

Item No. 06

APPLICATION NUMBER	CB/16/02473/SECM
LOCATION	Land to the rear of 2-6 Brookfields, Potton, Sandy, SG19 2TL
PROPOSAL	Modification and Discharge of Planning Obligations: application for all obligations (Education; Sustainable Transport; Health Facilities; Leisure; Recreation; Open Space; and Community Facilities) agreed within Planning Obligation by Deed and S106 of the Town and Country Planning Act 1990 relating to Land at Brookfields (Plots 11, 12, 14-17) LPA Planning Permission Reference MB/09/00524/FULL (Development of 6 dwellings) Dated 21 May 2009, to be discharged.
PARISH	Potton
WARD	Potton
WARD COUNCILLORS	Cllrs Mrs Gurney & Zerny
CASE OFFICER	Benjamin Tracy
DATE REGISTERED	25 May 2016
EXPIRY DATE	20 July 2016
APPLICANT	Wyboston Lakes Ltd
AGENT	Barford & Co
REASON FOR COMMITTEE TO DETERMINE	Call-in from Cllr Zerny for the following reasons: <ul style="list-style-type: none">• Contrary to Policy - Developer should pay contributions.
RECOMMENDED DECISION	To Approve Discharge of all S106 Obligations

Summary of Recommendation:

The application is made under Section 106A (3) of the Town and Country Planning Act 1990 (as amended) and seeks the discharge of all obligations imposed upon a development for the construction of six dwellings. The development of the site has lawfully begun, whereby a trench has been dug many years ago and development has since ceased on site and the site is overgrown as such the payment of obligations have not been triggered. The test which is to be applied to the application is, whether each obligation continues to serve a useful planning purpose (if not, the obligation must be discharged).

In the context of recent changes to National Guidance which outlines that obligations should not be sought from residential development of less than 10 units and 1000 sqm of gross floorspace, it is recommended for the Authority to approve the application to discharge the obligations.

Site Location:

The application relates to a development site that is a vacant irregular area of land, comprising 0.446 hectares, to the west of Brookfields residential estate. The site benefits from planning permission under reference MB/09/00524/FULL dated 10th June 2009 for the construction of six detached dwellings, garages and completion of access road together with improvement works to adjoining workshop.

Although development has begun no obligations within the S106 agreement attached to the permission have been triggered due to the triggers of payment relating to the occupation of each dwelling.

The Application:

The application has been made under S106A (3) of the Town and Country Planning Act 1990 to enable the consideration and determination of the discharge of all obligations set out in the S106 pursuant to the planning permission granted under reference MB/09/00524/FULL.

The obligations applied to be discharged are outlined within Table 1 below and are index linked:

Table 1

CONTRIBUTION	£
Education	£7,368 TOTAL - A SUM OF £1,228 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Sustainable Transport	£3,738 TOTAL - A SUM OF £623 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Health Care	£10,422 TOTAL - A SUM OF £1,737 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Indoor Sports & Leisure Centres	£2,706 TOTAL - A SUM OF £451 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Recreational Open Space / Outdoor Sport/ Children's Play/Informal Open Space	£20,160 TOTAL - A SUM OF £3,360 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Green Infrastructure/ Recreational Space	£12,234 TOTAL - A SUM OF £2,039 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Marston Vale Community Forest	£5,514 TOTAL - A SUM OF £919 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Village / Community halls	£3,606 TOTAL - A SUM OF £601 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Libraries	£462 TOTAL - A SUM OF £77 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.

Cemeteries	£54 TOTAL - A SUM OF £9 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Community Cohesion	£144 TOTAL - A SUM OF £19 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Waste Management	£276 TOTAL - A SUM OF £46 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
Emergency Services	£1,656 TOTAL - A SUM OF £276 TO BE PAID PRIOR TO THE OCCUPATION OF EACH DWELLING.
TOTAL	£68,310

Relevant Planning History:

Application Number MB/09/00524/FULL
 Description Full: Construction of six detached dwellings, garages and completion of access road together with improvement works to adjoining workshop.
 Decision Grant Planning Permission
 Decision Date 10th June 2009

Consultees:

Potton Town Council Objection on insufficient detail.
 Recreational Open Space and Green Infrastructure No contribution requested.
 Leisure and Open Space No objection to the removal of contributions. The projects identified have been provided in the interim.
 Early Years No response received.
 Education No response received.
 NHS England No response received.
 Public Transport No response received.
 Sustainable Transport No response received.
 Community Halls No response received.

