

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 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.

Members will recall that a previous report came before the 9th November 2021 planning committee.

RECOMMENDATION

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 18 months from the date of the decision of the reserved matters application, reference 21/00593/REM, and the payment of such a contribution if then found financially viable, be approved.

Reason for Recommendation

That substantial commencement can be extended from 12 months to 18 months to allow the delivery of the development, accounting for delays in completing a S106 agreement following the 9th November 2021 planning committee.

Key Issues

1.1 A report came before the 9th November 2021 planning committee whereby members resolved to support the modification of the Section 106 Obligations secured under the original outline planning permission, reference 17/00514/OUT, for residential development of up to 35 dwellings. The resolution of the planning committee was to accept the modification of the S106 agreement, to change the red edge site boundary and to secure a financial contribution of £83,110 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..

1.2 Since the 9th November planning committee a draft S106 agreement has been in circulation for a number of months but there have been delays due to a number of factors and the applicant has written to the local planning authority setting out their concerns about the implications of these delays. In particular, they have indicated that they will no longer be able to achieve substantial commencement of the development by the 11th January 2023 (12 months from the date of the decision of the reserved matters application, reference 21/00593/REM).

1.3 Substantial commencement is defined in the draft S106 agreement as the completion to damp proof course level of no fewer than six dwellings and the construction to base course level only of the access road within the development.

1.4 The draft S106 agreement appears to be agreed by all parties and the land title matters have been progressed. However, there is now less than 3 months for the applicant to achieve substantial commencement of the scheme and they are seeking an extension to the period required to achieve substantial commencement before a review of the schemes financial viability is triggered.

1.5 The applicant wishes to change the timeframe by which substantial commencement should be achieved from 12 months to 18 months. This would require substantial commencement to be achieved by the 11th July 2023.

1.6 Members will be aware that the Council sought independent financial advice from Butters John Bee (BJB) in January 2021 and it was concluded that the development could not support the policy compliant contributions of the original S106 agreement dated the 10th August 2018. Notwithstanding this advice, the applicant re-evaluated their own financial viability appraisal and made the commercial decision to offer a sum of £80,000 towards public open space and £80,726 towards secondary school places.

1.7 It is unlikely that the financial viability of the scheme has improved due to economic circumstances nationally. However, without independent advice there is no certainty.

1.8 The reason why your officers have consistently recommended a period for substantial commencement to be achieved is on the basis that market conditions, and thus viability, can change and to protect the Councils interests in terms of policy compliant S106 Obligations it is considered 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. In this instance a period of 12 months of the grant of the permission was suggested on the basis that the development is for 34 dwellings only and the site does not require significant earthworks.

1.9 The applicant advises that a reappraisal would result in significant delays and costs incurred by all parties, whilst also putting the delivery of the scheme in jeopardy. They have also advised that they have a commitment to deliver this scheme and that a further 6 months would allow them sufficient time to achieve this.

1.10 The delays to date have been due to a number of factors and on this basis, whilst also trying to ensure that a development is delivered on the site in a prompt manner, your officers accept that an 18 month period for substantial commencement to be achieved is acceptable in this instance. Whilst the delay is disappointing, it is important to get the development commenced and completed as well as securing developer contributions to support the delivery of local infrastructure.

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

None

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

25th October 2022