

West Wiltshire District Council

Planning Committee

23 August 2007

**Land at Blue Hills, Hilperton, Trowbridge -
04/00095/OUT**

**Change to resolution relating to approval to grant
planning permission in principle on 05/10/2006
subject to a Section 106 Agreement**

1. Purpose

To consider an amendment to the original committee resolution which required an index linked and bonded financial contribution to be paid by the developer to the County Education Authority towards the cost of additional education provision within the locality. This follows a reassessment by the Education Authority.

2. Background

This report relates to an outline planning application for a residential development and associated roads, footpaths and open space involving demolition of an existing house. Siting and means of access are sought in detail, but with all other matters reserved.

The layout plan with the application shows a total of 38 dwellings, including 11 affordable houses on a site of approximately 1.4 hectares.

Wiltshire County Council, the Education Authority, was originally consulted on the planning application on 20 January 2004. At that time they requested a financial contribution of £46,200 towards additional secondary school places.

The application was considered by the Planning Committee in October 2006 when it was resolved to grant permission subject to:

- 1) the completion of a legal agreement to secure the provision of 30% affordable housing
- 2) an index linked and bonded contribution to the provision of education within the locality
- 3) provision of public open space, together with a financial contribution to secure its future maintenance
- 4) provision of integrated cycleways and footpaths
- 5) provision of traffic calming within the development and locality
- 6) a contribution to the provision of public transport initiatives and

- 7) a contribution to the provision of public art within the development.

Solicitors were instructed and the S106 Legal Agreement is currently being prepared.

Since the committee resolution, the Education Authority have advised that its original request was based on an obsolete methodology and it has reassessed the need based on its current policy. It has concluded that there is no longer a case for a contribution as the designated area schools can accommodate the additional pupils that would be generated by this development. They stated that no contribution is therefore required for education and in the circumstances it no longer requires this to form part of a Section 106 Legal Agreement.

This was reported to the Planning Committee at its meeting on 19th April 2007. However, a decision on whether or not to change the original resolution was deferred. In order to obtain additional information from Wiltshire County Council, the Education Authority, with regard to

- the different methodologies (current and past) for assessing the need and level for a contribution towards education;
- to obtain a copy of the current policy document; and
- to ask whether such a contribution might be made towards the proposed new secondary school for the Melksham area.

The response was reported to the Planning Committee at its meeting on 31 May 2007. This Committee deferred the matter because it considered that the Education Authority had still failed to fully justify its assessment that there was no need for a contribution and that further clarification should be sought.

3. Education Authority responses

The Education Authority has stated that when the application was originally considered in February 2004 it used the assessment methodology based on the number of units, individual school capacities, pupil number forecasts and details of other known developments within the catchment areas which were then applicable. Under this system, the LEA considered it had a case for developer contributions at the designated secondary school, Clarendon College, which was notified to WWDC.

Since February 2004, the LEA has updated its way of assessing education needs. It, therefore, felt obliged to review the matter and, using the current assessment methodology. This involves a calculation of the number of school places likely to be generated by the development, capacities of individual schools, pupil number forecasts and details of other known housing developments in the catchment areas.

The calculation for this site is based on the application for 38 dwellings which would produce 12 primary and 8 secondary age pupils. The local schools are:

Hilperton Primary – with a net capacity 175 – forecast pupil numbers in 2010 = 126

Clarendon College - net capacity 1490 – forecast pupil numbers in 2010 = 1397

On this basis, the LEA concluded that there was no requirement for an education contribution, and continues to maintain that stance.

The LEA has stated that it has no reasonable case to pursue a secondary contribution based upon current data. It also reaffirms that the planned development lies within the designated area for Clarendon College, Trowbridge, and as such any contribution to Melksham would be not be appropriate.

The LEA has reaffirmed that no contribution to education is required.

