



Report to Planning Committee 06 October 2022
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Report Summary			
Application Number	16/00506/OUTM		
Proposal	Outline planning application for a phased residential development of up to 1,800 dwellings; a mixed use Local Centre of up to 0.75ha to include up to 535sqm of food retail (not exceeding 420sqm) and non-food retail (not exceeding 115sqm), food and drink uses (not exceeding 115sqm), community uses (not exceeding 1,413sqm); sports pavilion up to 252sqm; primary school (2.2ha) with school expansion land (0.8ha); formal and informal open space including sports pitches, pocket parks, structural landscaping / greenspace and drainage infrastructure; principal means of access, internal roads and associated works. All other matters to be reserved.		
Location	Land At Fernwood South		
Applicant	Persimmon Homes East Midlands		
Web Link	16/00506/OUTM Outline planning application for a phased residential development of up to 1,800 dwellings; a mixed use Local Centre of up to 0.75ha to include up to 535sqm of A1 food retail (not exceeding 420sqm) and non-food retail (not exceeding 115sqm), A3 food and drink uses (not exceeding 115sqm), D1 community uses (not exceeding 1,413sqm); sports pavilion up to 252sqm; primary school (2.2ha) with school expansion land (0.8ha); formal and informal open space including sports pitches, pocket parks, structural landscaping / greenspace and drainage infrastructure; principal means of access, internal roads and associated works. All other matters to be reserved. Land At Fernwood South Nottinghamshire (newark-sherwooddc.gov.uk)		
Registered	20.04.2016	Target Date <i>(Extension of Time agreed in principle)</i>	10.08.2016

Recommendation	Approve, subject to the conditions at Appendix 1 and the completion of a Section 106 agreement in accordance with Appendix 2
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1.0 Application Process to Date

The application has been presented to Members on five previous occasions.

The first was on 13th September 2016 with an Officer recommendation of approval. The second, was on 24th July 2018 where Officers outlined the original viability case presented by the applicant as well as outlining the changes which had occurred between 13 September 2016 and 24 July 2018 in respect of Section 106 negotiations and other changes in material planning considerations. The third was on 5th February 2019 where Officers presented a 'sense check' of their recommendation in the context of the revised National Planning Policy Framework (NPPF). The fourth was on October 6th 2020, where the applicant presented updated financial appraisals to make amendments to some of the triggers in the S106. The most recent occasion was on 7th September 2021 clarifying the position of Nottinghamshire County Council in relation to bus stop infrastructure.

Previous committee reports can be found on the application file in the link in the above table. At the outset it should be stated that on all occasions Members have resolved to approve the application subject to conditions and the sealing of the Section 106 agreement. The decision is yet to be issued due to discussions in relation to the Section 106.

2.0 Current Position

Since the application was last brought before Members, discussions have been ongoing in respect to the associated Section 106 agreement. The purpose of the current report is to update Members on the proposed changes which differ in relation to the previous resolution.

Section 106 Triggers

As set out above, the Section 106 triggers were last reviewed by Members in October 2020 where it was accepted that the applicant would need to undertake the viability review at 840 units (46.7%) and the second at 1,188 units (66%).

The applicant has now raised an issue with the above that essentially stems from Persimmon committing to the first phase and allowing the later phases to go to market. The Section 106 review mechanism as drafted currently offers no protection against cumulative completions across multiple phases triggering early reviews. It also leaves uncertainty for the marketing of the later phases as the exact amount of affordable provision will be unknown.

The solicitors (applicants and NSDCs) have been in discussion and the Council's appointed solicitor has suggested that a reasonable solution would be to have three review thresholds each triggered at 80% of those dwellings being occupied within each Phase respectively (i.e. not spread across the wider site). That way, viability would only be reassessed when occupation within a distinct phase is met meaning more accurate financial data would be available due to the existence of actual values. Liability would then be split such that the

owner/developer of Phase 1, 2 and 3 respectively would only be liable for the overage payable on their relevant phase and any additional contribution would be capped as a proportion to the numbers in that phase. For example, the maximum overage payable is circa £9.79 million for the 1800 units so based on the first phase of 840 units, the maximum overage payable for phase 1 would be circa £4.56 million.

The applicant has accepted this approach and therefore it is suggested that the Section 106 is amended to reflect these discussions.

First Homes Requirement

First Homes are a specific kind of discounted market sale housing which:

- a) must be discounted by a minimum of 30% against the market value;
- b) are sold to a person or persons meeting the First Homes eligibility criteria (see below);
- c) on their first sale, will have a restriction registered on the title at HM Land Registry to ensure this discount (as a percentage of current market value) and certain other restrictions are passed on at each subsequent title transfer; and,
- d) after the discount has been applied, the first sale must be at a price no higher than £250,000 (or £420,000 in Greater London).

First Homes are the government’s preferred discounted market tenure and should account for at least 25% of all affordable housing units delivered by developers through planning obligations. Although the Planning Practice Guidance sets out a number of transitional arrangements where their incorporation into a Section 106 would not be required, none of these apply to the current application. The affordable housing secured through the Section 106 will therefore require amending to include 25% of all affordable homes as First Homes.

Based on the previously agreed affordable housing contribution of 13%, there would be 234 affordable units on site. Officers have been in discussions with colleagues in Strategic Housing to understand the potential financial implications of the inclusion of First Homes. The applicant has raised concerns that a discount of 30% (rather than the agreed 25%) would affect the overall viability of the scheme.

