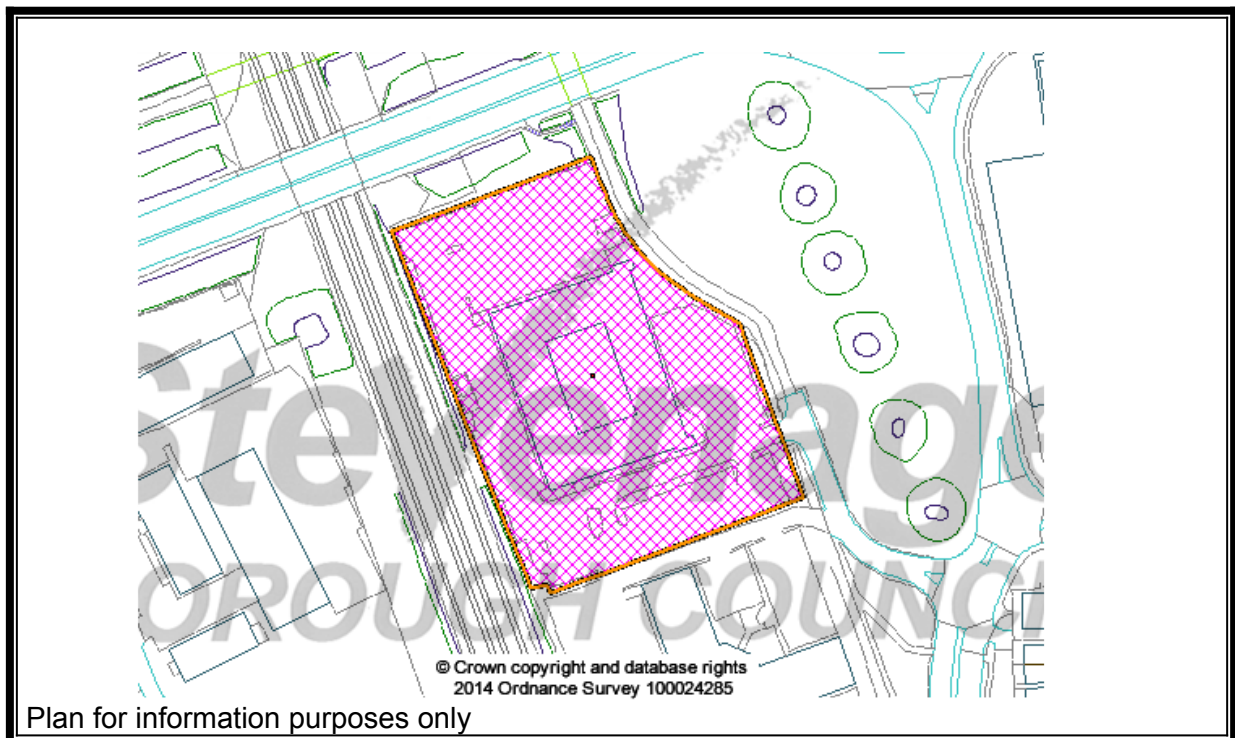


<b>Meeting:</b>	<b>Planning and Development Committee</b>	<b>Agenda Item:</b>
<b>Date:</b>	<b>5 February 2019</b>	
<b>Author:</b>	<b>James Chettleburgh</b>	01438 242266
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Application No:	18/00515/S106
Location:	Land at Six Hills House, London Road, Stevenage.
Proposal:	Variation of "Contribution Trigger Event" under Section 1 and additional mortgagee clause imposed to Section 2 of the S106 Agreement (dated 6 December 2017) approved under planning application 16/00482/FPM.
Drawing Nos.:	Site Location Plan.
Applicant:	Blackmore SPV16 Ltd;
Date Valid:	21 August 2018
Recommendation:	Agree Variation of S106 Agreement.



