

**PLANNING COMMITTEE**  
**29<sup>TH</sup> MARCH 2017**

**REPORT OF MRS JENNY CLIFFORD, THE HEAD OF PLANNING AND REGENERATION**

**VARIATION OF S106 AGREEMENT: 13/01616/MOUT OUTLINE FOR THE DEVELOPMENT OF UP TO 330 DWELLINGS TOGETHER WITH PUBLIC OPEN SPACE, ASSOCIATED INFRASTRUCTURE AND OTHER WORKS INCLUDING VEHICULAR ACCESS, PEDESTRIAN /CYCLE LINKS AND HIGHWAY IMPROVEMENT, LAND AT NGR 298671 113603, UPLOWMAN ROAD, TIVERTON**

**Cabinet Member**  
**Responsible Officer**

Cllr Richard Chesterton  
Mrs Jenny Clifford, Head of Planning and Regeneration

**Reason for Report:** To consider proposed changes to the S106 agreement entered into in relation to this planning permission.

**RECOMMENDATIONS:**

- 1. That clause 2.5(a) within agreed terms of the S106 be amended to require to no more than 260 dwellings (rather than 200) be occupied until the traveller pitches have been constructed and are ready for occupation in accordance with the traveller pitch scheme;**
- 2. That the timing of payments of the financial contributions within the S106 be amended in accordance with the changes requested;**
- 3. That the agreed terms of the S106 be amended to discharge market housing developers from all affordable housing requirements upon the completion of the Council's land purchase of part of the site.**

**Relationship to Corporate Plan:** The Corporate Plan 2016-2020 establishes priorities around the delivery of economic growth including housing provision, business development and planning for and enhancing the built environment. The Tiverton Eastern Urban Extension is a strategic mixed use land allocation within the adopted Local Plan, the delivery of which is vital to realising the Council's spatial strategy. This planning permission related to up to 330 dwellings on the north eastern part of the site.

**Financial Implications:** The proposed changes to the S106 affect the timing (not amount) of some of the financial contributions secured through the S106 agreement.

**Legal Implications:** Any agreed changes to the S106 will result in the signing of a supplemental agreement.

**Risk Assessment:** The implications of making changes to the s106 agreement must be considered in assessing whether they are acceptable or not. Such implications might be on the

prospect of development and associated infrastructure or mitigation measures coming forward and their timing in relation to the overall development. Additionally it must also be considered whether any S106 clauses are currently frustrating progress in the delivery of development on the site

**Consultation carried out with:** See consultation section.

## **1.0 BACKGROUND.**

- 1.1 Outline planning permission for up to 330 houses was granted on 18<sup>th</sup> September 2015 under the reference number 13/01616/MOUT following a resolution at a meeting of Planning Committee.
- 1.2 Since the grant of planning permission, discussions have been ongoing with the applicant over the delivery of dwellings on this site together with preparatory works for the submission of reserved matters. A future reserved matters application is not expected to be submitted by the outline applicant, but rather would be by a developer.
- 1.3 A request was received from the applicant on the 1<sup>st</sup> March 2017 for aspects of the S106 to be amended.

## **2.0 PROPOSED AMENDMENTS TO THE S106 AGREEMENT.**

### **2.1 GYPSY AND TRAVELLER PITCH PROVISION.**

- 2.1.1 The existing S106 agreement in connection with this application requires the provision of three traveller pitches and that unless agreed otherwise in writing by the Council not more than 200 dwellings on the site be occupied until the traveller pitches have been constructed and are ready for occupation in accordance with a traveller pitch scheme. Note: reference to traveller pitches includes gypsy and traveller.
- 2.1.2 Since the grant of planning permission, the provision of the required traveller pitches has been the subject of further discussions that are ongoing. There is a requirement on the whole of the Tiverton Eastern Urban Extension for the provision of at least five pitches which are considered part of wider affordable housing. The three pitches proposed as part of this application are indicated within the adopted masterplan supplementary planning document for the site near the north-eastern corner of the site to the north of Uplozman Road. This area of the site is expected to be in the last phases that will be reached by services and roads. 260 dwellings would be expected to equate with the capacity of the area of the site south of Uplozman Road.
- 2.1.3 The applicant not seeking to revise the provision of the pitches, but rather the timing of them in relation to the occupation of housing on this site. The request is to allow no more than 260 dwellings rather than 200 to be occupied before the traveller pitches are constructed and ready for occupation. This slightly delays pitch provision in relation to housing. The final 70 dwellings would come forward after the pitches.

