

Application No: W 14 / 0967

Town/Parish Council: Warwick

Case Officer: Rob Young

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Land North of Gallows Hill, Warwick, CV34 6SJ

Development of up to 425 residential dwellings (Use Class C3), medical centre, community hall, formal and informal green spaces, sports and recreation provision, structural landscaping, new roads, footpaths and cycle ways, site access and ancillary works (outline application including details of access). FOR Warwickshire County Council

Various amendments to the Section 106 Agreement

INTRODUCTION

This report relates to planning permission W/14/0967 (subsequently varied by W/17/0988). Both permissions are subject to a Section 106 Agreement dated 3 April 2015 ("the Original Agreement") that imposes a range of obligations on the Owner.

RECOMMENDATION

That Committee approve two alternative variations of the Original Agreement.

RELEVANT POLICIES

- National Planning Policy Framework
- DS14
- DM1

ASSESSMENT

Background

The site is owned by Warwickshire County Council. Negotiations for the sale of part to Warwick District Council and part to Waterloo Housing Group are at an advanced stage.

The intention is that the site will be split between the three parties with the County Council retaining an area of land to be used for education purposes, the District Council purchasing land on which to construct a community stadium and enabling development and Waterloo Housing Group purchasing the remainder of the land and selling it on for development for housing.

The Original Agreement will be varied to reflect the negotiations that have taken place between the parties and to attribute the obligations proportionately. Two alternative variation agreements have been drafted: The Attribution Version (the "AV") will have effect if both Waterloo Housing Group and Warwick District Council proceed with the planned purchases. The Rectification Version (the "RV") will have effect if the purchases do not proceed or if only one purchase proceeds.

Variations to the Original Agreement have already been authorised by Planning Committee (10 October 2017, 27 February 2018 and 22 May 2018). The purpose of this report is to recommend that Committee approve further variations and the amendment of variations that have already had Committee approval. Members are asked to consider this report as an urgent item as the Original Agreement needs to be varied by 15 November 2018 when it is anticipated that Warwick District Council will complete the purchase of the land. It has not been possible to put the matter before Committee prior to this date as negotiations between the parties as to the detail of the variations have been on-going.

Authorised variations

The variations authorised by Committee to date are detailed below:

1. Authorisation to vary the Original Agreement to the Rectification Version (10 October 2017 and 22 May 2018)
 - 1.1. To reflect the potential for the proposed changes in the size and location of the land to be safeguarded for a community stadium and the new location of the Education Land (subject to the agreement of the County Council).
 - 1.2. To provide that land will be "safeguarded" for a period of three years from the date of the varied Section 106 Agreement, during which time the District Council may purchase the land provided that it has obtained planning permission for the development of a community stadium.
 - 1.3. To reflect the fact that, if the stadium land is transferred to the District Council, the overall site will have been split, in which case the planning obligations will be attributed proportionately between the parties in a manner that avoids development on one part being frustrated by a failure to deliver infrastructure on the other part.
 - 1.4. To provide that if the land is not used for a community stadium or for housing then it may be used for another purpose with the consent of the neighbouring landowner (such consent not to be unreasonably withheld) subject to any required planning permission (subject to the agreement of the County Council).
 - 1.5. To give the District Council a right to enter the County Council's land to install services to the stadium land and to construct all or part of the spine road should it wish to commence development of the site before the County Council's land is developed and to provide reimbursement of the District Council's reasonable costs in this respect.
 - 1.6. To correct any minor typographical or drafting errors in the Original Agreement.
 - 1.7. To provide for any consequential amendments required as a result of the changes set out above.
 - 1.8. To reduce or remove the obligations relating to the On-Site Open Space and Allotments and the associated Open Space Maintenance Sum and Play Area Commuted Sum.
 - 1.9. To require the transfer of the Off-Site Open Space to the District Council to take place before the commencement of development.
2. Authorisation to amend the Original Agreement to the Attribution Version (27 February 2018 & 22 May 2018)
 - 2.1. To substitute a revised land use plan to show the locations of the Community Hall Land, the GP Facility Land, the Stadium Land, the

Education Land and the alignment of the Spine Road and provide (subject to the agreement of the County Council) that whilst the total area of the Education Land will remain the same as the revised use plan the detailed boundaries may change.

- 2.2. To reflect the fact that the site has been split and the planning obligations will be attributed proportionately between the parties in a manner that avoids development on one part being frustrated by a failure to deliver infrastructure on the other part.
- 2.3. To give the District Council step in rights to enter the land purchased by Waterloo Housing Group to construct the Spine Road and provide servicing if necessary to facilitate development of its own land and to recover its costs.
- 2.4. To provide for any consequential amendments required as a result of the changes set out above.
- 2.5. To reduce or remove the obligations relating to the On-Site Open Space and Allotments and the associated Open Space Maintenance Sum and Play Area Commuted Sum.
- 2.6. To require the transfer of the Off-Site Open Space to the District Council to take place before the commencement of development.
- 2.7. To correct any minor typographical or drafting errors in the Original Agreement.

Additional variations

It is proposed that the approved variations are added to and amended as follows:

Rectification Version

- That the variation approved at paragraph 1.2 above is amended so that the land intended for the community stadium (the "Community Stadium Land") is safeguarded for a period of three years from 30 June 2018 instead of 3 years from the date of varied Section 106 Agreement.
- That the variation also reflects the fact that the parties have agreed that the Community Stadium Land shall also include the Community Hall and GP Facility (the size of the safeguarded Community Stadium Land has accordingly been increased to 3.7 ha).
- Commencement of development will not be blocked pending transfer of the Off-site Open Space (the agreement will still require early transfer but this will be an obligation affecting only WCC and WDC and not the buyer of the County Council's residual land).
- The formula for the Biodiversity Offsetting Contribution may be varied to recognise the contribution to biodiversity to be made on the Off-site Open Space.
- That the obligation for WCC to appropriate the Education Land for Education Purposes within 6 months of the commencement of the development is removed

Attribution Version

- That, contrary to paragraph 2.3 above, the variation does not include step in rights to enable the District Council to construct the Spine Road, install

servicing and recover costs. It has now been agreed that these rights will be included in the sale agreement between the District Council and the County Council.

- That the agreement is varied so that the owner of the land to be purchased by Waterloo Housing Group is obligated to construct the Spine Road and provide servicing within a certain timescale.
- Commencement of development will not be blocked pending transfer of the Off-site Open Space (the agreement will still require early transfer but this will be an obligation affecting only WCC and WDC and not WHG).
- That the obligation for WCC to appropriate the Education Land for Education Purposes within 6 months of the commencement of the development is removed
- The formula for the Biodiversity Offsetting Contribution may be varied to recognise the contribution to biodiversity to be made on the Off-site Open Space

It should also be noted in relation to both agreements that the boundaries of the Education Land have now been agreed and so it is not anticipated that WCC will agree any provision to vary the detailed boundaries.

The test to be applied when deciding whether to modify a Section 106 Agreement is whether the obligation would serve its purpose "equally well" as modified. It is considered that the proposed changes to the Section 106 Agreement are in accordance with the Council's policies and serve the planning purposes equally as well as the original version. Therefore it is considered that this test is satisfied.

RECOMMENDATION

That Committee approve the two alternative variations of the Original Agreement as set out above.