



Report Reference Number: 2018/1116/DOV

To: Planning Committee
Date: 7 November 2018
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Request for a Deed of Variation to Section 106 agreement seeking the payment of a commuted sum to be used towards the provision of a children's play area elsewhere in Hambleton in lieu of the provision of a children's play area and play equipment on the land in respect of planning approval 2005/0876/FUL for residential development comprising of 89 (2 storey and 2 1/2 storey) dwellings and associated works on 2.3 ha of land, following demolition of existing buildings on land off Station Road

This matter has been brought to Planning Committee for consideration due to it being a proposal to amend the recreational open space provision agreed by Members in 2005.

Summary:

The applicant has developed out a scheme for residential development comprising 89 houses on land off Station Road, Hambleton, which was granted planning permission in August 2006 (under reference 2005/0876/FUL). This was subject to a Section 106 agreement which (amongst other things) secured the provision of recreational open space - meaning the open space and children's play areas together with play equipment to be provided by the owners on that part of the land in accordance with the agreement.

The children's play areas together with play equipment has not been provided on the recreational open space to date due to the siting of surface water system inspection chambers that has meant that an appropriate layout for the children's play areas together with play equipment would be difficult to achieve and would pose health and safety issues.

The applicant is therefore proposing the payment of a commuted sum to be used towards the provision of a children's play area together with play equipment elsewhere in Hambleton in lieu of the provision of a children's play area and play equipment on the land in respect of planning approval 2005/0876/FUL.

Recommendation:

That the request for a Deed of Variation be approved subject to delegation being given to Officers to complete a Deed of Variation to the original Section 106 agreement to allow the payment of a commuted sum to be used towards the provision of a children's play area and play equipment elsewhere in Hambleton in lieu of the provision of a children's play area and play equipment on the land in respect of planning approval 2005/0876/FUL. This variation shall be time limited for a period of 3 years from the date of the decision.

Reasons for recommendation

To enable the development to make alternative provision for recreational open space, to that agreed by Committee in 2005, as it is now impracticable to provide a children's play area together with play equipment on the recreational open space due to the subsequent positioning of the inspection chambers.

Consultation and Publicity

Parish Council – No objections. Support the commuted sum being used to provide play facilities in the Hambleton area.

Neighbour Summary – A site notice has been erected. One letter of representation has been received as a result of this publicity with concerns raised regarding the impact of any changes to the existing area of recreational open space on the development.

1. Introduction and Background

- 1.1. Planning permission for residential development of this site was granted in August 2006 (under reference 2005/0876/FUL) and was subject to a Section 106 agreement which (amongst other things) secured the provision of recreational open space - meaning the open space and children's play areas together with play equipment were to be provided on that part of the land by the owners in accordance with the agreement.
- 1.2. In May 2018 the applicant requested a deed of variation to amend the recreational open space provision agreed by Committee in 2005. The children's play areas together with play equipment have not been provided due to the installation of inspection chambers within the recreational open space. This has meant that an appropriate layout for the children's play area and play equipment would be difficult to achieve and would pose health and safety issues. The applicant is therefore proposing the payment of a commuted sum to be used towards the provision of a children's play area and play equipment elsewhere in Hambleton in lieu of the provision of a children's play area and play equipment on the land in respect of planning approval 2005/0876/FUL.
- 1.3 A Deed of Variation is an agreement between the parties to a Section 106 agreement to alter its terms. There would be no right of appeal to the Secretary of State if the Council refused the applicant's request, but we should

nevertheless act reasonably and determine the proposal in the context of the planning policies and other material considerations.

2. Policy Context

2.1. Since the approval of the application reference 2005/0876/FUL, the policy context has changed. The Development Plan for the District now comprises the saved policies of the Selby District Local Plan (2005) and the policies contained within the Selby District Core Strategy Local Plan (2013). In addition, the revised National Planning Policy Framework (NPPF) was published in July 2018. Although the policy context has changed, the relevant policy is unchanged in that for schemes of 50 dwellings or more, provision within the site will normally be required.

2.2. Policy RT2 of the Selby District Local Plan specifically relates to “Open Space Requirements for New Residential Development” and sets out that proposals for new residential development comprising 5 or more dwellings will be required to provide recreational open space at the rate of 60 square metres per dwelling on the following basis (of relevance here):

(c) For schemes of 50 dwellings or more, provision within the site will normally be required unless deficiencies elsewhere in the settlement merit a combination of on-site and off-site provision.

Depending on the needs of residents and the total amount of space provided, a combination of different types of open space would be appropriate in accordance with NPFA standards.

2.3. The pre-ambles to Policy RT2 of the Selby District Local Plan acknowledges that for schemes larger than 10 dwellings, provision should generally be made on-site, although there may be circumstances where this is impractical because of site characteristics or other planning requirements, or where off-site provision may be appropriately located elsewhere. In certain circumstances, a financial contribution to enable the District Council to make alternative provision or to upgrade existing facilities may be acceptable in lieu of direct provision.

2.4. Part 2, Section 2, Section 6 of The Developer Contributions Supplementary Planning Document sets out occasions when a commuted sum may be appropriate in lieu of on-site provision, including where the provision of open space on-site is impractical. The method that will be used in calculating contributions can be found in Annex A of that Section.

3. Assessment

3.1. The applicant is proposing the payment of a commuted sum to be used towards the provision of a children's play area together with play equipment elsewhere in Hambleton in lieu of the provision of a children's play area and play equipment on the land in respect of planning approval 2005/0876/FUL.

- 3.2. The pre-amble to Policy RT2 of the Selby District Local Plan is set out above (para 2.3). In certain circumstances, a financial contribution to enable the District Council to make alternative provision or to upgrade existing facilities may be acceptable in lieu of direct provision.
- 3.3. In this instance, Officers consider that the on-site provision of a children's play area together with play equipment on the land would now be impractical due to the subsequent positioning of the inspection chambers. In light of this Officers consider that the payment of a commuted sum to be used towards the provision of a children's play area together with play equipment elsewhere in Hambleton in lieu of the provision of a children's play area and play equipment on the land in respect of planning approval 2005/0876/FUL would be appropriate. Members will be updated regarding what the commuted sum would amount to at Planning Committee.
- 3.4. The existing area of recreational open space on the site would be subject to a recreational open space payment in respect of maintenance of the amenity open space forming part of the development on site only.

4. Legal/Financial Controls and other Policy matters

Legal Issues

- 4.1. Even though this is not an application under the Planning Acts this recommendation has been made in the context of the planning policies and other material considerations. If agreed, a Deed of variation to the S106 Agreement will be required.

Financial Issues

- 4.2. Financial issues are not material to the determination of this application.

Impact Assessment

- 4.3. It is not anticipated that the proposed Deed of variation will lead to discrimination or inequality in respect of any particular groups. Nor will it impact upon human rights.

5. Conclusion

- 5.1. Officers consider that the on-site provision of a children's play area together with play equipment on the land in respect of planning approval 2005/0876/FUL, which was originally agreed by Committee in 2005, would now be impractical due to the subsequent positioning of the inspection chambers on the recreational open space.
- 5.2. It is recommended that the payment of a commuted sum to be used towards the provision of a children's play area together with play equipment elsewhere in Hambleton in lieu of the provision of a children's play area together with play

equipment on the land in respect of planning approval 2005/0876/FUL would be appropriate.

- 5.3 This variation shall be time limited for a period of 3 years from the date of the decision.

6. Background Documents

Planning Application file reference 2005/0876/FUL and associated documents.

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Appendices:

None