However, if the agreement were to be continued on the basis of a 52 / 48 split of the remaining 75% affordable (i.e. less the First Homes) then it is the Councils view that to the contrary, the inclusion of less social / affordable rented could be financially beneficial to the applicant. The Council’s Strategic Housing Officer has therefore calculated a revised mix as shown below which would have a comparable impact for the applicant financially.

Tenure	Previously Agreed		LPA suggestion	
	%	No. of Units	%	No. of Units
<i>Social / Affordable Rent</i>	52	122	43	101
<i>Discount for sale at 75% of Open Market</i>	48	112	32	75

<i>Value</i>				
<i>First Homes at 70% of Open Market Value</i>	0	0	25	58
Total	100	234	100	234

The applicant has accepted the revised mix as presented and therefore it is considered reasonable to complete the Section 106 on this basis.

County Council Contributions

Education

Correspondence has been received from Nottinghamshire County Council (NCC) in respect to the currently drafted provision for education:

“We are concerned that due to the considerable lapse in time since the original committee resolution (in 2018) and the ongoing finalisation of the S106 agreement, the original figure requested by NCC in 2016 is no longer sufficient to deliver a 2FE primary school. To illustrate, based on the costs per place published by the DfE most recently, the cost of delivering a two-form entry school would be £9,507,540 (£22,637 x 420). As such, the current draft S106 appears to seriously undermine the ability of the County Council to deliver a new primary school, should the developer elect to pay the contribution to NCC in lieu of delivering the school directly.”

Further confirmation has been received that the relevant costings are updated when further evidence of typical build costs are published by the Department for Education (derived from actual build costs by authorities). These figures are used in NCC’S Developer Contributions Strategy which was adopted in December 2021. The figure currently within the Section 106 (£5,751,854) is based on pre-application discussions dating back to 2015 and understandably there have been several updates to build costs since that time.

A two form entry school would be the nearest viable school size relative to the scale of the development proposed. However, NCC have recognised that the proposal does not generate the full 420 pupils and based on the formula in their strategy for the pupils to be generated by the development, the contribution calculation would equal £8,556,786.

Officers have undertaken a sense check of how the original figure would have changed based purely on increased BCIS rates since the first Committee resolution in 2016:

BCIS Rates :

- Q3 2016 – 281
- Q4 2019 – 333
- Q3 2022 – 366

Education

- £5,751,854/281 * 333 = £6,816,254

- $£5,751,854/281 * 366 = £7,491,738.66$

Based on the above, the current figure in the Section 106 would need to increase by £1,739,884.66 but to reach the latest figure requested by NCC it would need to increase by £2,804,932. Both sums are significant and both sums would again affect the overall viability of the scheme.

Bus Service Provision

Linked to the above discussion, NCC have raised issue with the bus service contribution seeking an increase from the original £525,000 in line with the increase in RPI. To be comparable to the above, Officers have again applied BCIS increases to understand the reality of what this increase would be:

Bus Service

- $£525,000/281 * 333 = £622,153$
- $£525,000/281 * 366 = £683,808$

RPI rates would lead to a slightly lower increase (£680,181) but both figures would be a notable increase from the original figure.

The LPA is now in an extremely difficult position in that to insist on the increased education and bus service contributions requested by NCC could potentially prevent the scheme coming forwards. However, to the contrary to continue with the drafting of the figures previously agreed in the Section 106 would potentially lead to a development which cannot be appropriately served (i.e., the funds simply would not be enough to build a school on today's costings).

Given the strategic importance of the development, Officers have been in discussions with the applicant with a view of reaching a compromised position. The applicant has confirmed that they would be willing to have the education contribution indexation to be backdated to the original September 2016 committee, i.e., it would increase to the £7,491,738.66 figure referred to above. Officers have presented this offer to NCC and their response will be reported to Members.

As decision makers, it is within the gift of Members to re-distribute the financial contributions within the Section 106. For example, as set out in Appendix 2, at the moment the drafting secures £1.7million towards healthcare provision. Members could determine that education is a higher priority than health and thus this money should instead be used to increase the education contribution (noting even this would still not be enough to build a full two form entry primary school but would cover the education contribution attributable to the development size).

Members could also choose to accept a lower than 13% affordable housing delivery on site but it should of course be noted that the affordable housing delivery is already significantly less than the policy required 30%.

3.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

4.0 Conclusion

The material changes since the latest resolution are set out above. Officers consider in respect to triggers and first homes that the changes detailed are appropriate and necessary to bring the matter to the legal agreement to a resolution and in turn allow the application to be granted.

The requests of NCC have been noted and the rationale behind them is appreciated. The applicant is agreeable to a compromised position to back date the education contribution indexation to be backdated to the time of the first committee meeting which based on BCIS figures will lead to a notable increase in the education contribution towards that being sought by NCC. There would still be a shortfall compared to the requested figure and the bus stop contribution would remain at the £525,000 figure as drafted.

Officers consider that the compromised position should be accepted without further reapportionment of the other contributions previously agreed due to the impact upon healthcare and/or affordable housing provision.

It is anticipated that this will allow the applicant to proceed to reserved matters stage and deliver the development in line with the strategic objections of the Development Plan.

BACKGROUND PAPERS

Application case file.

Appendix 1 – Conditions and Informatives

Appendix 2 – Developer Contributions

Committee Plan - 16/00506/OUTM

