

**Application No. 16/01707/MOUT**

**Agenda Item**

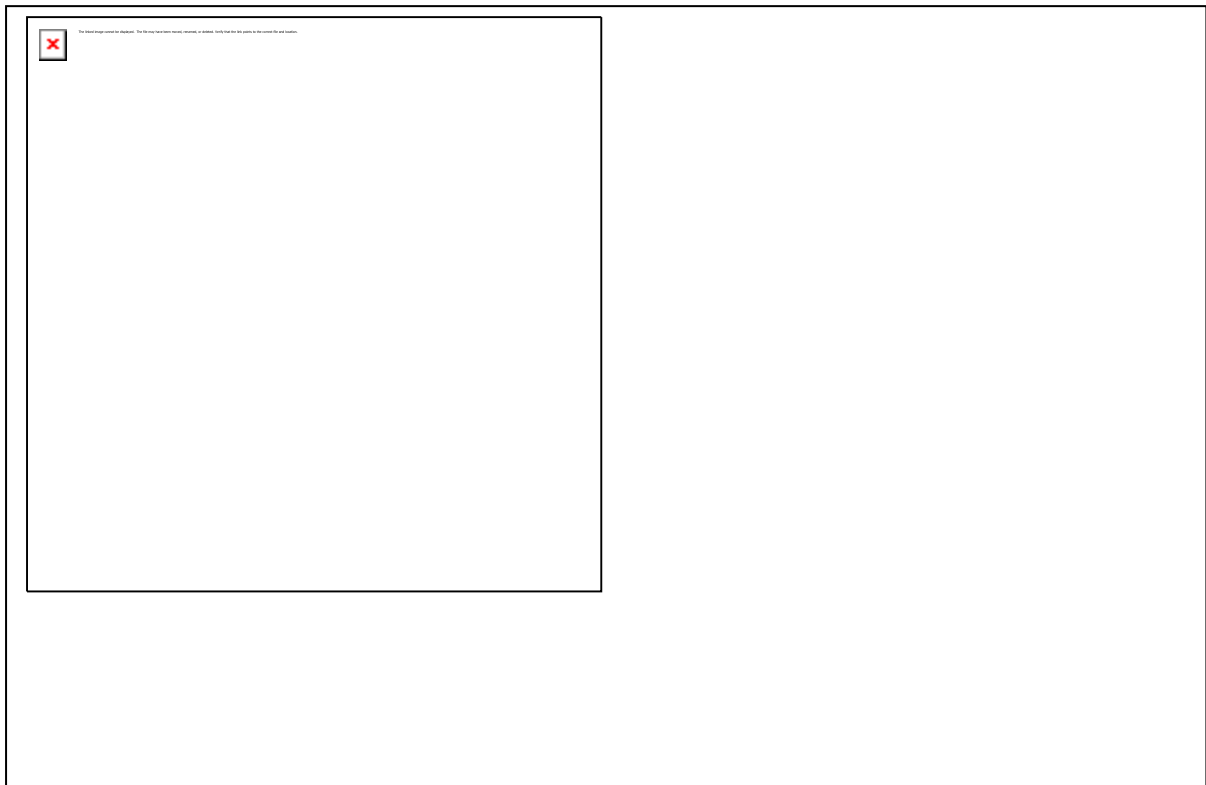
**Grid Ref:** 113644 : 295527

**Applicant:** The Frankpitt Family  
Trust

**Location:** Land at NGR 295527  
113644 (South Of  
Lea Road) Tiverton  
Devon

**Proposal:** Outline for the  
erection of 41  
dwellings and  
formation of vehicular  
access

**Date Valid:** 2nd November 2016



## AGENDA ITEM

PLANNING COMMITTEE  
2<sup>nd</sup> February 2022

### REPORT OF THE HEAD OF PLANNING AND REGENERATION

#### **16/01707/MOUT - OUTLINE FOR THE ERECTION OF 41 DWELLINGS AND FORMATION OF VEHICULAR ACCESS - LAND AT NGR 295527 113644 (SOUTH OF LEA ROAD) TIVERTON DEVON**

##### **Reason for Report:**

Members of the Planning Committee resolved on the 1<sup>st</sup> December 2021 to accept changes to the S106 agreement relating to Outline Planning Permission 16/01707/MOUT following independent assessment of the viability which concluded that this development could only be delivered through the removal of the affordable housing provision and reducing of financial contributions from £192,987 to up to £23,000. This report is to seek clarification as to how members would like to allocate the £23,000 (i.e. whether they would like the money to be spent on off-site affordable housing &/or Public Open Space &/or Education).

