

Planning Committee Report: 20/0439/MDO

1.0

Application: 20/0439/MDO
Applicant name: Vistry Partnerships Ltd and Westco Properties Ltd,
Proposal: Application to modify the S106 agreement related to Outline Permission Ref 10/2088/OUT (the S106 Agreement). The Planning Obligation is for the payment of the 'Exhibition Way Link Contribution' required by the First Schedule of the S106 Agreement (dated 3rd February 2012) associated with planning application [10/2088/OUT](#). The modification sought is to amend the obligation by a) reducing the amount of the contribution, b) redefining the purpose of the reduced contribution, and c) altering the trigger relating to the payment of the contribution.

Site Address: Pinhoe Quarry
Harrington Lane
Exeter

Registration Date: 2nd April 2020

Link: <http://publicaccess.exeter.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=Q85NMJHB03800>

Case Officer: Michael Higgins
Ward Members: Cllrs Harvey, Oliver and Wood

REASON APPLICATION IS GOING TO COMMITTEE: Non-delegated matter.

2.0 Summary of recommendation

DELEGATE to agree the proposed modifications to the S106 Agreement as set out in the report, with a secondary recommendation to REFUSE if the Deed of Variation is not completed within the requisite timeframe.

3.0 Reason for the recommendation: as set out in Section 18 at end

To ensure that the relevant S106 Obligations continue to meet the necessary tests for planning obligations.

4.0 Table of key planning issues

Issue	Conclusion
Principle of Development	The principle of the redevelopment of this site for residential use has already established by virtue of the consented

Issue	Conclusion
	outline and reserved matter Applications reference nos. 10/2088/OUT and 19/1100/RES respectively.
Historical position	The change in circumstances with regard to the obligations as they stand, and the issue of a Habitats Mitigation requirement arising since the outline approval are acknowledged.
Transportation impacts of scheme	Based on the advice of DCC as Highway Authority it is accepted that the proposed modifications to the S106 obligations will still ensure the impacts of the scheme are satisfactorily mitigated.
Legal requirements in respect of S106 Obligations	The suggested modifications to the S106 Obligations are considered acceptable and ensure the Obligations meet the relevant legal tests.
Economic benefits	Financial contributions to off-site highway works and jobs in construction related industries arising from implementation of the scheme.

5.0 Description of site

Pinhoe Quarry adjoins the residential area of Pinhoe, and is accessed via Harrington Lane. It comprises a site extending to approx. 17.88 hectares. Pinhoe Quarry has been previously worked for shales for use in the manufacturing of bricks at the former brickworks situated to the south of Harrington Lane. The brickworks ceased production in December 2006.

The nearest residential properties to Pinhoe Quarry are located adjacent to the southern boundary of the site along Harrington Lane. In addition, there are individual properties to the west of the quarry on Cheynegate Lane. There are further properties on Church Hill and Church Lane which run to the east and north of the site and the cemetery associated with St Michael and All Angels Church is sited adjacent to the northern boundary of the Quarry.

A public right of way, which runs from Beacon Down to the north of the site to Eastern Field to the south of the site, adjoins the western boundary of the site. A spur of this footpath also runs along the northern and eastern boundary of the site and links into Harrington Lane.

Land to the north and west of the quarry is designated as a County Wildlife Site/Site of Local Importance for Nature Conservation. There are also two Regionally Important Geological Sites (RIGS) within the boundary of the quarry itself.

6.0 Description of development

The current application seeks to modify the S106 agreement entered into in connection with Outline Permission ref 10/2088/OUT (the S106 Agreement) in respect of the 'Exhibition Way Link Contribution' and 'Sustainable Transport Contribution' obligations in the light of changed circumstances and impact on viability of the scheme. The modifications would replace the 'Exhibition Way Link Contribution' with a 'Beacon Lane Enhancements Contribution' and reduce the 'Sustainable Transport Contribution' to reflect works that have already been completed.

7.0 Supporting information provided by applicant

Covering letter setting out the change in circumstances behind the request to modify the S10 Agreement, commentary on continued relevance of the obligations it is sought to modify, and the proposals for the modifications.