### **2.2 TIMING OF S106 FINANCIAL CONTRIBUTIONS.**

- 2.2.1 The payment amounts to be secured via the S106 agreement have not changed, however the timing of the payments are proposed to be amended. This is in part to

ensure shifting the timing of housing in relation to traveller pitch provision does not prejudice the payment of these financial contributions and to also aid cashflow in relation to anticipated house sales. The existing requirements in relation to those proposed is set out in the table attached as **Appendix 1** to this report. The changes would mean that the first phase of financial contributions to mitigate the impact of the development will be made to MDDC / DCC respectively earlier than provided for in the existing S106 agreement. DCC is satisfied with the revised timing of financial contributions relating to any of interest to it: highways / transport and education. **Appendix 1** indicates that as proposed, £3.97m of financial contributions would be made prior to 150 dwellings with the balance of £1.55m being made prior to 225 dwellings.

- 2.2.2 The phasing of the highway contributions towards the A361 junction is also proposed to change from relating to key dates from the commencement of development, to relate to the occupation of numbers of dwellings. DCC is satisfied with this.

## **2.3 AFFORDABLE HOUSING.**

- 2.3.1 This Council proposes to be the affordable housing provider on this site, with market housing provision by other developers. Aspects of affordable housing provision on this site were considered by Planning Committee at the meeting of 6<sup>th</sup> July 2016 where it was resolved as follows:

- i) That subject to the Council remaining the affordable housing provider, the agreed terms of the S106 be amended to allow 21.5% affordable housing together with a financial contribution towards affordable housing of £120,000 which will be delivered through a reduction in the cost of the land to the Council.
- ii) That the agreed terms of the S106 be amended to discharge market housing developers from all affordable housing requirements upon the completion of the Council's land purchase of part of the site and the grant to the Council of reserved matters or full planning permission for the affordable housing.
- iii) That subject to the agreement of recommendation 2 above and the Council remaining the affordable housing provider, the agreed terms of the S106 be amended to allow the open market housing to be constructed and occupied independently of the delivery of the affordable housing.

Amendment is sought to the second of these resolutions.

- 2.3.2 It is proposed that land for the affordable housing be transferred to MDDC and that that all affordable houses are constructed by the Council. The provision of affordable housing and their timing will remain within the Council's control. As currently resolved at 2 above, the market housing developers are discharged from all affordable housing requirements upon i) the completion of the Council's land purchase, and ii) the grant to the Council of reserved matters or full planning permission for the affordable housing. It is now proposed to delete the second part of this such that the discharge of all affordable housing requirements upon market housing developers occurs on the completion of the Council's land purchase only.
- 2.3.3 As currently drafted, there is no certainty for market housing developers of the timing of the discharge of their affordable housing requirements as it depends upon the timing of this Council's planning permission. This uncertainty is hindering the purchase of the land

by market housing providers and their formulation of reserved matters application proposals: there is currently no clarity on whether they will have a 100% market housing site or whether the 22.5% affordable housing will be required. The Council's land purchase is also being held up by this issue. The Housing Service welcomes this proposed change.

- 2.3.4 If the Council does not complete the land purchase, the affordable housing requirements will still revert back to the market housing developers.
- 2.3.5 A second change sought to the affordable housing clause in the S106 in the event that the Council were not to be the affordable housing provider. In this event, due to the proposed phasing of the development, variation is sought over the timing of market / affordable housing provision.

As currently agreed: not more than 50% of open market dwellings to be constructed as part of the development are to be occupied until all the affordable is constructed and occupied and transferred to an affordable housing provider. (No more than 127 market before 75 affordable dwellings).

The change sought by the applicant would allow 75% of open market dwellings to be occupied. (No more than 191 market before 75 affordable).

This would set back affordable provision such that it would only all be occupied after the majority of market dwellings were constructed. It would also increase the risk of development of market dwellings stopping before the number at which the affordable dwellings would be required. This does not therefore form one of recommended changes to the S106 agreement.

