

Case Officer: Sarah Kay File No: CHE/20/00110/FUL  
Tel. No: (01246) 345786 Plot No: 2/719  
Decision Date: 30<sup>th</sup> March 2020 (subject to Covid-19 revised procedure)

### **ITEM 3**

#### **APPLICATION UNDER S106A TO MODIFY A PLANNING OBLIGATION AGREED ALONGSIDE PLANNING PERMISSION CHE/15/00755/OUT AND CHE/19/00159/REM AT LAND TO THE WEST OF BEVAN DRIVE, INKERSALL, CHESTERFIELD, DERBYSHIRE FOR WILDGOOSE HOMES**

Local Plan: Open Countryside / Other Open Land  
Ward: Hollingwood & Inkersall

#### **1.0 CONSULTATIONS**

<b>CBC Strategic Planning</b>	Comments received – see report
<b>DCC Education</b>	Comments received – see report
<b>Ward Members</b>	No comments received
<b>Publicity (Site Notice)</b>	No representations received

#### **2.0 THE SITE**

- 2.1 The application site lies in Inkersall about 4km northeast of Chesterfield. The site is situated to the west of Bevan Drive, Inkersall and southwest of Brimington.
- 2.2 The site consists of open grassland with hedgerows to the north and east, woodlands to the south and west and a stream (Trough Brook) running along the western edge. It slopes from east to west down towards Ringwood Lake and the Trough Brook. Staveley Footpath 58 runs north to south along the lower western part of the site.



2.3 When the outline planning permission was granted in March 2016 there was a resolution to protect a number of trees on northern and eastern edges of the site. A Tree Preservation Order was subsequently made (Ref. 4901.349 – 29/08/2019) covering a group of trees on the eastern boundary (G1) and 5 no. individual trees on the northern and eastern boundary of the site (T1 – T5).

### **3.0 RELEVANT SITE HISTORY**

3.1 CHE/19/00159/REM - Approval of reserved matters of CHE/15/00755/OUT - residential development of 29 dwellings. Approved – 24/09/2019.

3.2 CHE/16/00800/FUL - Application made under S106A of the T&CP Act 1990 to vary the S106 planning obligation signed under planning permission CHE/15/00755/OUT in respect of affordable housing.  
Approved / S106 amended - 10/09/2018.

3.3 CHE/15/00755/OUT - Outline application for residential development.  
Conditional permission (inc. S106 Agreement) approved - 29/03/2016.

### **4.0 THE PROPOSAL / BACKGROUND**

4.1 This is an application submitted under S106A of the Town and Country Planning Act 1990 to seek a review to the S106 Agreement signed alongside planning permission CHE/15/00755/OUT in respect of the education contribution.

4.2 Under the current S106 agreement the education contribution is dealt with in Schedule 3, which requires the developer to pay a sum of £120,233.19 to the council prior to / upon commencement of the development. The contribution was secured towards the provision of 7 no. secondary pupil places at the Springwell Community College.

4.3 This S106A application is made to seek amendment to the clause of payment of the S106 education contribution in line with the fact reserved matters (RM) consent has been granted on a phased basis. The applicant has requested that the payment of the full

outline planning permission education contribution be split on a pro rata basis, rather than full payment of the entire sum being required prior to any development commencing.

- 4.4 Under the provisions of the outline planning permission, a development of up to 103 dwellings was permitted. This figure generated the education contribution (£) included in the original S106 agreement. Following that, reserved matters approval has been granted in Sep 2019 for the first phase of the development comprising a scheme of 29 dwellings.

## **5.0 CONSIDERATIONS**

### **5.1 Planning Policy Background**

- 5.1.1 On the basis that an outline planning permission and reserved matter approval already exists for the site, the only development plan policy applicable to infrastructure delivery is policy CS4 of the Chesterfield Local Plan: Core Strategy 2011 – 2031.
- 5.1.2 Policy CS4 concerns Infrastructure Delivery and it requires any strategic infrastructure need arising from development to be addressed through the Council's Infrastructure Delivery Plan or the Community Infrastructure Levy (CIL).
- 5.1.3 Notwithstanding the above the outline planning permission was granted prior to the introduction of CIL (April 2016), and therefore the education contribution was made a specific requirement of the planning permission granted and S106 signed. If a decision had been made after April 2016, the development would be CIL liable and an education contribution would not have been sought. On this basis any amendments agreed under this S106A will not necessarily reflect the provisions of policy CS4 of the Core Strategy where it refers to the IDP or CIL; however the principles of policy CS4 and the requirements of securing infrastructure delivery commensurate with development proposals should still be applied.