8.0 Relevant planning history

Reference	Proposal	Decision	Decision Date
10/2088/OUT	Full permission for reprofiling of quarry to provide platform for accommodation of residential development and outline permission for up to 380 residential units, community facilities, shop, associated open spaces (including allotments) and infrastructure	PER	06.02.2012
19/1100/RES	Approval of Reserved matters of appearance, landscaping, layout and scale relating to the residential development comprising 380 dwellings, flexible retail and community space and the associated infrastructure, garaging, parking, landscaped open space, equipped children's play	PER	31.01.2020

and public realm. (Pursuant to planning permission reference 10/2088/OUT granted on 6th February 2012).

9.0 List of constraints

None.

10.0 Consultations

All consultee responses can be viewed in full on the Council's website.

County Head of Planning, Transportation and Environment (Highways) – After initially objecting to the modifications, following clarification of physical works already undertaken at the site and extensive negotiations and discussions regarding the relative impacts of the development and the measures set out in the Pinhoe Area Access Strategy and 2019 Addendum, DCC have provided the following revised response –

“The application is to modify the Sustainable Transport contribution. This included two raised table top junctions and build outs, one repeater sign, four bus shelters, (two within the site) an extension to the footway along the frontage of the site and £4,100 for cycle parking stands.

With the exception of the bus shelters and cycle stands these works have now been completed by the developers at their cost as part of their S278 works. In separate discussions it has been agreed that the shelters within the development are not required because it is not now expected that buses will not penetrate the site.

On this basis it is reasonable to vary the S106, and I am agreeable to the developers suggested wording “Sustainable Transport means a contribution of £20,000 towards the provision of two bus shelters and a contribution of £6,236 towards the provision of cycle stands at key Pinhoe locations (subject to indexation from the date of the Deed of Variation).”.

The developers have further requested that the contribution for the now defunct Exhibition Way Link be reduced by £212,000 to achieve the savings they are looking for. When this is deducted from the original £808,600, and indexation is added this gives £907,387 at today's values towards the Beacon Lane enhancements as part of the Pinhoe Area Access Strategy Addendum. When considering the site, contributions from other sites nearby and the guidance on S106s in the round I am happy to accept this variation.”

11.0 Representations

3 representations received (including one on behalf of the Exeter Cycling Campaign) raising the following concerns:

- Pressure on roads in Pinhoe area, surely if Exhibition Link is not proceeding money could still be spent on sustainable travel measures or other local improvements.
- Absence of an Environmental Impact Assessment.
- If contribution is reduced will this result in increased public contribution towards necessary improvements.
- Impact of reducing the contribution on initiatives/measures to address climate change concerns, national and local strategies and encouragement of sustainable transport choices, increased cycling and walking provision in safe environments.

12.0 Relevant policies

Development Plan

NPPF – Paras 34, 54-57 – Para 56 states “Planning obligations must only be sought where they meet all of the following tests:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.”

Planning Practice Guidance – Planning Obligations

Core Strategy (Adopted 21 February 2012)

Core Strategy Objectives

CP1 – Spatial Strategy

CP3 – Housing

CP4 – Density

CP5 – Mixed Housing

CP7 – Affordable Housing

CP9 – Transport

CP10 – Meeting Community Needs

CP11 – Pollution

CP12 – Flood Risk

CP14 – Renewable and Low Carbon Energy

CP15 – Sustainable Construction

CP16 – Green Infrastructure, Landscape and Biodiversity

CP17 – Design and Local Distinctiveness

CP18 – Infrastructure

Exeter Local Plan First Review 1995-2011 (Adopted 31 March 2005) Saved Policies

AP1 – Design and Location of Development

AP2 – Sequential Approach

H1 – Search Sequence

H2 – Location Priorities

H7 – Housing for Disabled People

L4 – Provision of Playing Pitches

T1 – Hierarchy of Modes

T2 – Accessibility Criteria

T3 – Encouraging Use of Sustainable Modes

T5 – Cycle Route Network

T10 – Car Parking Standards

C2 – Listed Buildings

C5 – Archaeology

LS1 – Landscape Setting

LS4 – Nature Conservation

EN2 – Contaminated Land

EN3 – Air and Water Quality

EN4 – Flood Risk

EN5 – Noise

DG1 – Objectives of Urban Design

DG2 – Energy Conservation

DG3 – Commercial Development

DG4 – Residential Layout and Amenity

DG5 – Provision of Open Space and Children's Play Areas

DG6 – Vehicle Circulation and Car Parking in Residential Development

DG7 – Crime Prevention and Safety

Development Delivery Development Plan Document (Publication Version, July 2015)

This document represents a material consideration but has not been adopted and does not form part of the Development Plan and therefore carries limited weight.

