

Agenda Item No. 8

Title: **Proposed section 106 Agreement in respect of an outline planning application for residential development of 50-70 dwellings at Manor Primary School Queensway, Melksham.**

Reporting Officer: **David Hubbard , Development Control Manager**

Purpose

To consider further a proposed section 106 Agreement in respect of the above development follow responses from the applicant to the heads of terms previously agreed by this committee

Background

At its meeting of 12th July 2007, the Planning Committee considered an outline planning application from Wiltshire County Council for residential development of 50-70 dwellings at Manor Primary School Queensway, Melksham.

The site is very generally rectangular in shape, measures approximately 1.7 hectares, and occupies a mainly level area of land south of Clackers Brook. Its northern boundary fronts onto Pembroke Road and its western and eastern boundaries abut the rear gardens of predominately semi-detached properties in Queensway, Lambourne Crescent and Rowley Place. Currently the existing school buildings occupy the central part of the site, with the playing fields lying to the south, and an area of open space separating the developed area from the heavily screened Clackers Brook

The Committee agreed with the Officer's recommendation that subject to the applicants entering into a section 106 agreement permission that outline planning permission should be granted subject to conditions. However the committee felt that the requirements of the section 106 agreement should be amended.

The committee were recommended that 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 the following: -

- (a) Provision of 30% affordable housing on site on a nil subsidy basis in accordance with policy;
- (b) To offset the loss of existing open space on the site +
 - (i) the provision of a pedestrian footbridge to aa agreed standard and design and the provision of associated footpath links and

(ii) a financial contribution of £25,000 towards a detailed management plan for Clackers Brook and the implementation of works identified in that plan

(c) A financial contribution of approximately £49,000 for the provision of off-site open space facilities on the north side of Clackers Brook. In the event that the number of dwellings delivered by this permission exceeds 70, this figure shall be increased proportionately.

(d) A financial contribution of £57,500 to secure improvements to the Town Cycle Network, bus and cycle shelters and an annual payment for bus passes for residents of the development.

The committee resolved that section b (ii) should be amended as follows:-

A scheme for the provision of new open space of equivalent community benefit in the immediate locality.

Key Issues

Negotiations have commenced with the applicant in respect of the agreement. They have responded in respect of the requirement for the provision of new open space of equivalent community benefit in the immediate locality by commenting that this requirement places them (the County Council) in 'an untenable position where it appears that we are unable to comply with the terms of the planning permission.'

They go on to comment that they have no available land in the immediate locality. At this council's suggestion they have investigated the possibility of making alternative provision on land at Woolmore Farm. However this site has already been identified for the relocation of George Ward School and it is unlikely that there will be surplus land after sufficient allowance has been made not only for the school itself but also additional requirements for playing fields and public open space.

As an alternative option the county council asks if this council would consider an increased financial contribution of £25,000 towards the provision of off site open space facilities on the north side of Clackers Brook.

The County Council conclude that 'it is keen to now be able to market this site with a deliverable planning consent and that this is necessary before we can proceed with the capital improvement works to The Manor School.'

The earlier report explained the background to this application as follows:-

'the application site has become surplus to educational needs following a consolidation of the Primary School facilities within the town. The Manor School was formed in 2005 by a consolidation of Lowbourne Primary and

St Michael's Schools, following a decision by the County Council in September 2004 to concentrate education provision on one of the two sites. The Manor "Ruskin" site has been identified as the best to meet the needs of local pupils, and its existing facilities will be expanded and improved to serve this wider catchment.

The applicant has confirmed that funds from the sale of the St Michael's site "will be invested to improve existing facilities and fund new classrooms and sports playing pitches" .

It continued to explain further comments from the applicants explaining their proposals in greater details as follows:-

The proposed works to the improved Manor Ruskin site will accommodate a larger number of pupils and all of the play facilities required to support them. This will include sufficient playing pitches, soft play areas, games courts etc to meet the requirements of Department of Education Design Bulletins for the combined number of pupils that are currently located on the two sites. There will therefore be no need for any additional land to meet playing pitch provision etc on the Manor Queensway site. That site will be surplus to requirements and will not be available for any other form of "public" recreation or leisure provision. The Manor Queensway site is a County Council asset which needs to be disposed of in order to fund the amalgamation of the two school sites and the related educational improvements that will result from that initiative."

In itself, it could be argued that the existing community investment is really being "transferred" with its pupils to an alternative site, and that the resources "freed" by the sale of the site for predominately private market housing, not specifically available for Melksham residents, would not obviously result in any local community benefit. In addition, while the stated education provision may be geographically local, there is no supporting evidence to clearly demonstrate that it is genuinely available to the local community.

Information provided by the applicant confirms that there is little community use of the Manor School beyond the school day - no sports clubs use the existing playing field and no other groups, such as evening classes use the school buildings;

The redevelopment of this site requires an appropriate level of new open space to provide for the proposed residents (Policy R4). The Design and Access Statement proposes a buffer of approximately 0.5 hectare of public open space adjoining Clackers Brook, and a central open square within the body of the development to include a formal play space (LAP).

The key issue in this report is how issues relating to open space will be addressed.

These are addressed in four ways will take four forms

- a buffer of approximately 0.5 hectare of public open space adjoining Clackers Brook,
- a central open square within the body of the development to include a formal play space (LAP).
- The use of playing fields (pitch provision etc) on the Manor Queensway site to meet educational needs. In this context it should be noted that there is little community use of the application site at present
- A commuted sum to provide alternative provision of equivalent community benefit is made in the immediate locality by enhancing in the locality.

