

PARISH Hodthorpe and Belph Parish

APPLICATION Variation of the wording of S106 Planning Obligations agreed for Outline planning permission 14/00518/OUT relating to the community facilities contribution and play area contribution

LOCATION Land to the North West of Broad Lane Hodthorpe

APPLICANT Keepmoat Homes

APPLICATION NO. 19/00549/OTHER **FILE NO.**

CASE OFFICER Mr Steve Phillipson

DATE RECEIVED 19th September 2019

SUMMARY

This report relates to an application to vary planning obligations in a completed s.106 legal agreement that is attached to an outline planning permission for residential development in Hodthorpe that was granted by the Planning Committee in 2016 (application no. 14/00518/OUT).

Approved Layout



The outline permission granted under application no. 14/00518/OUT allowed for residential development of up to 101 dwellings and granted outline consent for the erection of a community building on the application site. The existing s.106 legal agreement places a legal obligation on the applicant to provide the approved community building, which should have a floor area of 350sqm and a maximum value of £427,700.

Primarily for viability reasons, the applicant has applied to delete this obligation and is proposing to provide a sum of £50,000 for Hodthorpe and Belph Parish Council. This money would fund a programme of improvements of facilities to Hodthorpe Community Social Club, 147 Queens Road and also for the ongoing maintenance and proper administrative costs involved with the running of Hodthorpe Community Social Club

The applicant also seeks to change the wording in relation to the play space contribution but this is only to clarify that the contribution will be used for a play area on the development site rather than being used on an alternative off-site play space.

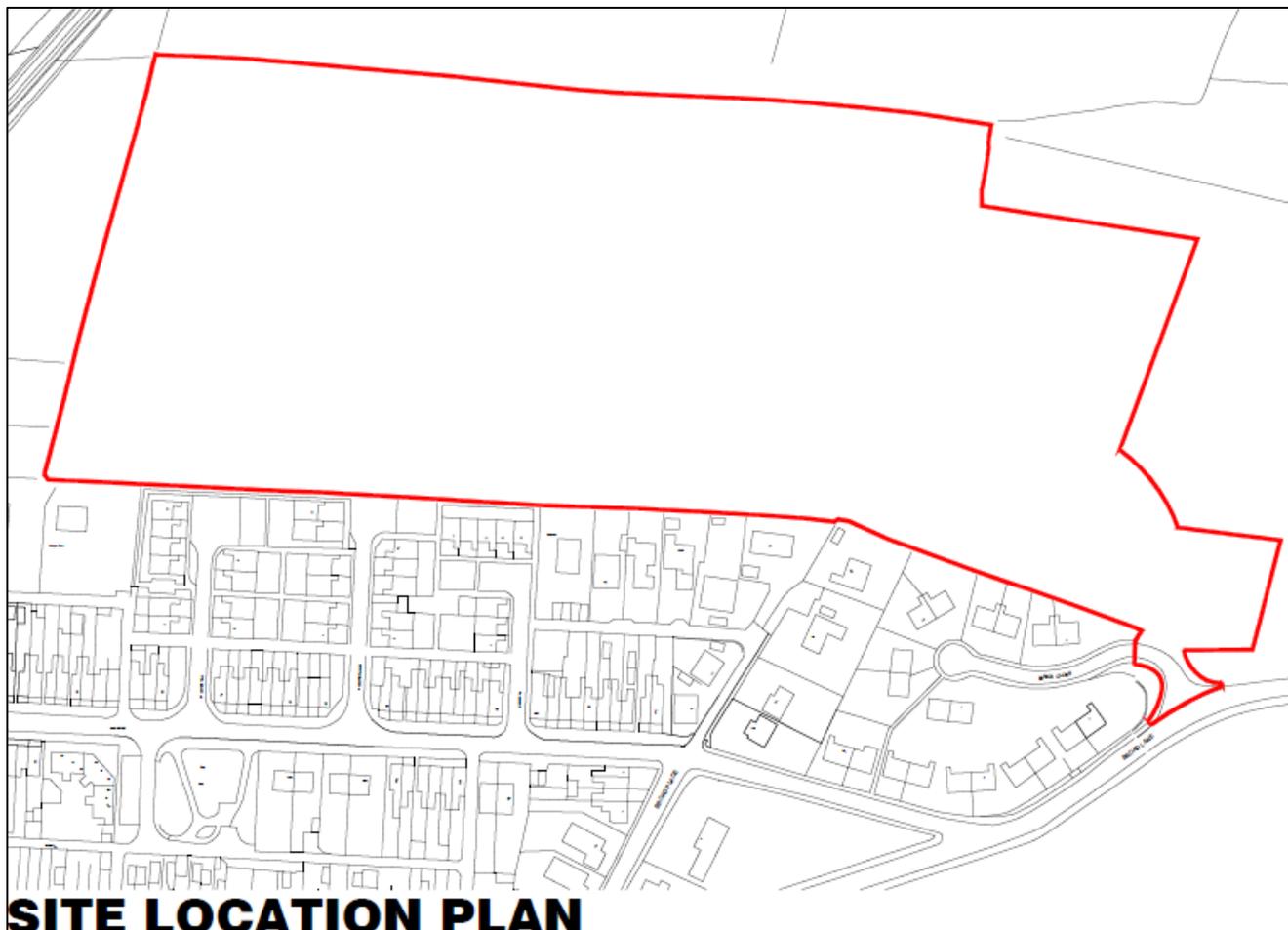
For the reasons set out in the following report, officers are recommending approval of this application. Therefore, the application has been brought to the Planning Committee for a final decision because deleting the requirement for the developer to provide a community building is a significant change from the original approval.

