

Item No.

BBC APPLICATION NUMBER	15/03039/S106
CBC APPLICATION NUMBER	CB/15/04953/SECM
LOCATION	Wixams Land at former storage depot, Bedford Road, Wilstead, Bedfordshire
PROPOSAL	Discharge and modifications to the S106 Obligations pursuant to Planning Permissions 99/01645/OUT and MB/99/01694/OUT (as amended by 11/01380/M73 and CB/11/02182/VOC) affecting the following: (i) Community Facilities, (ii) Public Art, (iii) Library Facility, (iv) Employment (Business Incubator Units), and (v) Education.
PARISHES	Houghton Conquest / Wixams
WARDS	Houghton Conquest & Haynes / Wilshamstead
WARD COUNCILLORS	Cllr Mrs Barker (CBC) Cllr Graeme Coombes (BBC)
CASE OFFICER	Louise Newcombe (CBC) & Jonathan Warner (BBC)
EXPIRY DATE	02 March 2016 (CBC) and 08 March 2016 (BBC)
APPLICANT	JJ Gallagher Ltd & Wixams First Ltd
AGENT	Barton Willmore
REASON FOR COMMITTEE TO DETERMINE RECOMMENDED DECISION	Relates to joint legal agreement for the proposed development
	Modify Planning Obligations

SITE

The application site includes all land forming the new settlement of Wixams. The Development Brief Area consists of approximately 384 hectares of land with planning permission for 4,500 dwellings, education, retail, employment, leisure and community uses, open spaces and main infrastructure. It is located approximately two miles south of Bedford town centre with the eastern boundary of the settlement is marked by the re-aligned A6 Bedford Road while to the west the boundary is marked by the main rail line and B530 Ampthill Road. The northern section of the settlement is bounded by open land with some existing employment uses while to the south the boundaries are marked by open countryside.

The overall masterplan for the settlement consists of 4 villages, each separated by linear parkland. Village 1 is the eastern most village adjacent to the A6 which is now close to completion. Village 2 is centrally located and separated from Village 1 by Greenway B. Village 3 is to the west of Village two and will include the Town Centre. Village 4 is to be located on the western edge of Wixams and to be separated from Village 3 by a Greenway. The site straddles the boundary between Bedford Borough and Central Bedfordshire.

BBC CONSULTATION

Wixams Parish Council

No objection to the proposals with the urgent need for a secondary school as part of the Wixams development is fully recognised. However, support is subject to the following changes :- Incubator units – there should be an obligation for developers of industrial/commercial land within Wixams to consider the inclusion of such units in future development; Library – Gallaghers should be under an obligation to make alternative provision within future community facilities; Public Art – public realm elements in the design codes for villages 2 and 4 and village 3 when this is developed should be fully delivered; Village 2 Lower School – an alternative five acres of education land should be allocated elsewhere within the Wixams development with no overall reduction in land allocated for education.

Education (Planning) -

No comments received

Service Manager (Parks/Open Spaces/Comm)

No comments received

Library Services

The Borough Council does not have the revenue budget provision for a standalone library within Wixams but the opportunity to include a library as part of a wider community offer would be of interest.

Economic Development

Given the priority of the schools' delivery and the focus of the secondary school no objection is raised to the proposed variation

CBC CONSULTATION

Houghton Conquest Parish Council No comments to make

Education (School Organisation) and Capital Planning No objections to the proposals

Library Services Agrees that there are now alternative ways of providing libraries in a shared building and welcomes this subject to a contribution from the developer of up to £100k to fund the set up of furniture, equipment and IT to allow the required library infrastructure to be provided.

Public Art No objections

BBC NEIGHBOURS

Consultation undertaken – Notification letters sent to 1032 properties within the settlement, advertisement placed in the local newspaper and site notices displayed within Village 1.

2 letters of support received stating that the delivery of the secondary school is critical and funds should be reallocated as set out.

