

Full planning permission was granted on 1st December 2015 for demolition of the old Jubilee baths building and construction of a 244 room student development on six floors comprising 154 self-contained, single person rooms and 90 en-suite rooms in clusters of 4 and 5 with shared lounge/kitchen areas. Ancillary accommodation including an IT suite, gymnasium, meeting room and cinema room is also provided. Prior to the granting of planning permission an agreement under section 106 of the Act was concluded between the Authority, the County Council, the charge and the owner, in which the owner covenanted to the following:

1. To pay the capital element of the Public Open Space contribution (£120,931 index linked) on or before 31 March 2016.
2. On or before occupation of the development or 30 September 2017, whichever is the earliest, to pay the maintenance element of the Public Open Space contribution (£77,785 index linked)
3. To pay the Travel Plan monitoring fee (£2,200, index linked) before development commences.
4. To pay £2,000, index linked, of the Residents Parking Zone contribution on or before commencement or before 31 March 2016 (whichever is the earliest).
5. To pay the remainder of the Residents Parking Zone contribution (£48,000 index linked) on or before occupation of the development or 30 September 2017, whichever is the earliest

The applicant has now asked the Council to agree to amendments to the agreement relating to the payment of the open space contribution (it is understood that the £2,000 Residents Parking Zone contribution has been paid) and this report concerns that request. The consequences of a further 4 weeks delay to the developer could be that the development would not be available for occupation at the start of the academic year 2017-18 resulting in a 12 month delay. The Chair is satisfied that by reasons of these special circumstances he is of the opinion that the item should be considered at this meeting as a matter of urgency.

RECOMMENDATION

That the applicant be advised that the Council would be prepared to vary the existing agreement so that the payment of public open space contribution is deferred to prior to or on 30 September 2016.

Reason for Recommendation

It is considered that the variation indicated above would still ensure that whatever improvements are to be obtained, by the expenditure by the Council of the monies obtained, will be likely to be in place by the time the development is occupied or shortly thereafter

KEY ISSUES

The Planning Committee at its meeting on the 3rd June 2015 resolved to grant planning permission for a student development subject to the applicant first entering into a section 106 agreement which, amongst other things, secures the capital element of the required open space contribution of £120,931 (index linked) to be on or before 31 March 2016.

The basis for the POS contribution came from LP Policy C4 which states that appropriate amounts of publicly accessible open space must be provided in areas of new housing and the Urban North Staffordshire Green Space Strategy which sets out an approved methodology whereby such contributions are calculated. CSS Policy CSP5 also refers to the need for such developer contributions "to meet the needs of new residents." Adjustments were made to the level of

contribution in recognition that the occupiers of the development are of an age where they should not use equipped play areas and as such should not be expected to pay towards their provision.

This is not a formal application under Section 106A which provides a right of appeal by the applicant (in the event of a refusal of such a request) (such an application cannot yet be made), but rather a request by the applicant that the Council be prepared to agree to amend the terms of the existing agreement. The agreement of the other parties, to the agreement, will also need to be obtained.

There has been a breach of some of the payment terms of the S106 in that the required payment of the payment has not been made. Furthermore the former Jubilee Baths building has been demolished and, it is understood, some piling works have taken place. The developer brought this breach to the attention of the Council, indicating that this was due to delays in obtaining funding, and requesting that the payment be deferred until 30 September 2016. In recent subsequent correspondence it has been indicated that the breach of the S106 as a result on the non-payment is having significant consequences with regard to the financing of the development – i.e, the developer cannot obtain finance for the development from their bank.

Payment of public open space contributions is normally required in full upon commencement of development to ensure that the actual provision, or enhancement, of open space is undertaken prior to the coming into existence of the additional demands arising from the occupation of the development – this being the reason such a contribution is required. In this case, however, during the preparation of the S106 the applicant requested that payments were staged and that the first payment was to be payable on or before 31st March 2016. The principle of a staged payment was accepted by your officers, as the payment towards the maintenance of the open space could not be justified at a time when the works to the open space secured by the development had not been implemented. The specified date of payment, which was not linked to the commencement of development, was accepted despite this not being in strict accordance with the Developer Contributions SPD which indicates that payments would normally be expected to be paid on the commencement of development (or as otherwise stated in the relevant Guidance or Policy Documents). The 31st March 2016 date turned out to be after the date of commencement, although such commencement to date has only consisted of the demolition of the building and the undertaking of some piling works, work appearing to have come to a halt due to the above funding issue.

The request to vary the S106 would not, however, bring the trigger for the payment in line with the normal practice advocated in the SPD in that the development has already commenced and will presumably have progressed by 30 September 2016 if funding is obtained. The work programme previously expected the development would take 57 weeks to build out and confirmation that this continues to be the case has been sought. The likelihood is that insofar as it is a single building with communal facilities no part of it will be occupied in advance of the completion of such works. Accordingly there is a reasonable expectation that actual occupation of the building by students will not occur until immediately preceding the start of the 2017/18 academic year (should the development proceed within the next month). On this basis were the Council to receive the capital sum by the end of September 2016, it should still be possible given that the sum and its receipt will be known in advance for it spending to be planned and for the improved facility to be provided by the start of the academic year, or shortly after.

Notwithstanding the Landscape Development Section's view that, as they wish to carry out the public open space improvements to Queens Gardens funded by the contribution as soon as possible (in order to coordinate with works associated with the Civic Hub development), the request to change the terms of the agreement should be declined, it is not felt that this a reasonable basis for resisting the applicant's request. Furthermore in practice resisting the request will not result in the payment in any case at least in the immediate future as the development would not apparently not proceed and the Council would have to apply to the Courts for the term to be enforced – a lengthy process.

APPENDIX

Policies and Proposals in the approved Development Plan relevant to this decision:-

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy (CSS) 2006-2026

Policy CSP5 Open Space/ Sport/Recreation
Policy CSP10 Planning Obligations

Newcastle under Lyme Local Plan 2011 (NLP)

Policy C4 Open Space in New Housing Areas
Policy IM1 Provision of essential supporting infrastructure and community facilities

Other material considerations include:

National Planning Policy Framework (March 2012)

CIL Regulations, particularly Section 122

Supplementary Planning Guidance

Developer Contributions SPD (September 2007)

North Staffordshire Green Space Strategy – adopted December 2009

Relevant Planning History

15/00166/FUL Demolition of former swimming baths and construction of 244 room student development with associated communal area and car parking has been permitted on the application site, following the completion of a related Section 106 agreement. An application to construct a 273 room student development was refused earlier this year (reference 16/00244/FUL).

Views of Consultees

Landscape Development Section have indicated that they do not support the request to defer the payment as they wish to carry out the public open space improvements to Queens Gardens funded by the contribution as soon as possible.

Representations

None – no publicity has been given to the developer's request, as this is not an application for planning permission.

Background Papers

Application file and policy documents referred to above

Date report prepared

12th July 2016