

Wixams Joint Development Control Committee – 31.07.2018 – Revision to the Triggers for Certain Obligations contained in the Wixams Section 106 Agreement

SITE

The land comprising the new settlement of Wixams 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 completed. Village 2 is centrally located and separated from Village 1 by Greenway B. Village 3 is to the west of Village 2 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 another greenway. Construction work has begun on parcels within Village 4. The site straddles the boundary between Bedford Borough and Central Bedfordshire with Village 2 split approximately two thirds within Bedford Borough and one third within Central Bedfordshire.

COMMENTS

1. CONTEXT

- 1.1 The Wixams S106 was entered into in June 2006 and varied by further agreements in 2011 providing for a Secondary School in Village 1 and in 2015 securing an additional £2.5 million contribution from Gallagher Estates towards the Secondary School by identifying savings elsewhere in the S106 to the same value. Further Deeds of Variation in 2017 and earlier in 2018 varied the affordable housing planning obligations for Villages 2 and 4.
- 1.2 The original S106 is now more than 10 years old and it has become apparent that many of the triggers for the delivery of certain pieces of infrastructure are out-of-date and / or unwieldy and it would be of benefit to all parties to update the triggers within the agreement.
- 1.3 The amendments set out in this report are being sought under S106A (1) of the Town and Country Planning Act 1990 (as amended) which allows a planning obligation to be modified or discharged by agreement between the Local Planning Authority and the person or persons against whom the obligation is enforceable. The amendments will change the Heads of Terms of the joint Wixams S106 legal agreement, and, in accordance with the Terms of Reference and Standing Orders for the Wixams Joint Development Control Committee, the matter is being referred to this committee for determination.

2. MAIN CONSIDERATIONS

2.1 Amendments Sought

2.1.1 The draft deed of variation seeks to make the following amendments to the Heads of Terms:

- (a) Amending and updating the triggers for various pieces of infrastructure, to include date triggers and switching commitments to Village 3;
- (b) Extending the timescales for the provision of the railway station contribution for a further five years;
- (c) Earlier delivery of key roads/Highway infrastructure;
- (d) Amending the affordable housing delivery of Village 3 to be in line with the delivery arrangements for Village 2 as agreed in the 4th and 7th Deeds of Variation
- (e) Deletion of the obligation to provide the First Day Nursery in Village 1, subject to the transfer of land to Bedford Borough Council for the provision of a Day Nursery being completed simultaneously with the completion of the Deed;
- (f) The Landscape Enhancement Area between Wixams and Wilstead to be offered to the Wilstead Parish Council (or successor) at nil cost by 200th occupation within Village 2, and to pay the Commuted Payment for laying out and maintaining the Landscape Enhancement Area.
- (g) The earlier delivery of the Expansion Land obligations;
- (h) Tidies up various points, including listing the previous Deeds of Variation, making minor alterations to the boundaries of the Villages 2, 3 and 4 and removing references to Middle School and the requirement to deliver a Pilot Wind Power Project in the Town Centre.

2.2 Assessment

2.2.1 The draft Deed of Variation seeks to make amendments to the triggers within the agreement in accordance with the table set out below. The amended triggers provide dates as well as occupation triggers, which provides more certainty that the relevant infrastructure will be delivered by an acceptable date, even if delivery timetables should slip.