The consequential changes of these proposals to the layout of the approved housing development is considered in more depth in the parallel application for approval of reserved matters, which is also being brought to the Planning Committee for a final decision.

OFFICER REPORT ON APPLICATION NO. 19/00549/OTHER

APPLICATION SITE

Approximately 5.5ha site on fields adjacent to the north side of the village of Hodthorpe.



BACKGROUND

Outline planning permission (Ref 14/00518/OUT) for residential development of up to 101 dwellings and a community building up to 350 sq. m. and details of the access into the site was approved by the Council on 29/02/16.

At that time the Council did not have a five year housing supply and so although approval of development outside the settlement framework was contrary to development plan policy, the “tilted balance” and the presumption in favour of sustainable development in the National Planning Policy Framework (the Framework) applied. The Applicant was able to demonstrate that the development would be sufficiently sustainable and this led to the application being approved.

A factor to be taken into account when considering the sustainability of a site is whether or not

there is sufficient local and social infrastructure to support the extra demands from the new development. If not whether the infrastructure issues can be resolved by S106 agreement such that the development will pay for the necessary expansion of services and infrastructure.

In this case the Applicant proposed to fully meet policy requirements in the following respects (sums index linked):-

- Children's play at £75,447
- Adult recreation at £89,688
- Public art £99,384
- 10% affordable housing on site (even though an interim exemption could have been applied at that time waving the affordable requirement in return for market housing delivery by set deadlines).

In addition, the Applicant voluntarily included an obligation to provide a community building 350sqm area, to be provided by the developer to value not exceeding build cost £1,222/sqm (max value £427,700).

The S106 includes a requirement to use reasonable endeavours to enter into an agreement with the Parish Council for the transfer of a new community building to them, if they want it, and to ensure that it could only ever be used for community uses. Provided that the transfer agreement is in place, the Owner would then submit an application for approval of reserved matters for the community building. The community building was to have been provided before 70 of the market dwellings were occupied.

At the time the outline application was determined the Planning Officer's report to Planning Committee contained the following advice:-

"The Applicant is also offering to build a new community building of 350 sqm in area. Whilst on the face of it this may seem to be a benefit in favour of the proposal. The Council does not have a policy to require this, neither has it been established that there is a need for such a building nor is it necessary to make the application acceptable in planning terms and there is no indication that it would be a viable facility for the short to medium term. As such it fails the tests for planning obligations and no weight can be given to this element of an agreement.

Furthermore, whilst the Applicant may have every intention of delivering this building at this moment in time, in the event that a future developer were to seek to remove this obligation from a S106 undertaking the Council would have to agree to it. As such we cannot be certain whether this facility would ever be provided."

The Applicant now seeks to amend the S106 obligation for a community building.

PROPOSAL

A housing developer is now interested in developing the site. They have submitted application for approval of reserved matters (19/00113/REM) which is also on this agenda.

The Applicant seeks to alter the wording of the original S106 to omit the requirement to

provide a community building on the development site. Instead the Applicant now proposes to provide a sum of £50,000 for Hodthorpe and Belph Parish Council primarily for a programme of improvements of facilities to Hodthorpe Community Social Club, 147 Queens Road and also for the ongoing maintenance and proper administrative costs involved with the running of Hodthorpe Community Social Club.

The Applicant also seeks to change the wording in relation to the play space contribution but this is only to clarify that the contribution will be used for a play area on the development site rather than being used on an alternative off-site play space. This was always an option as the original S106 was written.

(The full wording of the original S106 obligation can be seen on the planning pages of the Council’s website under application reference 14/00518/OUT, and the full wording of what is now proposed on the draft Deed of Variation can be seen on reference 19/00549/OTHER).

