

Application 17/00598/D106

Proposal	Consideration to vary a s106 Agreement secured against application 15/00631/FUL Phase 1, approved 14 October 2015
Site Location	Wharf Mill / Toray Textiles, Dukinfield Road, Hyde
Applicant	Bellway Homes Ltd & Toray Textiles Europe Ltd (TTEL)
Recommendation	<p>That Members consider the variation of a section 106 Agreement entered into following the grant of planning permission subject to conditions and prior signing of the said section 106 agreement in respect of Application 15/00631/FUL, in the following terms requested by the Applicant in their application 17/00598/D106</p> <p><i>‘to refund the Bond upon completion of the first dwelling on the Employment Site as the site will no longer be available for employment purposes’.</i></p>
Reason for report	A Speakers’ Panel decision is required because the application proposes a material amendment to a previous resolution of the Committee.

REPORT

1. APPLICATION DESCRIPTION

- 1.1 This application seeks to vary a s106 agreement secured against application 15/00631/FUL approved on 14 October 2015 by Speaker’s Panel (Planning) <http://www.tameside.gov.uk/speakerspanel/planning/14oct15/agenda> which sought full planning permission for the erection of 66 no. dwellings with associated car parking, access, internal roads and landscaped open space on the central and southern part of the site, and outline planning permission for employment uses (Use Classes B1/B2/B8) with all matters reserved, except for access on the northern part of the site. This application was permitted in October 2015 subject to a S106 Agreement which secured financial contributions towards the off-site provision of open space and educational facilities.
- 1.2 The section 106 agreement also required a £300,000 bond to be paid to the Council in connection with the construction of commercial units on the employment site unless the developer/owner substantially completed one or more commercial units of at least 6,000 square feet. The purpose of this was to provide an incentive to see the remainder of the site to be developed for employment uses.
- 1.3 Members granted planning permission on 21 June 2017 for residential development on the northern part of the site. Commercial development had not been forthcoming on the site.
- 1.4 The variation sought by the Applicant requests the amendment of the existing section 106 agreement for the wider Wharf Mill site (dated 5 November 2015) to reflect this change in circumstance, and states *‘it is reasonable for the Council to refund the Bond upon completion of the first dwelling on the Employment Site as the Site will no longer be available for employment purposes.’*

2. PLANNING HISTORY

- 2.1 09/00002/OUT, demolition of the existing premises on the site, and erection of a mixed residential and employment development. Refused April 2009 for the following reason:
- 2.2 “The proposed development introduces without adequate justification a non-employment use on a site designated as an Established Employment Area which is contrary to both Policy E3 of the Unitary Development Plan and also the Employment Land Supplementary Development Document.
- 2.3 A subsequent appeal was dismissed.
- 2.4 09/01070/OUT, demolition of the existing premises on the site, and erection of a mixed residential and employment development (resubmission of 09/00002/OUT). Approved subject to a section 106 agreement requiring a bond to be paid to the Council prior to the occupation of any residential units or the completion of two industrial units on the site together with contributions towards education and open space.
- 2.5 15/00631/FUL, hybrid application was submitted seeking full planning permission for the erection of 66 no. dwellings with associated car parking, access, internal roads and landscaped open space on the central and southern part of the site, and outline planning permission for employment uses (Use Classes B1/B2/B8) with all matters reserved, except for access on the northern part of the site. Permitted October 2015 subject to a S106 Agreement which secured financial contributions towards the off-site provision of open space and educational facilities. It also required the provision of 6,000 sq ft (c. 557 sq m) of commercial floorspace on the northern part of the site, or the payment of a financial bond, prior to the occupation of the first residential dwelling on the site. The bond was paid to TMBC by TTEL on 20 January 2017.
- 2.6 17/00266/FUL, 29 Dwellings with associated car parking, access, landscaping etc. Resolution to approve subject to conditions and prior signing of a s106 agreement

3. PUBLICITY CARRIED OUT

- 3.1 There are no third parties affected by the agreement who would need to be consulted.

4. RESPONSES FROM CONSULTEES

- 4.1 N/A

5. ASSESSMENT

- 5.1 At Speakers Panel on 21 June 2017 members resolved to approve application 17/00266/FUL for 29 Dwellings with associated car parking, access, landscaping etc. on the northern part of the above – mentioned site subject to conditions and prior signing of a s106 agreement.
- 5.2 The Council had previously entered into a legally binding agreement with the Developer where the Developer agreed that prior to the occupation of the first dwelling on the 2015 approval they would either build and substantially complete one or more of the commercial units or pay the bond. Implementation of a subsequent planning permission is required before this could be considered to cease to have effect, and that has not so far been achieved. It does not follow therefore that terms in the previous section 106 agreement should be considered for modification, variance or discharge at this stage.

5.3 The Applicant should therefore explain to the Speakers Panel why the Council should modify the obligation they have requested in these circumstances, either at all, or at this moment in time.

6. RECOMMENDATION

6.1 As set out at the beginning of the report.