

Application Number:	16/00054/OUT
Proposal:	Application under s106A of the Town and Country Planning Act 1990 (as amended) to vary the terms of the s106 agreement that accompanied outline planning permission granted for the demolition of all existing on site structures and the development of the site for residential dwellings (use class C3), landscaping, boundary treatments and vehicular access from Cartwright Street.
Site:	Newton Business Park, Cartwright Street, Hyde
Applicant:	Mr & Mrs Shaw and Wainhomes (North West) Limited
Recommendation:	Approve modification of s106 agreement accompanying planning permission 16/00054/OUT.
Reason for Report:	A Speaker's Panel decision is required because the application was previously reported to members for a decision.
Background Papers:	The application documents are background papers to the report. They are open to inspection in accordance with Section 100D of the Local Government Act 1972.

1. INTRODUCTION

- 1.1 The purpose of this report is to seek member's approval for a variation to the terms of a section 106 agreement that accompanied the grant of planning permission 16/00054/OUT.

2. BACKGROUND

- 2.1 Application 16/00054/OUT was considered at the meeting of the Speaker's Panel (Planning) held on the 5 October 2016. The report is appended here. The Panel resolved to grant planning permission subject to conditions and an agreement entered into under section 106 of the Town and Country Planning Act 1990 (as amended) (the Act) for residential development of the western section of Newton Business Park. The agreement was subsequently signed and planning permission granted on the 16th December 2016.
- 2.2 Schedule 1 part 1 of the agreement concerned an improvement works strategy, defined as follows:
- Details of the implementation of improvement works on the land remaining in employment use to ensure that the buildings achieve an energy performance rating of E or better by April 2018;
 - A schedule of the proposed improvement works; and
 - A plan identifying the buildings proposed to be improved.
- 2.3 The agreement thus requires the following:
- To submit details of the above to the council on or prior to commencement of development and implement as agreed; and
 - Not to occupy more than fifty percent of the dwellings until the improvement works strategy has been certified and evidence of the certification has been provided in writing to the council.
- 2.4 The applicant is proposing that schedule 1 part 1 of the agreement be deleted.

3. PLANNING HISTORY

3.1 Following the grant of outline planning permission, the following applications have also been determined:

17/01089/REM Approval of reserved matters (appearance, landscaping, layout and scale) for 64 dwellings. Granted 16 November 2018.

21/00588/CLUD Certificate of lawful development to confirm that outline planning permission 16/00054/OUT and reserved matters approval 17/01089/REM have been lawfully commenced such that the development may lawfully be carried on. Granted 27 May 2021.

3.2 Applications to discharge conditions in respect of materials, ecology, drainage, construction management, site investigation and remediation have also been submitted.

3.3 In addition, the following application is currently under consideration:

22/00418/FUL To vary condition 2 (approved plans) to allow for amended house designs previously granted by 17/01089/REM.

4. LEGISLATION & GUIDANCE

4.1 Section 106A of the Act states that a planning obligation cannot be modified except by agreement between the parties. An applicant may apply for the obligation to be modified in particular circumstances, where the Council as local planning authority can decide:

- That the agreement shall continue to have effect without modification;
- If the agreement no longer serves a useful purpose, that it shall be discharged; or
- If the agreement continues to serve a useful purpose, but it would serve that purpose equally well if it had effect subject to modifications specified in the application, that it shall have effect subject to those modifications.

4.2 Planning Practice Guidance sets out that planning obligations can be renegotiated at any time, where the local planning authority and the developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way.

4.3 In this case, the s106 agreement was 5 years old on the 15th December 2021, and so an application has been submitted

4.4 The Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework state that planning obligations must only be sought where they meet the following tests:

- 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.

5. APPLICANT’S CASE

5.1 The applicant is of the view that the agreement no longer serves a useful purpose. Modification is required in the interests of delivering the residential development to which the application relates.