6 letters of objection received with the comments summarised as follows –

General – the original plans should be completed and the community projects finished as these are a fundamental part to forming a community; no details on how the applicant is accelerating delivery of funding; lack of detail on costs, change in land values and impact on other planned community facilities; Gallaghers should not be allowed to divert funds from elsewhere and profit from not providing community facilities; lack of clear consultation; figures provided by applicant need to be robust and verified and the Council must secure the best possible deal for residents; lack of financial justification and decision should be deferred until information is available and consulted upon; any savings should be channelled back into other outstanding community projects such as the delivery of the railway station.

Education - how will s106 take account of the change to two tier schools; applicant should provide financial implications of co-locating schools on one site and releasing site for residential; no details on specification of schools; concerned two schools on one site will not be large enough with potential traffic problems; will capacities of schools change as a result of locating on one site; Gallaghers should be required to build a secondary school; no information as to whether co-locating schools on one site will reduce build costs; profits from sale of released land should be ploughed back into community project such as railway station and medical centre; Gallaghers should put secondary school contribution towards technical academy; savings for Gallaghers are far in excess of the £2.5m school shortfall.

Public Art – no objection subject to land being retained and other public funds sought; agree that public art obligation should be removed to fund school; whilst no objection to loss of public art no information on the financial savings has been provided.

Incubator Units – unclear if Northern Expansion Area will include similar sized facilities and if it does not the obligation should remain; agree obligation should be removed to fund school; no information on the cost savings to be achieved from not providing units; unclear what will happen to land if obligation is removed.

Library – no objection to removal of obligation but some form of public internet access within a public building should be provided; library will be hub for community; no objection to principle of removal of library but no information on the financial savings has been provided; unclear what will happen to land if obligation is removed.

Station – delay in the delivery of the station is significantly disappointing and the applicant should be pressed on the matter and consideration given to including delivery of the station in the renegotiation of the s106.

CBC NEIGHBOURS

CBC notified 60 properties within and adjacent to the Wixams main settlement area. A site notice was displayed.

No neighbour representations received.

BBC HISTORY

99/01645/OUT	Permitted Subject to S106 agreement	Built development consisting of building and engineering works for a mixed use development of residential, employment, retail (A1, A2, A3) leisure and community uses, open space and associated uses together with supporting infrastructure (roads, paths, cycleways, pumping stations, electricity substations), public transport, interchange and car parking.
11/01380/M73	Permitted Subject to S106 agreement	99/01645/OUT Built development consisting of building and engineering works for a mixed use development of residential, employment, retail (A1, A2, A3) leisure and community uses, open space and associated uses together with supporting infrastructure (roads, paths, cycleways, pumping stations, electricity substations), public transport, interchange and car parking (all matters reserved except access). Application for variation of condition 20 (i) restriction on floorspace of foodstore.

CBC HISTORY

MB/99/01694/OUT	Approved 02.06.06 subject to S106 Agreement	Outline: built development consisting of building and engineering works for a mixed use development of residential, employment, retail (a1, a2, a3), leisure and community uses, open space and associated uses together with supporting infrastructure (roads, paths, cycleways, pumping stations, electricity substations), public transport interchange and car parking (all matters reserved except access)
CB/11/02182/VOC	Approved 04.07.12 subject to S106 Agreement	Variation of Condition 20(i) on planning permission MB/99/01694/OUT dated 2 June 2006 to read "the total net retail sales floor area of the foodstore hereby permitted shall not exceed 5,500sqm provided that no more than 2,500 sqm of the net retail sales area is to comprise comparison goods floorspace