DD1 – Sustainable Development

DD8 – Housing on Unallocated Sites

DD9 – Accessible, Adaptable and Wheelchair User Dwellings

DD13 – Residential Amenity

DD20 – Accessibility and Sustainable Movement

DD21 – Parking

DD25 – Design Principles

DD26 – Designing out Crime

DD28 – Conserving and Managing Heritage Assets
DD29 – Protection of Landscape Setting Areas
DD30 – Green Infrastructure
DD31 – Biodiversity
DD33 – Flood Risk
DD34 – Pollution and Contaminated Land

Exeter City Council Supplementary Planning Documents

Sustainable Transport SPD (March 2013)

Planning Obligations SPD (April 2014)

DCC Documents

Pinhoe Area Access Strategy and Pinhoe Area Access Strategy 2019 Addendum.

13.0 Human rights

Article 6 - Right to a fair trial.

Article 8 - Right to respect for private and family life and home.

The first protocol of Article 1 Protection of property

The consideration of the application in accordance with Council procedures will ensure that views of all those interested are considered. All comments from interested parties have been considered and reported within this report in summary with full text available via the Council's website.

This recommendation is based on the consideration of the proposal against adopted Development Plan policies, the application of which does not prejudice the Human Rights of the applicant or any third party.

14.0 Public sector equalities duty

As set out in the Equality Act 2010, all public bodies, in discharging their functions must have "due regard" to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard in particular to the need to:

- a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of other persons who do not share it
- c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has had due regard to the matters set out in section 149 of the Equality Act 2010.

15.0 Financial issues

The requirements to set out the financial benefits arising from a planning application is set out in s155 of the Housing and Planning Act 2016. This requires that local planning authorities include financial benefits in each report which is:-

- a) made by an officer or agent of the authority for the purposes of a non-delegated determination of an application for planning permission; and
- b) contains a recommendation as to how the authority should determine the application in accordance with section 70(2) of the Town and Country Planning Act 1990.

The information on financial benefits must include a list of local financial considerations or benefits of a development which officers consider are likely to be obtained by the authority if the development is carried out including their value if known and should include whether the officer considers these to be material or not material.

Material considerations

This application relates to the modification of previously agreed S106 obligations relating to highway/transportation matters. If the modifications are agreed there will still be direct financial contributions to the Highway Authority as follows –

- Sustainable Transport contribution comprising £20,000 towards provision of 2 bus shelters and £6,236 towards provision of cycle stands within Pinhoe.
- Beacon Lane enhancement contribution of £907,387.

16.0 Planning assessment

The key issues are:

1. Principle of Development
2. Historical position
3. Transportation impacts of scheme
4. Legal requirements in respect of S106 Obligations
5. Economic benefits

Principle of Development

The principle of the redevelopment of this site has already been determined by virtue of application 10/2088/OUT which was approved on 6th February 2012. This application was a hybrid application through which full planning permission was granted for the reprofiling of the former quarry to provide a platform for subsequent residential development, and outline permission was granted for residential development of up to 380 dwellings with associated facilities/infrastructure. As part of this approval a S106 was completed relating to various matters including Transportation, community facilities, and education contributions, provision of car club parking spaces, affordable housing, a Travel Plan, and open space provisions. The consideration of the outline application included a viability consideration and the obligations, particularly the level of affordable housing provision, reflected this.

Subsequently approval of the reserved matters relating to the housing development was approved by way of application ref 19/1100/RES on 31 February 2020. As part of the consideration of this application it was necessary to consider the impact of the development in terms of impact on designated Special Protection Areas (SPAs), a matter that was not an issue at the time of the determination of the original outline permission. The Council's normal approach to mitigation of such impacts involves the allocation of a proportion of CIL receipts from the residential development towards an agreed mitigation strategy (the South-east Devon European Site Mitigation Strategy prepared by Footprint Ecology on behalf of East Devon and Teignbridge District Councils and Exeter City Council). However, given the date of the original approval this development is not CIL Liable and therefore it was necessary to seek a separate financial contribution of £390,376 (Habitats Mitigation Contribution (HMC)) towards the agreed mitigation strategy and this was secured through a further legal agreement completed in association with the approval of the 'reserved matters' application.

