

The application is for the modification of a planning obligation made under Section 106 relating to outline planning permission 13/00970/OUT for residential development of up to 100 dwellings.

The completed S106 agreement secured, amongst other things, affordable housing at a level that wasn't compliant with policy and also secured the requirement that viability is reappraised should the development not substantially commence within a specified time period. This enables the Local Planning Authority to secure further affordable housing should the viability of the development have improved to the extent where further provision would not render it unviable.

The S106 has previously been modified on two occasions, the most recent modification provided an additional 12 months for the development to be substantially commenced, at which point the developer is required to prepare and submit a revised viability report if this trigger is not reached. This would extend the period of time to 25 September 2021.

The modification sought in this application is to provide an additional 9 months for the development to be substantially commenced extending the period until 25 June 2022.

The 8 week determination period for this application expires on 22nd September 2021.

RECOMMENDATION

That the application to modify the S106 agreement, by extending the period of time within which the developer must substantially commence development before the need for a revised viability report is triggered to 25 June 2022, be approved.

Reason for Recommendation

The obligation continues to serve a useful purpose, but would serve that purpose equally well subject to the modifications specified in the application.

Key Issues

The application under Section 106A of the 1990 Town and Country Planning Act seeks to modify the planning obligations entered into on the 2nd April 2015 prior to the grant of outline planning permission (13/004970/OUT) for residential development of up to 100 dwellings, as varied by the Deed of Variation (DoV) dated 17 December 2019 and 20th August 2020.

As indicated above the modification sought is to paragraph 2 of Schedule 6 of the Agreement as amended by the DoV to provide a further 9 months for the development to be substantially commenced, at which point the developer is required to prepare and submit a revised viability report if this trigger is not reached. This is additional to the 12 months extension already granted. This would extend the period of time from 25th September 2021 to 25 June 2022.

This application is again made in response to the impact that Covid-19 has had on construction. Such impacts are acknowledged.

Keele Parish Council have expressed surprise in the delay in the commencement of development and the need for this application given the speed of house construction taking place in the local area.

Whilst initially there was little interest in this site from house building companies it is understood that this has now changed and that a developer could be secured in the near future. It is, however, clear that substantial commencement of the development as defined in the planning obligation is no longer possible by the current deadline of 25th September. Unless modified the requirement to carry out a reappraisal will be triggered.

The significant abnormal costs involved in preparing the site for development, primarily the remediation works to address the burning spoil heap, remain unchanged. In light of this there is little prospect that the viability of the development will have improved and that more policy compliant contributions could be secured. Notwithstanding this the requirement to carry out a viability reappraisal will create uncertainty that could discourage development of this site.

Both Keele and Silverdale Parish Councils have made reference to flood risk and to an application which seeks approval of scheme to limit the surface water run-off generated by the proposed development as required by condition 28 of the outline planning permission. The scheme that has been submitted to satisfy this condition has not, to date, been agreed with the Lead Local Flood Authority and the application remains undetermined. Such an outstanding matter is not, however, directly relevant to the determination of this Section 106A application. The condition will still need to be satisfied

Taking into consideration that the Government, in the wider interests of the economic recovery of the country, is encouraging Local Planning Authorities to be flexible and work with the construction industry to ensure development can still take place it is considered that the proposed modification should be approved.

Section 106A of the 1990 Town and Country Planning Act indicates that where an “obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to these modifications”. This is such a case and as such the proposed modification should be supported.

Reducing Inequalities

The Equality Act 2010 says public authorities must comply with the public sector equality duty in addition to the duty not to discriminate. The **public sector equality duty** requires **public authorities** to consider or think about how their policies or decisions affect people who are **protected** under the Equality Act. If a public authority hasn't properly considered its public sector equality duty it can be challenged in the courts.

The duty aims to make sure public authorities think about things like discrimination and the needs of people who are disadvantaged or suffer inequality, when they make decisions.