Other Representations:

Neighbours No response received.

Site Notice No response received.

Considerations

- 1.1 This application has been made under S106A (3) of the Town and Country Planning Act 1990 to enable the consideration and determination of the discharge of all obligations set out in the S106 pursuant to the planning permission granted under reference MB/09/00524/FULL. 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 Development Management Committee is invited to determine whether or not to discharge the obligations within the S106 agreement. 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.
- 1.2 In considering an application to vary a planning agreement under Section 106A(3) of the Act, sub section (6) states that the authorities may determine the application in one of the following ways:
 - That the planning obligation shall continue to have effect without modification;
 - If the obligation no longer serves a useful purpose, that it shall be discharged; or
 - 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.
- 1.3 This application is not a planning application. As such the normal test "that application for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise" is not the appropriate test.
- 1.4 The test which is to be applied to the application is, whether each obligation continues to serve a useful planning purpose (if not, the obligation must be discharged). 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.
- 1.5 Planning obligations should mitigate the impact of development which benefits local communities and supports the provision of local infrastructure. In applying the planning obligations to decisions post 6th April 2010 local planning authorities must ensure that these meet the three tests that are set out as statutory tests in the Community Infrastructure Levy Regulations 2010 (as amended) and as policy tests in the National Planning Policy Framework. The statutory and Policy test for planning obligation is, that they may only constitute a reason for granting planning permission for the development if the obligation

is:

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

- 1.6 These statutory tests only apply to "relevant determinations" that results in the grant of planning permission, A "relevant determination" means in the context of the regulations is a determination made on or after 6th April 2010.
- 1.7 It is key in assessing this request to discharge obligations to note that the policy and legal framework has changed significantly surrounding planning obligations since 10th June 2009.
- 1.8 The development plan at the date of the approval comprised the Mid Bedfordshire Local Plan First Review 2005 which has been superseded by the current development plan which comprises the 2009 Central Bedfordshire Core Strategy and Development Management Policies document (CSDMP). Policy CS2 of the CSDMP is also considered to be out of date in the context of the National Planning Policy Framework, the National Planning Practice Guidance and the Community Infrastructure Levy Regulations 2010 (as amended); whereby Policy CS2 seeks tariff style contributions from all scales of new residential development and does not abide by the maximum of five pooled contributions towards individual local infrastructure projects.
- 1.9 The National Planning Practice Guidance as updated on 19th May 2016, sets out circumstances where tariff style planning obligations (S106 planning obligations) should not be sought from small scale and self-build development, in the interest of ensuring small development was not stalled by changes in economic conditions. The circumstances which obligations should not be sought are outlined within the Ministerial Statement and the National Planning Practice Guidance which includes:
- contributions should not be sought from developments of 10-units or less, and have a maximum combined gross floorspace of no more than 1000 sqm.
- 1.10 The Committee is advised that the proposed development consists of development of less than 10 units and has a maximum combined gross floorspace of no more than 1000 sqm and the contributions within the agreement are tariff style.
- 1.11 It is acknowledged that the obligations within the agreement all serve a useful planning purpose, whereby mitigating the impact of the development upon local infrastructure including: Education; Sustainable Transport; Health Care; Indoor Sports and Leisure Centres; Recreational Open Space/ Outdoor Sport/ Children's Play/ Informal Open Space; Green Infrastructure/ Recreational Space; Marston Vale Community Forest; Village/ Community Halls; Libraries; Cemeteries; Community Cohesion; Waste Management; and Emergency Services. However it is clear that the applicant benefits from the fall back position that a fresh application for planning permission for the same

development would not be subject to any planning obligations.

1.12

Paragraph 205 of the NPPF states: "Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development from being stalled". It is considered that the revisions to obligations referred to in the latter paragraph is relevant to applications under S106a.

1.13

Potton Town Council's objection is noted. However in the context of the Ministerial Statement dated 28 November 2014 and the National Planning Practice Guidance which seeks to tackle the disproportionate burden of developer contributions on small-scale developers, custom and self-builders, when undertaking development such as that subject to this application, it is considered that the obligations have been acknowledged nationally to be a burden to the development and that a financial viability assessment would not be necessary to justify the discharge of the obligations, for this scheme, in this instance.

1.14

It is considered that the obligations would not be imposed under a fresh application for planning permission. As such it is recommended for the Authority to approve the application to discharge the obligations.

Recommendation:

To Grant Discharge of all S106 Obligations.

DECISION

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