### **3.0 CONSULTATION.**

- 3.1 In accordance with procedure, the Chair of Planning Committee, Ward Members and Town Council have been advised of the requested changes to the S106 and given 14 days to respond with comments. In addition, the views of other interested parties including relevant statutory consultees have been sought.
- 3.2 Where views have been received, they are referred to in the body of this report. Committee will be advised verbally of any further comments received following the publication of this report.

#### **Contact for any more information**

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#### **Background Papers**

Planning Committee 6<sup>th</sup> July 2016

#### **File Reference**

13/01616/MOUT

#### **Circulation of the Report**

Members of the Planning Committee

Item	Amount gross	Council	Payment terms CURRENT	Prior to 200 dwellings	After 200th dwelling	Payment terms PROPOSED	Prior to 150 dwellings	Prior to 225 dwellings	Total
Blundells Road Calming	£ 434,211.00	DCC	On or before commencement of development	£ 434,211.00	£ -	On or before commencement of development	£ 434,211.00		£ 434,211.00
Bus vouchers	£ 82,500.00	DCC	On occupation	£ 49,750.00	£ 32,750.00	On occupation			£ 82,500.00
Community Facilities Contribution	£ 651,090.00	MDDC	1/3 before each of 100, 200 & 300 dwellings	£ 217,030.00	£ 434,060.00	1/2 before each of 150 & 225 dwellings	£ 325,545.00	£ 325,545.00	£ 651,090.00
Cycle / Footway Enhancement Contribution	£ 162,829.00	DCC		£ -	£ 162,829.00	1/2 before each of 150 & 225 dwellings	£ 81,414.50	£ 81,414.50	£ 162,829.00
Cycle Voucher	£ 16,500.00	DCC	On occupation	£ 9,950.00	£ 6,550.00	On each occupation			£ 16,500.00
Education Land Contribution	£ 300,000.00	DCC	Prior to 200 dwellings	£ -	£ 300,000.00	1/2 before each of 150 & 225 dwellings	£ 150,000.00	£ 150,000.00	£ 300,000.00
Golf Course Contribution	£ 125,000.00	MDDC	Before commencement of development	£ 125,000.00	£ -	Before commencement of development with no financial contribution from Tiverton GC.	£ 125,000.00		£ 125,000.00
Highway Works Contribution PAID	£ 100,000.00	DCC	Within 3 months of PP being granted	£ 100,000.00	£ -	Within 3 months of PP being granted	£ 100,000.00		£ 100,000.00
Highway Works Contribution	£ 559,210.50	DCC	On or before commencement of development	£ 559,210.50	£ -	6 months from commencement	£ 559,210.50		£ 559,210.50
Highway Works Contribution	£ 359,210.50	DCC	On or before 6 months from the Commencement Date	£ 359,210.50	£ -	50th dwelling	£ 359,210.50		£ 359,210.50
Highway Works Contribution	£ 359,210.50	DCC	On or before 12 months from the Commencement Date	£ 359,210.50	£ -	75th dwelling	£ 359,210.50		£ 359,210.50
Highway Works Contribution	£ 359,210.50	DCC	On or before 18 months from the Commencement Date	£ 359,210.50	£ -	125th dwelling	£ 359,210.50		£ 359,210.50
Primary Education Contribution	£ 1,086,356.00	DCC	Prior to 200 dwellings	£ -	£ 1,086,356.00	1/2 before each of 150 & 225 dwellings	£ 543,178.00	£ 543,178.00	£ 1,086,356.00
Public Transport Enhancement Contribution	£ 238,816.00	DCC	1/2 before each of 200 & 300 dwellings	£ -	£ 238,816.00	1/2 before each of 150 & 225 dwellings	£ 119,408.00	£ 119,408.00	£ 238,816.00
Roundabout Works Contribution	£ 119,480.00	DCC	Prior to occupation	£ 119,480.00	£ -	100th dwelling	£ 119,480.00		£ 119,480.00
Secondary Education Contribution	£ 675,829.00	DCC	Prior to 200 dwellings	£ -	£ 675,829.00	1/2 before each of 150 & 225 dwellings	£ 337,914.50	£ 337,914.50	£ 675,829.00
Traveller Pitches			Prior to 200 dwellings		£ -	Prior to 260 dwellings			£ -
Sub totals				£ 2,692,263.00	£ 2,937,190.00		£ 3,972,993.00	£ 1,557,460.00	
Totals	£ 5,629,453.00			£ 5,629,453.00					£ 5,629,453.00