

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

REFERENCE NO - SW/14/0399			
APPLICATION PROPOSAL Modifications to the S106 Agreement including removal of all financial payments apart from Primary and Secondary education contribution; deferral of payments to the end of the residential development programme; change to the phasing to bring the residential component forward; and a reduction in the provision of affordable housing to 10% intermediate provision.			
ADDRESS Old Sittingbourne Mill And Wharf, Sittingbourne (Morrisons), Kent, ME10 3ET			
RECOMMENDATION Modify S106 Agreement as requested			
SUMMARY OF REASONS FOR RECOMMENDATION The applicant has been able to demonstrate that the scheme is not viable with all of the obligations as set out within the original Section 106 agreement.			
REASON FOR REFERRAL TO COMMITTEE Significant changes to the Section 106 Agreement requiring consideration by elected Members.			
WARD Chalkwell	PARISH/TOWN COUNCIL N/A	APPLICANT Essential Land AGENT BPTW Partnership	
DECISION DUE DATE N/A	PUBLICITY EXPIRY DATE N/A	OFFICER SITE VISIT DATE N/A	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date

SW/11/0159	Hybrid application seeking; outline planning permission (Phases 3,4 & 5) for up to 1,200sqm of leisure use floorspace, 250sqm of community floorspace, 150 residential units, in buildings ranging from 2 to 4 storeys in height, together with car and cycle parking; and incorporating detailed planning permission (Phase 1) for a retail food store of 6,682sqm, petrol filling station of 72sqm together with associated landscaping, car	Granted planning permission subject to Section 106 agreement	08.02.2012
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	and cycle parking & full landscaping detail for new parkland areas (Phases 2 & 3).		
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MAIN REPORT

1.0 INTRODUCTION

1.01 Members will recall that this proposal was reported to the planning committee on 18th September 2014 and 30th October 2014. The reports are appended (A and B respectively). When the proposal was reported to the October planning committee, Officers were in a position to confirm that, following an independent assessment, it was not viable for the developer to pay all of the contributions and provide all of the affordable housing required under the original Section 106 agreement for SW/11/0159. Members are asked to refer to paragraph 9.03 of the report at appendix B which sets out the revised offer put forward by the developer. Members should though note that there was an error in reference to the % of affordable housing which should have read 3.33% and not 7.5%. It should be made clear at this stage that the developer has taken a significant cut in his profit from 20% to 15% and that Officers had previously accepted 20% profit as a reasonable level to expect from the development of this type in this location. The developer could have reasonably withdrawn any offer of affordable housing and/or other developer contributions. Instead the developer has reduced his profit, essentially as a good-will gesture. Members are therefore strongly urged to accept the offer in front of them at the risk of the developer withdrawing it completely.

1.02 At the last Planning Committee meeting held on 30th October 2014, Members resolved that the proposal be deferred to allow officers an opportunity to address the points raised by Cllr Whelan with the developer and the party spokespersons ,the Planning Chair and the Portfolio Holder for Planning.

2.0 PROPOSAL

2.01 The proposal is to modify an existing Section 106 Agreement that was signed as part of the hybrid planning application as described above (SW/11/0159). See paragraph 9.03 of the Report attached as Appendix B for full details of the revised offer from the developer.

2.02 The applicant has submitted an Economic Viability Appraisal Report which tests the viability of the proposed housing development and seeks to demonstrate that the required modifications are necessary in order that the housing can be built out.

3.0 SUMMARY INFORMATION

3.01 See above.

4.0 PLANNING CONSTRAINTS

Archaeological Sites YES

Flood Zones Flood Zone 3

Flood Zones Flood Zone 2

Swale Borough Local Plan 2008 AAP8 - Area Action Plan - land around Milton Creek

Swale Borough Local Plan 2008 H2 - Providing for New Housing

Swale Borough Local Plan 2008 H5 - Housing Allocations

Swale Borough Local Plan 2008 B2 - Providing for New Employment

Swale Borough Local Plan 2008 H6 - Sites within Existing Built-Up Areas

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG) – Planning Obligations.

Development Plan:

Swale Borough Local Plan 2008 – Policies E1, C2 & C3

Supplementary Planning Documents:

Developer Contributions 2009.

6.0 BACKGROUND PAPERS AND PLANS

6.01 Draft modified Section 106 Agreement and confidential Economic Viability Appraisal Report.

7.0 APPRAISAL

7.01 The appraisal section in the appended reports sets out in detail the key areas of consideration. I will therefore focus on addressing the comments by Cllr Whelan at the Planning Committee held on 30th October 2014.

7.02 Firstly, there is concern that the development does not now address the needs of the community but instead is governed by the 'profit margins being demanded by...the developer'. The reality is that the developer must make a profit on a development in order for it to be worthwhile to proceed with it. A 15% profit is a significant reduction from the 20% profit originally sought and it is my strong view that a 15% profit is

entirely reasonable for this site and is commonly seen as a very low profit level for development on brownfield land. This council and the community is, in my view, getting a very good deal from the offer presented by the developer. As noted above, the developer could quite reasonably withdraw his offer completely leaving the community with no contributions. This would obviously not be desirable and Members are urged to give due consideration to the positive contribution that this development, through the money offered, affordable housing and also through the provision of much needed housing on a key town centre site would make.

