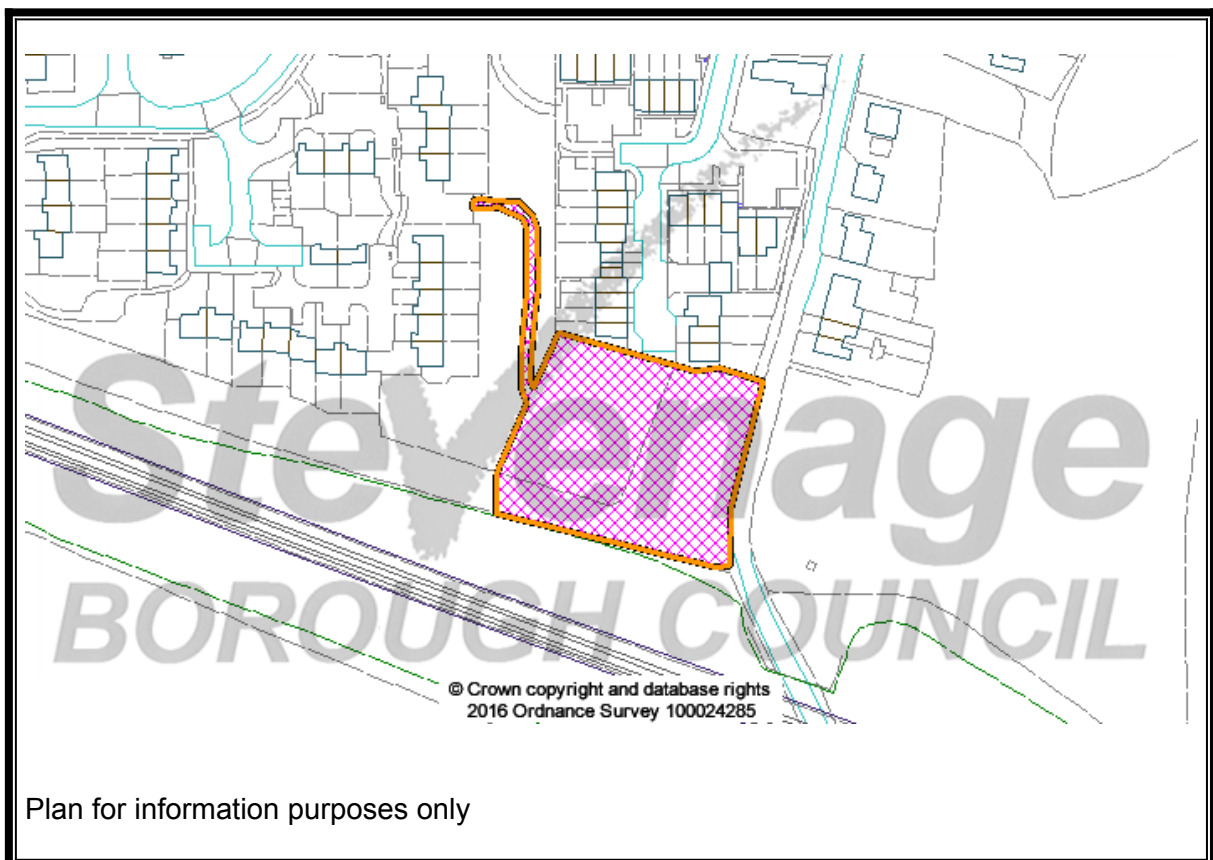


Meeting:	Planning and Development Committee	Agenda Item: 7
Date:	5 September 2017	
Author:	James Chettleburgh	01438 242266
Lead Officer:	Zayd Al-Jawad	01438 242257
Contact Officer:	James Chettleburgh	01438 242837

Application No:	17/00338/S106
Location:	Land bounded by Bragbury Lane, Pembridge Gardens and Blenheim Way, Stevenage.
Proposal:	Variation of Schedule 2, 1 (Financial Obligations) and Schedule 2, 2 (Obligation payment) of the Section 106 Agreement (dated 11th September 2014) approved under planning permission 13/00595/REG3.
Drawing Nos.:	Site Location Plan
Applicant:	Torbeth Holdings Ltd
Date Valid:	18 May 2017
Recommendation :	AGREE VARIATION OF LEGAL AGREEMENT.



1. SITE DESCRIPTION

- 1.1 The application site is located on the south-eastern periphery of Stevenage, close to the railway line and overhead power cables which run in close proximity to the southern boundary of the application site. Directly to the north is the former Van Hage Garden Centre site which has recently been redeveloped into residential properties (known as Pembridge Gardens) by Charles Church. To the east of the site is Bragbury Lane which connects onto Broadhall Way (A602) to the north. To the west of the site is Blenheim Way.
- 1.2 The site which is the subject of this application has now been cleared and enclosed with 2m high timber hoarding. Parts of the site have now been excavated with the footings being dug out for the foundations for the approved houses.

