



Report Reference Number: 2015/1004/OUT

To: Planning Committee
Date: 4 December 2019
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Lead Officer: Ruth Hardingham, Planning Development Manager

Request for a Deed of Variation to Section 106 agreement seeking the payment of a commuted sum to be used towards the provision, enhancement or maintenance for Open Space within the Parish boundaries of Biggin in lieu of the provision of an off- site Recreational Space in respect of planning approval 2015/1004/OUT for the erection of 5 No. dwellings including details of access (all other matters reserved) at Land at Croft Farm, Oxmoor Lane, Biggin.

This matter has been brought to Planning Committee for consideration as it is a proposal to amend the Recreational Open Space provision agreed by Members in 2015.

Summary:

The applicant has developed out a scheme for residential development comprising of 5 dwellings at Land at Croft Farm, Oxmoor Lane, Biggin which was granted planning permission in December 2015 (under planning reference 2015/1004/OUT). This was subject to a Section 106 agreement which (amongst other things) secured the provision and management of off-site provision of Recreational Open Space to be provided by the applicant in accordance with the Agreement. The commuted sum has been considered by Officers given that the Off-Site Recreational Open Space would now be impractical for the applicant to deliver. This is because of the private access arrangements for the new development of 5 dwellings and private ownership of the land which in turn has made it difficult for the Recreational Open Space to be accessible and to be of benefit to the wider community of Biggin as was originally intended.

The applicant is therefore proposing the payment of a commuted sum towards the provision, enhancement or maintenance Open Space within the Parish boundaries of Biggin in lieu of the provision off- site Recreational Space.

Recommendations:

- i. 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 of £5475 to be used towards the provision, enhancement or maintenance Open Space within the Parish boundaries off Biggin in lieu of the provision off- site Recreational Space as detailed above on the land in respect of planning approval 2015/1004/OUT.**

Reasons for recommendation

To enable the development to make alternative provision for open space, to that agreed by Committee in 2015, as it is now impracticable for the wider local community of Biggin to access the Recreational Open Space due to the private access arrangements of the new development of 5 dwellings and private ownership of the land.

1. Introduction and Background

- 1.1. Planning permission for residential development of this site was granted in December (under reference 2015/1004/OUT). This was subject to a Section 106 agreement which (amongst other things) secured the provision and management of off-site provision of Recreational Open Space to be provided by the applicant in accordance with the agreement. The commuted sum of £5475 has been considered by Officers given that the Off-Site Recreational Open Space would now be impractical for the applicant to deliver. This is because of the private access arrangements for the new development of 5 dwellings and private ownership of the land which in turn has made it difficult for the Recreational Open Space to be accessible and to be of benefit to the wider community of Biggin. as was originally intended. The site has now been fully built out.
- 1.2. The applicant is seeking a Deed of Variation under Section 106A(1)(a) to alter its terms by agreement. 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. Policy RT2 of the Selby District Local Plan specifically relates to "Open Space Requirements for New Residential Development". Policy RT2 states that for schemes of more than 4 dwellings including up to 10 dwellings a commuted payment should be required in order to enable the district Council to provide new or upgrade facilities in the locality.

3. Assessment

- 3.1. The applicant is proposing the payment of a commuted sum to be used for provision, enhancement or maintenance of Open Space within the Parish boundaries of Biggin in lieu of the provision and management of the off-site

provision of Recreational Open Space on the land in respect of planning approval 2015/1004/FUL.

- 3.2. When the application was determined Officers acknowledged the lack of existing provision within the village and considered the benefits arising from the provision of the Off-Site Recreational space for community use instead of seeking a commuted sum. In this instance, Officers consider that the provision and management of off-site provision of Recreational Open Space on the land in respect of planning approval 2015/1004/FUL, which was originally agreed by Committee in 2015, would now be impractical due to the access arrangements of the new development and private ownership of the land.
- 3.3. The original intention for this piece of land to function as a space for community use is no longer capable of being provided as was intended. It has therefore been agreed between the applicant and the Council that an appropriate commuted sum would be £1095 per dwelling which in total would equate to a figure of £5475. This would ensure that the local community would still benefit from the proposals in regards to Open Space whether it be for the provision, enhancement or maintenance Open Space within the Parish boundaries off Biggin.

4. Legal/Financial Controls and other Policy matters

Legal Issues

- 4.1. This is request under Section 106A(1)(a) of the Town & Country Planning Act 1990 to modify the planning obligation by agreement. The Council should act reasonably and determine the proposal in the context of the planning policies and other material considerations.

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 provision and management of off-site provision of Recreational Open Space on the land in respect of planning approval 2015/1004/FUL, which was originally agreed by Committee in 2015, would now be impractical due to the access arrangements of the new development and private ownership of the land.

- 5.2. It is recommended that the payment of a commuted sum of £5475 to be used towards the provision, enhancement or maintenance Open Space within the Parish boundaries off Biggin in lieu of the provision off- site Recreational Space as detailed above on the land in respect of planning approval 2015/1004/OUT 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 2015/1004/OUT and associated documents.

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Appendices: None