## **1. SITE DESCRIPTION**

- 1.1 The application site is located at the northern end of the Six Hills House site and is currently occupied by surface car parking. To the south of the application site is Six Hills House which is an existing part four storey, part eight storey building which has been converted into residential apartments.
- 1.2 To the north of the application site is Six Hills Way, beyond which is Stevenage Police Station. To the east of the application site is the Six Hills Common which is an established Wildlife Site and comprises the Six Hills Mounds which is classed as a Scheduled Ancient Monument. Beyond the common is Asda supermarket and the North Herfordshire College Campus. To the south of the application site is Kings Court which is a five storey office building with residential properties to the east of this office block which front London Road. To the west of the application site is the East Coast railway line with Gunnels Wood Employment Area beyond.

## **2. RELEVANT PLANNING HISTORY**

- 2.1 Planning application reference 2/0131/80 sought permission for an office development. Permission was granted in June 1980.
- 2.2 Planning application reference 2/0342/80 sought permission for car parking and landscaping ancillary to the office development. Permission was granted in November 1980.
- 2.3 Planning application reference 2/0099/85 sought permission for 36 additional car parking spaces. Permission was granted in May 1985.
- 2.4 Prior approval application reference 14/00328/CPA sought approval for change of use of office building (Use Class B1(a)) to Residential Dwellings (Use Class C3) comprising 52 no. one bedroom and 80 no. two bedroom flats. This application was granted in August 2014.
- 2.5 Planning application reference 14/00639/FPM sought permission for the construction of 17no. three bed and 1no. two bed duplex units on roof area of floors 3 and 8, including external alterations to existing building and construction of refuse and cycle storage, pumping housing and new sub-station. The proposal also comprised of alterations to existing car parking layout incorporating additional landscaping and a new footpath/cycleway. This application was withdrawn in August 2016.
- 2.6 Planning application reference 15/00078/FP sought permission for the erection of 4no. bin and bicycle stores, 1 no. sub-station and 1 no. pumping station. This application was granted in April 2015.
- 2.7 Prior approval application reference 15/00225/CPA sought approval for the change of use of commercial roof top plant enclosures (Class B1) to 15no. residential apartments (Class C3). This application was granted in June 2015.
- 2.8 Planning application reference 15/00293/FP sought permission for the erection of a 4 storey lift enclosure alongside existing stair tower and external alterations to existing building. This application was granted planning permission in July 2015.
- 2.9 Prior approval application reference 15/00483/CPA sought prior approval for the change of use of the office building (Use Class B1(a)) to Residential dwellings (Use Class C3) comprising 128 no. one, two and three bedroom apartments. This application was granted in October 2015.

- 2.10 Discharge of condition application 15/00708/COND sought partial discharge of condition 3 (Archaeology) attached to planning permission reference 15/00078/FP. The application was partially discharged in January 2016.
- 2.11 Non-material amendment application 16/00250/NMA sought a non-material amendment to planning permission 15/00078/FP to relocate and increase the size of substation, amend the size and adjust positions of the bin store, increase in size and relocation of pumping station and amendment to the cycle canopy design. The Non-material amendment was agreed in May 2016.
- 2.12 Discharge of condition application 16/00252/COND sought to discharge condition 7 (Tree protection) attached to planning permission reference 15/00078/FP. A response to the discharge of condition was issued in June 2016.
- 2.13 Planning application reference 16/00482/FPM sought permission for the erection of an 8 storey residential building comprising of no. 17 one bedroom residential units, no. 35 two bedroom units, no. 12 three bedroom units, and associated access. This application was granted planning permission in December 2017.
- 2.14 Deed of variation application 18/00515/S106 sought to vary the "Contribution Trigger Event" under Section 1 and additional mortgagee clause imposed to Section 2 of the S106 Agreement (dated 6 December 2017) approved under planning application 16/00482/FPM. This application was granted by the Planning and Development Committee on the 6<sup>th</sup> November 2018.

