

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of meeting: 10th April 2013
Report of: Steve Irvine – Development Management and Building Control Manager
Title: Erection Of 43 Dwelling Houses (Including 5 Affordable Dwellings), Creation Of New Access To Sheppenhall Lane, Aston as enabling development to secure the restoration of Combermere Abbey.

1.0 Purpose of Report

- 1.1 To consider instructing the Borough Solicitor to complete a Section 106 Agreement in respect of planning application 12/3323N for the erection of 43 dwelling houses (including 5 affordable dwellings), and creation of new access to Sheppenhall Lane, Aston to come into effect in the event that the Appeal against the Council's refusal of the application is upheld and planning permission granted.
- 1.2 Also, to consider instructing the Borough Solicitor to prepare a Deed of Variation in respect of the Section 106 Agreement attached to planning permission 11/2818N granted on Appeal last year for the erection of 43 dwelling houses (including 5 affordable dwellings), and creation of new access to Sheppenhall Lane, Aston.

2.0 Decision Required

- 2.1 To authorise the Borough Solicitor to complete a Section 106 Agreement as set out in the recommendation below.

3.0 Background

- 3.1 The site, comprises some 2ha of open farmland on the southern edge of the village of Aston. It is part of a larger field which stretches to the south for a further 175m. The field is generally level with a mature hedge, interspersed with individual trees, along its eastern boundary with Sheppenhall Lane and along its western boundary with the farmland beyond.
- 3.2 To the north, the site wraps around the rear of two pairs of semi-detached houses and a detached bungalow which front Sheppenhall Lane beyond a

- 4m open grassed verge. The boundary between these properties and the application site comprises a low stock proof fence and hedging.
- 3.3 Beyond Sheppenhall Lane to the east of the site are four detached properties of varying age and design. Two are relatively modern detached bungalows, whilst the other two are older detached houses.
 - 3.4 The village of Aston has seen various phases of growth over many years, with the result that it has properties of a variety of ages and designs. It includes modern bungalows and houses as well as the older, original properties of the settlement. It stands on the junction of the A530, Whitchurch Road, and Sheppenhall Lane/Wrenbury Road, although the majority of the village lies to the south of Whitchurch Road, including the more recent development on Sheppenhall Grove.
 - 3.5 Members may recall that in April 2012, Strategic Planning Board refused planning permission for the erection of 43 dwellings including 5 affordable dwellings on the site. The scheme was intended to be an “enabling development” which would provide funds for the restoration of the north wing of Combermere Abbey, a Grade 1 Listed Building which is in Priority Category A on the English Heritage Register of Buildings at Risk.
 - 3.6 Combermere Abbey is thought to have originated in 1133 as a Cistercian monastery, but nothing of this survives. In 1774, it was recorded as largely timber framed but alterations took place in 1795 and after 1814, including the addition of new service wings.
 - 3.7 The abbey is set in its own extensive grounds next to a mere, with service ranges, a sundial and game larder close by to the south and an ice house and stables to the north east, all set within the open countryside and registered historic park land.
 - 3.8 The north wing is disused and semi–derelict and appears on the English Heritage register of Buildings at Risk, as a building in the priority category being in immediate risk of further rapid deterioration or loss of fabric with no way forward agreed.
 - 3.9 The proposed works, which the enabling development was intended to fund, were the conversion of The North Wing to form a dwelling involving its repair, alteration and refurbishment on the ground and first floor and remodeling and simplifying its roof structure attics.
 - 3.10 An Appeal was submitted against the Council's refusal of the application, and whilst the Appeal was under consideration, the Applicant submitted a duplicate application for consideration by the Council. (12/3323N refers). The only difference between the two proposals, was that the applicant

was offering, as part of the second application, to provide a permissive footpath to improve public access to the Combermere Estate. This was also refused by Strategic Planning Board on 24th October 2012.

- 3.11 Meanwhile, to ensure that the public benefits of the scheme, in particular the restoration of the Abbey, but also highways improvements, open space contributions, education contributions, provision of footpath, and affordable housing, were forthcoming, in the event that the Appeal against the first refusal was upheld and planning permission granted, Strategic Planning Board also resolved on 24th October 2012 to enter into a Section 106 Legal Agreement with the Appellant.
- 3.12 In most cases, where an Appeal is submitted, it is usually sufficient for the Appellant to submit a Unilateral Undertaking, to the Planning Inspectorate, with their Appeal paperwork to make the usual provisions for affordable housing, financial contributions to open space, highways, education etc.
- 3.13 However, due to the legal complexities of this case, particularly in respect of the management of the funds that would be generated by the development towards the restoration, which the Council would be actively involved in, it is necessary for the Council to be a signatory to the agreement. Therefore a bilateral Section 106 Agreement was required.
- 3.14 The Appeal against the first refusal was subsequently allowed by the Planning Inspectorate on 8 February 2013 and planning permission was granted subject to conditions and the Section 106 Agreement which the Council and Appellant had entered into.

