

CHESHIRE EAST COUNCIL

SOUTHERN PLANNING COMMITTEE

Date of meeting: 15 January 2014

Report of: David Malcolm – Interim Planning & Place Shaping Manager

Title: Deed of Variation to S106 Legal Agreement for previously approved scheme for (08/0492/OUT) at Fine Art, Victoria Mills, Holmes Chapel

1.0 Purpose of Report

- 1.1 To consider a proposal to vary the previous legal agreement on an outline application for residential development including means of access (08/0492/OUT) at Victoria Mills, Holmes Chapel.
- 1.2 To explain the nature of the proposed changes and what it will involve so that Members can make an informed decision.

2.0 Decision Required

- 2.1 To support the recommendation and agree to the changes to the S106 legal agreement as proposed.

3.0 Background

- 3.1 Planning permission was granted on 30 August 2012 subject to a legal agreement for an outline application for residential development which included means of access at Fine Art, Victoria Mills, Holmes Chapel. The development included indicative plans which demonstrated a development of up to 160 dwellings.
- 3.2 The legal agreement covered a number of aspects but includes:
 - Provision of 15% Affordable Housing
 - Development not to commence until such time as Fine Art has relocated to alternative premises with the borough of Cheshire East.
 - Submit a Travel Plan and implement the approved Travel Plan in accordance with the agreed triggers and mechanisms.
 - Secure a financial contribution of £25,000 to fund off-site highway improvements and works to upgrade bus services and bus stops as required by the Travel Plan.
 - To cover a range of scenarios in respect of Children and Young Persons play provision.
- 3.3 The existing premises for Fine Décor (known as Fine Art) are unsuitable for their current operations which employ some 200 people in the locality and it is now necessary to relocate the business. There

is now also interest in the site from a national house builder. The Council has therefore been approached to consider two changes to the S106 legal agreement to facilitate the relocation of the business and to enable the site to be developed for housing.

4.0 The Proposal

4.1 The applicants have identified suitable premises to which the business can relocate but these premises are located in Winsford over the border in Cheshire West and as such would require a change to the legal agreement.

4.2 A further change is also requested to provide that the restriction preventing the commencement of the housing development on site until Fine décor business has relocated should only apply for so long as the Fine Décor business continues to trade. This is necessary as the house builder purchaser is needed to fund the relocation however the house builder needs the certainty that it will have vacant possession and can commence the development. It is therefore necessary to cover all eventualities which include Fine Décor business ceasing to trade.

4.3 The amendments requested are therefore:

- (1) to facilitate the relocation of the Fine Décor business to alternative premises within the Cheshire East Borough or within 15 miles of the site.
- (2) to clarify that the restriction on the commencement of development of the housing development on the site does not apply if the Fine Décor business has relocated to the alternative premises or ceases to trade before such relocation has taken place.

5.0 Assessment

5.1 The original application for this site first received approval in February 2009 under the former Congleton Borough Council subject to the associated legal agreement and conditions. The restriction on relocating the business was paramount to the decision due to the site being an existing on-going business and the site being a designated employment site in the Congleton Local Plan. A reduced affordable housing provision was also accepted at the time due to the cost of relocation.

5.2 Updated reports were brought before Southern Planning Committee in April 2011 recommending that the application should be refused due to the lack of progress on the legal agreement. Members deferred the decision advising that further time should be given to enable the agreement to be signed. A further updated report was brought in July

2011 recommending minor changes to the terms of the S106. The agreement was finally signed in August 2012. There has therefore been a significant length of time in resolving this matter which perhaps shows the complexity of requiring a business to relocate as part of a planning application.

- 5.3 Agents have been looking for suitable premises for the past year. Council officers from the Economic Development team have also recently worked with Fine Décor to try and establish whether there are any suitable premises within Cheshire East that could accommodate the relocated business. Six individual sites across Cheshire East have been discounted due to constraints on the size of unit, potential build time, costs and location such that they have been unable to secure suitable premises.
- 5.4 The significant factor in terms of location of the new premises is the location of the workforce with the majority of the skilled staff being based in Middlewich/Sandbach, Winsford and North Cheshire. As a result identified sites which are affordable have been found in Winsford, however this is clearly outside Cheshire East and in conflict with the current legal agreement.
- 5.5 Members may be aware that National Planning Policies and Government guidance in the light of the economic downturn has supported flexibility in decision making and that legal agreements should not be seen as a restriction on development. While the designation of the site remains as employment land the principle of the redevelopment for housing has already been secured. It is not considered that there has been any significant change in the policy position brought in by the NPPF that would fundamentally affect the original decision made. The policy background would now be seen as more supportive of a flexible approach provided it was sustainable.
- 5.6 It would clearly be preferable for the existing business to be relocated within Cheshire East and it is disappointing that appropriate premises cannot be found. However, the current business supports some 200 jobs within the locality and therefore does have a clear economic benefit that would not just be restricted to its location in Winsford. It is therefore considered that varying the agreement would be acceptable.
- 5.7 It should also be highlighted that without the business relocating then the proposed housing development would at this time not take place. The varying of the agreement also brings the realistic prospect of the site actually being developed for housing which in the current climate would be a valuable addition to the housing supply position. This further adds weight to allow the variation.
- 5.8 The second part of the variation seeks to give certainty for any prospective house builder that once they pursue purchase of the site that they will be able to commence and develop the site – even if Fine

Décor goes out of business. Again this is seen as a reasonable request given the circumstances of the site.

6.0 Conclusions

6.1 Taking account of the proposed changes and the need to adopt a flexible approach to planning permissions and associated legal agreements it is considered that the proposed variations can be accepted.

7.1 It is considered that the proposed changes are consistent with the core principles of the NPPF and that the approach being recommended represents a sustainable development.

8.0 Recommendation

8.1 That Members accept the deed of variation to facilitate the following:

- (1) the relocation of the Fine Décor business to alternative premises within the Cheshire East Borough or within 15 miles of the site.**
- (2) to clarify that the restriction on the commencement of development of the housing development on the site does not apply if the Fine Décor business has relocated to the alternative premises or ceases to trade before such relocation has taken place.**

9.0 Financial Implications

9.1 No specific financial implications

10.0 Legal Implications

10.1 A new agreement will need to be secured and completed.

11.0 Risk Assessment

11.1 There are no identified risks associated with this decision.

12.0 Reasons for Recommendation

12.1 To ensure the application is dealt with effectively and to enable the development to progress accordingly.

For further information:

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Background Documents: