

OPEN

Strategic Planning Committee

20 September 2023

Handforth Garden Village Hybrid Planning Application 19/0623M Update Report

Report of: David Malcolm Head of Planning

Ward(s) Affected: Handforth

Purpose of Report

- 1 Following the approval of this application by Members of the Strategic Planning Board on 13 January 2023, this report provides an update for Committee on proposed changes to the format of the Section 106 Agreement and Conditions set out at the time.

Executive Summary

- 2 Planning approval was granted for the following development, subject to the removal of the holding condition from the Environment Agency (which was subsequently removed), the completion of the Section 111/Section 106 agreement and conditions.
- 3 This is a hybrid planning application proposing a new mixed-use settlement for the Garden Village at Handforth. It comprises two parts: (1) Outline planning application, including: demolition works (unspecified); around 1500 new homes (class C3); new employment uses (class B1 & B2); new mixed-use local (village) centre (classes A1-A5 inclusive, B1(a), C1, C2, C3, D1 & D2); new green infrastructure; and associated infrastructure. All detailed matters (appearance, means of access, landscaping, layout & scale) reserved for subsequent approval. (2) Full planning application for initial preparation and infrastructure works (IPIW), including: ground remediation, re-profiling and preparation works; highway works; drainage works; utilities works; replacement A34 bridge works; green infrastructure works; and other associated infrastructure. Land East of the A34 and South of A555, Handforth, Cheshire,
- 4 Since approval was granted, extensive discussions have taken place with the applicant over the format of the Section 111/106 agreement to secure the planning obligations required and the conditions attached to the approval granted by Members. A revised approach is now recommended, that does not significantly affect the decision made by Members in January but is a different approach to the s106 agreement and has allowed the conditions and s106 requirements to be streamlined whilst still covering all the areas originally set out in the officers report.

RECOMMENDATIONS

The Strategic Planning Committee is recommended to:

1. Approve the amended approach to the Section 106 Legal Agreement
2. Approve the amended list of conditions
3. Approve the amended list of s106 requirements and triggers

Background

- 5 In January of this year Strategic Planning Board (SPB) resolved to grant planning permission subject to planning conditions, and the completion of a legal agreement securing obligations under section 111 of the Local Government Act 1972 and section 106 of the Town and Country Planning Act 1990 (s.106 Agreement). Appendix 1.
- 6 A s.106 Agreement binds the landowners and developers to deliver mitigation both within and outside of the application site which is necessary to make the development acceptable in planning terms, is directly related to the development and fairly and reasonably related in scale and kind to the development. These are known as the CIL Regulations s122 tests. As part of their decision in January, SPB identified a list of mitigation that is required to be provided in connection with the Garden Village Scheme that would necessitate being secured through a s106 agreement.
- 7 Ordinarily all parties with a material interest in an application site will enter into the s.106 Agreement prior to the grant of planning permission. In this case, as large parts of the site are in the ownership of the Council, the LPA takes the position that public law and contract law principles prevent Cheshire East BC from entering into a legal agreement with itself. In any event the Council cannot take enforcement action under s106 against itself as that requires a separate legal personality. Separately, other landowners of parts of the site are not in a position to sign up to the s106 agreement covering the Council land.
- 8 In these circumstances, an alternative legal method to secure the mitigation necessary to make the development acceptable in planning terms has been identified that has been utilised by Cornwall Council in a similar case. The method places stronger reliance on planning conditions than in a more conventional application context due to the novel circumstances that exist. Those circumstances being the fact that the Council is in effect the applicant and majority landowner, with only a small amount of land that is part of the application site falling outside of the Council's control.
- 9 In these novel circumstances it is proposed that the s106 obligation (or mitigation and requirements that would otherwise be secured by the s106 obligation) are secured by negatively worded planning conditions attached to the planning permission requiring:

- That to the extent the Council as landowner/developer implements the permission, the commencement of development is prohibited until the Council as landowner submits to, and has approved by, the LPA a Memorandum of Understanding (MoU), confirming how and when relevant obligations in the agreed form of s.106 Agreement will be met for the development that is proposed to be carried out.

- That to the extent the Council as landowner/developer divests its land interests to a third-party developer for that developer to implement the permission, development is prohibited unless the Council as landowner/developer ensures that such third-party developer enters into the agreed form of s.106 Agreement with the Local Planning Authority before it is permitted to implement the permission.

- That to the extent the permission covers third party land, the commencement of development is prohibited until the relevant third-party landowner has entered into the agreed form of s.106 Agreement prior to commencement on that land.

Under these conditions it means that there is no way to implement the planning permission that can take free of the s106 requirements that make this development acceptable in planning terms.