2. RELEVANT PLANNING HISTORY

- 2.1 Planning application 13/00595/REG3 outline planning permission was sought for the erection of 5 no. five bed detached dwellings. This application was granted planning permission in September 2014.
- 2.2 Planning application 16/00444/RM sought reserved matters approval for layout, scale, design and appearance of outline permission reference 13/00595/REG3. This application was granted permission in September 2016.
- 2.3 Planning application 16/00581/COND sought to discharge conditions 5 (materials), 7 (Tree Protection), 10 (boundary treatments), 12 (swept path analysis for waste vehicles), 17 (Construction Traffic Management Plan), 18 (Construction Method Statement), 19 (mitigation strategy and tree felling methodology), 20 (provision of bat and bird boxes), 22 (contaminated land investigation), 24 (suppression of dust), and 26 (archaeological scheme) attached to planning permission 13/00595/REG3 and discharge of condition 3 (soft landscaping) attached to Reserved Matters 16/00444/RM. The conditions application were approved in April 2017.

3. THE CURRENT APPLICATION

- 3.1. This application has been made under S106A part 6(b) of the Town and Country Planning Act 1990 (as amended) to seek permission to vary the wording of the S106 agreement which was attached to planning permission reference 13/00595/REG3 in respect of the financial contributions for the following:-
- Affordable Housing - £110,000;
 - Childcare Facilities - £1,385;
 - Children's Play Space - £72.02 per dwelling;
 - Library Facilities - £775;
 - Monitoring Fee - £2,880;
 - Nursery Facilities - £4,775;
 - Outdoor Sports Facilities - £79.99 per dwelling;
 - Primary Education - £28,365;
 - Secondary Education - £12,025; and
 - Youth Facilities - £275.
- 3.2. Clause 6.3 of the Agreement states that all payments or financial contributions shall be made on the dates provided in the Agreement accordingly. Turning to the dates in question, Schedule 2 of the Agreement stipulates that "*prior to the commencement of development*", the developer is covenanted to pay the necessary S106 financial contributions which have

been listed under paragraph 3.1 of this report. In addition, Clause 6.2 of the S106 agreement states that all payments pursuant to the Agreement shall be indexed.

- 3.3. This application seeks permission to modify the wording of Schedule 2 to vary the timing of the payment of the aforementioned financial contributions to be made after the sale of the first dwellinghouse. The applicant has stated that due to financial constraints, cash flow issues and high build out costs (including the costs of pile and beam foundations), they are unable to make payment of the financial contributions specified in the legal agreement until the sale of the first house. No other changes are proposed to either the planning permission or the accompanying S106 agreement.

4. PUBLIC REPRESENTATIONS

- 4.1. A site notice has been erected in accordance with Section 5 (1) of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulation 1992. This notice expired on the 14 June 2017. No comments or representations have been received.

5. CONSULTATIONS

- 5.1. No relevant consultees associated with this application.

6. RELEVANT PLANNING POLICIES

6.1 Background to the Development Plan

- 6.1.1 In the determination of planning applications development must be in accordance with the statutory development plan unless material considerations indicate otherwise. For Stevenage the statutory development plan comprises:

- Hertfordshire Waste Development Framework 2012 and Hertfordshire Waste Site Allocations Development Plan Document (adopted 2012 and 2014);
- Hertfordshire Minerals Local Plan 2002 – 2016 (adopted 2007); and
- The Stevenage District Plan Second Review 2004.

The Council has now commenced work on the new Stevenage Borough Local Plan 2011-2031. The draft version of the Plan was published in January 2016 and will be used as a material consideration in the determination of all planning applications registered on or after Wednesday 6 January 2016. The Site Specific Policies DPD, the draft Gunnels Wood Area Action Plan (AAP), the draft Old Town AAP, the Pond Close Development SPG, Stevenage West Masterplanning Principles SPG, the Gunnels Wood Supplementary Planning Document and the Interim Planning Policy Statement for Stevenage are no longer material considerations in the determination of all planning applications registered on or after Wednesday 6 January 2016.

- 6.1.2 Where a Development Plan Document has been submitted for examination but no representations have been made in respect of relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted. The converse may apply if there have been representations which oppose the policy. However, much will depend on the nature of those representations and whether there are representations in support of particular policies.
- 6.1.3 In considering the policy implications of any development proposal the Local Planning Authority will assess each case on its individual merits, however where there may be a conflict between policies in the existing Development Plan and policies in any emerging

Development Plan Document, the adopted Development Plan policies currently continue to have greater weight.