People are protected under the Act if they have protected characteristics. The characteristics that are protected in relation to the public sector equality duty are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

When public authorities carry out their functions the Equality Act says they must have due regard or think about the need to:

- Eliminate unlawful discrimination

- Advance equality of opportunity between people who share a protected characteristic and those who don't
- Foster or encourage good relations between people who share a protected characteristic and those who don't

With regard to this proposal and the matters that can be addressed, it is considered that it will not have a differential impact on those with protected characteristics.

APPENDIX

Material Considerations

[National Planning Policy Framework](#) (2021)

[Planning Practice Guidance](#) (PPG) (March 2019)

[Supplementary Planning Documents/Guidance](#)

[Developer Contributions SPD](#) (September 2007)

Relevant Planning History

13/00970/OUT Residential development of up to 100 dwellings including means of access – Permitted.

15/00359/DOAHR Application under Section 106BA of the Town and Country Planning Act 1990 to revise the affordable housing contribution secured within the planning obligation entered into in association planning permission 13/0970/OUT for residential development – Permitted

18/00262/REM Application for approval of reserved matters for layout, scale, appearance and landscaping for the erection of 100 Dwellings – Permitted

20/00431/DOB Application for the modification or discharge of planning obligations made under Section 106 of the Town and Country Planning Act relating to planning permission ref 13/00970/OUT – Approved

Views of Consultees

Keele Parish Council (KPC) note that Keele Homes Ltd are requesting an extension of the deadline for the development to be substantially commenced in the land off Pepper Street. KPC are surprised by this application given the current housing market. Keele Homes have already been given a 12 month extension of the deadline for this condition in the light of the difficulties created by the pandemic. The housing market over the last year has shown a very high level of activity with prices rising rapidly. Seddon have continued to work apace on the Hawthorns site in Keele and Persimmon have begun their development off Gallows Tree roundabout. KPC are surprised that Keele Homes have been unable to find a buyer in this period and do not accept that circumstances surrounding the pandemic have made it difficult for them to do so. KPC do not accept that 9 months is a 'relatively short period of time' given that a 12-month extension has already been granted. It is clear that Keele Homes do not intend to develop the site themselves and KPC is sceptical of their capacity to find a buyer, given the amount of time the planning permission has been in place and the current state of the housing market.

KPC also note that application 13/00970/2CN28 for a scheme to manage surface water and flood risk is still pending consideration. Staffordshire County Council Flood Risk Team have commented that insufficient information had been provided to demonstrate an acceptable drainage strategy. No documents have been uploaded by the applicant since June 2020. Keele Parish Council consider it implausible that any deal could be struck with a developer until this matter has been resolved. If Keele Homes were serious about finding a developer to take on the site, surely they would have used the last 16 months to resolve issues surrounding their technical submission for 13/00970/2CN28?

Silverdale Parish Council (SPC) indicate that it is impacted by the Pepper Street Development deadline extension for a further 9 months on top of the mandated 12 months due to issues of flood risk.

Surface water and foul drainage are connected issues for Silverdale in the current proposal because giving the applicant more time to commence the development reduces the chance of county highways action and landowner consent on related flooding in Pepper Street.

Frequent flooding at the junction of Underwood Road and Pepper Street has occurred during periods of persistent or heavy rainfall. The effects – apart from blocking Pepper St entirely to traffic - has been flooding at the odd numbers 3-13 in Underwood – sometimes only front gardens- and remains a local flood risk. The threshold identified by County for capital funding priority is high as ingress of water was to penetrating into 10 properties. That is no consultation if 6 are affected or it is 'only' gardens.

SPC indicate that it has highlighted the likely cause of the drainage problem was run off from adjoining agricultural land to Pepper Street blocking the surface water drains located in Underwood Road and Pepper Street. The owner at Redhill House has recently cut back trees in the locality indicating the required action.

Silverdale Parish Council therefore opposes the proposed extension of a planning permission deadline of 9 months to Keele Homes in the application reference 21/00780/DOB.

Representations

None

Applicant/agent's submission

The application documents are available for inspection via the following link <http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/21/00780/DOB>

Background Papers

Planning File.
Planning Documents referred to.

Date Report Prepared

1st September 2021