7.03 The competence of the developer's Quantity Surveyor (QS) has been questioned owing to the fact that they increased their estimated construction costs after visiting the site. Officer's do not question the competence of the developer's QS and moreover, all figures have been independently reviewed by the Council's own consultant. Members can be reassured that the viability appraisal submitted by the applicant has been robustly appraised.

7.04 Cllr Whelan requests the following changes to the proposed offer:

- Require the submission of the car parking management plan before the commencement of development;
- The linear park, green spaces and tree planting should be carried out at the start of the housing development. This is to provide a buffer between the residents of Charlotte Street and the development and;
- The leisure building, heritage building and waterside park should be provided in view of the reduction in affordable housing and the commitment from the start.

7.05 With regards to the car parking management plan, this is likely to be drawn up by the management company charged with the management of the common areas of the housing estate. Such a management company would be unlikely to be appointed prior to the development commencing and is more likely to be appointed once the houses are being occupied. The submission of the car parking management plan should be allowed once the development is being used in my view. This will allow the management company assess the parking issues, if any, within the housing estate and respond appropriately.

7.06 Members should be clear that the linear park would not provide a buffer between the residents of Charlotte Street and the housing development. The linear park was always intended to provide a buffer between the new housing estate and the Morrisons development. The provision of the linear park is required to be provided under the terms of the planning permission as well as the Section 106 agreement. It is not only 'buffer land', it is also the open space provision for the development. The developer cannot complete the linear park during construction as they need to use some of the land as a site compound. The developer will still be obligated to provide the linear park and this Council has powers of enforcement if it is not fully completed. As set out at 9.08 of the report at Appendix B, condition (39) of the planning permission (SW/11/0159), gives the Council control of the delivery of the linear park relative to the housing. The developer has explained that they cannot complete the linear park prior to construction the housing. The drainage from the different phases of the housing development would run, at regular intervals, into a main drain running underneath the linear park. Due to the significant expense of the drainage, it can only be put in place

in conjunction with each phase of the housing development. Therefore if the park were completed before the housing is constructed, all of the landscaping would have to be dug up at each drainage interval. This would be both impractical and expensive. I have asked the developer to provide more detailed information on the likely phasing of the housing development and how this will dictate the delivery of the linear park. Members may wish to give officers delegation to agree a timetable for the delivery of the linear park which would correlate with the phasing on the housing. I will update members at the meeting on this issue. Members may also be comforted to know that the developer is willing to erect a hoarding along Charlotte Street during construction in order to minimise disruption to the residents of this road, as well as for health and safety reasons.

7.07 The provision of the leisure building and heritage building was never required, under the existing section 106 agreement, to be developed prior to the housing. For clarity, Members will note that the requirements of the original S106 are set out a 2.02 of the report at Appendix A. With any development involving different buildings under the same planning application, there is no requirement to 'complete' the development i.e. build all of the buildings. This is unless there is a legal requirement to do so and there would have to be sound planning reasons for this, which I do not consider to be present in this case. However, it is still quite possible that the developer will proceed with the development of the leisure building and waterside park.

7.08 It is of course regrettable that the development is potentially not going to be built-out as envisaged under the original hybrid planning application SW/11/0159. However, the Morrisons development and housing development did not rely on the development of the leisure building, waterside park and heritage building to be acceptable in planning terms. I am of the view that the Morrisons and the housing development alone enhance Sittingbourne economically and socially and in this respect, I do not consider that the result for the Sittingbourne community is a negative one. Moreover, part of the waterside park has planning permission for a skate park and it is quite possible that other development will come forward on the remaining land in the near future. Members are also asked to give some consideration to the future planning application for the regeneration of Sittingbourne Town Centre which would offer a leisure use in the middle of the town.

7.09 The wording of the modified Section 106 agreement will need to be scrutinised by the Council's Legal team and I anticipate that this will happen once Members have resolved to agree to this modification proposal.

8.0 CONCLUSION

8.01 Members are asked to consider the modification of the Section 106 Agreement for SW/11/0159. The details of this application are set out above and within the appended reports A and B. The modification of the agreement would see a substantial reduction in the financial contributions received by the Council, a reduction in affordable housing, altered phasing, deferred payment and a review mechanism for the payment of a Heritage Initiatives Contribution/affordable housing. I ask Members to accept the following:

1. that the phasing should be altered in line with the applicant's request;

2. a phased payment of the education contributions.

Members are asked to make a resolution on:

3. whether a review mechanism should be used for the Heritage Initiatives Contribution (£215,000.00) or whether a review mechanism should instead be used to consider whether there is any further potential for an increase in affordable housing;
4. the percentage of affordable housing required with acknowledgement that this will result in the reduction of the education contribution;
5. the percentage of social rented accommodation within the agreed affordable housing provision.
6. The acceptance of all other elements of the offer.

