

## POST COMMITTEE COMPLIANCE REPORT

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| <b>Planning Ref:</b> 26/01213/S106                                                                                                                 |            |
| <b>Site Address:</b> Ickleford Mill Arlesey Road Ickleford Hitchin Hertfordshire SG5 3UN                                                           |            |
| <b>Proposal:</b> Modification to S106 associated with planning application 17/01955/1 to amend the affordable housing and development obligations. |            |
| <b>Committee date</b>                                                                                                                              | n/a        |
| <b>Date final draft DoV posted on website</b>                                                                                                      | 07/10/26   |
| <b>Case Officer</b>                                                                                                                                | Peter Bull |

### 1. Purpose of report

- 1.1. The purpose of this report is to provide an update to the Development and Conservation Manager on the revisions proposed to the original S106 as part of the Deed of Variation (Deed) amendments to the proposed conditions and planning obligations pursuant to those agreed by the original Planning Control Committee (PCC) in relation to both the original outline permission and the recent S73 application, to demonstrate that the agreed Section 106 Heads of Terms agreed by PCC have been captured.
- 1.2. This report also considers whether there have been any relevant material considerations arising between the PCC meeting and the date of preparing this report, which could have led PCC Members to a different planning decision, and which would require reconsideration at PCC.
- 1.3. This report summarises the relevant issues raised by representations received on the application since the PCC meeting. Any representations that raise new planning issues are addressed in this report.
- 1.4. The report also lists any relevant changes to legislation, planning policies and guidance since the assessment of the application.

### 2. Recommendation

- 2.1. That the deed of variation be agreed as a delegated matter.

### 3. Background

- 3.1. Outline planning permission was granted by PCC for up to 71 dwellings and associated access, car parking, garages, landscaping and open space including demolition and removal of all existing structures, buildings and hardstanding (all matters reserved except means of access). This was subject to a S106 to secure
- 3.2. Pursuant to the outline, two applications have been submitted by the new land owner – (i) 26/00631/RM - Reserved matters application for appearance, landscaping, layout and scale in relation to erection of 55 dwellings and associated access, car parking, garages, landscaping and open space pursuant to Outline Planning

Permission 17/01955/1 (as varied by associated Section 73 Planning Application) (ii) 26/00587/S73 - Variation of conditions 4, 10,11,14, 16, 17, 18, 19, 31 32, 35 and 37 of outline planning permission 17/01955/1 granted 11.03.2024 for up to 71 dwellings and associated access, car parking, garages, landscaping and open space including demolition and removal of all existing structures, buildings and hardstanding (all matters reserved except means of access).

3.3. Members resolved to approve both applications the satisfactory completion of a Deed to the S106 agreement secured on the original planning permission 17/01955/1 to secure the original Heads of Terms as set out in the original report.

3.4. The five core purposes of the Deed are –

- (i) adjustment of the originally set out Affordable Housing Scheme (tenure / mix) to reflect the RM application and associated updates relating to definitions and clauses.
- (ii) allow for the Open Space Scheme and the Open Space Management arrangements to be provided prior to occupation rather than prior to commencement
- (iii) allow for the SUDS scheme and management arrangements to be provided prior to occupation rather than prior to commencement
- (iv) the inclusion of a wording to confirm that demolition works do not constitute commencement of development in relation to the S106 contributions.
- (v) Reallocation of the £20,000 financial contribution (towards a community project which has been completed) to be put towards an alternative community project (solar panels) on the village recreation ground building.

#### **4. Condition amendments**

4.1. None

#### **5. Representations received by interested parties and statutory consultees**

5.1. **Housing Supply Officer** – the proposed changes around affordable housing have been considered and agreed.

5.2. **Cllr Louise Peace** – requesting reallocation of community contribution of £20,000 towards solar project at village recreation ground

#### **6. Planning Policies and Material considerations**

6.1. This report considers whether the deed can be finalised having regard to:

- (a) the original resolution of PCC in relation to the outline permission and the recent S73 application;
- (b) Whether there have been any material changes in circumstances or new planning issues that would or could lead to the PCC reaching a different conclusion from that reached.

