

Report

Report Subject : PROPOSED REQUEST FOR ALTERATIONS TO SECTION 106 LEGAL AGREEMENT, RELATED PLANNING PERMISSION S/05/0980, AT LAND OFF DOWNTON ROAD, HARNHAM, SALISBURY

Report to: SOUTHERN AREA COMMITTEE

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1. Report Summary:

Members to consider the applicants request to alter the triggers of the existing S106 legal agreement related to outline planning permission S/05/0980, as agreed in 2005 by Members of the City Area Committee of Salisbury District Council.

2. Considerations

2.1 Outline planning permission S/05/0980 relates to the provision of up to 130 dwellings, including a retail unit, on land allocated in the Salisbury District Local Plan.

In 2005, Members of the City Area Committee resolved to approve application S/05/0980, subject to a number of planning gains being achieved and secured in a S106 (See attached officer report).

Subsequently, after significantly protracted negotiations, the applicants signed a legal agreement with Salisbury District Council and the County Council, to provide the planning gains requested. As is normal in such circumstances, for enforcement purposes and the proper phasing of development, the legal agreement also contained numerous “triggers”, which stipulated what monies were to be provided and at what time scales.

Since the signing of the legal agreement, a reserved matters application has been approved for the details of the housing scheme, and works have commenced on site.

2.2 The applicant, Persimmon Homes, has now written to the Council, requesting that the timing of the provision of the various monies secured as part of the S106 Agreement be altered, in light of the current economic downturn. The applicants written request and justification is attached as an appendix to this report

The applicant originally approached the Council several months ago, at a time when many of the housing providers and builders had chosen to halt work on

many of their sites. At this time, Persimmon indicated that unless the trigger dates for the various payments could be altered, then there would be a high probability that the housing site as approved would not be delivered. Such a situation would of course affect the Council targets for the provision of housing.

Since that initial approach, the developers have commenced works on the site, and it appears, confidence in the health of the housing market is improving. It is also the understanding of officers that the viability of the 130 house scheme has been improved due to funding secured as part of the provision of affordable housing as part of the overall scheme. It is therefore somewhat difficult to understand why there may still be an issue regards the viability of the site.

However, Members should note that the developer is not requesting changes to the levels of the financial contributions, but simply requesting that the submission of the payments be staged. As a result, the Council will still receive the required payments in due course, and it is officers opinion that the staging of payments in this manner will not affect the provision of the various infrastructure. The Council legal department have however queried whether the proposed second education payment trigger should be “before 90 dwellings are occupied” as suggested by the developer. The reason for this is that the housing site could in fact be fully completed (built out) prior to the 90 dwelling is actually occupied, hence raising a potential enforcement situation in relation to such a “late” S106 trigger. Members may therefore wish to alter this trigger suggested by the developer.

Members will also note that the developer has offered to agree to two additional matters, if the Council is minded to alter the triggers for the required payments, namely:

- i) Not to retain a “ransom strip” between the development site and potential future housing beyond the boundary of the site, and
- ii) Agree that 65 of the residential units would achieve Code level 3 of Sustainable Code for Homes

Regards point (i), “ransom strips” often cause planning problems as they inhibit linkages to be created between different development sites which have been developed a number of years apart. For example, Persimmon Homes could retain a strip of land in their ownership adjacent to the boundary of the land currently being developed. If at a future date, the Council through its LDF system wishes to allocated land for further dwellings adjacent to this site, it may be desirable that the two sites to be linked via roadways or paths. However, if there existed a strip of land between these two sites which was not owned or available to the new developer (should it not be Persimmon), then it may be unlikely that the two sites could be linked. The addition of a clause in the current agreement which allows linkages to be created between the existing development site and future adjacent land is therefore generally welcomed.

Regards point (ii), any increase or improvement in the number of dwellings being built out to a higher environmental standard is welcomed.

3. Options for consideration:

3.1 Members effectively have three options:

3.2 **OPTION 1**- That the request of the applicant to amend the various triggers is accepted, and the matter delegated to officers to complete a revised S106 Agreement.

3.3 The effect of this option would be that the triggers for the S106 would be revised, and payments received as described in the applicants attached letter.

3.4 **OPTION 2** - That the request of the applicant to amend the triggers is not accepted, and the current S106 remains in force.

3.5 The effect of this option would mean that the triggers suggested in the attached letter would not be implemented. The existing S106, together with its triggers, would remain in force. The applicants have not indicated whether, in this event, the scheme would become unviable. However, the fact they have already commenced on site indicates that there appear to be no viability issues with the scheme.

3.6 **OPTION 3**- That Members indicated which triggers they are happy to alter, and that the matter is delegated to officers to negotiate a revised S106 agreement.

3.7 The effect of this option is similar to Option 1. However, it may be that the developers will not agree with any other alterations to the S106 suggested by Members, in which instance, officers assume that members will wish a further report to be brought back to committee outlining the remaining issues.

4. **Consultation Undertaken**

Both WC Education Dept and WC Highways Dept were signatories to the original agreement. Both have indicated that they are happy to alter the existing S106 Agreement triggers.

5. **Recommendation(s):**

That either option i) (or (iii) if preferred) is followed.

6. **Background Papers:** Development Brief, Planning application S/05/0980 and associated legal agreement. The officers original report to the City Area Committee of Salisbury District Council, and the related committee minutes are attached.