9.0 RECOMMENDATION –

9.01 Members are asked to agree to the modified Section 106 as set out at paragraph 9.03 above and to give Officer's delegation to finalise the wording of the modified Section 106 agreement in consultation with the Council's Legal Officer. Member's agreement is sought to points 1-2 above and their resolution on points 3-6 above.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

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APPLICATION PROPOSAL			
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MAIN REPORT

2.0 DESCRIPTION OF SITE

1.01 The application site for the planning application to which the Section 106 Agreement relates, totals 7.79ha and comprises of a large area of land, 225m to the northwest of Sittingbourne town centre High Street and 131m from Sittingbourne Railway Station. The site is separated into two distinct parts by Mill Way. To the south and west of Mill Way is the mill site that formally had a myriad of industrial buildings upon it, some dating back to the 19th Century. Much of this land is now occupied by the Morrisons foodstore and Petrol Filling Station. To the north and east of Mill Way is the wharf site located at the head of Milton Creek. This land is long and irregularly shaped and abuts the creek to the north, Sittingbourne Retail

Park to the south and commercial buildings to the west. Part of the SKLR, including the ticket office, runs through the wharf site. There has been no development of the Wharf site so far but a Skate Park is planned for half of the waterside park area under SW/14/0023. Members resolved to grant planning permission for the skate park subject to ecology and flood risk issued being resolved.

1.02 A large proportion of the wharf site lies within Flood Zones 1, 2 and 3. The wharf site lies 2.07km from the closest SSSI, SPA and Ramsar site and lies within the SSSI consultation zone.

1.03 Neither the mill site, nor the wharf site, are allocated for a specific use in the Swale Borough Local Plan 2008 proposals map and the mill site is excluded from the Masterplan area as defined by the Sittingbourne Town Centre and Milton Creek Supplementary Planning Document (2010).

1.04 The housing part of the development was granted outline permission only with landscaping and appearance to be agreed under a future reserved matters application. This reserved matters application is expected to be submitted within the next few months.

2.0 PROPOSAL

2.01 The proposal is to modify an existing Section 106 Agreement that was signed as part of the hybrid planning application as described above (SW/11/0159). The modifications would see the removal of all financial payments apart from the Primary and Secondary education contributions; deferral of payments to the end of the residential development program; change to the phasing to bring the residential component forward; and a reduction in the provision of affordable housing to 10% intermediate provision.

2.02 The requirements of the existing 106 agreement are as follows:

Phase 1 – Morrison’s food store (built and all required money paid)

Bus stop contribution - £20,000

CCTV 25% of total contribution of £80,000

Green Travel plan fee £5000

Town Centre Pedestrian Improvements contribution £100,000

Section 278 agreement inc. £22,000 for pedestrian link improvement.

Milton Street Railway Bridge Maintenance £8000 prior to occupation of phase 1.

£27,750.05 = 5% monitoring fee.

Local labour agreement.

Phase 2 – Mill site public realm (linear park between Morrison’s and housing site)

On commencement submit strategy for management of the public realm.

Phase 3 – leisure building and waterside park

CCTV 75% of total contribution upon completion of phase 3.

Heritage Initiative contribution £225,000 – within 12 months of completion of phase 3 (but only if heritage building not provided).

10 working days prior to commencement of phase 3, off-site public right of way contribution £9000

Waterside Park maintenance contribution **£88,113** upon completion.

Phase 4 – Housing

Affordable housing – **45 units provided (30% of the total). 32 as social rented and 13 as intermediate.** Not more than 50% of open market housing to be occupied until the affordable housing has been transferred to social housing provider. **All to be lifetime homes.**

20% of open market housing as lifetime homes.

Car park management plan 28 days prior to commencement.

Primary School contribution £237,276.48 **prior to occupation of 1st resi unit**

Secondary school contribution £237,159.90 **prior to occupation of 1st resi unit**

Youth services contribution £32,034.38 prior to occupation of 1st resi unit

Library contribution £34,050 prior to occupation of 1st resi unit.

Submit and implement green travel plan.

Submit schedule of works to the Laburnum underpass on commencement and carryout the works prior to occupation of phase 4.

Wheeled bins £12,369 prior to occupation of phase 4.

£27,750.05 =50% of monitoring fee on commencement of phase 4.

Submission of schedule of works to improve the Laburnum Road underpass.

Phase 5 – heritage building.

If built then Heritage building contribution £39,000

Total contribution = £1,110,002.30

Monitoring fee **5% = £55,500.115**

All contributions index linked.

2.03 The applicant has submitted an Economic Viability Appraisal Report which tests the viability of the proposed housing development and seeks to demonstrate that the required modifications are necessary in order that the housing can be built out. Members should note that Officers have agreed that the viability assessment can be confined to the housing site only and does not need to take account of the leisure building in terms of its ability to 'add value' to the scheme. The advice from our independent assessor is that it is reasonable to allow the viability assessment on just the housing part of the scheme. This is primarily because the leisure building and the housing development are quite separate in terms of their physical location and the fact that they do not rely on each other to be acceptable in planning terms. Also, the financial returns from the Morrisons part of the hybrid application should not now be considered in my view for the same reasons as noted above and in addition, it could be argued that the Morrisons part of the application has already contributed significant sums by way of section 106 monies (detailed above under phase 1).

