

LAND SOUTH OF HONEYWALL LANE, MADELEY HEATH
MR CHRIS ANDREWS

20/00972/DOB

The application is for the modification of a planning obligation made under Section 106 relating to outline planning permission 17/00514/OUT for residential development of up to 35 dwellings.

The completed S106 agreement secured 25% Affordable Housing onsite, a financial contribution of £5,579 per dwelling towards the maintenance and improvement of public open space at the playground facilities at Heath Row, Madeley Heath and £77,217 towards primary school places at Sir John Offley CE(VC) Primary School in Madeley and £83,110 towards secondary school places at Madeley High School, Madeley.

The applicant now wishes to modify the terms of the secured S106 Agreement following part of the site, which formed part of the outline planning application, being sold since the decision. The applicant has also advised that the scheme cannot support the secured level of S106 Obligations

The 8 week determination period for this application expired on 13th January 2021.

RECOMMENDATION

A) That the application to modify the S106 agreement, to change the red edge site boundary and to secure a financial contribution of £80,726 towards secondary school places at Madeley High School, Madeley, a contribution of £80,000 towards the maintenance and improvement of public open space at the playground facilities at Heath Row, Madeley Heath and a review mechanism of the scheme's ability to make a more or fully policy compliant contribution to education places, off site public open space and/ or affordable housing, if the development is not substantially commenced within 12 months from the date of the decision, and the payment of such a contribution if then found financially viable, be approved.

Reason for Recommendation

It is accepted, following the obtaining of independent financial advice, that a policy compliant scheme is not viable and that the scheme can only sustain reduced contributions. It is accepted that the benefits of the development are considered to outweigh the harm caused by the additional demand created by the development on education places and public open space in the area. A Section 106 agreement is required to secure those policy compliant contributions which can be afforded and a viability review mechanism should substantial commencement not be achieved promptly, along with the amendments to the red edge development site.

Key Issues

1.1 A report came before the 14th September planning committee whereby members resolved not to accept the conclusions of independent financial advice that the scheme can only support a financial contribution of £83,110 towards secondary school places at Madeley High School. The reason was that the level of Section 106 Obligations that this development can support is not policy compliant and therefore not sufficient to mitigate the impact of the proposed development.

1.2 The completed S106 agreement, dated the 10th August 2018, secured 25% Affordable Housing onsite, a financial contribution of £5,579 per dwelling towards the maintenance and improvement of public open space at the playground facilities at Heath Row, Madeley Heath and £77,217 towards primary school places at Sir John Offley CE(VC) Primary School in Madeley and £83,110 towards secondary school places at Madeley High School, Madeley.

1.3 Since the September meeting, legal advice has been received advising that the modification of the S106 Agreement application and the reserved matters application should have been treated separately. Therefore, notwithstanding the decision of members at the September meeting, separate reports have been prepared and a decision on each now needs to be made separately.

1.4 The NPPF indicates that where up-to-date policies have set out the contributions expected from the development, planning applications that comply with them should be assumed to be viable, and it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. Policies about contributions and the level of affordable housing need however to be realistic and not undermine the deliverability of the Plan. In the Borough it is not presently the case that up-to-date development plan policies, which have been subject of a viability appraisal at plan-making stage, have set out the contributions expected from development, so the presumption against viability appraisals at application stage does not apply. That will be the case until the Local Plan is finalised.

1.5 The applicant has re-evaluated their financial viability appraisal and has submitted a financial viability statement (briefing note) which sets out that the applicant has made the commercial decision to offer a greater level of financial contribution than previously concluded to be financially viable. The applicant now offers a sum of £80,000 towards public open space and £80,726 towards secondary school places.

1.6 The applicants briefing note also sets out the context of the financial viability appraisals already carried out and why the commercial decision, which is likely to affect profit margins, has now been made. In this respect it advises that a Residential Viability Report was prepared by development viability experts Grasscroft Development Solutions (GDS) in October 2020. The report found that there were over £980,000 of abnormal costs associated with bringing the site forward for residential development, alongside a further £250,000 of costs associated with delivering on-site open space and highways improvement works (secured by the outline permission). Overall, the report concluded that the scheme could not support any level of s106. However, the GDS report was the subject of a detailed and wholly transparent independent viability review undertaken on behalf of the Council by Butters John Bee (BJB). BJB concluded, in their report dated March 2021, that the scheme could support a maximum of £27,104 as a baseline, although with some cost savings, under a 'best case scenario' there is the potential to increase the sum available for contributions to a maximum of £195,881, but more realistically £75,000 - £100,000.