##### **RECOMMENDATION(S)**

In light of removal of the on-site affordable housing through the proposed changes to the original S106 agreement, it is considered that the priority for the Council would be to allocate the £23,000 to off-site housing provision of affordable housing.

##### **Relationship to Corporate Plan:**

###### **Homes**

- Work with applicants/organisations to deliver homes retained in perpetuity for local need

###### **Environment**

- Protecting the natural environment, enhancing biodiversity and addressing carbon pressures

#### **1.0 BACKGROUND OF THE APPROVED DEVELOPMENT**

1.1 Outline application 16/01707/MOUT was approved on the 10<sup>th</sup> July 2019 for the erection of 41 dwellings (12 affordable) on land south of Lea Road and to the west of the existing Moorhayes development at Oakfields. Access is to be from Lea Road and was determined under this outline application. Layout, scale, appearance and landscaping have been reserved for later consideration under a reserved matters application and the reserved matters application would need to be submitted by the 10<sup>th</sup> July 2022.

1.2 The site comprises approximately 1.29 hectares of sloping pasture land between the existing residential development at Oakfields, Moorhayes, and the school sports pitches fronting Bolham Road. Planning permission was previously granted under reference 07/01559/MFUL for the erection of 95 dwellings on a larger parcel of land including the site the subject of this application, however, that planning permission was not implemented and expired. This site was allocated for residential development in a previous plan but there is no current development allocation but it

is within the settlement limits of Tiverton. A suitable surface water drainage scheme with attenuation was also proposed as part of the outline application approved.

- 1.3 The outline planning permission is subject to a S106 agreement securing the following:
  1. The provision of 12 affordable dwellings on site (35%)
  2. A financial contribution of £49,405 towards the provision of a new play area garden at the entrance to Amory Park, including new fencing, entrance gates, furniture and signs
  3. A financial contribution of £139,933 towards the provision of additional primary education facilities
- 2.0 **PROPOSED DEED OF VARIATION TO THE S106 AGREEMENT**
- 2.1 As noted above Members resolved to accept changes to the S106 agreement in order to make the development viable whereby the affordable housing provision would need to be reduced to 0% (with no off-site contribution) and that the Agreement contributions would need to be reduced from £192,987 to up to £23,000.
- 2.5 Following this resolution, the Council's Legal Department were instructed to make changes. However the Council's Planning Solicitor has raised concerns that the printed minutes of the planning committee dated 1 December 2022 make no reference as to how the members of the committee would like to allocate the monies.
- 2.6 The minutes state on P.171 that the members "**RESOLVED** that the changes to the S106 agreement be supported as recommended". However, the report does not include any recommendation as to how they should allocate the monies. It simply states at Paragraph. 5.3 that "*Therefore the recommendation of Officers would be to accept the proposed Deed of Variation to the S106 and for Members to consider how the £23,000 should be allocated, either a financial contribution towards the provision of a new play area garden at the entrance to Amory Park, a financial contribution towards the provision of additional primary education facilities or a split between the two. Alternatively, this could be delegated to the Interim Development Management Manager to assign and the Legal Department instructed to complete this change to the S106 agreement*".
- 2.7 Therefore in the circumstances, to avoid any potential legal challenge of the decision, this matter has been referred back to Members of the Planning Committee to seek clarification as to how members would like to allocate the money (i.e. whether they would like the money to be spent on off-site affordable housing &/or Public Open Space &/or Education which were the three Heads of Terms) before providing the Planning Solicitor with further instructions to complete the agreement.
- 2.8 I can confirm that Education Services at Devon County Council have been contacted following the resolution of Members on the 1<sup>st</sup> December to accept changes to the S106 agreement in order to provide the most up to date information relating to education requirements in Tiverton. Members will be updated on this information prior to Planning Committee in order that they have all the information at hand to make a decision on allocation of the monies from this development.
- 2.9 It is the view of Officers that the £23,000 should be allocated to off-site affordable housing provision which would be deemed as a priority for the Council.

Notwithstanding this Members can consider if the financial contribution should go towards the provision of a new play area garden at the entrance to Amory Park, a financial contribution towards the provision of additional primary education facilities, an off-site affordable housing provision contribution or a split between the two or three Heads of Terms. Alternatively, this could be delegated to the Interim Development Management Manager to assign and the Legal Department instructed to complete this change to the S106 agreement.

**Contact for any more information**

Mr Adrian Devereaux, Area Team Leader  
01884 234267

**Background Papers**

Committee Report

**File Reference**

16/01707/MOUT

**Circulation of the Report**

Cllrs Richard Chesterton  
Members of Planning Committee

[Attach previous Committee report](#)