2.04 The proposed modified S106 agreement would require the following:

Phase A – residential units

Affordable housing – 10% = 15 units. Intermediate only. Not more than 50% of the open market houses occupied until the affordable housing provided.

Car parking management plan submitted 28 days prior to completion of housing phase.

Primary and Secondary education contributions - £237,276.48 & £237,159.90 respectively. 50% paid upon 25% occupation and 50% paid upon 75% occupation.

Submission of a Green Travel Plan and implement prior to occupation of housing phase.

Monitoring fee - £10,000 10 working days prior to commencement of development.
Submission of schedule to improve the Laburnum Road underpass and £10,000 towards CCTV covering the underpass.

Phase B – Mill site public realm (linear park)

Upon practical completion, submit a strategy for the management of the land and clause to ensure that the footpath/cycle path is retained for public use.

Phase C – leisure building and waterside park

Prior to occupation of leisure building/waterside park, hand-over process for waterside park initiated.

Payment of waterside park maintenance contribution upon completion of phase C. (Members should note that the suggested draft S106 agreement does not put a figure on the 'waterside park maintenance contribution and as such, this requires further clarification).

Phase D – museum and heritage building

Submission of a new viability assessment, following the last occupation/sale of the last residential unit. If the Council and 'owner' agree that there is 'reasoned justification' for the payment of a sum by way of a Heritage Initiatives Contribution - £215,000. However, no payment of this sum if the Council and 'owner' agree that the viability assessment does not provide 'reasoned justification' for the payment.

Monitoring fee - £20,000 10 working days prior to commencement of phase D.

In addition, they suggest that the local labour clause is retained insofar as the construction of the development.

2.05 The implications of these modifications are as follows:

2.06 Phasing – the housing would be built before the linear park (buffer between Morrisons and housing site) and waterside park. Members should note that condition 39 of the hybrid planning application SW/11/0159 requires the linear park (mill site public realm phase 2) and the waterside park (phase 3) to be completed prior to the first occupation of the dwellings built as part of the residential phase (phase 4) of the development. This condition would have to be removed or varied in addition to the modifications to the S106 Agreement.

2.07 I have indicated in bold above, those contributions/obligations that would now not be included/reduced or modified within the proposed modified section 106 agreement.

3.0 SUMMARY INFORMATION

3.01 See above.

4.0 PLANNING CONSTRAINTS

Archaeological Sites YES

Flood Zones Flood Zone 3

Flood Zones Flood Zone 2

Planning Category District

Swale Borough Local Plan 2008 AAP8 - Area Action Plan - land around Milton Creek

Swale Borough Local Plan 2008 H2 - Providing for New Housing

Swale Borough Local Plan 2008 H5 - Housing Allocations

Swale Borough Local Plan 2008 B2 - Providing for New Employment

Swale Borough Local Plan 2008 B14 - Neatscourt, Queenborough

Swale Borough Local Plan 2008 H6 - Sites within Existing Built-Up Areas

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG) – Planning Obligations.

Development Plan:

Swale Borough Local Plan 2008 – Policies E1, C2 & C3

Supplementary Planning Documents:

Developer Contributions 2009.

6.0 LOCAL REPRESENTATIONS

6.01 The Swale Museums Group have commented on the proposal. They express their disappointment about the potential loss of the heritage initiatives money. However, they are not surprised that this has happened. They consider that the Section 106 was a 'sweetener' to help the developer get what they wanted. They have put a lot of time and effort into discussing how the heritage initiatives money could be spent. The review mechanism will allow the developer to further reduce the payment without recourse. There are not many opportunities that come along with the potential to help our community. They urge the planning committee to reject the new proposals and look for improve heritage initiatives contributions. If the proposal is allowed, the losers will be Sittingbourne and its community.

6.02 The Sittingbourne Society object to the proposal noting that the changes to the 106 agreement will adversely affect the well-being of the High Street. They are concerned about the way that the iconic mill buildings were destroyed. The new heritage museum would have provided a new home for the Periwinkle Mill remains. They consider that the town is in 'desperate need for a heritage museum' and this may be the last chance to get one.

7.0 CONSULTATIONS

7.01 KCC have asked that the viability assessment is independently reviewed to ensure that the loss of the community contributions is justified. They consider that the alteration to the wording of the obligation to pay the education contributions would leave the council in a vulnerable position in terms of enforcement of the payment. They also note that prior funding of school places is necessary to address the need and that payment after all of the houses are

complete would fail to address this need at the right time. They do however acknowledge that the current requirement to pay the contribution 28 days prior to the first occupation is onerous and would suggest that the payment is amended to 50% upon 25% occupations, with the balance paid upon 50% of occupations. This would accord with the way that they have overcome this issue elsewhere in the County and will enable KCC to implement phased expansion in a timely manner.