Historical position

As indicated above the S106 legal agreement completed in respect of the outline consent included various financial contributions including those relating to highway/transportation matters. It is in the light of changed circumstances relating to

certain of those contributions, and the subsequent (and previously unaccounted for) need to make a Habitats Mitigation Contribution, that the developer is seeking a modification of the S106 to ensure that the viability and deliverability of the scheme is not compromised by this additional and unaccounted for contribution. This is to be achieved by reappraising transportation related contributions due to the County Council in terms of their continued relevance, and with a view to a reduction in the overall S106 contribution burden by the amount of the Habitats Mitigation contribution secured at the 'reserved matters' stage.

The formal definitions of relevant obligations they are seeking to modify from the original S106 (as specified in the agreement) are set out below –

“Sustainable Transport Contribution” - means around the Site access and along the Harrington Lane corridor a contribution of Two Hundred Thousand Pounds (£200,000) (subject to indexation) towards two raised table top junctions and buildouts, one 20mph repeater sign, four bus shelters with RRTI (including two within the Site) and extension of footway to 3 metres along the frontage of the Site and a contribution of Four Thousand One Hundred Pounds (£4,100) (subject to indexation) towards the provision of cycle stands at key Pinhoe locations to be agreed with the City Council, on Site cycle facilities, cycle signage to key destinations and/or key routes or as a contribution which may be used toward the Exhibition Way Link.

“Exhibition Way Link” - means the proposed highway improvements and the extension of Exhibition Way between Harrington Lane and Pinhoe Road or the provision of other public transportation services or infrastructure within the vicinity of the Site which are necessary in consequence of the Development.

"Exhibition Way Link Contribution" - means the sum of Eight Hundred and Eight Thousand Six Hundred Pounds (£808,600) (subject to Indexation) as a contribution towards the provision of the Exhibition Way Link.

Transportation impacts of scheme

The above detailed S106 Obligations formed part of a package of measures/mitigation that were considered at the time of the consideration of the outline application to be necessary to make the development acceptable in terms of its highway/transportation impacts.

In respect of the physical works set out in the definition of the 'Sustainable Transport Contribution' the applicant has pointed out that these works (apart from the bus shelters and cycle stands) have been completed at the developer's own cost as part of the S278 highways undertaken at the site, including the formation of the site access to serve the development. Based on discussions with DCC as the 'Highway

Authority' regarding bus shelter costs/need, and the fact that the majority of the works which the 'Sustainable Transport Contribution' was meant to finance have since been completed at the developer's cost, the modification proposed to the 'Sustainable Transport Contribution' is as follows –

'Sustainable Transport Contribution' means a contribution of £20,000 towards the provision of two bus shelters and a contribution of £6,236 towards the provision of cycle stands at key Pinhoe locations (subject to indexation from the date of the Deed of Variation).

Due to changed circumstances the Exhibition Way link is no longer practically deliverable and therefore this obligation needs to be reconsidered in the context of its continued relevance in terms of meeting the tests for S106 obligations and mitigating the transportation impact of the scheme. It has been advocated that enhancements to Beacon Lane would, in the absence of the delivery of the 'Exhibition Way Link', be capable of mitigating the impact of the scheme as originally approved. Therefore the proposed modification would be to delete the obligations relating to the 'Exhibition Way Link and Exhibition Way Link Contribution' and replace them with a new obligation towards 'Beacon Lane Enhancements', as set out in the PAAS Addendum.