### **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 16/00482/FPM in respect to the following financial contributions:-
- Affordable Housing;
  - Children's Playspace;
  - Outdoor Sports Facilities; and
  - Primary Education.
- 3.2 Under Section 1 "Definitions", the "Contribution Trigger Event" is defined as "*....Commencement of Development has not occurred and the notice required by clause 5.1.4(a) of this Agreement has not been provided by 8 November 2018 being the date two years from being the committee dated Planning Permission was granted subject to completion of this Agreement*". In reference to clause 5.1.4(a) as set out above, this requires the applicant to notify the Council in writing within seven days when they are seeking to commence development.
- 3.3 Under the original Deed of Variation application, which was determined by the Council's Planning and Development on 6<sup>th</sup> November 2018, the applicant sought the Contribution Trigger Event to be amended to 28 February 2019. The reason why the applicant is seeking to amend the contribution trigger event again is because they are unable to commence works on site due to the following:-
- Relocation of a sewer to be agreed with Thames Water;
  - Relocation of a high voltage electricity cable to be agreed by UK Power Networks; and
  - Sign Off on the Construction Method Statement by Network Rail due to the proximity of the development to the East coast mainline.

- 3.4 In addition to the above, the applicant sought the inclusion of an additional clause to clarify who is responsible for the planning obligations as set out within the S106 Legal Agreement. This additional clause which would be addressed in Section 2 of the Agreement will read as follows:-

*“The Parties agree that the obligations contained in this Deed shall not be enforceable against any mortgagee or chargee from time to time of the whole or part of the Site unless it takes possession of the Site as a mortgagee in possession in which case the mortgages or the chargee will be bound by the obligations in this Deed as if it were a person deriving title from the Owner on the basis that its liability will cease once it has parted with its interest in the Site [without prejudice to its liability for any subsisting breach of its covenants in this clause prior to parting with such interest]”.*

- 3.5 However, since this application to modify the S106 agreement was determined by the Council’s Planning and Development Committee, the original purchaser of the site no longer has an interest in developing out the approved scheme. In addition, the applicant has advised that whilst they have actively marketed the site to find a new purchaser they are reluctant to take on the development unless the “Contribution Trigger Event” is extended. This is because any prospective purchasers of the site do not consider there would be sufficient time to finalise any outstanding matters with UK Power Networks, Thames Water and Network Rail as well discharge the relevant conditions attached to planning permission 16/00482/FPM.

- 3.6 Given the aforementioned, the applicant is seeking to extend the contributor trigger event to the 28th February 2020. This should allow sufficient time for the site to be sold, for the new owner/purchaser of the site to resolve any outstanding planning issues and to commence development on the site in line with the above planning permission. The applicant does not seek any further changes to the 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. No comments or representations have been received.

## **5. CONSULTATIONS**

### **5.1 Network Rail**

- 5.1.1 Following discussions with the Asset Protection Team they have confirmed that the developer has entered into discussions and subsequently a Basic Asset Protection Agreement has been signed and paid for. The proximity of the East Coast Main Line and the associated 25kv overhead lines is problematic for the build. The developer needs to locate scaffolding on Network Rail land to facilitate the build. This requires Network Rail oversight, supervision on site, close co-operation with the builder and critically, overnight possessions (line closures with isolation of electrical overhead equipment) in order for the scaffolding to be constructed safely, both for the workers involved and the operational railway.
- 5.1.2 There are currently on-going site meetings between Network Rail engineers and the developer. It is noted that the scope of works and timescales will be part of the agreement that has been entered into which includes issues such as construction methodology.

## **5.2 Thames Water**

5.2.1 No comment.

## **5.3 UK Power Networks**

5.3.1 There is a requirement to remove cables from the site, however, a final programme has not yet been agreed with the developer.

# **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 reached an advanced stage in the preparation of a new Stevenage Borough Local Plan 2011-2031. The Plan has been used as a material consideration in the determination of all planning applications registered on or after Wednesday 6 January 2016. The Plan has now been through the Examination process and the Inspector's Report was received in October 2017. This recommended approval of the Plan, subject to modifications proposed. The Plan is currently subject to a holding direction placed upon it by the Ministry of Housing Communities and Local Government (MHCLG), which prevents its adoption whilst MHCLG are considering whether or not to call it in.