7.02 The Open Spaces Manager has not commented.

7.03 The Head of Economic and Cultural Services has not commented.

7.04 The Economy and Community Services Manager has not commented.

7.05 The Head of Housing has not commented.

8.0 BACKGROUND PAPERS AND PLANS

8.01 Draft modified Section 106 Agreement and confidential Economic Viability Appraisal Report.

9.0 APPRAISAL

9.01 The key issues to consider are whether we are in agreement with the findings of the submitted Economic Viability Appraisal; whether the altered phasing of the development would have any detriment to environmental, economic and social factors; whether the deferment of certain payments would be acceptable and; whether the money that is potentially available for 'Heritage Initiatives' should be used for other, perhaps more necessary, community benefits.

9.02 On the first matter of whether this Council should accept the significant reduction in the financial contributions, it is prudent to set out the total reduction. This would equate to approximately £224,560.00 (or £439,560.00 if the Heritage Initiatives Contributions is not paid). In addition, there would be 30 less affordable housing units provided. Due to the significant reduction sought, it is crucial that the independent review of the submitted viability appraisal is robust. This Council has employed the services of the Valuation Office Agency (VOA) who have scrutinised the financial appraisal. They had originally questioned the construction cost assumptions as well as the valuations for the development. On running the appraisal based on their set of costs and valuations, the VOA concluded that the scheme would be unviable if all of outstanding section 106 contributions are required to be paid. However, they found that the developer was offering less by way of affordable housing and other contributions than they could afford to. The VOA produced a draft report on this basis and this was the subject of discussion between them and the applicant's financial experts. The discussions have resulted in movement on both sides in terms of some of the costs and valuations of the development. Although there is still disagreement over the % profit for the development, the interest figures and abnormal costs, both parties have essentially agreed on a more realistic set of figures for the other construction costs and valuations. The VOA have re-run the appraisal based on the revised agreed set of costs and valuation figures and they have concluded that again the scheme is unviable, but also crucially, that there is now reduced scope to require further payments over and above those currently offered by the developer. As it stands, our consultant has concluded that there is potential for the developer to provide an additional 10% affordable housing on the site. However, I warn Members that because there is such a difference between our assumed abnormal costs and the applicants assumed abnormal costs, further negotiations may well result in this additional 10% affordable housing being reduced further. I ask that Members allow officers to continue negotiations and to seek to ensure that additional affordable housing is provided if possible. I can confidently state

that the appraisal submitted by the applicant has been robustly scrutinised and will continue to be and that although the scheme is unviable with all of the obligations originally required, there may be opportunity for some additional affordable housing. I recommend therefore that Members accept the revised offer as set out at paragraph 2.04 put forward by the applicant but that officers are given delegation to continue to seek a larger proportion of affordable housing than the 10% currently offered.

9.03 On the second matter of phasing, the key issue is that the proposal would see the housing being built prior to the provision of the linear park. This linear park functions in three ways. 1 – it provides a buffer between the Morrisons foodstore and Petrol Filling Station and the housing development, 2 – it provides the necessary amount of open space to meet the needs of the residents of the housing development and 3, it provides a pleasant pedestrian/cycle link between the Laburnam Road underpass and Mill Way. With regards to its purpose as a buffer, the land will still act as a buffer regardless of its use, due to its width and there is a high fence along the boundary of the Morrisons site which would ensure that noise and disturbance is kept to a minimum. The 'buffer land' should of course be landscaped in the manner approved but it does not matter, in my view, whether this happens prior to occupation or on completion. With regards to the need for the open space provision, it is the case that open space can be provided upon completion of the housing development. Although this is not ideal, I am of the view that in this case, given the tight urban grain of the surrounding land which may result in the use of the linear park land for construction vehicles/construction compound, such a delay would not be unreasonable. With regards to the pedestrian/cycle link, this will still be provided, just later in the development process. I therefore consider that the altered phasing would be acceptable. It should be noted that the waterside park would also be provided after the housing phase rather than before it, as originally envisaged. I cannot identify any harm that would amount as a result of this modification.

9.04 On the third matter of deferred payments, KCC have suggested that there is a justified need to provide the education contributions prior to the completion of the residential phase. Their reasoning is set out above. I have put this suggestion to the applicant and they accept that payment upon completion of the housing would be too late in the process. They have come forward with a counter suggestion of providing 50% of the money on 25% occupation and the remaining 50% on 75% occupation. I consider that this alternative suggestion of a phased payment would be a good compromise and I recommend to Members that this approach is endorsed by them. The only other deferred payment is the last payment of the monitoring fee which would now be linked to the heritage building phase (phase D/last phase) as opposed to the housing phase. It is quite possible that the heritage building will not be built out and so I have concerns about linking a payment of £20,000 to this phase. However, I am mindful that this Council usually seek a payment of 5% of the total contribution. In this case, this would equate to a total of £24,221.50. The applicant has already agreed to pay £10,000 towards the monitoring fee prior to the commencement of the housing development and so there would potentially be a shortfall of £14,221.50 for the monitoring fee based on the 5% requirement. I recommend that Members accept the payment schedule as proposed given the fact that as I have set out above, the scheme has been proven to be unviable.

