

Agenda Number: PWM2
Application Number: S14/1316
Proposal: Residential development and use of former school playing field for community uses of site for residential purposes

Summary of issues raised:

Section 106 Agreement

Members have requested that the S106 agreement include payment of a financial contribution towards works that are reasonably necessary to enable the former playing field to be used as community open space including upgrades to the access and track.

Such an approach has been carefully considered by officers, in consultation with the Council's legal team. It has been concluded that it will not be possible for the following reasons:

- The starting point is the adopted Local Plan SAP policy SAP LSC1a:

LSC1e(Billingborough): residential development will only be permitted on the previously developed part of the former Aveland High School [approximately 1.5ha]. The remainder of the site [approximately 2.5ha] should be provided as open space for community use (including playing fields and allotments), to be accessed along the track adjacent to the development.

- Whilst there is no specific requirement for any upgrade to the community land or access written into this policy, or who should own or maintain it, officers have taken the view that works reasonably necessary to enable the land to be brought into that use, including improvements to the access and track etc, as well as the existing use value of the land (that LCC would have obtained from selling it on the open market) are costs of the development as a whole (to enable it to comply with policy LSC1a above) and therefore have been factored into the viability assessment carried out by the Council's viability consultant (the VOA). These and other additional development costs as well as the need to ensure a competitive return to the landowner and developer, mean that a reduced number of affordable houses (28% reduced from 35%) can be justified. In that sense the estimated costs are already included in the S106 as proposed.
- Government guidance is very clear that conditions should be the preferred option where they can be used instead of S106. NPPF para 204 states:

Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

- NPPF para 205 states:

Planning obligations should only be sought where they meet all of 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.*

- In addition, the NPPF policy tests above are enshrined as statutory tests in the Community Infrastructure Levy Regulations 2010 (As Amended):

*A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—
(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.*

- Conditions 4, 5 & 8 are intended to ensure that detailed specification of the upgrading works is submitted to and approved by the Council, and that the works are subsequently carried out and the land brought into community use before the residential development is commenced. Therefore the developer of the residential part of the development is obliged to carry out these works before they can build the houses. In addition, this application is in outline form with all matters reserved so although indicative details have been submitted, all costs are necessarily based on estimates and it is not known at this stage what the final specification of the works or exact uses of the playing field will be or proportion of land divided between different uses. The costs of any upgrading works cannot be specified exactly or based on a formula in the Councils Planning Obligation SPD as they arise from the allocation policy SAP LSC1a in the SAP rather than a direct consequence of a quantified need that allowing the residential development would provoke. All reserved matters have to be approved before any development can start in accordance with condition 2. The application site is in single ownership and includes both the residential and playing field areas so it is explicitly an application for a single development rather than 2 separate entities so the use of conditions in this way is considered reasonable.
- Lincolnshire County Council as landowner and applicant and Billingborough Parish Council as potential future landowner of the playing fields are competent public bodies so there is no reason to believe that the proposed arrangements for transferring the land to the PC or carrying out the works will not be carried out as proposed. It is understood that both councils have worked on this project proactively together and have an understanding that this would happen.

Taking the above into account, it is considered that the recommended conditions are sufficient to ensure compliance with planning policy and that a fixed contribution in the S106 would meet neither the statutory tests of Section 122 of the Community Infrastructure Levy Regulations 2010 (As Amended), or government guidance on the use of planning obligations.

Notwithstanding the above, for the avoidance of doubt, officers have asked the applicant to provide evidence that the community open space will be provided in the manner set out in the application. Such evidence is expected to be submitted before the application is signed off by the Chairman and Vice Chairman in consultation with the Business Manager for Development Management and Implementation.

Drainage

Following submission of an updated floodrisk assessment and drainage strategy, the Environment Agency (as statutory consultee) has withdrawn their holding objection. Subject to the details required by condition 9, the proposal is therefore acceptable in flood risk and surface water drainage terms

Changes to recommendation: No change