However, since the committee last considered this issue, the applicant's agent has since written to the Council stating that it understands that improvements are required at the Hilperton Village Hall. The original LEA requirement was for a contribution of £46,200 and the applicant is prepared to offer this amount as a financial contribution towards improvements to the Hilperton Village Hall on the understanding that the Planning Committee will not also seek a contribution towards education.

They are anxious to resolve this matter quickly to enable the S106 agreement to be completed and permission granted.

4. Key Issues

This report is simply to reconsider that part of the original resolution that required a contribution to education needs. The principle of the residential development has already been considered and accepted by the Planning Committee on 5 October 2006 and is not for consideration as part of this report.

The Planning Act enables local authorities and developers to enter into legal agreements to secure the delivery of matters that are necessary to make a development acceptable in planning terms. This included the requirement for financial contribution for public services, such as to education needs.

When considering the need for a planning obligation it must meet the following tests:

- relevant to planning;
- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development;
- fairly and reasonably related in scale and character to the proposed development; and
- reasonable in all other respects.

In this case, the Local Education Authority has reassessed its original position and concluded that there is no longer a necessity to make a contribution towards education needs in the area,. The area is specifically referred to as Trowbridge as the development lies within the designated area for Clarendon College, Trowbridge.

To continue with this obligation would fail to meet all policy tests because it would no longer be necessary, reasonable or relevant to impose such an obligation. This Council cannot force the LEA to accept a financial contribution when it has clearly stated that it does not require one to be made. Furthermore, even if such a contribution were to offered, it could not be used for educational facilities in another town which was not related either to the development or to the site. To do so would open the Council to challenge.

Since the last deferral the applicant has made an offer to make the same financial contribution, the sum of £46,200, towards improvements to Hilperton Village Hall.

Whilst this offer may similarly fail to meet all of the tests it has been made by the developer in an endeavour to resolve a matter to which there appears to be no simple solution.

However, Government advice makes it quite clear that planning obligations should never be used purely as a means of securing for the local community a share of the profits of development, ie as a means of securing a 'betterment levy'. The use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold.

The planning committee will need to consider very carefully whether, on the planning merits of the case, it is prepared to accept this offer.

On the matter of the education contribution, the Committee needs to consider if it accepts that the LEA does not require, and cannot be forced to accept, a contribution towards the provision of education that is not justified. If that is the case then the original recommendation should be amended accordingly to delete the requirement for an education contribution.

5. Affect on Strategies and Codes

None.

6. Risk Management Implications

None.

7. Finance and Performance Implications

None.

8. Recommendation(s)

Firstly, that the resolution taken by the Planning Committee on 5 October 2006 be amended to delete the requirement for an index linked and bonded contribution to the County Education Authority towards the cost of providing additional education provision within the locality.

The amended recommendation should therefore read as follows:

"Planning permission be granted at a future date in the event of the Development Control Manager being satisfied as to the prior completion of a Legal Agreement to secure:

- 1) The provision of affordable housing in accordance with Council policy
- 2) Provision of public open space together with a financial contribution to secure its future maintenance.
- 3) Provision of integrated cycleways and footpaths leading into the existing network
- 4) Provision of traffic calming measures within the development and locality.
- 5) A contribution to the provision of public transport initiatives in the area.
- 6) A contribution to the provision of public art within the development"

Together with justification reason and all conditions as identified on the original resolution numbered 1 to 19 and informative numbered 1.

Secondly, the committee will need to consider whether it is prepared to accept the offer of a financial sum of £46,200 in lieu of education, towards improvements to Hilperton Village Hall. In the event of the Committee accepting the offer from the developer that the resolution taken by the Planning Committee on 5 October 2006 be amended to add the following:

"7) A contribution of £46,200 towards improvements to Hilperton Village Hall."

9. List of Background Papers

Copy of original report to Committee, reference 04/00095/OUT dated 5 October 2006 which includes the original resolution.

Letter from the Applicant's Agent.

Site Location plan.

Plain English guidance given



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RMG/Aug09