### **5.2 Education Contribution / School Capacity**

- 5.2.1 In respect of developer contributions, although the current reserved matters approval is for a limited scale scheme (29 dwellings), the RM application covers only part of a wider area

which has the benefit of an outline planning permission (ref: CHE/15/00755/OUT), with an education contribution secured through a S106 agreement for the whole site.

- 5.2.2 The indicative site layout plan which was submitted in support of the original outline permission in February 2016 showed provision for 103 dwellings. Although this provided only an indication of one potential solution in which the site could potentially be developed, it did indicate the potential scale of development which could eventually be built out under the outline permission. The education contribution, set at £120,233.19, was based on this figure.
- 5.2.3 Given that the developer now intends to phase the development it is reasonable for them to ask that the contribution be applied on a pro rata basis. It is therefore necessary to arrive at an equitable distribution of contributions to address a need generated across the whole permitted site.
- 5.2.4 In these circumstances, it was proposed that the following proportionate split would be reasonable:  
**£120,233.19 for 103 dwellings**  
**= 1167.31 per dwelling**  
**X 29 dwellings = £33,851.99**
- 5.2.5 Having regard to the above Derbyshire County Council (DCC) recognise the issue which has arisen with regard to the change to a phased delivery of the site in respect of the S106 education trigger for payment in full on commencement and consider this proportionate split of the education contribution based on a pro rata rate per dwelling would be a reasonable solution to the issue.
- 5.2.6 It is therefore considered that the current S106 agreement should be amended, by deed of variation, to allow this pro rata payment of the education contribution. The agreement would also need to include a further clause that allows for the necessary contribution of any subsequent phases of development to be calculated on this basis, and the payment thereafter made for each respect phase on upon commencement.

## **6.0 REPRESENTATIONS**

- 6.1 The application has been publicised by site notice posted on 04/03/2020 (with the consultation period expiring on the

27/03/2020). There have been no representations received as a result of the applications publicity.

## **7.0 HUMAN RIGHTS ACT 1998**

7.1 Under the Human Rights Act 1998, which came into force on 2<sup>nd</sup> October 2000, an authority must be in a position to show:

- Its action is in accordance with clearly established law
- The objective is sufficiently important to justify the action taken
- The decisions taken are objective and not irrational or arbitrary
- The methods used are no more than are necessary to accomplish the legitimate objective
- The interference impairs as little as possible the right or freedom

7.2 It is considered that the recommendation is objective and in accordance with clearly established law.

7.3 The recommended conditions are considered to be no more than necessary to control details of the development in the interests of amenity and public safety and which interfere as little as possible with the rights of the applicant.

7.4 Whilst, in the opinion of the objector, the development affects their amenities, it is not considered that this is harmful in planning terms, such that any additional control to satisfy those concerns would go beyond that necessary to accomplish satisfactory planning control.

## **8.0 STATEMENT OF POSITIVE AND PROACTIVE WORKING WITH APPLICANT**

8.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraph 38 of the National Planning Policy Framework (NPPF).

8.2 Given that the proposed development does not conflict with the NPPF or with 'up-to-date' Development Plan policies, it is considered to be 'sustainable development' and there is a presumption on the LPA to seek to approve the application. The

LPA has used conditions to deal with outstanding issues with the development and has been sufficiently proactive and positive in proportion to the nature and scale of the development applied for.

- 8.3 The applicant / agent and any objector will be provided with copy of this report informing them of the application considerations and recommendation / conclusion.

## **9.0 RECOMMENDATION**

- 9.1 Having regard to the information presented it is considered that the amendments to the S106 be accepted and the S106 agreement be amended by deed of variation to reflect the recommendations in para. 5.2 above.