

West Wiltshire District Council

Planning Committee

26 March 2009

**Land South of Sandridge Common Melksham –
05/00225/OUT**

**Change to resolution relating to approval to grant
planning permission in principle on 08/09/2005
subject to a Section 106 Agreement**

1. Purpose

The purpose of this report is twofold:

Firstly, to report to Committee the results of a reconsultation exercise with the statutory consultees, to establish whether there have been any material changes in the circumstances affecting the proposed development since it went to Committee on 8 September 2005 and;

secondly, to seek an amendment to the original Committee resolution to include a further two additional items within the heads of terms of the S106 legal agreement which were omitted, in error, from the original report. These relate to the provision of:

- (i) financial contribution towards the provision of the Fully Serviced Site at the Local Centre;
- (ii) financial contribution towards the provision of recycling facilities,

on an adjoining development, known as Land East of Melksham, approved under reference 04/01895/OUT.

2. Background

This application was originally placed before the Planning Committee on 8th September 2005 where it was resolved to grant permission, subject to the signing of an appropriate legal agreement covering the following heads of terms:

- (a) 30% affordable housing;
- (b) Provision of public open space and maintenance contributions;

- (c) A financial contribution towards the provision of a community hall, playing fields and changing room;
- (d) A financial contribution to the provision of a primary school;
- (e) Contribution for public arts;
- (f) Financial contribution towards a distributor road, together with highway alterations and improvements, contributions to public transport and traffic regulations orders;
- (g) Provision of new and upgraded cycleways and footpaths;
- (h) Provision of bus stops and shelters;
- (i) Provision of Green Travel Plan;
- (j) Provision of surface water attenuation.

A number of these heads of terms were required to be included as a result of planning obligations contained in a separate S106 agreement for the neighbouring site known as Land East of Melksham, under Reference 04/01895/OUT. This requires the District Council to use its reasonable endeavours to secure financial contributions from this application for infrastructure and recycling facilities which are being provided on the adjoining site.

3. Consultations

Due to the length of time that has passed since the original resolution to grant, it was considered necessary for a further consulted exercise be undertaken in respect of the statutory consultees.

This has been done to establish whether any material changes have taken place which would affect the original resolution to grant permission or require the terms of the S106 to be varied to accommodate such changes. This exercise also enables the Authority to establish an up-to-date position in relation to the required contributions subsequently sought through the s106 agreement.

Town Council

In respect of the S106 agreement which is still in the process of being negotiated Councillors have asked if consideration could be given to the Forest Community Centre.

Internal

Housing Enabling Team – No change in the positioning relation to the affordable housing provision being sought through the S106 agreement;

External

County Archaeologist has raised no further issues;

County Education Team have identified an up-to-date financial contribution towards the provision of a primary school which is to be secured through the S106 agreement;

County Council Planning Policy Team has no strategic comments;

Environment Agency consider that the original list of conditions attached to the original resolution to grant address the potential flooding issues associated with the development;

County Highways Team have stated that they understand that this outline submission from 2005 has never obtained planning consent and the Section 106 is still unsigned. Importantly, I am not aware of any legal consultations with this Authority on the extent of the contributions which were laid down in Ian Postlethwaite's letter dated 31st March 2005, so would be most concerned if the contributions for this site were not pro-rated as required. I would be grateful if this Authority's position can be clearly stated to your Committee and confirm that the views laid down on 31st March 2005 remain appropriate.

4. Key Issues

(i) Update in terms of the Consultation Response

In respect of the request by the Town Council to make a contribution towards Forest Community Centre, it is important to note that a contribution is already being sought towards community provision on the adjoining site, detailed above at Item C on the heads of terms. For this reason, and, in the absence of any material change in the circumstances affecting the application or the legislative and policy framework upon which the resolution was made, it is not considered that there is any justification to now seek this additional contribution within the proposed S106.

In respect of the comments raised by the Highways Team in relation to the infrastructure contributions, it is important to note that the previous resolution sought contributions, as outlined above within heads of terms (f), (g), (h) and (i) towards highway and transport infrastructure. In this regard, the requirement for such contributions remains unchanged and will be sought through the S106 agreement.

In conclusion, whilst an additional contribution is sought by the Town Council, it is considered that such a request is unreasonable and is, therefore, not sought to be included within the amended heads of terms. Furthermore, it is clear from the Consultation process that there have been no material changes in the circumstances affecting the applications which would result in a recommendation which would be at variance to that presented to

the Planning Committee on 8th September 2005 other than those sought later on within this report.

(ii) Inclusion of two additional heads of terms which were omitted in error from the original resolution.

Unfortunately, at the 8th September 2005 Committee, two contributions required under the 04/01895/OUT S106 legal agreement were not included within the list of heads of terms, as shown above and, for this reason, they are now sought to be included. Accordingly, this report has been placed before the committee to reconsider the original resolution to allow the inclusion of the additional two heads of terms within the proposed S106 legal agreement.

These S106 requirements relate to the payment of financial contributions, which are reasonable and adequate (having regard to the nature and scale of development of this development), towards:

- (i) the provision of the Fully Serviced Site (i.e. Highway and Pedestrian access/gas/electricity etc.) at the Local Centre of the Development on the neighbouring development known as the Land East of Melksham;
- (ii) the provision of Recycling Facilities on the neighbouring development

Whilst the inclusion of these two items has no material impact upon the planning considerations affecting the determination of the application, the District Council cannot seek the inclusion of these items within the S106 legal agreement unless the original resolution is amended to allow for this to take place.

5. Affect on Strategies and Codes

None.

6. Risk Management Implications

None.

7. Finance and Performance Implications

None.

8. Recommendation

That the Committee's resolution of 8 September 2005 be amended to include the following heads of terms in addition to those previously approved by Committee:

- k) A financial contribution towards the provision of a fully serviced site at the local centre on the neighbouring development

l) A financial contribution towards the provision of recycling facilities on the neighbouring development

9. List of Background Papers

Copy of original report to Committee, reference 05/00225/OUT dated 8th September 2005.

Site Location plan.

Sim Manley

Planning Consultant