

# **FOR PUBLICATION**

## **Variation of s106 Agreement concerning development on land at Wheeldon Mill, Chesterfield for Harron Homes**

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**MEETING:** PLANNING COMMITTEE

**DATE:** 12TH MARCH 2018

**REPORT BY:** DEVELOPMENT MANAGEMENT &  
CONSERVATION MANAGER

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**WARD:** BRIMINGTON SOUTH

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### 1.0 **Background**

1.1 Outline application CHE/14/00404/OUT was approved for residential development of land at Wheeldon Mill in August 2015. This permission was agreed subject to 27 conditions and a s106 legal agreement which required:

- % for Art subject to any viability appraisal to be agreed before reserved matters submission;
- 4 Affordable housing units;
- An open space and SUDs Management Scheme;
- An off site play contribution of £40,000;
- Prior to first occupation of the development the construction to adoption standards of a section of

the Chesterfield/Staveley Regeneration Route including appropriately levelled ground including a 7.3 metre carriageway with footway, cycleway and pedestrian facilities to binder level (with narrower surface features) within a 17.3 metre corridor with all necessary earthworks to a design agreed by CBC and DCC;

- Prior to first occupation of the development the provision of and management and maintenance (including design, necessary survey and permissions) of a connection and pedestrian bridge link with additional provision for passage of cycles over the Chesterfield Canal from the development to the towpath. The agreement requires a payment to the County Council for the design of the bridge link;
- Use of local labour.

- 1.2 The s106 agreement was signed by The Chesterfield Sports Stadium Ltd, Frank George Sissons, Sarah Cannon, Verna Mowbray, Patricia Ann Johnson, Keith Johnson Mowbray, Faye Johnson Mowbray and the Borough Council.
- 1.3 Applications CHE/16/00677/DOC and CHE/17/00659/DOC were subsequently submitted for the discharge of conditions 5 (archaeology impact and WSI), 6 (Reptile Assessment and mitigation) and 12 (Noise Assessment and mitigation) of CHE/14/00404/OUT, all of which were required to have been agreed prior to the submission of a Reserved Matters application.
- 1.4 This paved the way for a Reserved Matters application from Harron Homes for 120 dwellings on the site (116 Market houses and 4 affordable houses).

CHE/17/00685/REM. Vehicular access to the site is proposed via the creation of a roadway from the existing roundabout at Rother Way and which is proposed to run in a straight line from South to North, and the intention is that this would form the beginning of the Chesterfield- Staveley Regeneration Route as referred in the Section 106 Agreement with the outline consent. The plans showed a 14.25 metre corridor (as opposed to the 17.3 metre corridor referred to in the s106) would be provided. The reduction was achieved by co-joining a footpath and cycle route saving 3 metres width.

- 1.5 The Reserved Matters submission was agreed by planning committee in accordance with the report recommendations on 8<sup>th</sup> January 2018.
- 1.6 At planning committee reference was made to an application from Harron Homes for Variation of the s106 legal agreement. The Variation being sought by Harron concerned the bridge over the canal however additionally the agreement would need variation to take account of the reduced corridor width which had been accepted by planning committee.

## 2.0 **Variation of S106**

- 2.1 Now planning permission has been granted, Harron Homes are obligated to purchase the site from the owners. However there remains uncertainty regarding the costs and deliverability implications arising out of the requirements for provision of a bridge over the canal and which would have potential viability implications for the scheme.

### Corridor width

- 2.2 Paragraph 2.9 sets out a definition of the “Highways , Cycling and Bridge Related Works” and states that:- *the following will be constructed to a standard suitable for adoption as public highway/cycleway/pedestrian footpath and/or footway as appropriate:*
  - a) *the provision of a section of the Chesterfield-Staveley Regeneration Route, including appropriately levelled ground namely 7.3 metres carriageway with a footway*

*and cycleway and pedestrian facilities to binder level (with narrower surface features and carriageway) within a corridor of 17.3 metres with all necessary earthworks in accordance with detailed designs to be submitted to and approved by the Council and Highway Authority.*

- 2.3 Planning Committee have now agreed and accepted a 14.3 metre width corridor with a saving of 3 metres arising from a conjoined footpath and cycle route rather than the original segregated option.
- 2.4 The s106 agreement requires amendment to refer to the reduced corridor width of 14.3 metres and this should be referred to in a variation document.

#### Canal Bridge

- 2.5 Paragraph 2.9 sets out a definition of the “Highways, Cycling and Bridge Related Works” and states that:- *the following will be constructed to a standard suitable for adoption as public highway/cycleway/pedestrian footpath and/or footway as appropriate:*

*b) provision of and management and maintenance (including design, necessary surveys and permissions) of a connection and bridge link.*

Schedule 6 sets out the owners obligations as follows:-

- 1.1 *not to permit first occupation of the development without having first completed to the Council's and highway authority's satisfaction the Highways, Cycling and Bridge Related Works.*
- 1.2 *To design and construct a pedestrian footbridge with additional provision for passage by cycles in accordance with a design submitted to and approved in advance by the County Council.*
- 1.3 *To pay to the Council on behalf of the County Council prior to first occupation of the development a commuted sum calculated by The County Council as appropriate for the design of the Bridge Link to*

*enable adoption of the Bridge link for maintenance at public expense.*

- 1.4 *Not to permit the Bridge Link to restrict access to, or use of, the Trans Pennine Trail or navigation of the Chesterfield Canal.*
- 1.5 *To enter into any subsidiary agreements with the County Council in relation to the Highways, Cycling and Bridge Related Works.*
- 1.6 *To carry out all at its own expense all necessary and reasonable associated measures during the construction of the Bridge Link including, but not limited to, any temporary closures of public rights of way.*

2.6 Harron Homes consider the current obligations provide too onerous a limitation on the scheme under which they could not proceed to develop. They have no control regarding the timings, costings or decision making process with regard to the canal bridge and this has been brought very much to the fore by the concerns which have been expressed by the County Council which were referred to at the planning committee.