Appendix A

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Reference to provision in Schedule 2 of the Existing Planning Agreement (save where specified otherwise)	Current wording in Existing Agreement	Replacement wording to be inserted	Anticipated change in delivery date
Part 2 – Education			
Para 1.7.3	"the third Lower School by the Occupation of the 2,500th (two thousand five hundredth) Dwelling"	"the third Lower/Primary School by the Occupation of the 100th (one hundredth) Dwelling in Village 3 or within 2 years of the date of this Eighth Deed of Variation (whichever is earlier)"	From Q3 of 2022 to Q2 2021 or Q3 2020
Para 2.4	"If the relevant School is the third Lower School to be constructed as part of the Development then the Owners shall use reasonable endeavours to Complete that third Lower School by the Occupation of the 3,300th (three thousand three hundredth hundredth) Dwelling"	"If the relevant School is the third Lower/Primary School to be constructed as part of the Development then the Owners shall use reasonable endeavours to Complete that third Lower School by the Occupation of the 500th (five hundredth hundredth) Dwelling in Village 3 or within 5 years of the date of this Eighth Deed of Variation (whichever is earlier)"	From Q4 2024 to Q1 2023 or Q3 2023
Part 7 - Community Facilities			
Para 10	"The Owners covenant that until the Occupation of the 3,000th (three thousandth) Dwelling it shall reserve an area of a maximum size of 2 (two) acres in the Town Centre (or such other part of the Site as the relevant Council may approve) for us as a Primary Healthcare Centre and the area shall not be used for any other purpose except Temporary Uses."	"The Owners covenant that they will proffer the Primary Healthcare Centre Site for transfer for a period of 3 (three years) once the 200th (two hundredth) Dwelling on Village 3 is Occupied or within 4 (four) years from the date of this Eighth Deed of Variation (whichever is earlier)."	From Q4 2023 to Q4 2021 or Q3 2022

Appendix A

Part 8 – Management of Public Areas			
Para 4.1	"Subject to obtaining the necessary consents and approvals the Owners covenant not to Occupy more than 2,200 (two thousand two hundred) Dwellings (or such other number of Dwellings as agreed by the relevant Council and the Owners) until they have procured the provision of the Public Car Park in the Town Centre in accordance with the specification set out in the Wixams Specification and Maintenance Schedule"	"Subject to obtaining the necessary consents and approvals, prior to the Occupation of the 250th (two hundred and fiftieth) Dwelling in Village 3 or within 4 (four) years from the date of this Eighth Deed of Variation (whichever is earlier) the Owners covenant to procure the provision of the Public Car Park in the Town Centre in accordance with the specification set out in the Wixams Specification and Maintenance Schedule"	From Q1 2022 to Q1 2022 or Q3 2022
Part 15 – Expansion Land			
Para 2	<p>"The Owners covenant that upon:</p> <p>(i) the grant of planning permission for development of any part of the Expansion Land; and</p> <p>(ii) the necessary infrastructure connecting the Site to that part of the Expansion Land being put in place by the Owners in accordance with the agreed phasing of infrastructure on the Site provided that the Owners can erect any barriers necessary to prevent access or use in accordance with this Part 15 of Schedule 2,</p> <p>they will seek to sell to the owner or developer of the relevant part of the Expansion Land access and other necessary rights in, on, under or over the Boundary Strips to enable development of the relevant part of the Expansion Land and (except in respect of the Hostel Site) the price at which the Owners sell such rights is entirely at their discretion (with the Owners under no obligation to submit to any mechanism for resolving any dispute) for a</p>	<p>"The Owners covenant that upon:</p> <p>(i) the grant of planning permission for development of any part of the Expansion Land; and</p> <p>(ii) the necessary infrastructure connecting the Site to that part of the Expansion Land being put in place by the Owners in accordance with the agreed phasing of infrastructure on the Site provided that the Owners can erect any barriers necessary to prevent access or use in accordance with this Part 15 of Schedule 2,</p> <p>they will seek to sell to the owner or developer of the relevant part of the Expansion Land access and other necessary rights in, on, under or over the Boundary Strip to enable development of the relevant part of the Expansion Land and (except in respect of the Hostel Site) the price at which the Owners sell such rights is entirely at their discretion (with the Owners under no obligation to</p>	From Q2 2027 to Q4 2023 or Q3 2023