6.2. The Council is required to discharge its statutory duty under s70(2) of the Town and Country Planning Act (as amended), and in doing so the Council must consider whether to grant planning permission or not, considering all relevant material considerations at the time of issuing a decision notice on a planning application. Case law – *Kides, R (on the application of) v South Cambridgeshire District Council & Ors* [2002] EWCA Civ 1370, is relevant given that a period has passed following the resolution of the PCC to grant planning permission.

- 6.3. In summary the Kides case assessed the nature and extent of a Council's duty under Section 70(2) of the Act. The appellant's contention was based on a duration of more than five years passing between the Council's decision, in principle, to grant planning permission and the issuing of the decision notice; and that several material changes in circumstances had taken place during that period. The permission to apply for judicial review was refused and the appeal dismissed at the Court of Appeal. This was on the basis that the Council had not failed in its duty to 'have regard to' material considerations when issuing the decision. The case provides guidance to local planning authorities in considering whether new or emerging planning consideration would result in a requirement to refer back to planning committee. In the Kides case, it was found that it not in every case where a new material consideration arises, after passing a resolution, but before the issuing of a decision notice, that there has to be referral back to committee.
- 6.4. The judgement in Kides indicated that the Council's duty is discharged if, at the date on which the decision notice is issued, the Authority has considered all material considerations relating to the application and has done so with the application in mind. In practical terms, therefore, where since the passing of the resolution, a new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a 'material consideration' the delegated officer should err on the side of caution and refer the application back to PCC for specific reconsideration, in light of that new factor.
- 6.5. The application should only proceed for determination if the delegated officer is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority would reach the same decision. In the Kides case the Council did not accept that any of the factors were justified or significant objections at all, let alone ones, which taken together, would lead to a different result. The judge held that the Council's decision would have been the same.
- 6.6. The draft heads of terms as agreed as part of the resolution by PCC on the outline permission confirmed (i) on site provision of 40% affordable dwellings based on 65% rented tenure and 35% intermediate tenure in accordance with NHDC Planning Obligations Supplementary Planning Document and Local Plan Policy HS2 'Affordable Housing' as evidenced by the Council's SHMA and (ii) Open space/Landscape buffer management and maintenance arrangements to comprise details of a private management company to secure the provision and long term maintenance of the open space/landscape buffer and any SuDs infrastructure in accordance with Local Plan Policy SP7 'Infrastructure requirements and developer contributions'.
- 6.7. The variations as proposed by the Deed will continue to secure the heads of terms albeit in a revised form / or wording. As previously set out above, the affordable housing amendments have been agreed in consultation with the NHC Housing Supply Officer. For the avoidance of doubt, 40% affordable provision is maintained via the Deed with a 65% and 35% split. The management and maintenance of open space and SUDs features will be provided by a management company as set out in the officer report relating to the outline permission. The trigger for provision of the management arrangements will be moved from before development commences to

prior to occupation. The £20,000 financial contribution will be reallocated to a solar project at the village recreation ground.

## **7. Planning Obligations – S106 Heads of Terms**

7.1. The Heads of Terms presented to the PCC contained headlines summarising the previously agreed content of the Section 106 Legal Agreement. Officers have negotiated revised wording as set out above in accordance with this S106 and the recent reports considered by Members.

7.2. The Deed is in accordance with the Heads of Terms.

## **8. Conclusion and Recommendation to the Development and Conservation Manager**

8.1. Officers consider that no material considerations have arisen since PCC that would have resulted in a different recommendation from the PCC or would have affected the determination of the PCC.

8.2. It is considered that the Council's duty has been discharged in this case, as that the date at which the decision notice is to be issued, the authority has considered all material consideration affecting the application and has done so with the application in mind. Since the passing of the resolution, all new factors which might rationally be regarded as material considerations or the purposes of Section 70(2) of the Act, have been duly considered and the delegated officer is fully aware of their relevance to the decision-making process. On further consideration taking account all of the above, officers have concluded that the authority would reach the same decision.

8.3. The Deed of Variation is considered to accord with the original Heads of Terms as set out in the original outline application and the more recent S73 application. Therefore it is recommended that the Development and Conservation Manager agree the details of the Deed for completion and issue the S73 decision notice.

### **Recommending Officer and Date**

*Peter Bull 07/10/26*

### **Authorising Officer and Date**



Shaun Greaves – Development and Conservation Manager

9 October 2026