COMMENTS

1. CONTEXT

- 1.1 The Wixams S106 entered into in June 2006 and varied by a further S106 in 2011 provides for a 10.12 ha site for a Secondary School in Village 2. However, only £1.0 million funding towards the upper school (now worth £1.3 million with indexing) was secured, as at the time the original S106 was negotiated and signed there was a surplus of upper school places in the vicinity. The funding for the first middle school was committed through the 2011 S106 towards delivery of the village 1 and 2 schools as primary schools rather than the lower schools originally intended.
- 1.2 The Department for Education (DfE) wishes to establish a flagship Technical Academy for ages up to 18 in Bedford to serve the Bedford and Central Bedfordshire area sponsored by Bedford College and has been looking at the suitability of various existing buildings in the Bedford urban area as the most cost effective method of delivering a Free School.
- 1.3 Joint forecasting work for pupil numbers at Wixams establishes the need for a secondary school at Wixams but the DfE have made it clear that their financial contribution would remain at the original level intended for the refurbishment of an existing building rather than a new building and this has resulted in a funding gap of £2.5 million.
- 1.4 Gallaghers have offered to meet the £2.5 million funding gap on the condition that this increase in their financial contribution would need to come from an identified reduction in the cost of their future S106 Obligations.
- 1.5 Members will recall that the issue was considered at the Wixams Joint Development Management Committee meeting on 21 October 2015 and, in accordance with the resolution at that meeting, Officers from both Councils have entered into discussions with Gallaghers and the local Parish Councils to identify S106 savings to the value of £2.5 million. The conclusion of these negotiations has resulted in the submission of this application.

2. MAIN CONSIDERATIONS

- 2.1 This application has been made under S106A (3) of the Town and Country Planning Act 1990 to enable consideration and determination of amendments to a number of obligations set out in the S106 pursuant to the planning permission granted under reference 99/01645/OUT (BBC) and MB/99/01694/OUT (CBC) (as amended under reference 11/01380/M73 and CB/11/02182/VOC). The procedure under which the application has been made does not allow for the outcome to be a resolution to negotiate a new S106. Instead, the Joint Development Control Committee is invited to determine a proposed schedule of amendments to the S106 presented by the applicant which will, if approved, be read together with the existing S106. There is a right of appeal if no decision is made or the applicant wishes to challenge the merits of the decision under section 106B of the Town and Country Planning Act 1990.

- 2.2 In considering an application to vary a planning agreement under Section 106A(3) of the Planning Act, sub-section (6) states that the authorities may determine the application in one of the following ways:
- (a) That the planning obligation shall continue to have effect without modification;
 - (b) If the obligation no longer serves a useful purpose, that it shall be discharged; or
 - (c) If the 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 those modifications.
- 2.3 It must be clearly understood that this application is not a planning application. As such the normal test “that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise” (NPPF paragraph 11) does not apply to this application. Therefore, any conflict with development plan policy which may arise as a result of the proposed amendments to the S106 obligations is not relevant to the determination of the application.
- 2.4 The test which must therefore be applied to the application is, whether each obligation continues to serve a useful planning purpose or whether, as proposed to be modified, they would serve that purpose equally well. A “useful planning purpose” is not defined by the 1990 Act but cases which have come before the courts in the past suggest that the issue should not necessarily be construed narrowly and it is open to the decision maker to consider the broader planning purpose of the scheme and the place of each element within that as well as the individual planning purpose of each element.
- 2.5 In order to assess the proposed modification or discharge of each obligation, they must be considered individually in order to establish if each obligation still serves a useful purpose and whether or not this useful purpose would be served equally well if modified, as proposed by the applicant. Modifications may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable and officers are satisfied that this is not the case in respect of this application.

The Proposal

- 2.6 Table 1 below sets out the S106 changes as proposed by Gallaghers. Each element is considered in the paragraphs below including the explanation offered by Gallaghers, the planning purpose for each element and a judgement about its place in the broader planning context.