1.7 Following the conclusions of BJB, your officers advised the applicant that the priority is likely to be for secondary education places and the applicant agreed to a financial contribution of £83,110, following initial advice from the Education Authority also. This is discussed further at paragraph 1.12.

1.8 The increased offer of the applicant demonstrates the commitment of the applicant to deliver a development on the land and whilst a lesser figure was concluded to be acceptable by BJB, the figure now offered by the applicant should be accepted and it should be concluded that the scheme cannot support a greater level of planning obligations at this time.

1.9 The scheme does provide a number of benefits, including housing supply in the rural area, and your officers have concluded that the scheme represents a high quality design that would enhance the landscape and would be suitable for the site and the character of the area. The applicant has also shown a commitment to deliver houses on the land in the near future.

1.10 As is shown in this case, the Council has no agreed formal "hierarchy of need" for its priorities of S106 Obligations, in its Developer Contributions SPD. The NPPF also offers no such preference.

1.11 Paragraph 57 of the NPPF sets out that: Planning obligations must only be sought where they meet all of the following tests:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

1.12 In this case, your officers previously considered that the provision of school places was the priority on the basis that the County Council, as the Education Authority, has advised of specific expansion projects at Madeley High School which is anticipated for delivery by September 2023. Therefore, the financial contribution would be spent on this project and contribute to mitigating the additional children generated by the proposed 34 dwellings.

1.13 Your officers have also now been made aware that Madeley Parish Council have specific projects and proposals for the improvement and enhancement of the public open space (POS) at Heath Row in Madeley Heath. These projects include improvements to the POS but also include public realm improvements to a parcel of land adjacent to the Crewe Arms Public House, in Madeley Heath.

1.14 The original S106 Agreement secured a financial contribution of £189,686 towards public open space (POS) at Heath Row and whilst the level of contribution offered by the applicants falls well short of this figure the Parish Council have advised that it is acceptable to deliver specific projects. These projects include the improvements to the Heath Row play equipment but also include public realm improvements to a parcel of land adjacent to the Crewe Arms Public House, in Madeley Heath.

1.15 In this instance the suggested public realm improvements would not be in accordance with paragraph 57 of the NPPF because it is not considered necessary to make the development acceptable in planning terms. However, the specific projects for improvements to the Heath Row play area are acceptable and in accordance with the NPPF, the Council's adopted Developer Contribution SPD and Open Space Strategy.

1.16 On this basis, the advice of your officers is to accept the commercial decision of the applicant and secure the financial contributions towards secondary school provision and public open space improvements, instead of providing affordable housing and primary school provision.

1.17 It is also reasonable and necessary for the Local Planning Authority to require the independent financial assessment of the scheme to be reviewed if the development has not been substantially commenced within 12 months of the grant of the permission, and upward only alterations then made to the contributions if the scheme is then evaluated to be able to support higher contributions. This would need to be also secured via the Section 106 agreement, as would the revision of the red edge application site to reflect the changes to the ownership of the land.

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 CSP6 Affordable Housing
Policy CSP10 Planning Obligations

[Newcastle-under-Lyme Local Plan \(NLP\) 2011](#)

Policy C4 Open Space in New Housing Areas
Policy IM1: Provision of Essential Supporting Infrastructure and Community Facilities

Other Material Considerations

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

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

[Supplementary Planning Documents/Guidance](#)

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

[Newcastle-under-Lyme Open Space Strategy](#) – adopted March 2017

[Views of Consultees](#)

Keele Parish Council resolved not to object.

Madeley Parish Council advises that they have proposals for the Heath Row play area and further comments will be provided prior to the committee meeting.

[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/20/00972/DOB>

Background Papers

Planning File.
Planning Documents referred to.

Date Report Prepared

27th October 2021