For information, the layout from 19/00113/REM is shown below and housing is now proposed on the site originally ‘ear marked’ for the community building:



CONSULTATIONS

Parish Council – No response to date

Leisure Officer - No response to date

PUBLICITY

Site Notice posted. 70 residents notified.

One objection received on grounds that Hodthorpe has limited access to key services.

POLICY

Bolsover District Local Plan (“the adopted Local Plan”)

None relevant

Publication Version of Bolsover District Local Plan (“the emerging Local Plan”)

Policy ii1: Plan Delivery and the Role of Developer Contributions

Allows S106 contributions to be sought, including for community facilities, where an up-to-date Infrastructure Delivery Plan has identified infrastructure types to be necessary and relevant. There is not an identified need for a new community building in Hodthorpe.

National Planning Policy Framework

The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied. The Framework is therefore a material consideration in the determination of this application and policies in the Framework most relevant to this application include:

Para 56. (Which reflects the requirements of the CIL Regulations)

Planning obligations must only be sought where they meet all of the following tests:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

Other

Community Infrastructure Levy Regulations 2010 (CIL Reg’s 2010)

The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019

Government Guidance on the Community Infrastructure Levy

Government Guidance on the Use of planning obligations and process for changing obligations.

ASSESSMENT

With regard to procedure, there is no formal requirement for the Council to accept an application to change the wording of a section 106 obligation which is less than 5 years old.

However under S106A of the Town and Country Planning Act 1990, a planning obligation may be modified by agreement with the Council.

So whilst the Council does not have to agree to the modification proposed, being a responsible public authority, it should at least consider the application because it is important to ensure that the Council's decisions are reasonable.

Although the alternative offer of £50,000 for the Parish Council to use on improvements and the running of the existing Hodthorpe Community Social Club is potentially less than the value of the original obligation (a building to a cost not exceeding £427,700), the planning officer recommendation is to agree to the change in wording and to the alternative offer. The reasons for this are set out below.

It was made clear to Planning Committee at the time the outline permission was determined, that no weight could be given to the offer of a community building in the planning balance when the decision was made to grant planning permission (see extract of officer report above in italics). This obligation failed the tests set out in the Framework and the CIL Regulations because it was not necessary to make the development acceptable in planning terms.

Since the Committee gave no weight to the provision of the community building in their decision making process it is considered that it would be unreasonable to now insist that it is provided. Furthermore there is no evidence to show that the Parish Council actually want the building or have the finances in place to run and maintain the building in the future. This is important because the transfer agreement needed with the Parish Council would have prevented it from being used for any other purpose and this would effectively mean that it could not be sold off by the Parish Council.

If the Parish Council were to confirm that they do not want a new community building on site that would effectively release the Applicant from the obligation as it is currently written.

Furthermore, even if the change to the S106 wording is not agreed and the reserved matters proposals did include a community building, and the Parish Council had confirmed that they wanted it and would accept the transfer of it to them for community use; if the developer then failed to comply with the obligation (i.e. did not provide the building) they would have an arguable defence from prosecution in that that the obligation was never lawful because it didn't pass the tests in the Framework or the CIL Regulations 2010.

The changes proposed to the wording of the play space obligation are not considered to be controversial because this is only to clarify that the contribution will be used for a play area on the development site rather than being used on an alternative off-site play space. This was always an option as the original S106 was written.

Having regard to the above it is recommended that the Council agrees to the change in wording proposed.

RECOMMENDATION

The proposed changes to the wording of the S106 obligation for outline planning permission 14/00518/OUT are approved by the Planning Committee and the draft deed of variation be signed and completed by the Council with the effect of:

- A. deleting the original obligation to provide a community building;**
- B. adding an additional obligation to provide a commuted sum for use on the existing Hodthorpe Community Social Club; and**
- C. to vary the obligation to provide an on-site play area.**

Statement of Decision Process

Officers have worked positively and pro-actively with the applicant to address issues raised during the consideration of the application to promote and encourage delivery of housing on the application site.

Equalities Statement

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (i.e. “the Public Sector Equality Duty”).

In this case, there is no evidence to suggest that the development proposals would have any direct or indirect negative impacts on any person with a protected characteristic or any group of people with a shared protected characteristic. However, the proposed contribution towards the existing community centre would offset the potential loss of a new building that is unlikely to be built due to viability reasons.

Human Rights Statement

It is not considered that a decision on this application would engage the specific Articles of the European Commission on Human Rights (‘the ECHR’) relevant to planning including Article 6 (Right to a fair and public trial within a reasonable time), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).