Table 1

S106 Schedule Section	Proposed Modification
Interpretation	“Library Contribution” means the sum of up to £100,000 (one hundred thousand pounds) Index linked from the 2 nd Quarter Date 2016 to be paid to Central Bedfordshire Council towards the cost of funding the set up of furniture, equipment and IT for the Library Facility;

	<p>“Library Facility” means space of up to 100 sq m provided within the assembly building in the Town Centre;</p>
Part 2 – Education	<p>a) Replace separate Primary and Secondary School sites with a single co-joined site b) Meet the £2.5 million funding shortfall for the provision of the secondary school c) Accelerate Village 2 Primary Education contribution (£5.1m indexed) d) Accelerate Secondary School contribution (£1.36m indexed)</p>
Part 7, Section 1: Community Facilities	<p>Amend obligation as follows:</p> <p>a) Delete the requirement for the provision of Community Facilities insofar as they relate to the standalone Library Facility to be in accordance with the specification set out in the Wixams Specifications, and Maintenance Schedule; and</p> <p>b) Delete the requirement for the occupation of dwellings to be restricted by these triggers, set out in Section 3 and Appendix 3 of the Community and Leisure Facilities Strategy insofar as they relate to the standalone Library Facility.</p>
Part 7, Section 7: Public Art	<p>Replace paragraphs 7.1, 7.2 and 7.3 with the following:</p> <p>7.1 The Owners covenant to</p> <p>7.1.1 prepare a site wide Public Art Strategy that identifies the locations for Public Art and the delivery mechanism for this and not to occupy more than 90% of the Dwellings in a Sub-Area until the relevant sites in that Sub Area have been prepared.</p>
Part 7, Section 8 – Library Facility	<p>Delete the following paragraphs:</p> <p>8.1 Prior to the Occupation of the 2,200th (two thousand two hundredth) Dwelling the Owners shall: 8.1.1 pay the Library Contribution to the County Council; and 8.1.2 offer to grant a Lease of the Library Facility to the County Council for the sum of £1 (one pound). 8.2 The Library Facility shall be based on the specification in the Community and Leisure Facilities Strategy and shall be worked up in consultation with the County Council and submitted by the Owners to, and approved by, the County Council.</p> <p>Replacement Obligation</p> <p>Provision of up to 100 sq.m floorspace within the proposed Wixams town centre assembly hall for Library Facility.</p> <p>Pay the Library Contribution (trigger to be agreed).</p>
Part 12 – Employment (Incubator Units)	<p>Delete Part 12 with the effect of discharging the requirement to provide any of the specified Business Incubator Units.</p>

2.7 Part 7, Section 7 (Public Art)

- 2.7.1 The S106 currently requires the developer to prepare 22 sites identified in the Community and Leisure Facilities Strategy so that they are suitable for Public Art exhibits and to procure the provision of Public Art for each site up to that maximum aggregate amount of £900,000 (index linked).
- 2.7.2 In planning terms public art has both intrinsic and aesthetic value which benefits the communities where it is located as well as the wider area. The settlement offers good opportunities for the inclusion of art installations that would enhance the environment. The applicant has offered to prepare a site wide Public Art Strategy that identifies the location for Public Art and how it will be delivered but it does not require the developer to prepare the site or procure the public art. The safeguarding of sites for public art will allow interested parties and community groups to propose public art installations and the obligation as modified continues to serve a useful purpose.

2.8 Part 7, Section 8 (Library Facility)

- 2.8.1 The S106 currently requires the developer to procure a Library Facility, pay a library contribution of £250,000 (index linked) towards the cost of providing books, additional library equipment and computer equipment and to offer to grant a lease of the Library Facility to the County Council for the sum of £1. Although the library contribution is not due until prior to the 2,200th occupation, the current index linked contribution stands at £300,000. The applicant has estimated the current cost of constructing the library is approximately £800k.
- 2.8.2 The applicant has correctly stated that the provision of additional libraries within both administrative areas is not a corporate priority and as such neither Council would be willing to adopt and manage new libraries which are offered via a S106. It should be borne in mind that these provisions were negotiated on the basis of a development brief and policies prepared in conjunction with the former county council approximately 10 years ago.
- 2.8.3 From the point of view of the emerging community the delivery of this facility will have been seen as a valuable community asset, one which would enhance the planned settlement and that may well have influenced decisions about moving into the area. Clearly there would have been reasonable expectations that the library would be delivered.
- 2.8.4 The developer is however proposing to provide floorspace of up to 100 sqm within the proposed assembly hall within the town centre which could be used in the future as a community library. CBC Leisure Services advise that this floorspace would provide sufficient space to allow for book stock and computer space with some work area. It is comparable with other libraries within CBC at Potton and Stotfold.
- 2.8.5 Following discussions the developer has also offered an amended library contribution of up to £100,000 to reflect the amended provision of the library within the community building in the Town Centre (Village 3). This is considered to be sufficient to fund the set up of furniture, equipment and IT as neither Council would