9.05 Finally, the suggested Heritage Initiatives Contribution clause suggests that the intention is not to build the heritage building but to instead provide a sum of money to be put towards 'Heritage Initiatives.' This sum of money would total £215,000.00 and would only be payable to the Council if, upon the submission of a new viability appraisal (when the housing phase is nearing completion), the Council agrees that there is enough money as a consequence of the funds generated from the housing development, to pay the agreed sum. If there is not enough money, the sum is not paid. Members will be aware of the loss of the old industrial buildings on the Mill site and when the original S106 Agreement was drawn up, the money

sought for heritage contributions was seen to be justified. However, this was at a time when the Council would have also seen the provision of other contributions towards CCTV, libraries, youth services, wheeled bins, a large maintenance contribution towards the waterside park and the full 30% affordable housing. All of these contributions are now potentially being stripped away or cut back considerably. I therefore ask Members to consider whether they believe that a review mechanism, such as that currently proposed for the Heritage Initiatives Contribution, should instead be used to potentially release money for the above community benefits and/or a review of whether a greater number of affordable houses (social rented/or intermediate) should be provided. This is a matter for Members to give careful consideration to and it may be that Members decide to place greater importance on affordable housing, over the Heritage Initiatives Contribution. I would though urge Members to consider the comments of the Museums Group which are set out above.

9.06 The wording of the modified section 106 agreement will need to be scrutinised by our Legal team and I anticipate that this will happen once Members have resolved to agree to this proposal.

10.0 CONCLUSION

10.01 Members are asked to consider the modification of the section 106 Agreement for SW/11/0159. The details of this application are set out above. The modification of the agreement would see a substantial reduction in the financial contributions received by the Council, a reduction in affordable housing, altered phasing, deferred payment and a review mechanism for the payment of a Heritage Initiatives Contribution. I have recommended that the phasing should be altered and ask Members to carefully consider the conclusions of our independent assessor of the submitted viability assessment. I have asked Members to consider a phased payment of the education contributions and I have also asked Members to consider an accepting the altered trigger for the payment of the final monitoring fee. Finally, I have asked Members to carefully consider whether a review mechanism should be used for the Heritage Initiatives Contribution (£215,000.00) or whether it should instead be used towards any of the other contributions/affordable housing that would be lost or reduced as a consequence of the modified agreement.

11.0 RECOMMENDATION –

11.01 Subject to the scrutiny of the Legal Officer, agree to the modification of the Section 106 Agreement.

Case Officer: Emma Eisinger

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

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APPLICATION PROPOSAL			
Modifications to the S106 Agreement including removal of all financial payments apart from Primary and Secondary education contribution; deferral of payments to the end of the residential development programme; change to the phasing to bring the residential component forward; and a reduction in the provision of affordable housing to 10% intermediate provision.			
ADDRESS Old Sittingbourne Mill And Wharf, Sittingbourne (Morrisons), Kent, ME10 3ET			
RECOMMENDATION Modify S106 Agreement as requested			
SUMMARY OF REASONS FOR RECOMMENDATION			
The applicant has been able to demonstrate that the scheme is not viable with all of the obligations as set out within the original Section 106 agreement.			
REASON FOR REFERRAL TO COMMITTEE			
Significant changes to the Section 106 Agreement requiring consideration by elected Members.			
WARD Chalkwell	PARISH/TOWN COUNCIL N/A	APPLICANT Essential Land AGENT BPTW Partnership	
DECISION DUE DATE N/A	PUBLICITY EXPIRY DATE N/A	OFFICER SITE VISIT DATE N/A	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/11/0159	Hybrid application seeking; outline planning permission (Phases 3,4 & 5) for up to 1,200sqm of leisure use floorspace, 250sqm of community floorspace, 150 residential units, in buildings ranging from 2 to 4 storeys in height, together with car and cycle parking; and incorporating detailed planning permission (Phase 1) for a retail food store of 6,682sqm, petrol filling station of 72sqm together with associated landscaping, car and cycle parking & full landscaping detail for new parkland areas (Phases 2 & 3).	Granted planning permission subject to Section 106 agreement	08.02.2012

MAIN REPORT

3.0 INTRODUCTION

1.01 Members will recall that this proposal was reported to the planning committee on 18th September 2014. A copy of the report and the minutes of the meeting are appended. When the proposal was reported to the September planning committee, Officers were still negotiating on the 'abnormal costs' (remediation of contaminated land, preparation of the ground and installation of infrastructure). However, we had reached agreement on the profit at 20%.

1.02 At the meeting, Officers sought Members' views on whether the Heritage Contribution – if the viability of the development supported it - should be re-allocated to additional affordable housing or financial contributions. Members indicated that the money should be re-allocated to affordable housing.

1.03 Officers also sought delegated authority to negotiate an increased percentage of affordable housing – if the viability supported it – and on the mix of affordable housing tenures, rather than it being solely intermediate (shared equity).

1.04 Members resolved that the proposal be deferred to allow officers to re-negotiate the Section 106 so that a more acceptable proposal could be considered by Members. Members also expressed concern about the potential for the delivery of the linear park to be delayed or not delivered at all.