- 10 The Planning Practice Guidance (PPG) advises that negatively worded conditions requiring a s106 agreement to be entered into prior to certain development taking place are unlikely to be appropriate in the majority of cases, but that they may be required in exceptional circumstances. Particularly complex development schemes and schemes where delivery could otherwise be at risk are identified as examples of exceptional circumstances. It is considered that given the size of this scheme and the importance of its delivery in terms of housing supply and infrastructure to bring forward the development of the site for the Borough and the potential of delay to the scheme that may put the delivery of the scheme at risk, that this development would satisfy the exceptional circumstances criteria in the PPG. The negatively worded conditions would still need to meet the standard condition tests that are set out in the National Planning Policy Framework and the PPG.
- 11 This proposal is not without risk. Utilising a more bespoke solution is open to legal challenge. The LPA would not be able to seek an injunction for breach of the MoU given by the Council as developer. This therefore puts the Council as developer in a position that would not be available to other landowners and increases the risk of challenge. The method would effectively rely on the reputational damage to the Council, if any of the undertakings made in the MoU were not met. However, enforcement through breach of condition would still be an option.
- 12 Given the circumstances, officers are of the view that the Cornwall method described utilising negatively worded planning conditions and Memoranda of Understanding, is an acceptable way forward. It has been proposed that responsibility for drafting any MoUs on behalf of the Council, as landowner, agreeing them with the LPA, and signing them, will be delegated to the Director

of Growth & Enterprise by the Economy and Growth Committee at their meeting on 12th September 2023. At that meeting the detail of the method proposed is to be put before Committee members for them to approve or otherwise this approach. The decision of the Economy and Growth Committee will be reported to SPB as part of an update.

- 14 A draft of the first MoU, which would be required prior to the commencement of the Initial Primary Infrastructure Works is set out at Appendix 2. Further MoU may be required as the development progresses and further s.106 obligations are triggered. The delegation to the Director of Growth & Enterprise is intended to cover the MoU relating to the Initial Primary Infrastructure Works and any further MoUs that might be required if the Council as developer determines to undertake further phases of development itself.
- 15 Discussions on the s106 obligations are well advanced and there is a draft s106 in place. Prior to the grant of planning permission the terms of the s106 agreement will be agreed in the interest of precision, enforceability and transparency so that all parties understand what is required as mitigation for this development and at what stage in the development process. On this basis the updated table of s106 requirements and trigger points are set out below.

Consultation and Engagement

15. Full public consultation was undertaken on the planning application in accordance with normal procedures and responses considered as part of the Officers report to SPB in January 2023.

Reasons for Recommendations

16. There is a concern that the way the current decision mechanism is formulated would not stand up to scrutiny, as if the applicant – Cheshire East Council – Economic Development does not fulfil it’s obligations as set out in the report, Cheshire East – as Local Planning Authority cannot enforce against itself.
17. A full review of the conditions has been undertaken, and the revised list attached to this report, avoids any duplication and clarifies what will be included as a legal obligation and what can be conditioned.

Other Options Considered

Option	Impact	Risk
Do nothing – Keep decision as recommendation to SPB 13 January 2023	Inability of the Council as Landowner to sign up to a s106 agreement and therefore there is no way to ensure delivery of relevant s.106 obligations and therefore no planning	That no planning permission would be able to be issued and therefore the HIF funding that has been awarded to the scheme would be lost which would call into question the

	permission can be issued	deliverability of the scheme as a whole Undermining the delivery of a key mixed use site within the Local Plan
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Implications and Comments

Monitoring Officer/Legal

18 All planning matters were considered as part of the Officers report to SPB in January 2023

Section 151 Officer/Finance

19 All planning matters were considered as part of the Officers report to SPB in January 2023.

Equality, Diversity and Inclusion

20 All planning matters were considered as part of the Officers report to SPB in January 2023

Human Resources

21 All planning matters were considered as part of the Officers report to SPB in January 2023

Risk Management

22 All planning matters were considered as part of the Officers report to SPB in January 2023

Rural Communities

23 All planning matters were considered as part of the Officers report to SPB in January 2023

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

24 All planning matters were considered as part of the Officers report to SPB in January 2023

Public Health

25 All planning matters were considered as part of the Officers report to SPB in January 2023

Climate Change

26 All planning matters were considered as part of the Officers report to SPB in January 2023

Access to Information	
Contact Officer:	David Malcolm Head of Planning David.malcolm@cheshireeast.gov.uk
Appendices:	Appendix 1: Original decision from SPB in January Appendix 2: Memorandum of Understanding – Heads of Terms Appendix 3: Proposed amended decision
Background Papers:	January SPB report for Hybrid Planning Application 19/0623M