be able to fund this from reducing library budgets and there are no external funding sources of significance to provide alternative sources for this infrastructure cost.

2.8.6 A revised schedule of modifications has been requested from the applicant to set out up to 100 sqm floorspace to be set aside within the assembly hall for this purpose and to provide the reduced library contribution. An update on this will be given in advance of or at the meeting.

2.8.7 The modifications for removal of the standalone library facility and alternative provision of a library facility within the assembly hall and a reduced library contribution are considered to serve the original useful purpose of the library obligation equally well and the modifications are therefore supported.

2.9 **Part 12 (Business Incubator Units)**

2.9.1 The S106 currently requires the provision of up to 16 Business Incubator Units. These are to range in size with five units up to a maximum of 25 square metres, six units up to a maximum of 75 square metres and five units up to a maximum 100 square metres with the use of the units being either B1 (Business) or B2 (General Industry). The applicant has estimated the current cost of building all 16 Incubator Units to be approximately £600k and it is proposed to delete the obligation and remove the requirement to provide the Business Incubator Units.

2.9.2 The applicant states that the role and relevance of the Incubator Units has changed since the agreement was signed. The original objective driving the need for the Incubator Units stemmed from a desire to re-accommodate former tenants of Elstow Storage Depot. However in the intervening years Bedford Borough Council has committed to its own 'starter unit' initiative which has reduced the relevance of the Incubator Units. Locally the applicant has a resolution to grant planning permission for an employment park of up to 226,600 square metres within the Wixams Northern Expansion Area (15/00466/EIA). Planning permission (07/00839/MAF & 07/00840/MAO) has also been granted for the expansion of the Watson Road Industrial Park to consist of up to 28,000 square of new employment floorspace, with the first phase now complete and work expected to start shortly on the next phase. Due to the changes in the provision of employment units within the local area it is considered that the obligation no longer serves a useful purpose and can be discharged.

2.10 **Part 2 (Education)**

2.10.1 The S106 currently requires the location and boundaries of schools to be agreed as part of approval of the design brief and code for each village. The approved design code for Village 2 shows separate primary and secondary school sites with the primary school site located to the south of Dane Lane and the secondary school site located to the north of Green Lane. To achieve cost savings from the provision of shared infrastructure and services it is proposed to locate both schools on the single site to the north of Green Lane. This site provides sufficient land for the two schools proposed and does not alter the overall provision of up to 17.2 ha of educational land within the settlement as a whole. Although objectors have questioned the lack of detail of the proposed schools, this is not a matter for consideration as part of this application and will be considered as part of separate reserved matters applications for the schools. The accelerated and additional payments towards the secondary

and primary schools will ensure the delivery of the schools to the benefit of the wider community and the obligation as modified is considered to serve a useful purpose.

2.11 Part 7, Section 1 (Community Facilities)

2.11.1 The Justification Statement submitted with the application stated that the requirement for the provision of community facilities to be in accordance with the specifications set out in the Wixams Specifications and Maintenance Schedule and associated triggers should be deleted. Such a change would have had the unacceptable effect of deleting the requirement for the provision of any community facilities. The applicant has acknowledged this and has confirmed that the change only relates to the provision of community facilities insofar as they relate to the Library Facility.

2.12 Proposed Savings

2.12.1 Based on the contributions set out in the s106 (at current indexed prices) and the costings provided by the applicant it is estimated that the proposed modifications to the s106 will achieve the savings shown in table 2 below.