6.1.2 The National Planning Policy Framework sets out that decision-takers may give weight to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and their degree of consistency with policies in the National Planning Policy Framework.

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, bearing in mind the positive Inspector's Report, significant weight will be afforded to policies within the emerging Local Plan.

## **6.2 Central Government Advice**

6.2.1 A revised National Planning Policy Framework (NPPF) was published in July 2018. 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 213 of the NPPF applies which states that 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 Planning Practice Guidance must also be taken into account. It states that, where the development plan is absent, silent or the relevant policies are out of date, paragraph 11 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;
- Planning Practice Guidance (2014).

## **7. APPRAISAL**

- 7.1 The main issue for consideration in the determination of this application is whether the proposed variations to the S106 agreement as set out under Section 3 of this report 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 paragraphs 3.1 to 3.3 of this report.

- 7.2.2 The amendment sought to move the “Contribution Trigger Event” from 8 November 2018 to 28 February 2020 would allow any future owner of the site sufficient time to finalise and agree the Construction Methodology with Network Rail. This will ensure that when the development does commence, it does not prejudice the safety and operation of the East Coast Main Line during the construction phase of the development. In addition, it allows the developer to agree the removal and relocation of power cables with UK Power Network which currently run through the development site.

- 7.2.3 With respect to the sewer network, whilst Thames Water have not provided any comments on this particular application, under planning application reference 16/00482/FPM, they advised that through the centre of the development site, there are currently easements and wayleaves in place. This is because of the presence of a public sewer and therefore, this restricts the developer’s ability to break ground in order to build out the approved development until the aforementioned sewer can be repositioned. Given this, the developer is still negotiating with Thames Water to seek agreement to relocate the existing public sewer pipe at this current time.

- 7.2.4 Given the aforementioned, it is clearly evident that the developer is unable to commence any development on-site until the outstanding matters with the relevant utility companies and Network Rail have all been resolved. Consequently, the proposed amendment to the “Contribution Trigger Event” to the 28 February 2020 allows a realistic timeframe to ensure agreements can be reached with Thames Water, UK Power Network and Network Rail as

well as the developer discharging the relevant pre-commencement conditions attached to planning permission 16/00482/FPM. In addition, the applicant is not seeking to reduce any financial contributions which have already been secured by the Council as the Local Planning Authority.

- 7.2.5 In relation to the additional clause to be added to Section 2 as referenced under paragraph 3.3, this clause sets out who is responsible for the obligations as per the legal agreement. What this clause establishes is that the Deed is not enforceable on any mortgagee or chargee who has an interest in the site unless the mortgagee or chargee takes possession of the site. Notwithstanding this, the legal agreement would still be enforceable on whoever the owner of the land is, presently or in the future, as the legal agreement runs with the land. Furthermore, if the owner of the land was to go into administration, then enforcement would then revert to the mortgagee or chargee who has taken possession of the land in question.

## **8. CONCLUSIONS**

- 8.1 All of the proposed changes to the S106 agreement as described are minor in nature and allows the developer sufficient time to reach agreements with Network Rail, UK Power Networks and Thames Water. In addition, the additional clause relates to a hypothetical position should the landowner go into administration and that they are responsible for all the obligations set out in the agreement. As such, the proposed changes are not considered to weaken the Council's position in anyway. Therefore, the proposed changes are considered to be acceptable and it is recommended that this deed of variation can be agreed.

## **9. RECOMMENDATIONS**

- 9.1 The Committee agree to the variation to the definition "Contribution Trigger Event" and to add an additional clause to Section 2 of the S106 agreement dated 6 December 2017 and to 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 Local Plan 2011-2031 Publication Draft.
4. Responses to consultations with statutory undertakers and other interested parties referred to in this report.
5. Central Government advice contained in the National Planning Policy Framework July 2018 and National Planning Policy Guidance March 2014.