2.7 The day before planning committee the County Council confirmed in an email that a suggested £95,000 commuted sum would be insufficient to cover design, build and long term maintenance of a canal bridge and on the basis that a bridge is not included in the canal restoration programme, DCC will seek to remove its request for such a link, or financial contribution to it, from the revised s106.

2.8 The developer has committed to the scheme and has a programme which delivers the housing scheme within 3.5 years however the first 6 months is spent on construction of the roadway from Rother Way along the Chesterfield- Staveley Regeneration Route. It is accepted that the

scheme is on the margins of viability and that the scheme has been squeezed such that just 4 affordable houses are all that can be secured. It is also the case that the developer has invested in an investigation to the tune of £10,000 in an attempt to resolve the flooding problem with the blocked culvert notwithstanding the fact that this would normally be responsibility of DCC.

- 2.9 It is clearly desirable in providing a link to the canal towpath TPT which would provide a traffic free route to Chesterfield and Staveley and this is also something which has been encouraged by Chesterfield Cycle Campaign.
- 2.10 It is accepted however that the Chesterfield Canal is owned by DCC and that they are not party to the s106 agreement and the fact that they have indicated that they don't want a bridge causes significant uncertainty as to whether the clause in the s106 requiring a bridge link could actually be secured.
- 2.11 Discussion with the land owner, a previous developer for the site and DCC officers suggested that the principle of a commuted sum for the design and building of a bridge could be accepted. An example was the recently constructed bridge over the canal at Constitution Hill however this was accepted as a more substantial taller and wider brick of brick and stone construction and which was considered to be a more elaborate solution. Whilst this bridge cost £131,500 it was considered that a sum of £95,000, which was considered as a viable limit, could be identified for provision of a bridge.
- 2.12 Until a survey and design exercise has been undertaken to investigate the practical limitations and opportunities on the site and the opportunity to design a scheme which provides a link, it is not possible to conclude how much fund would be required. It is clear however that there is a limit which determines whether the housing scheme will proceed or not. Notwithstanding the reference to a cycle gutter in the bridge design it is considered that a functional pedestrian bridge over the canal would be better than nothing at all as a compromise.

2.13 It is accepted that the s106 clauses need to be amended to allow the development scheme to proceed.

It is suggested that the s106 should be varied as follows:-

- Paragraphs 1.2 to 1.6 (inclusive) of Schedule 6 of the Original Agreement to be deleted.
- The following paragraph to be inserted as a new paragraph 1.2 of Schedule 6 to the Original Agreement:  
“To pay to the Council on behalf of the County Council prior to first occupation of the Development a commuted sum of £95,000 for the design and the construction of the Bridge Link and to enable adoption of the Bridge Link for maintenance at public expense”.
- That a new obligation be added to the agreement requiring that a) the Council covenants with the Owners that the Council will complete or procure completion of the construction of the Bridge Link prior to occupation of the 80<sup>th</sup> Dwelling to be constructed on the Land and will reasonably and properly apply the sum paid pursuant to paragraph 1.2 above (commuted sum payment) for such purpose and b) the Council covenants with the Owners (but for the sole benefit of the party who makes the payment) to repay any balance remaining of the sum paid pursuant to paragraph 1.2 above of this Schedule (commuted sum payment) within 14 working days of demand for the return of any such balance if the construction of the Bridge Link is not completed prior to the occupation of the 80<sup>th</sup> Dwelling to be constructed on the Land.“

2.14 Such amendments to the s106 agreement will allow the development scheme to proceed whilst allowing an ongoing conversation with DCC about provision of a bridge over the canal. This would provide a fund to be used for design purposes and if it were concluded that it is not possible to achieve a bridge for technical or land owner reasons, then the financial pot can be returned. A date when the 80<sup>th</sup> dwelling on the site has been occupied should give sufficient time to be able to resolve whether a scheme can be provided or not and for delivery of such a scheme.

3.0 **Recommendations**

3.1 That the s106 agreement requires amendment to refer to the reduced corridor width of 14.3 metres.

3.2 That the Agreement be amended to allow the developer to pay to the Council on behalf of the County Council on commencement of the development a commuted sum of £95,000 for the design and the construction of the Bridge Link and that the Council works with the County Council to procure the design and completion of the construction of the Bridge Link prior to occupation of the 80<sup>th</sup> Dwelling to be constructed on the Land. The agreement would allow the repayment of any balance remaining if the Bridge Link is not completed prior to the occupation of the 80<sup>th</sup> dwelling to be constructed on the Land.

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