Table 2

Item	Estimated S106 Financial Change
Business Incubator Units	- £600,000
Public Art	- £1,080,000
Library Facility	- £800,000
Library Contribution	- £200,000
Total	£2,680,000

2.12.2 It should be noted that the above estimated costs do not take account of the unquantifiable costs to be incurred by Gallaghers as a result of the S106 modification. This includes the need to prepare a public art strategy for the settlement and to safeguard floorspace within the proposed Assembly Hall for a library facility. In addition, it does not take account of the upfront costs to be met by Gallaghers in providing the infrastructure to serve the schools, bearing in mind the adjacent housing parcels sharing the same infrastructure (and therefore costs) may not come forward for a number of years. Gallaghers are also accelerating the payment of the S106 contributions towards the provision of both schools which the s106 agreement only requires payment once the settlement is at a much more developed stage. Gallaghers have stated that their total liability to deliver the schools will be £10.85m, which includes £2m to provide the access road, site earthworks, serving costs and other enabling works in respects of the schools site.

2.12.3 The accelerated contributions towards the schools total £6.47m at current indexed prices. Together with the additional contribution of £2.5m, Gallaghers have proposed to stage payments during the construction process of the schools as follows:

1. £1.1m - June 2016
2. £1.1m - August 2016
3. £1.1m – November 2016
4. £1.1m – February 2017

5. £1.1m – May 2017
6. £1.1m – August 2017
7. £1.1m – November 2017
8. £1.27m – February 2018

- 2.12.5 Having regard to the above payment schedule it should also be noted that the existing S106 does not require payment of the primary school contribution until Village 2 is close to completion and the upper school contribution is not due until the whole settlement is close to completion. The offer from Gallaghers therefore represents a significant acceleration in payments to allow the early delivery of the schools.
- 2.12.4 Gallaghers have also stated that it is their intention to build out Village 2 from the south at Southern Cross rather than from Green Lane. Without the delivery of the schools at Green Lane it is a reasonable assumption that the infrastructure investment required to serve the later northern parcels of Village 2 would not be made by Gallaghers for several years.
- 2.12.5 Although the proposal will result in land not being used for the construction of the Business Incubator Units and Library, this application will not alter the development parameters agreed as part of the outline consent for the settlement which sets out the consented amount of land and floorspace for various uses and the maximum number of residential units. Of the proposals being considered under this application, the agreed development parameters set the maximum number of dwellings at 4,500 units, up to 28,500 square metres of B1 floorspace, up to 9,000 square metres of B2 floorspace, up to 9,000 square metres of B8 floorspace, approximately 6000 square metres of community and indoor sports floorspace and approximately 17.2 ha of land for educational facilities.
- 2.13 Other issues – Concerns regarding the delivery of other facilities set out in the S106 have been raised by objectors but the application must be considered as set out in the applicant's proposal with each modification to an obligation either accepted or refused. Proposed changes to other obligations cannot be considered as part of the determination of this application.

3 CONCLUSION

- 3.1 The S106 Obligations which the applicant is seeking to have modified or discharged have been carefully considered having regard to the "useful planning purpose" of each individual obligation and the wider context of the need to achieve, if possible, the ongoing delivery of a balanced and sustainable community. The provision of a new secondary school for Wixams in September 2017 will be a significant benefit to Wixams and support higher housing delivery rates and development of community facilities at Wixams. The savings outlined are considered to be commensurate to the commitment from Gallaghers to fund the £2.5 million funding gap for the secondary school and with no changes proposed to the consented development parameters of the settlement it is not considered necessary to take into account any change in land values resulting from the proposed modifications.

- 3.2 Subject to an acceptable revised Scheme of Modifications being received prior to the meeting, it is recommended that Members agree to the submitted request to modify and discharge the planning obligations.

RECOMMENDATION:

Grant Discharge and Modification of S106 Obligations