

FIRST SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
4th December 2018

Agenda item 5

Application Ref. 13/00970/OUT

Land off Pepper Street, Keele

If Members are minded to accept the recommendation within the main agenda report it is considered that the opportunity should be taken to rectify an error in the S106 Agreement that has recently been identified.

As set out in the main agenda report, outline planning permission was granted following the completion of a S106 Agreement. The Committee resolved that one of the obligations within the Agreement should be the provision of a financial bond to be held by the Council to be used to fund the works necessary to complete the process of extinguishing the spoil heap fire and reinstating that part of the site affected by such works should the developer fail to do so following commencement of such works. To ensure that this could be achieved it was therefore necessary for the financial bond to be provided by the developer before such remediation works commenced.

Whilst the S106 Agreement does include a requirement to provide such a financial bond (amounting to £1,264,477) the trigger for this is on or before *Commencement of Development*. The term *Commencement of the Development* is defined in the Agreement as “the earliest date upon which a material operation is begun in accordance with the provisions of Section 56(4) of the Act save for the purposes of this Agreement none of the following operations shall constitute a material operation: site clearance, archaeological investigations, site investigation works for the purposes of assessing ground conditions; works of demolition; site decontamination works; and the Remediation Works.” Therefore the remediation works (the extinguishing of the spoil heap fire and reinstatement of the land) does not constitute commencement of the development for the purposes of the Agreement and as such the bond does not need to be provided at the time it is required i.e. when the remediation works have commenced.

It is noted that the remediation works are about to start, if they have not done so already.

Clearly what is in the Agreement is not what the Planning Committee intended when it resolved to grant outline planning permission and as the developer has requested that the Agreement is amended as set out in the main agenda report this presents an opportunity to rectify this error.

The RECOMMENDATION is therefore amended as follows:

That, the S106 Agreement be varied

- a) **by reducing the amount of affordable housing to 6% as requested by the applicant, and that the trigger for reappraisal be amended to 18 months**

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from the date of the District Valuer's final report in the absence of substantial commencement being achieved by that date; and

- b) Provision of the financial bond of £1,339,804 (to reflect the latest estimated cost of the remediation works as included in the Viability Appraisal) upon completion of the new Agreement.**