1.05 Since the 18th September planning committee, further works has been carried out on the abnormal (cost in the ground) and external costs (landscaping, roads, lighting etc.). The applicant's Quantity Surveyor (QS) has visited the site and as a result, he has identified further abnormal costs as a result of the sloping nature of the site and the concrete within the ground which would need to be removed. The revised total construction cost now stand at £21 million (with a figure of £3,452,290 for the abnormal costs), an increase of £2 million. This information has been submitted to our consultants and whilst their QS does not consider that the total construction cost would be £21 million, he has agreed that it would cost more than was originally considered a reasonable assumption. He has increased his estimate from £17.3 million to £19.9 million. The applicant has submitted a revised viability assessment based on our QS' construction cost and it is clear that the development would be unviable if any developer contributions are paid. The applicant is therefore willing to reduce their profit from 20% to 15% in order that some developer contributions can be provided. Our financial consultant has reviewed the revised appraisal and he finds that it is sound. He concludes – *'Based on this I am of the opinion that the scheme cannot viably support additional contributions over the above offer and that it should be properly considered.'*

2.0 PROPOSAL

2.01 The proposal is to modify an existing Section 106 Agreement that was signed as part of the hybrid planning application as described above (SW/11/0159). The modifications would see the removal of all financial payments apart from the Primary and Secondary education contributions; deferral of payments to the end of the

residential development program; change to the phasing to bring the residential component forward; and a reduction in the provision of affordable housing to 10% intermediate provision.

2.02 The applicant has submitted an Economic Viability Appraisal Report which tests the viability of the proposed housing development and seeks to demonstrate that the required modifications are necessary in order that the housing can be built out.

3.0 SUMMARY INFORMATION

3.01 See above.

4.0 PLANNING CONSTRAINTS

Archaeological Sites YES

Flood Zones Flood Zone 3

Flood Zones Flood Zone 2

Swale Borough Local Plan 2008 AAP8 - Area Action Plan - land around Milton Creek

Swale Borough Local Plan 2008 H2 - Providing for New Housing

Swale Borough Local Plan 2008 H5 - Housing Allocations

Swale Borough Local Plan 2008 B2 - Providing for New Employment

Swale Borough Local Plan 2008 H6 - Sites within Existing Built-Up Areas

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG) – Planning Obligations.

Development Plan:

Swale Borough Local Plan 2008 – Policies E1, C2 & C3

Supplementary Planning Documents:

Developer Contributions 2009.

8.0 BACKGROUND PAPERS AND PLANS

8.01 Draft modified Section 106 Agreement and confidential Economic Viability Appraisal Report.

9.0 APPRAISAL

9.01 The appraisal section in the appended report sets out in detail the key areas of consideration – findings of the Economic Viability Appraisal; phasing and; the review mechanism. I have nothing further to add with regards to the latter point but consider that Members would benefit from further clarification over the viability appraisal and the intentions of the applicant with respect of the linear park (the buffer land between the housing and the Morrisons site).

9.02 Firstly however, I reiterate to Members that Officers have agreed that the viability assessment can be confined to the housing site only and does not need to take account of the leisure building and Morrisons in terms of the ability to 'add value' to the scheme. The advice from our independent financial assessor is that it is reasonable to allow the viability assessment on just the housing part of the scheme. This is primarily because the leisure building and the housing development are quite separate in terms of their physical location and the fact that they do not rely on each other to be acceptable in planning terms. Also, the financial returns from the Morrisons part of the hybrid application should not now be considered in my view for the same reasons as noted above and in addition, it could be argued that the Morrisons part of the application has already contributed significant sums by way of section 106 monies i.e. approx. £270,000 in addition to payments for alterations to the surrounding road layout.

9.03 Since the last meeting, Officers have asked the applicant to reconsider their original offer of developer contributions and I can report that they have agreed to the following:

Phase A – residential units

Affordable housing – 3 no. 2 bed Rented houses; 1 no. 2 bed Shared Ownership apartment; 1 no. 1 bed shared ownership apartment = 5 in total (7.5% of the total number of houses) 70% affordable rent, 30% shared ownership.

Car parking management plan submitted 28 days prior to completion of housing phase.

Primary and Secondary education contributions - £237,276.48 & £237,159.90 respectively. 50% paid upon 25% occupation and 50% paid upon 75% occupation.

Submission of a Green Travel Plan and implement prior to occupation of housing phase.

Monitoring fee - £25,000 (equivalent to approx. 5% of the total paid under the modified 106 agreement) paid over 4 phases of the housing development.

Wheeled bins - £12,500

Submission of schedule to improve the Laburnum Road underpass and £10,000 towards CCTV covering the underpass.

Phase B – Mill site public realm (linear park)

Upon practical completion, submit a strategy for the management of the land and clause to ensure that the footpath/cycle path is retained for public use. A clause is necessary to ensure that the public realm is provided.

Phase C – leisure building and waterside park (no obligation to provide this)

Prior to occupation of leisure building/waterside park, hand-over process for waterside park initiated.

Payment of waterside park maintenance contribution upon completion of phase C. (Members should note that the suggested draft S106 agreement does not put a figure on the ‘waterside park maintenance contribution’ and as such, this requires further clarification).

