

## CHESHIRE EAST COUNCIL

### STRATEGIC PLANNING BOARD

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**Date of Meeting:** 27 May 2009  
**Report of:** John Knight - Head of Planning and Policy  
**Title:** Variation of S106 Agreement – Henbury High School,  
Macclesfield Redevelopment by Wimpey Homes

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#### **1.0 Purpose of Report**

- 1.1 To consider the request of the developer of the former Henbury High School site to vary the phasing of delivery of various requirements attached to the Section 106 Agreement attached to that development, which has commenced.

#### **2.0 Decision Required**

- 2.1 To delegate the authority to the Head of Planning and Policy to negotiate upon and secure amendments to the wording of the S106 Agreement to allow for alterations to the phasing of delivery of monies required prior to commencement of development for highways contributions and other items such as the provision of playing pitches and sporting facilities.

#### **3.0 Financial Implications**

- 3.1 Costs are likely to increase marginally in terms of additional officer time

#### **4.0 Legal Implications**

- 4.1 There are no legal implications in respect of this matter.

#### **5.0 Risk Assessment**

- 5.1 The risks associated with this are considered below.

#### **6.0 Background**

- 6.1 The site has permission, subject to S106 Agreement, for its residential redevelopment for 123 dwellings, public open space comprising a single storey pavilion, children's play area, 2 multi use games areas (MUGA's), associated dedicated car parking for the playing pitches and 2 separate accesses off Whirley Road, Macclesfield.

6.2 The Section 106 agreement was completed in February 2006 and related to the following matters:-

- Timing of the removal of the existing synthetic pitch and construction of recreational facilities.
- All revenue raised by the sale of the site shall be spent on development connected with the Learning Zone.
- 25% of the housing shall be affordable in accordance with the Council's policies and guidelines.
- Specified highway works shall be carried out.
- A financial contribution shall be made for off-site highway works to be determined by the Highway Authority.
- The recreational facilities/open space shall be provided to a specified standard.
- The open space shall be transferred to the Borough Council for recreational purposes and maintained to a suitable standard prior to transfer.
- A commuted sum shall be paid to the Council for ongoing repair and maintenance of the recreational facilities.

6.3 The majority of these issues have been resolved and the capital raised from the development has been used by the former Cheshire County Council to help fund the development of the Learning Zone in Macclesfield and the relocation of the synthetic turf pitch to Fallibroome High School in Macclesfield.

## **7.0 Current Position**

7.1 The Applicant, like many housebuilders, is finding the current economic climate very challenging. In order for the Applicant to be able to continue with the development in a viable manner they are unable to outlay the level of expenditure currently required by the S106 in advance of the commencement /occupation of the residential units. The only way that the development can proceed is subject to committed sales, without this Wimpey will not progress the site. This potentially could leave this site blighted and result in the local Broken Cross Juniors football team not being able to return to the site by this autumn.

7.2 The Applicant is still committed to the delivery of the development but is seeking to allow for greater flexibility in the phasing of the provision of commuted sum payments for highways works and the phasing of replacement playing pitches and the enhanced pavilion building and play equipment.

7.3 The requirements of the S106 Agreement as originally signed and as the Developer is now seeking to negotiate amendments upon are best summed up by the following table:

<b>Heads of Terms of S106 Agreement as originally drafted</b>		<b>Revised Heads of Terms as now proposed</b>
Clause 4.6	Wimpey Homes shall pay the County Council £100,000 for the delivery of highway improvements prior to the commencement of development.	Wimpey Homes shall pay the Highways department £25,000 on the commencement of the development, thereafter £50,000 upon completion of the 50 <sup>th</sup> open market unit (subject to agreed construction plan) and £25,000 upon commencement of the 100th residential unit, all payments are to be index linked.
Clause 8.2	There shall be 2 junior grass pitches with new drainage systems and pumping station to lift surface water into a public drain.	There shall be 2 new grass pitches with new drainage systems. A new pumping station will be provided, future responsibility for which requires further investigation.
Clause 8.3.2	The reseeding and drainage improvements of the pitches shall be undertaken from April 2009 over the Summer of 2009 and be ready for Autumn 2009.	Phase 1 – Autumn 2009 : Sports pitch no. 1 to have remedial drainage treatment and ground preparation to make it playable for the 2009/10 season. Temporary changing and toilet facilities and access/parking surfacing (Area outlined in pink on attached plan)
Clause 8.3.3	The pavilion shall be made available at the same time as the pitches in Autumn 2009.	The pavilion is to be completed in two phases: Phase 2: Sports element (ie permanent changing facilities) of the pavilion to be completed in Autumn 2010.  Phase 4: Community facilities element of pavilion building to be completed upon sale of

