

**REPORT OF THE HEAD OF PLANNING, ECONOMY AND REGENERATION**

**MOORHAYES COMMUNITY CENTRE, TIVERTON – S106 REVISIONS ARISING FROM PROPOSED TRANSFER OF OWNERSHIP (99/02780/FULL)**

**Reason for Report:**

To consider the S106 implications and revisions arising from the proposed change of ownership of the Moorhayes Community Centre in Tiverton.

**RECOMMENDATION**

**That the revisions to the s106 agreement as set out in paragraph 2.2 be agreed and a supplemental S106 agreement be entered into.**

**FINANCIAL IMPLICATIONS:** None in connection with the planning considerations of the proposed transfer of ownership with the exception of clause 5.3 at paragraph 2.1 below and the legal costs of entering into a supplemental agreement.

**LEGAL IMPLICATIONS:** It is proposed that the ownership of the Moorhayes Centre and associated facilities be transferred to the Moorhayes Community Association. This report addresses consequential legal implications arising from a S106 entered into in 2000. The restrictive clauses in the original S106 will require amendment in order to allow for the proposed change in ownership and to ensure that the necessary planning safeguards will apply to the new owner and ensure the continued community and public open space use of these assets. A supplemental S106 agreement will be entered into simultaneously with the transfer to the proposed new owner.

**RISK ASSESSMENT:** The revision of the original S106 agreement will address legal constraints arising from the original S106 agreement. The supplemental S106 agreement proposed will safeguard these community assets for the future use of residents.

**EQUALITY IMPACT ASSESSMENT:** It is not considered that the proposed S106 changes will have any impact upon equality matters.

**RELATIONSHIP TO CORPORATE PLAN:** Community Aim 1 – Support local communities to retain and develop their local facilities and services.

**IMPACT UPON CLIMATE CHANGE:** No climate change issues are identified arising from this report.

**Consultation carried out with:**

1. Chairman of Planning Committee

2. Vice Chairman Planning Committee
3. Ward Members
4. Tiverton Town Council

## 1.0 BACKGROUND

- 1.1 The Moorhayes Community Centre, Tiverton was provided in 2007 as part of the planning requirements in connection with residential development at Moorhayes on the northern side of Tiverton. Originally granted planning permission under 05/01543/FULL and subsequently extended, the centre comprises a community building together with football pitch, outdoor hard play court facilities, car parking and amenity space. It was planned to provide the community facilities at the heart of the residential development. A S106 agreement dated 16<sup>th</sup> October 2000 relating to residential development at Moorhayes Park, Tiverton was entered into in connection with application 99/02780/FULL. It includes obligations relating to these community facilities on the Moorhayes estate.
- 1.2 A report was considered at the meeting of Cabinet on 4<sup>th</sup> April 2019 outlining options for the disposal of the Moorhayes Community Centre in Tiverton. This Cabinet report was considered to involve the likely disclosure of exempt information defined in paragraph 3 of Part 1 of the Schedule 12A of the Local Government Act 1972 (namely information relating to the financial or business affairs of any particular person (including the authority holding that information)). The minutes of the meeting identify that it was resolved that the recommendations outlined in the report be approved. For the purposes of this Planning Committee report, Members are advised that it is intended for the ownership of the community centre and associated facilities to be transferred to the Moorhayes Community Association. There are planning related implications arising from this due to the need to make changes to the original S106 agreement to reflect the change of ownership and to secure obligations in order to safeguard continued community use once the ownership changes. This report addresses these planning implications.

## 2.0 THE ORIGINAL S106 AGREEMENT AND PROPOSED REVISIONS.

### 2.1 The existing situation.

The S106 agreement as it stands places a series of requirements upon the Moorhayes Community Centre and associated facilities:

Clause 5.2 requires that the land, provided for the community centre and/or all buildings and structures constructed thereon *'shall be used only for the purposes of public open space or a community centre for the benefit of the local community.'*

Clause 5.3 requires a covenant that *'any monies received by the Council as a result of the Council allowing the community centre ... to be used commercially (which for the avoidance of doubt is any use which results in a*

*monetary profit arising) shall be utilised by the Council only in the maintenance of the community centre'*

Clause 5.6 applies a restrictive covenant to the public open space requiring that it should not be used other than as '*public open space in pursuance of the Open Spaces Act 1906*'.

## **2.2 The proposed changes.**

In order to reflect the change in ownership and to secure continued obligations safeguarding the future use of the facilities for the community and as public open space it will be necessary for a supplemental S106 to be entered into with the Community Association. This will provide for the change in ownership away from the Council and require that the property continues to be held for the benefit of occupiers of the development and the local community for use as public open space and a community centre and to ensure that monies generated from community use continue to be utilised only for maintenance of the community centre. The requirements of clauses 5.2, 5.3 and 5.6 referred to above will therefore need to be re-imposed and to apply to the new owner and any successors in title in order to continue to safeguard these community assets for the purpose they were provided.

## **3.0 VIEWS ARISING FROM CONSULTATION.**

3.1 The planning issues arising from the proposed change in ownership were identified as part of wider Cabinet consideration on 4<sup>th</sup> April 2019. Within the context of this report addressing the S106 implications, the Chairman of Planning Committee, Vice Chairman, Ward Members and Town Council have been consulted in accordance with the agreed procedure.

3.2 No comments had been received at the time of writing this report so officers will provide a verbal update on these responses at the Planning Committee Meeting.

## **4.0 CONCLUSIONS.**

4.1 The disposal of the community centre together with associated facilities to the Moorhayes Community Association has already been addressed via a recent report to Cabinet. This report deals with the planning implications of that, specifically the need to vary the original S106 agreement to not only allow for this change of ownership to take place, but also to ensure a continuation of obligations which seek to safeguard the future use and operation of these facilities for the community and as public open space.

4.2 There is no objection to the proposed changes from a planning perspective. The assets will continue to be used for the community purposes for which they were initially provided and the safeguards within the supplemental S106 will

ensure that. The changes to the S106 agreement are not considered to raise any planning concerns or policy consequences.

**Contact for any more information**

Mrs Jenny Clifford, Head of Planning,  
Economy and Regeneration  
[jclifford@middevon.gov.uk](mailto:jclifford@middevon.gov.uk) (01884)  
234346

David Green, Group Manager for  
Development  
[dgreen@middevon.gov.uk](mailto:dgreen@middevon.gov.uk) (01884)  
234348

**Background Papers**

S106 agreement entered into in  
connection with application  
99/02780/FULL

**File Reference**

99/02780/FULL Further variation of  
condition (3) of planning permission no.  
4/52/90/1600 to extend the time limit for  
the submission of Reserved Matters from  
6 years to 14 years (previously extended  
under planning permission no.  
4/52/96/735) to 16 June 2007 and  
variation of condition (6) - relating to  
surface water drainage works - in respect  
of off-site drainage works

05/01543/FULL Erection of community  
and sports centre, provision of football  
pitch and multi-use games area, with  
ancillary parking (Revised scheme)

**Circulation of the Report**

Members of Planning Committee