6.2 Central Government Advice

6.2.1 In March 2012 the National Planning Policy Framework (NPPF) was published and in doing so it replaced many documents including all Planning Policy Guidance Notes and Planning Policy Statements. The NPPF sets out the Government's planning policies for England and how these are expected to be applied. Annex 1 of the NPPF provides guidance on how existing local plan policies which have been prepared prior to the publication of the NPPF should be treated. Paragraph 215 of the NPPF applies which states that only due weight should be afforded to the relevant policies in the adopted local plan according to their degree of consistency with it.

6.2.2 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is itself a material consideration. Given that the advice that the weight to be given to relevant policies in the local plan will depend on their degree of consistency with the NPPF, it will be necessary in the determination of this application to assess the consistency of the relevant local plan policies with the NPPF. The NPPF applies a presumption in favour of sustainable development.

6.2.3 In addition to the NPPF advice in the Planning Practice Guidance (March 2014) also needs to be taken into account. It states that, where the development plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

6.3. Central Government Legislation

- Town and Country Planning Act 1990 (as amended)
- Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992

7. APPRAISAL

7.1. The main issue for consideration in the determination of this application is whether the proposed variation of Schedule 2 of the S106 agreement attached to planning permission 13/00595/REG3 is acceptable to the Council as the Local Planning Authority.

7.2. Planning Policy Considerations

7.2.1 Through Section 106a part 6(b) of the Town and Country Planning Act (1990), an application can be made to the Local Planning Authority to seek to vary the terms of a Section 106 agreement. This application has therefore been submitted, in accordance with the Town and Country Planning (Modifications and Discharge of Planning Obligations) Regulation 1992, to seek to vary the payment of the financial contributions as specified in paragraph 3.1 of this report.

7.2.2 In this instance the financial contributions would be collected by Stevenage Borough Council after the sale of the first dwellinghouse. However, it has been agreed with the applicant and their solicitor that none of the other houses on the site can be occupied until the Council has received all the necessary financial payments specified in the agreement.

- 7.2.3 In order to justify the variation of the S106 agreement, the applicant has provided a detailed and comprehensive viability appraisal as part of this application. This appraisal identifies that the applicant, due to limited availability of capital in order to finance the development, has taken out a loan from a bank. This loan is structured over a 24 month period with a repayment clause requiring payment (including interest of 5%) from the sale of the units which are being built on-site. The loan itself generally only covers the construction costs of the development.
- 7.2.4 In addition to the above, as the houses are to be aspirational as approved by the Council under the original outline permission, combined with the requirement to use pile and beam foundation (instead of conventional standard strip foundations), this generates a higher build out cost per sq.ft (£130) compared to that of a traditional build (approx. £100 per sq.ft) for a scheme of 5 units. The total cost to build out the site is approximately £1,621,100 (£2,494,788 including landscaping/boundary treatment, roads, site clearance, professional fees, S106 costs etc.). In addition, it has also been identified that due to current economic uncertainty and combined with a deflation in property values, these have all affected the overall viability of the project since the site was purchased from the Council at £1,466,760 (including legal fees, stamp duty, survey and fixed purchase price). Consequently, total developer costs are in the region of £3,961,538.
- 7.2.5 Taking the aforementioned factors combined, it is clearly evident that there is currently a cash flow issue in that the developer is currently running at a loss, hence why the developer required a bank loan in order to cover the initial construction costs. Consequently, based on the information set out in the viability appraisal, the applicant is unable to initially afford the Council's financial contributions until the sale of the first house. Following the sale of this property, the developer would have sufficient capital to pay the necessary financial contributions as specified in the agreement. However, to ensure the developer pays the Council the monies as specified in the Agreement, the other four houses on the site cannot be occupied until the monies have been paid to the Council following the sale of the first house (including indexation). This will be included as a clause in the varied S106 agreement.

8. CONCLUSION

- 8.1. The applicant has requested to alter the wording of the existing S106 agreement to deal with the aforementioned cash flow problems. It is considered that the proposed variation is reasonable as it would still ensure the Council receives the required financial contributions as set out in Agreement and these contributions would still be index linked. Consequently, it is recommended that this deed of variation be agreed.

9. RECOMMENDATION

- 9.1. The Committee agree to the variation of the S106 agreement and delegate authority to the Assistant Director of Planning and Regulation in conjunction with an appointed Solicitor on behalf of the Council to agree the precise wording of the variation to the S106 agreement.

10. BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents having the reference number relating to this item.
2. Stevenage District Plan Second Review 1991-2011.

3. Stevenage Borough Council Supplementary Planning Documents – Parking Provision adopted January 2012.
4. Stevenage Borough Local Plan 2011-2031 Publication Draft.
5. Responses to consultations with statutory undertakers and other interested parties referred to in this report.
6. Central Government advice contained in the National Planning Policy Framework March 2012 and Planning Policy Guidance March 2014.