- 5.2 The report to Speaker's Panel on the 5 October 2016 set out that continuing employment at Newton Business Park was a key consideration and the reason for the wording and content of schedule 1 part 1 of the agreement. Specifically, there was agreement that proceeds from the sale of the land would facilitate the works.
- 5.3 In December 2018, the applicant sold the balance of Newton Business Park as a going concern to a third party, Lancaster Gate Limited. The applicant agreed to indemnify Lancaster Gate for the costs of any remaining works that had been identified. The applicant has provided an email dated 15th August 2019 from Lancaster Gate confirming that the energy efficiency requirements had been completed.
- 5.4 The applicant states that policy E3 of the Tameside UDP sets the criteria by which proposals for non-employment uses on existing employment sites will be determined. These include the quantity and type of employment sites and premises available in the area; evidence of demand for employment sites and premises in the area; the suitability of the site for further employment uses; and the opportunity for new forms of employment as part of the mixed-use scheme. In this case, the applicant states that the continued use of land adjacent to the application site has been secured and so the s106 agreement serves no useful purpose with regard to development plan policies.
- 5.5 The applicant states that regulations have changed in terms of minimum energy efficiency standards since the legal agreement was entered into. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 has set a minimum energy performance rating of E for rented properties. As of April 2018, it is unlawful for landlords to grant a new tenancy, be it new or renewal, for a commercial property that would operate below this level. From April 2023, this will be extended to include existing leases, such that all lettable units must meet a minimum energy rating of E.
- 5.6 The applicant states that this renders the requirements of the agreement redundant as it would not be lawful for a property within the remainder of Newton Business Park to operate at a level lower than that set out.
- 5.7 The applicant states that the business park has been sold to a third party and there is no contractual relationship or formal agreement with the applicant to comply with the requirements of the s106 agreement on energy efficiency. This means that the restriction on residential occupation in the s106 agreement penalises the applicant/housing developer.
- 5.8 The applicant states that a house builder, Wainhomes, has agreed to purchase the land, but has no control over the relevant obligations. Given the restrictions, the development cannot proceed until the agreement is varied because of the restriction on occupation.
- 5.9 The applicant states that the council cannot currently demonstrate a five year housing land supply and there is an unmet need for additional housing in Tameside. The current agreement is delaying the delivery of much needed residential development on a previously developed site in an accessible location. This is contrary to paragraph 60 of the National Planning Policy Framework which sets out the Government's objective of significantly boosting the supply of housing.
- 5.10 As a result of the change of circumstances since planning permission was granted, the applicant states that schedule 1 part 1 of the section 106 agreement serves no useful planning purpose within the context of the requirements of planning obligations as set out in paragraph 4.4 above. The applicant states that it is not directly related to the development because the applicant and prospective house builder have no control over the land in question. It is also restricting the delivery of new housing where there is undersupply. In any case, the purpose of the section 106 agreement, the continuation of the employment use, has been secured.

5.11 On the basis of the above, the applicant is seeking removal of schedule 1 part 1 of the schedule.

6. ANALYSIS

6.1 The application related to an established employment area allocated in the adopted Tameside Unitary Development Plan (UDP) (2004) by policy E3. The report before members set out that the council would not normally have granted planning permission for residential development unless factors indicated otherwise. In this case, it was concluded that the buildings on the site were unsuitable for continued employment use due to their state of repair. Also, the repair and refurbishment of all buildings or redevelopment of the whole site for employment uses was said to be unviable.

6.2 The report set out that redevelopment of part of the site for housing would support the retention of the remaining business park in employment, meeting the employment needs of the area and providing economic benefits by enabling funding to be released for consolidation and continuation of the business park.

6.3 It was acknowledged that most of the accommodation at Newton Business Park had a poor energy rating, where the buildings were outdated and in poor condition. Although it was accepted that refurbishment of the whole site would not be viable, release of part of the site for housing with the remainder staying in employment would be acceptable, provided that the balance of employment be upgraded to achieve an energy performance certification of E or better. This provision was secured in schedule 1 part 1 of the s106 agreement that accompanied the grant of outline planning permission (paragraphs 2.2 and 2.3 above).

6.4 As set out in section 5 of this report, a number of factors have now changed. The part of Newton Business Park remaining in employment use has been sold to a third party by the applicant and legislation has and is due to be introduced to secure energy efficient standards of buildings in employment uses.

6.5 As the balance of Newton Business Park is no longer within the ownership or control of the applicant, they cannot implement the requirements of schedule 1 part 1 of the agreement. They have sought assurance from the new owner and received an email confirming that the changes have taken place. However, there is no evidence before the applicant and thus the council that works have, as a matter of fact been carried out.

6.6 Notwithstanding the above, given the change in circumstances, the ability of the council to bring about compliance with the agreement is now in question. In the absence of ownership or control there is no reasonable prospect of compliance by the applicant such that it would not be expedient for the council to pursue.

6.7 In addition, it is accepted that legislation has and is being introduced to bring about the changes required by the agreement. Whilst these are regulations that lie outside the planning system, its existence is acknowledged here.

6.8 It is accepted that the council cannot demonstrate a five year housing land supply and that delivery is also below the requirement. Within this context and the circumstances stated above, the provisions of the agreement are now fettering full implementation of the development. In the circumstances, it would not now be reasonable for the council to fetter the delivery of the site.

6.9 On the basis that the applicant cannot comply with schedule 1 part 1 of the agreement, the council cannot reasonably secure compliance and that there is a need for the development to be implemented, it is accepted that it no longer serves a useful planning purpose within the context of the requirements as per paragraph 4.4 above.

RECOMMENDATION

It is recommended that part 1 schedule 1 of the s106 agreement that accompanies outline planning permission 16/00054/OUT be deleted such that the council enters into a supplemental s106 agreement with the applicant to this effect.