Phase D – museum and heritage building (no obligation to provide this)

A review mechanism upon completion of the last dwelling for the payment of a commuted sum to be used for affordable housing off-site.

9.04 This is an improvement on the original offer (see para. 2.04 of the appended report) in that affordable rented accommodation would be provided within the scheme in line with the 70:30 split as set out in the adopted SPD, the monitoring fee would be increased to reflect adopted policy and the contribution towards wheeled bins would be paid.

9.05 With regards to affordable housing, Members will have noted that the number of affordable units has decreased since the original offer from 15 to 5 (10% to 7.5%). This is because the Head of Housing has strongly indicated that there is a real need for affordable rented accommodation and as such, 70% of the affordable housing on offer should be of this type with the remaining 30% shared ownership. Members will recall that the original offer was for 100% shared ownership. The implication of increasing the affordable rented offer is that the total number of affordable houses would be reduced. This is because it is more costly to the developer to provide affordable rented units as opposed to shared ownership. I recommend that Members accept this offer as although there would be a reduction in the overall number of affordable houses, the revised offer would actually address the Borough’s needs more readily. I recommend that Members accept the overall reduction in the number of affordable units in order that the number of affordable rented units can be increased. It is important that Members do not underestimate the significant costs of construction for this particular site, specifically the high abnormal costs (see 1.05 above), which have resulted in it being unviable for the applicant to be able to provide a greater number of affordable homes.

9.06 The applicant has also increased the monitoring fee by £15,000 and has included the wheeled bins contribution (£12,500).

9.07 It is important that Members are aware of the fact that the applicant is offering all of the above despite, according to the viability appraisal, it not being viable for the developer to do so. He is therefore effectively taking a cut in the overall profit of the scheme from 20% to 15%, a significant drop in my view. It is my strong view that Members should accept the offer that is in front of them.

9.08 With regards to the linear park, the applicant has assured us that this will be implemented as part of the housing phase and note that they will need to start work on it during the construction of the housing due to the position of the drainage for the whole site. Members can also be reassured that condition 39 of the planning permission SW/11/0159 would need to be varied to allow the housing to start prior to the completion of the linear park and it is anticipated that the altered wording would ensure that the housing cannot be completed prior to the completion of the linear park. The wording of the modified Section 106 agreement would also ensure that the linear park is provided prior to the completion of the housing.

9.09 At the planning meeting 18th September 2014, some Members indicated that increasing the affordable housing offer was a priority, even if this might be at the expense of the education contribution. However, Members should be aware that the implications of reducing the education contribution are significant. There is a real need for additional school places within the Borough as a whole and within Sittingbourne specifically. There is no doubt that the addition of the new dwellings will add to this need and it is crucial therefore that the need for financial contributions towards education is not underestimated. Members may wish to note that the approximate cost to the developer of providing an affordable house is £50,000. Increasing the number of affordable units, even by a small amount, would therefore have a significant impact on the education contribution. I recommend that Members accept the 7.5% affordable housing being offered in order that the full education contribution requirement can be maintained. I accept that Members have indicated a preference towards affordable housing instead of the Heritage Building Contribution and so Members may be comforted by the fact that there would be a review mechanism built into the Section 106 Agreement that would see the provision of additional affordable housing if it is viable to do so at the time of review.

9.10 I would like to it to be noted that whilst it is extremely disappointing that the developer contributions have had to be reduced so much, Officers have sought, through independent assessment, to ensure that the amount being offered is the maximum possible. I am confident that our independent financial expert has thoroughly assessed the information before them and that there is no possibility of further developer contributions without the scheme being unviable. Indeed, the developer is already taking a significant drop in his profit to 15% which, in my opinion, falls well below the % that one could reasonably expect for this site.

9.11 The wording of the modified Section 106 agreement will need to be scrutinised by the Council's Legal team and I anticipate that this will happen once Members have resolved to agree to this modification proposal.

10.0 CONCLUSION

10.01 Members are asked to consider the modification of the Section 106 Agreement for SW/11/0159. The details of this application are set out above and within the appended report. The modification of the agreement would see a substantial reduction in the financial contributions received by the Council, a reduction in affordable housing, altered phasing, deferred payment and a review mechanism for the payment of a Heritage Initiatives Contribution/affordable housing. I ask Members to accept the following:

7. that the phasing should be altered in line with the applicant's request;
8. a phased payment of the education contributions.

Members are asked to make a resolution on:

9. whether a review mechanism should be used for the Heritage Initiatives Contribution (£215,000.00) or whether a review mechanism should instead be used to consider whether there is any further potential for an increase in affordable housing;
10. the % of affordable housing required with acknowledgement that this will result in the reduction of the education contribution;
11. the % of social rented accommodation within the agreed affordable housing provision.
12. The acceptance of all other elements of the offer.

11.0 RECOMMENDATION –

11.01 Members are asked to agree to the modified Section 106 as set out at paragraph 9.03 above and to give Officer's delegation to finalise the wording of the modified Section 106 agreement in consultation with the Council's Legal Officer. Member's agreement is sought to points 1-2 above and their resolution on points 3-6 above.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.