The amount of the contribution towards these enhancements would be proportionate to the scale of the scheme and its impacts. Taking into account the objective of ensuring the overall S106 burden for the scheme, allowing for the unaccounted for 'Habitats Mitigation Contribution', is maintained the calculation of the proposed modified contribution is as follows –

The proposed modification to the 'Sustainable Transport Contribution' would provide a saving of £180,000 against the original 'Sustainable transport contribution. Off-setting this against the unaccounted for Habitats Mitigation Contribution of £392,000 this leaves a further saving of £212,000. Applying this to the defined 'Exhibition Way Link Contribution of £806,600 would reduce this figure to £596,600, which after allowing for indexation to this figure would result in a contribution at today's values of £907,387. Hence the 'Beacon Lane Enhancement' contribution to replace the 'Exhibition Way Link' contribution would be £907,387. Both this and the modified 'Sustainable Transport Contribution' would be subject to indexation from the date of any completed S106 modification agreement. Therefore the modification would replace the 'Exhibition Way Link Contribution' would be replaced as follows –

'Beacon Lane Enhancements Contribution' means the sum of £907,387 payable as a contribution towards the delivery of the Beacon Lane Enhancements by the County Council.

Legal requirements in respect of S106 Obligations

Planning obligations assist in mitigating the impact of development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

Whilst the figures quoted above demonstrate how the proposed modified contributions have been calculated to achieve a saving equivalent to the Habitats Mitigation contribution, to maintain the overall S106 burden of the scheme, they are not directly relevant to the assessment of the acceptability of the proposed S106 obligation modifications. Given the relevant tests set out above the key question is whether or not the proposed modified obligations still meet those tests.

The Highway Authority have been consulted in respect of the proposed modifications, and have been involved in extensive negotiations with the applicant's and their representatives. As a result of those negotiations, given the change in circumstances outlined above in respect of these obligations, it is considered that the proposed modifications to these obligations would ensure that as revised they continue to meet the relevant tests outlined above, which it could be argued the obligations as currently set out in the legal agreement no longer do.

Economic benefits

Modification of the S106 Agreement in the manner proposed would result in the direct economic benefits set out below and maintain scheme viability and the associated jobs in construction related industries generated through its delivery.

- Sustainable Transport contribution comprising £20,000 towards provision of 2 bus shelters and £6,236 towards provision of cycle stands within Pinhoe.
- Beacon Lane enhancement contribution of £907,387.

17.0 Conclusion

As the majority of the works that the 'Sustainable Transport Contribution' was intended to finance have already been completed at the developer's expense it would be reasonable to maintain an obligation for a financial contribution to pay for those works. Therefore the modifications proposed to this obligation are considered acceptable. With regard to the 'Exhibition Way Link' contribution as this can no longer be implemented it is accepted that it is reasonable to re-examine this contribution. The proposed replacement of this obligation with an alternative obligation in the form of a proportionate financial contribution towards Beacon Lane Enhancements is considered appropriate in terms of ensuring the impacts of the development are

appropriately mitigated. Therefore these proposed modifications to the S106 agreement are also considered acceptable as advised by the Highway Authority.

18.0 Recommendation

a) DELEGATE TO THE SERVICE LEAD (CITY DEVELOPMENT) TO AGREE MODIFICATIONS TO THE COMPLETED LEGAL AGREEMENT AS FOLLOWS :-

- Delete all provisions relating to Exhibition Way and the Exhibition Way Contribution
- Introduce a new “Beacon Lane Enhancements Contribution” in the sum of £907,387 towards the delivery of the Beacon Lane enhancements set out in the Pinhoe Area Access Strategy Addendum 2019
- Replaces the current definition of the Sustainable Transport Contribution with a revised definition - ‘Sustainable Transport Contribution’ means a contribution of £20,000 towards the provision of two bus shelters and a contribution of £6,236 towards the provision of cycle stands at key Pinhoe locations.
- Amend the indexation formula so that the Beacon Lane Enhancements Contribution and the Sustainable Transport Contribution will be indexed from the date of the 2nd DOV rather than the Original Agreement.
- Provide for both payments in the amended obligations to be made within 3 months of the date on which the 2nd DOV is completed.

Modified S106 contributions to be index linked from the date of completion of the Deed of Variation.

- b) REFUSE PERMISSION FOR THE S106 MODIFICATIONS FOR THE REASON SET OUT BELOW IF THE DEED OF VARIATION IS NOT COMPLETED BY 29TH SEPTEMBER 2021 OR SUCH EXTENDED TIME AS AGREED IN WRITING BY THE SERVICE LEAD (CITY DEVELOPMENT)
- In the absence of a completed Deed of Variation within the specified timeframe the continued relevance of the proposed modifications would need further assessment and consideration by way of a further application.