		all residential units or 2012 whichever is soonest.
Clause 8.11.1	A construction, provision works, equipment phasing plan and programme for the MUGA, LEAP, remainder of the open space, landscaping arrangements, car park, pavilion and access shall be agreed in writing prior to the commencement of development.	Construction programme to be agreed in writing in accordance with enclosed Phasing Plan.
Clause 8.11.2	The open spaces, including the MUGA and LEAP, pavilion and pitches must be provided prior to first occupation of any residential units abutting to or in the vicinity of the these facilities.	Delete clause relating to occupation of units adjacent to the POS as delivery will be based on agreed Phasing Plan at Clause 8.11.1.
Clause 8.15	The STP and grass pitches shall remain available for community use throughout the football season 2006/07. Drainage works are to be carried out during the closed or the summer season. This should continue until alternative facilities are provided off or on site.	Phase 1: as set above. Phase 2: Sports pitch 2 to have remedial drainage treatment and ground preparation to make it playable for 2010 – 2011.

- 7.4 National Guidance in PPG17 emphasises the importance of protecting open space, sports and recreational facilities in local plans. However, it also recognises that the development of such land may provide an opportunity for local authorities to remedy deficiencies, “wherever possible, the aim should be to achieve qualitative improvements to open space, sports and recreational facilities”, and these should be secured through conditions and planning obligations. The proposed facilities are to be owned and managed by the Borough Council and provide for a mixture of formal and informal recreational uses to maximise use by different members of the local community. They help to remedy deficiencies in the area as identified by the Council’s Audit.
- 7.5 Overall, it the Governments advice to Local Planning Authorities to be as flexible as possible in the current economic climate when considering requests by Developers for flexibility. It is reassuring to note that the Developer is not seeking to renege on the Agreement to provide the playing fields, pavilion building and associated car parking. Rather they are seeking to utilise the revenue from housing

commitments from purchasers to fund their other legal responsibilities for the sporting and recreational facilities.

- 7.6 The Leisure Services Manager recognises that this is a challenging time for house builders and is happy to negotiate further on the detail of the pavilion building, the design of which in terms of the approved plans is cumbersome and architecturally complicated and therefore expensive to build, however, she has stated in meetings with the Developer that she will not accept a lesser level of overall provision particularly with regard to the LEAP and MUGA. The Leisure Services also wishes to ensure that drainage is adequate, without taking on future responsibility for maintenance of a drainage system that may comprise drainage from the residential parts of the site. In this regard the developer proposes a pumping station, which requires further investigation and negotiation.
- 7.7 The Highways Engineer recognises that these are challenging times and is willing to be more flexible in terms of the funding of off site highways improvements.
- 7.8 Overall, given that the Applicant has assured the Council that they are not seeking to renege on the quality of play and replacement sporting provision that was anticipated by the former Macclesfield Borough Council in respect of the sporting provision, it is considered that the Council can be more flexible in this particular case however, the S106 Agreement would still require careful redrafting to ensure that there is no reduction in provision of replacement facilities overall and that all necessary infrastructure is provided.

## **8.0 Recommendation**

- 8.1 Delegate to the Head of Planning and Policy the authority to renegotiate the terms of the S106 in accordance with the suggested phasing of delivery as detailed in the table within Section 5 of this report and the phasing plan submitted in support of Section 5 or as further amended by negotiation between the developer and Officers.

## **9.0 Background documents**

- a. Location plan
- b. letter from Turley Associates dated 12 May 2009
- c. POS phasing plan

### ***For further information:***

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