

Full planning permission was granted on 18th February 2013 for residential development on the above site comprising 23 dwellings. Prior to the granting of planning permission an agreement under section 106 of the Act was concluded between the Authority and the developer, in which the developer covenanted to pay upon commencement of the development:

- £67,689 (index linked) to the Council to be used towards the cost of “providing open space and to enhance or improve the quality of, accessibility and value of existing open space within the area”.
- £55,155 (index linked) as a contribution towards primary school places.
- £26,224 (index linked) as a contribution towards the Newcastle-under-Lyme (Urban) Transport and Development Strategy (NTADS)

The applicant has now asked the Council to agree to amendments to the agreement relating to the payment of the open space contribution and this report concerns that request.

RECOMMENDATION

Subject to no objections being raised by the Education Authority or the Highway Authority, the Head of Planning be authorised to advise that the Council would be prepared to vary the existing agreement so that half of each contribution is paid prior to commencement with the outstanding sums be paid prior to the commencement of the twelfth dwelling on the site.

Should either the Education Authority or the Highway Authority object to such a proposal the matter be brought back to the Planning Committee for reconsideration

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 Councils of the monies obtained, will be likely to be in place by the time a significant number of the dwellings are occupied. The variation will increase the likelihood that this brownfield site is redeveloped, by improving the deliverability of the scheme, and the residential development that takes place will have a beneficial effect on the supply of housing in the locality. There is also the possibility that the improved viability of the scheme arising from the phasing of these payments could eventually be reflected in an enhanced profit which may, because of the terms of the original agreement, lead to the provision of a contribution towards affordable housing provision

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

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (adopted 2009) (CSS)

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)

Planning Practice Guidance (March 2014)

CIL Regulations, particularly Section 122

Supplementary Planning Guidance

Developer Contributions SPD (September 2007)

North Staffordshire Green Space Strategy – adopted December 2009

Views of Consultees

The views of the **Landscape Development Section, the Highway Authority** and the **Education Authority** are being sought.

Representations

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

Applicant/agent's submission

The applicant has requested that one third of each financial contribution will be paid upon commencement of work and the remaining two thirds will be paid upon commencement. The request is made due to the tight financial situation of the company.

KEY ISSUES

The Planning Committee at its meeting on the 13th September 2011 resolved to grant planning permission for this residential development subject to the applicant first entering into a section 106 agreement securing:-

- £67,689 open space contribution
- £55,155 contribution towards primary school places.
- £26,224 contribution towards NTADS

The basis for the POS contribution came from NLP 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".

The Education Authority when consulted indicated that the local primary school, St Luke's Primary School does not have sufficient capacity to accommodate the likely demand from pupils generated by the development and as such requested a contribution to provide for 5 primary school places.

The NTADS contribution was calculated on the basis of the estimated pm peak vehicular movements generated by the development and its impact on key, identified, junctions in accordance with the adopted calculation methodology set out within it.

Members will note that rather than pursuing a case for a reduction of the sum based upon an assessment of the current financial viability of the scheme, which would require the developer to provide both information and finance for an independent assessment to be undertaken, the applicant has asked that the Council give consideration to agreeing to reschedule when the payments are required to be made.

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), but rather a request by the applicant that the Council be

prepared to agree to amend the terms of the existing agreement. Given that the County Council are a party to the agreement their agreement to such an amendment would also be required.

The request suggests that the timing when payments are required can have significant impact upon the financial viability of the scheme. However, as indicated in the Council's Developer Contribution SPD allowance or flexibility for financial reasons will only be considered when substantive evidence has been submitted and appraised. This has not happened in this case.

The reason why commencement is normally used as the trigger point at which contributions are sought is simply to ensure that the required improvements are undertaken prior to the coming into existence of the additional demands arising from the occupation of the new dwellings – this being the reason such a contribution is required. The Developer Contributions SPD for this reason does indicate 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 Education Policy of the County Council indicates that in most cases they would request payment upon signing of the agreement but arrangements for payment are open to negotiation. NTADS indicates that any sum secured should be paid on or before the commencement of the development. There is no further adopted guidance by the Council on this matter, although Local Plan policy C4 indicates that where a developer themselves plan to carry out and complete necessary works of public open space provision that should happen not later than the completion of 75% of the approved development or the expiration of 24 months from the date of the agreement, whichever is the sooner.

The NPPF in paragraph 205 advises that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and where appropriate, be sufficiently flexible to prevent planned development being stalled. In this context it is relevant to note that since the planning permission was granted in February 2013, following lengthy negotiations over the terms of the Section 106 agreement, no start has been made on this site and no applications have yet been made for the approval of details required by some of the conditions of the planning permission

That commencement of development is a legal defined status or point which can be easily monitored is also a factor in the use of it either as a trigger point or as the base for one.

This is a relatively modest sized development and phasing of payments would not normally be considered for such a development.

Members will be aware the Council has received similar requests in the past where the Council has been generally sympathetic to the financial plight of developers and applicants in such cases. The approach taken has not always been the same but there are examples where it has been agreed that payments are delayed. For sites of this size deferral of payment of lesser contributions limited to public open space ones until the earlier of either by 9 months after commencement of the development or by occupation of the first dwelling - were agreed in three not dissimilar cases, whilst in another case no payment (again only of a POS contribution) was required until the 8th dwelling of a 16 unit development was reached.

There is a risk in agreeing to such a proposal - that up to 11 out of the 23 houses might be commenced (approximately half of the development) and then the remainder of the development does not take place for a long time, if at all, and yet only one third of the required payments would have been paid. In practical terms given the investment required for the common infrastructure of the development this is probably not a significant risk. Nevertheless having taken into account the size of the scheme it is considered that the Council should only be prepared, on the basis of the suggested trigger points, to agree payment of half, rather than a third, of the contributions upon commencement – thus maintaining a proportionate approach. The proposal will still provide the applicant with an opportunity to improve his cash flow position and will provide the Council with a further clear and defined legal point which is relatively easy to monitor as well as providing the full contribution which will enable identified capital projects to be carried out with confidence.

In addition Members should note that the Section 106 obligation that has been entered into in this case includes an overage clause which requires the developer to pay up to £334,308 towards affordable housing provision off site if upon review of the viability of the scheme the developer's profit

is found to be in excess of £447,515 – the actual amount being calculated on the basis of a 50/50 split of any profit beyond that figure which was based upon an appraisal. Rescheduling of payments may improve the viability of the scheme and whilst there is no guarantee whatsoever that such an overage payment will be due to Council, the existence of such a requirement is a factor to be taken into account in this decision.

Background Papers

Application file and policy documents referred to above

Date report prepared

18th February 2015