

Decision under Delegated Powers

Officer Requesting Decision

Team Leader Strategic Development

Officer Making the Decision

Head of Planning & Growth

Recommendation

That a Section 106 Agreement (deed of variation) be signed to secure amended planning obligations in relation to Planning Permission reference **P/13/1008/2**, including amendments to funding arrangements relating to maintenance of open space and provision of buildings ancillary to the sports pitch on the site at Halstead Road, Mountsorrel, with the associated outline application described as *“Site for residential development of up to 200 houses, with associated roads, landscaping sports pitch and landscaped bund (revised scheme P/12/0022/2 refers)”*.

The S106 agreement will be required to permit a variation to the provisions of the original S106 agreed as part of permission P/13/1008/2. The submission is made under the provisions of s106 of the Town and Country Planning Act 1990 which allows obligations and covenants to be secured to bind the development of the Application Site.

It is recommended that the original S106 legal agreement is amended to make provision for the maintenance contribution originally agreed to also be used for the provision of buildings ancillary to the sports pitch. All other provisions of the original S106 agreement are unchanged.

In relation to the resolution by Plans Committee in 2013, the original relevant element of the heads of terms was resolved to be approved based on the following:

- The provision of on-site open space (to include children’s play area and sports pitch) and associated maintenance contribution (£569,909)

The proposed deed of variation would effectively change the above resolution as follows:

- The provision of on-site open space (to include children’s play area and sports pitch) and associated contribution towards maintenance and provision of ancillary buildings (£569,909)

Reason

The S106 agreement is required to be amended by a deed of variation to enable amendments to be made to the funding arrangements previously

agreed as part of the outline permission in relation to delivery and maintenance of open space on the site and allow for the agreed maintenance fund to also be used for delivery of buildings that are ancillary to the use of the on-site open space, if required.

The original arrangements made provision for delivery of on-site open space as well as financial contributions towards their on-going maintenance. The S106 is proposed to be amended to make provision for part of the overall financial contribution (£569,909) to be used for the provision of ancillary buildings, as well as the future maintenance of the open space.

Other provisions of the S106 are unchanged and the overall quantity of financial contributions for maintenance of open space which were resolved to be agreed by Plans Committee is also unchanged.

The content of the original s106 was resolved to be agreed by Plans Committee (Recommendation A) as follows (emphasis added to show the relevant provision which is proposed to be amended):

- 30% Affordable housing constructed on site unless £1.9million paid for the completion of the Mountsorrel Memorial Hall project within 12 months of the date of this decision to enable early delivery of this essential community facility;
- In the event that the £1.9 million is received within 12 months of the decision date 5% Affordable Housing – 10 affordable houses, 75% of the housing to be for social rented and 25% to be for intermediate or shared ownership;
- Education- £580,752.48 used to accommodate the capacity issues created by the proposed development by improving, re-modelling or enhancing existing facilities at Christ Church & St Peters C of E Primary School in Mountsorrel.
- The PCT Cluster requests contributions of £88,709.28 towards additional accommodation at Alpine House in Mountsorrel based on a total of 200 dwellings;
- Libraries - This to be spent on additional lending stock items to be provided at Mountsorrel Library being £27.18 per 1 bed house/flat;
- £54.35 per 2 bed house/flat; £63.41 per 3/4/5 bed house/flat.
- A contribution to the completion of the Memorial Hall project of £1.9m;
- **The provision of on-site open space (to include children's play area and sports pitch) and associated maintenance contribution (£569,909);**
- Local Traffic Calming; Travel Packs and Bus Passes Bus stop Improvements (Subject to Highway Authority requirement).

Reserved matters application referenced P/15/1024/2 relates and is described as *"Erection of 200 dwellings (Reserved Matters – Outline application P/13/1008/2 refers"*. Associated discharge of conditions applications have been agreed and the development has largely been completed. These set out the physical layout of the site, including provision of on-site open space with a cricket pitch.

The approved physical layout of the site and on-site open space are unchanged by these proposals.

The original S106 agreement makes provision for the delivery of a cricket pitch and bund as part of the on site open space with the expectation that the open space would be transferred to Mountsorrel Parish Council along with a contribution towards its ongoing maintenance. If the open space is not transferred to the Parish Council then there is the option for CBC to take on ownership of the land and the maintenance fund could be apportioned as necessary – either retained for maintenance or put towards provision of ancillary buildings, accepting that liability for future maintenance of the open space would lie with the landowner at the time.

Upon review of the details of the S106 provisions the parish council would be in agreement to taking receipt of the cricket pitch but would require ancillary buildings in order to make the use of the cricket pitch feasible, such as a pavilion to support club cricket. The Parish Council are content that with ancillary buildings the cricket pitch would be financially viable and that there are options for them to generate revenue from its use to supplement a reduction in the maintenance contributions formed part of the original S106 agreement such that they would accept any liability to fund future maintenance that would be incurred.

Furthermore, the applicant (Jelson Homes) has agreed that the overall funding agreed through the original S106 agreement can be reallocated to reflect the current requirements and the associated maintenance requirements to allow the parish council to reappportion funds to support delivery of buildings ancillary to the cricket pitch.

To allow the application to progress, a signed variation of the S106 legal agreement will be needed. The amendment itself is of limited significance, reallocating funds that have been secured for the maintenance of on-site open space to be allocated for provision of buildings ancillary to the cricket pitch as well as their maintenance. The reallocation does not materially affect the overall provision of funding or provision of open space but would provide greater flexibility for the parish council to deliver an effective cricket pitch on the site which would meet the aims of the permission.

Chair and Vice Chair of Plans Committee, along with ward members, have been consulted on the proposals and raise no objections to the amendments outlined above.

Authority for Decision

Authority to enter into a deed of variation in accordance with the resolution to approved planning permission (P/13/1008/2), subject to certain caveats, is delegated to the Head of Planning and Growth under the constitution scheme of delegation. This deed of variation is determined under delegated authority (following consultation with the Chair of Plans Committee and ward members).

The relevant delegated authority to the Head of Planning & Growth in the Constitution is to make minor amendments to the wording of planning conditions and planning obligations following a Plans Committee decision and before the issue of a decision notice, subject to this not materially affecting the decision.

Decision and Date



14 July 2023

Background

Application P/13/1008/2 was granted outline planning permission on 23rd December 2014 with associated S106 agreement dated 14th December 2014.

Reserved matters P/15/1024/2 and associated discharge of conditions applications are unchanged.

Financial Implications

None

Risk Management

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
Receiver of open space is unable to maintain on-site open space	Very Low	Low	Very Low (1 - 2)	<p>The receiver of the open space is expected to be Mountsorrel Parish Council. They are aware of the risks involved and are content that there is adequate remaining provision for maintenance and that any reduced financial contribution can be supplemented by proceeds from the use of the open space and ancillary buildings.</p> <p>In the event that the parish council do not take transfer of the open space then it would default to the</p>

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
				Borough Council who would have the option to use funds as they deem necessary, for provision of ancillary buildings or for maintenance and therefore the status quo of the original S106 funds could be retained as originally agreed, if preferable.

Key Decision: No

Background Papers:
Planning application and appeal ref.