The Leisure Manager supports the principle of a financial contribution to add to the £45K play strategy Lottery bid already won and identified for the Clackers Brook open space immediately opposite the application site. The combined monies would enable an existing low quality, underused play area to be replaced with a considerably improved play facility to serve both the existing community and residents on the new site. The footbridge across the Brook and footpath links will provide immediate access and its development as a single project will ensure an overall design to compliment the wider open space surrounding the application site.

The proposed application will result in a net loss of safeguarded open space. Policy R2 requires that "the loss of existing playing fields, play space and other recreational land, whether publicly or privately owned" must be met by appropriate measures to offset this loss. This can either be on the basis of like-for-like provision elsewhere in the locality, or alternative provision of equivalent community benefit, also within the immediate vicinity.

In this particular area, Clackers Brook has been identified as an important ecological site which provides a unique opportunity for nearby residents to interact with the countryside and wildlife on their doorstep. There are clear opportunities for further investment to improve and expand the ecological objectives and quality of the area, and in conjunction with the District Ecologist and the Council's Leisure Manager and Landscape Officer, a programme of works has been drawn up to achieve this. This includes: -

- The provision of a pedestrian footbridge across Clackers Brook from the application site to access the existing open space and future play area on the north side of the Brook (£25K);
- The provision of footpaths linking the bridge to the existing network on the north side of the Brook with the proposed housing development (£10K);

- A detailed Management Plan to be drawn up for Clackers Brook from its road frontage with Queensway as far as the site of the redundant play area to the northwest of the application site (approximately 300 metres) (£5K);
- A financial contribution to any works identified in that plan (£20K).

Clearly the individual figures have not been fully costed but a total figure of £60,000 is considered a reasonable maximum when set against the cost of providing a replacement playing field elsewhere. In order to ensure that the footbridge and footpath links are provided concurrently with the development, the applicant is being required to provide these two elements as part of the scheme with the remaining elements as a financial contribution.

In policy terms, this proposal is considered to address the loss of open space issue while contributing to an important ecological objective which directly benefits residents in the immediate area. It has been agreed by the applicant subject to the overall 'contribution' being "an absolute maximum".

The applicants are now prepared to contribute a further £25,000 towards works to enhance.

Conclusion

The approach put forward in this proposal is in accordance with the West Wiltshire District Plan 1st Alteration 2004 and in particular Policy R2. While this seeks to protect recreational space it allows for alternative approaches where

- i the sports and recreational facilities can best be retained and enhanced through the redevelopment of a small part of the site;
- ii alternative provision of equivalent community benefit is made in the immediate locality; or
- iii it can be demonstrated that there is an excess of sports pitch provision and public open space in the area, taking account of the recreational and amenity value of such provision

The policy does not restrict the alternative provision of equivalent community benefit is made in the immediate locality can be either a direct replacement of a like for like piece of land. This can be achieved in other ways most notably by using a commuted sum to improve the quality and facilities of existing public open space and its facilities close to the site.

In this case the applicants are unable to put forward an equivalent piece of land for public open space in the locality. As alternative they now propose

- a buffer of approximately 0.5 hectare of public open space adjoining Clackers Brook,
- a central open square within the body of the development to include a formal play space (LAP).

- The use of playing fields (pitch provision etc) on the Manor Queensway site to meet educational needs.
- An enhanced commuted sum to provide alternative provision of equivalent community benefit which bring forward
 - Improvement of and better access to open space close to the site well related to the site and readily accessible to residents of the site
 - Replacement of an existing low quality, underused play area to be with a considerably improved play facility
 - meeting identified ecological objectives in the area

Recommendation

That 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 the following: -

- (a) Provision of 30% affordable housing on site on a nil subsidy basis in accordance with policy;
- (b) To offset the loss of existing open space on the site +
 - (i) the provision of a pedestrian footbridge to an agreed standard and design and the provision of associated footpath links and
 - (ii) a financial contribution of £50,000 towards a detailed management plan for Clackers Brook and the implementation of works identified in that plan
- (c) A financial contribution of approximately £49,000 for the provision of off-site open space facilities on the north side of Clackers Brook. In the event that the number of dwellings delivered by this permission exceeds 70, this figure shall be increased proportionately.
- (d) A financial contribution of £57,500 to secure improvements to the Town Cycle Network, bus and cycle shelters and an annual payment for bus passes for residents of the development.

All conditions and informatives as agreed by the committee in the resolution of 12th July will continue to apply.

Legal Implications

The approach advocated above accords with the council's local development framework policies. If the committee is not minded to accept the recommendation it could refuse planning permission for this development on grounds of inadequate provision for the replacement of open space lost as a result of the development. However it is not considered that the council's position would be easy to defend on appeal and there would be a risk of costs being awarded against the council.

Financial Implications.

The proposals offer commuted sum which would enable the council to enhance and improve access to existing public open space to the benefit of the existing community and the residents of future dwellings on the application site.

A refusal of planning permission if challenged by planning appeal would carry a risk of costs being awarded against the council.

Human rights

No issues to report

Background Papers

Planning application File 06/03047/OUT

Planning Committee papers for meeting of 12/07/2007, Agenda item 06, item (planning application) 03.

The West Wiltshire District Plan 1st Alteration 2004