Appendix A

	<p>period up until the Commencement of Development of the 4,000th (four thousandth) Dwelling."</p>	<p>submit to any mechanism for resolving any dispute) for a period up until the Commencement of Development of the 3,000th (three thousandth) Dwelling or 5 (five) years from the date of this Eighth Deed of Variation (whichever is earlier)."</p>	
--	--	--	--

- 2.2.2 The proposed amended triggers have been checked against the predicted build out schedule and none of the infrastructure would be delivered later than is currently set out within the existing agreement; in several cases the amended triggers represent earlier delivery, most notably the provision of the third Lower School, the Primary Healthcare Site and the Expansion Land obligations. With regard to the Primary Healthcare Site the revised trigger will bring forward the obligation for the developer to offer the land to the NHS; as well as continuing to provide a long backstop date (3 years from the date offered) for the land to be reserved to ensure the NHS have enough time to acquire and deliver the facility.
- 2.2.3 The Deed also makes provision to extend the date for the provision of financial contributions towards the cost of the railway station. Under the current Section 106 Agreement, the obligations on Gallagher Estates to provide a financial contribution towards the railway station would fall away in 2019. Due to uncertainties in relation to the delivery of East West Rail it has not yet been possible to deliver the railway station. The proposed Deed would extend the obligations until 2024 to allow time for the East West rail route to be finalised and discussions to continue in relation to the provision of the railway station.
- 2.2.4 The Deed would include a new phasing plan committing the developers to a timescale for the earlier delivery of the strategic road network. This would facilitate the earlier delivery of the town centre within Village 3 and its associated facilities.
- 2.2.5 As requested by Central Bedfordshire Council's affordable housing team, the Deed would also bring the delivery of Affordable Housing in Village 3 into line with the arrangements agreed for Village 2. This would ensure that the Affordable Housing that would be delivered would be of a mix of dwellings and a balance of tenures to meet requirements.
- 2.2.6 The current S106 only requires the First and Second Day Nursery sites to be reserved, marketed and offered for lease (at a market rent) for Day Nursery Facilities. It does not require the developer to transfer the Day Nursery sites as free and serviced sites to a nursery operator. However the developer has agreed with Bedford Borough Council, that on completion of this Deed, that they will transfer the First Day Nursery Site at Village 1 to the Council as a free and serviced site. This will enable the nursery facility to be provided in line with the current Section

Appendix A

106 and in accordance with the planning permission recently granted for this facility. The Deed therefore confirms that the obligation in respect of the provision of the First Day Nursery Facility in Village 1 is treated as released and no longer binding or of effect.

- 2.2.7 With regard to the Landscape Enhancement Area the current S106 does not include a trigger requiring the developer to implement the approved landscape scheme. The Deed therefore includes a trigger, requiring the developer to offer the land at nil cost to Wilstead Parish Council (or successor) and to pay the sum of £289,000 to enable the delivery of the approved Landscaping Scheme in respect of the Landscape Enhancement Area. As the obligation to deliver the enhancement will fall on the Parish Council with the relevant funds provided by the Developer, confirmation is being sought from the Parish Council that they are agreeable to the Deed. An update on this matter will be provided orally at the meeting
- 2.2.8 The earlier delivery of the commitments relating to the Expansion Land, would also be provided within the Deed, which would facilitate discussions to deliver connections to neighbouring land at an earlier stage.
- 2.2.9 The tidying up of minor points within the Agreement, and listing of the previous Deeds of Variation would provide clarity and easier comprehension.

3. CONCLUSION

- 3.1 The terms of the proposed Deed of Variation would provide significant benefits to the Councils and the community in securing more certainty (by the introduction of date triggers) and earlier delivery of a number of key pieces of infrastructure; and by securing the railway station funding for an additional five year period. The transfer of the land for the Day Nursery, the affordable housing amendments and the enhanced clarity provided by the proposed Deed would also be of benefit.
- 3.2 It is therefore recommended that Members agree to the amended Heads of Terms as set out in section 2.1.1 of this report.