Dwellings in that Area; The Owner shall pay the balance of the Education Contribution to the Country Council upon Occupation of the 90% of the Dwellings in that Area."

Requested amendment:

The Owner shall pay ~~10%~~ **25%** of the Education Contribution attributable to a particular Area to the County Council on Occupation of ~~the first dwelling~~ **20% of the Dwellings** in that Area; The Owner shall pay ~~50%~~ **25%** of the Education

Contribution to the County Council upon Occupation of the ~~50%~~ **40%** of the Dwellings in that Area; The Owner shall pay **25%** the balance of the Education Contribution to the Country Council upon Occupation of the ~~90%~~ **70%** of the Dwellings in that Area; The Owner shall pay the balance of the Education Contribution to the Country Council upon Occupation of the 90% of the Dwellings in that Area.

Note: As part of the amendment to the Education Contribution schedule, the wording in the definition will need to be updated to replace Myton Secondary School with the required education provider.

Public Transport Contribution

Schedule 2 Part 14 requires:

"The Owner shall pay the County Council a contribution towards securing and improving the Bus services to serve the Development as follows:

£123,374 within 14 days of a written request for payment PROVIDED THAT such request is made by the County Council on or within 2 years of the Commencement of Development;

*£107,952 upon the first anniversary of the first instalment;
£92,530 upon the second anniversary of the first instalment;
£77,109 upon the third anniversary of the first instalment; and
£61,687 upon the fourth anniversary of the first instalment."*

Requested Amendment:

The Owner shall pay the County Council a contribution towards securing and improving the Bus services to serve the Development as follows:

£115,663 upon the Occupation of 20% of the Development;
£115,663 upon the Occupation of 40% of the Development;
£115,663 upon the Occupation of 70% of the Development; and
£115,663 upon the Occupation of 90% of the Development.

Footpath Contribution

Schedule 2 Paragraph 12 requires:

"The Owner shall pay to the County Council the Footpath Contribution within 14 days of receipt of a written request for payment PROVIDED THAT such request is made by the County Council on or within 2 years of the Commencement of Development"

Following the Deed of Variation, which was agreed on the 31st March 2020, we request that paragraph 12 is updated to align with the new Europa Way longstop date of 2029.

Requested Amendment:

The Owner shall pay to the County Council the Footpath Contribution within 14 days of receipt of a written request for payment PROVIDED THAT such notice is made by the County Council on or within 2 years of the Commencement of Development **before 31 May 2029.**

Open Space, SUDs and Play Area Contributions

To avoid numerous transfers of land at each phase, it has been agreed that the transfer of these contributions will be restricted to a total of two transfers. L&Q will transfer open space, SUDs and play areas for the west side of the development following completion of the current phase. The east side transfer will then take place at completion of the development.

We therefore request that Schedule 1 part 2 and 4 are updated to reflect the updated transfer arrangements.

ASSESSMENT

The revisions would provide the same overall contributions but with regular instalments spread at regular intervals during the build. The revisions to the contribution schedules have been the subject of negotiations with the relevant statutory consultees who are in agreement with the revisions.

The revisions will allow for a more balanced approach to the payments which will the applicants to provide the contributions as the site grows allowing for a sustainable flow of funding to the relevant services that require them.

It is noted that the intention is also for L&Q to provide additional affordable housing to provide 50% affordable units in lieu of the approved 40%. This will equate to an additional 45 units across the site. The balanced payment schedule will assist in providing the increased affordable housing numbers. This is subject to separate funding by Homes England to support the increase and does not change the requirements of the Section 106.

CONCLUSION

The revisions are not affected by the CIL regulations.

There would be no difference to the level of contributions to be received through the Section 106 Agreement as a result of the changes and levels of funding would be maintained and provided in a more balanced manner. The changes have the agreement of the statutory consultees and as such, there is no objection from Officers.

The associated Legal costs in providing the Deed of Variation would be met by the applicants so there is no cost to the Local Planning Authority.

RECOMMENDATION

That Committee approve the additions to allow the elements to be incorporated through a Deed of Variation to the Section 106 Agreement.