4.0 Proposed Variation to the Section 106 Agreement

- 4.1 A planning obligation must comply with the following three tests as set out in the Community Infrastructure (CIL) Regulations 2010:
- necessary to make the development acceptable in planning terms
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 4.2 In determining the Appeal, the Inspector considered the obligations within the Section 106 Agreement in the light of these tests.
- 4.3 In respect of the Public Open Space contribution of £10,000 the Inspector states:

“as the Council’s Greenspace Officer considers there to be more than adequate public open space in the nearby village of Wrenbury, I do not

consider the requirement for a contribution in this regard satisfies the regulations.”

- 4.4 As such he gave no weight to this contribution in his assessment of the planning balance in the case. Planning Inspectors do not have the power to amend Section 106 Agreements, only to comment on the weight that should be afforded to them as material considerations.
- 4.5 Therefore the applicant has submitted a formal request to the Council to vary the existing legal agreement to remove the requirement for this contribution.
- 4.6 Having considered the matter in the light of the Inspectors comments, along with the previously expressed views of the Greenspaces Officer, Planning Officers are of the view that the proposed open space contribution does not meet the requirements of the CIL Regulations and that Strategic Board should agree to the applicants request to delete this obligation from the existing agreement. This would be done by instructing the Borough Solicitor to prepare a Deed of Variation.

5.0 Further Section 106 Agreement

- 5.1 The Appellant has now also appealed against the second refusal of planning permission (12/3323N).
- 5.2 As was the case with the first Appeal relating to application 11/2818N, it is, therefore, necessary to enter into a Section 106 Agreement in respect of this application, so that in the event that the Appeal is upheld and planning permission is granted by the Secretary of State, the public benefits of the scheme, in respect of the restoration of the Abbey, but also highways improvements, education contributions, provision of footpath, and affordable housing, are forthcoming.
- 5.3 However, for the reasons set out in Section 4.0 above, it is not considered that the Section 106 Agreement in respect of the second Appeal, should include any contribution towards public open space.
- 5.4 The Borough Solicitor can only sign such an agreement with the express consent of the Strategic Planning Board.
- 5.5 It is important to stress, that the Agreement would only come into force in the event that the Appeal is upheld and planning permission granted and that by entering into the agreement, the Council would not in any way prejudice its case in defending its refusal of planning permission.

- 5.6** By entering into the agreement, the Council is merely protecting its position and ensuring that the maximum public benefit is secured from the scheme in the event that the Inspector's decision is not in the Council's favour.

5 Conclusion

- 5.1** On the basis of the above, it is considered to be appropriate for the Council to enter into a Deed of Variation to the existing Section 106 Agreement to delete the open space contribution and also to enter into a new Section 106 Agreement in respect of the second Appeal proposal, including the same obligations as the previous agreement with the exception of the open space contribution which should be omitted.

6 Recommendation

6.1 That the Borough Solicitor be authorised to:

- 1. Prepare a Deed of Variation to the Section 106 Agreement attached to planning permission 11/2818N to delete the following obligation**
 - **A commuted sum payment in respect of off-site open space/recreation provision of £10,000 to be spent on upgrading current facilities or the provision of new facilities within Aston or Wrenbury.**
- 2. Prepare a Section 106 legal agreement in respect of planning application 12/3323N to secure:**
 - **the delivery of the heritage benefits of the scheme including the restoration of the Abbey**
 - **affordable housing comprising 3 x 2 bed units and 2 x 3 bed units, to be delivered on a discounted for sale basis at a discount of 40% from open market value or as another form of intermediate tenure housing which is offered at the same level of affordability and complies with the requirements the Councils Interim Statement on Affordable Housing.**
 - **An education contribution of £30,000**
 - **Great Crested Newt Hibernacula**
 - **A total of 40 days per annum in total when the Abbey is open to the public for Guided Tours**
 - **6 open days a year when there will be public access to the gardens.**
 - **2 days each year for both Newhall Parish Council and Dodcott-cum-Wilkesley Parish Council to hold local events in the Abbey or gardens.**

- A financial contribution of £8000 towards the cost of implementing a speed limit on the A530 through Aston and the extension of the existing 30mph limit on Sheppenhall Lane to beyond the application site southern boundary.
- Provision of permissive footpath within the Combermere Estate in accordance with submitted plan.

7 Financial Implications

- 7.1 The loss of £10,000 towards open space provision in Wrenbury

8 Legal Implications

- 8.1 The Borough Solicitor has been consulted on the proposals and raised no objections

9 Risk Assessment

- 9.1 There are no risks associated with this decision.

10 Reasons for Recommendation

- 10.1 To allow the Council to ensure that the maximum community benefit from the scheme, including the restoration of the Abbey, highways improvements, open space contributions, education contributions, provision of footpath, and affordable housing are secured in the event that the appeal is upheld and planning permission granted by the Planning Inspectorate.

- 10.2 A planning Inspector has determined that:

“as the Council’s Greenspace Officer considers there to be more than adequate public open space in the nearby village of Wrenbury, I do not consider the requirement for a contribution in this regard satisfies the regulations.”

For further information:

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Background Documents:

- Application 11/2818N.
- Application 12/3323N