

PLANNING COMMITTEE – 18 September 2014

Report of the Head of Planning

PART 1

Any other reports to be considered in the public session

1.1 SW/14/0399		(Case 06635)		<u>Sittingbourne</u>	
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		APPLICANT Essential Land	
				AGENT BPTW Partnership	
DECISION DUE DATE		PUBLICITY EXPIRY DATE		OFFICER SITE VISIT DATE	
N/A		N/A		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,			Granted planning permissio	08.02.2012

	<p>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).</p>	<p>n subject to Section 106 agreement</p>	
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MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 The application site for the planning application to which the Section 106 Agreement relates, comprises of a large area of land, 7.79 hectares in total, 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 issues 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 Section 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 (shared equity). 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 dwelling**

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

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

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

Submit and implement green travel plan.

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

Wheelie 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 contributions = £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 to be paid 10 working days prior to commencement of development.

Submission of schedule of works to improve the Laburnum Road underpass and the payment of £10,000 towards CCTV covering the underpass. The timing of these items is to be negotiated.

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 to be paid 10 working days prior to commencement of phase D.

In addition, they suggest that the local labour clause is retained in respect of the construction of the remaining parts 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 by way of a new planning application under S73 of the Town and Country Planning Act - 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, would be 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 Section 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 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). This includes the loss of the wheeled bins contribution at £12,369 and the consequent additional cost to the council for providing them. 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 e.g. remediation of contaminated land, preparation of the ground and installation of infrastructure, 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 would ask Members to note 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 would request 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 the provision of 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 occur 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 the Council usually seeks 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 (following the last occupation/sale of the last residential unit), 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 Section 106 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 remind Members also 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 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. 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. Members are asked to consider a phased payment of the education contributions and to consider accepting the altered trigger for the payment of the final monitoring fee. Finally, Members are asked 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 Head of Legal Services, and to refinement of the amended agreement as required following further negotiations (as referred to in 2.04 and 9.02 above), to agree to the modification of the Section 106 Agreement Members are also asked to provide their views on the contents of paragraph 9.05 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.