

## TEWKESBURY BOROUGH COUNCIL – DEVELOPMENT CONTROL

<b>Committee:</b>	Planning
<b>Date:</b>	20 October 2020
<b>Site Location:</b>	Land Adjacent To Hucclecote Road And Golf Club Lane Brockworth Gloucestershire
<b>Application No:</b>	18/01239/FUL – UPDATE REPORT
<b>Ward:</b>	Brockworth
<b>Parish:</b>	Brockworth
<b>Proposal:</b>	Erection of 166 new homes including 40% affordable housing provision, 163 sq meters of flexible commercial/community uses (A1, A2, A3, A4, A5, B1 and D1) public open space and associated infrastructure.
<b>Report by:</b>	Paul Skelton
<b>Appendices:</b>	Site location plan Site layout plan
<b>Recommendation:</b>	Delegated Permit

### 1.0 INTRODUCTION

- 1.1 At its meeting on 18th April 2018 the Planning Committee resolved to delegate permission to the Technical Planning Manager (as was) to

*“PERMIT the application, subject to the addition of/amendments to planning conditions/obligations; continuing consultation with the Environmental Health Officer in relation to noise mitigation; re-consultation with Natural England and securing any necessary mitigation measures; and the completion of planning obligations to secure the Heads of Terms in relation to 40% affordable housing, securing an on-site LEAP in line with Fields In Trust specifications and negotiating and securing Section 106 payments in response to requests from the Highway Authority where necessary and appropriate.”*

- 1.2 Since then officers have worked closely with the Applicant and consultees to resolve the outstanding matters which are discussed below.

### 2.0 COMMUNITY INFRASTRUCTURE LEVY/SECTION 106 OBLIGATIONS

- 2.1 The Community Infrastructure Levy (CIL) Regulations allow local authorities to raise funds from developers undertaking new building projects in their area. The regulations stipulate that, where planning applications are capable of being charged the levy, they must comply with the tests set out in the CIL regulations. These tests are as follows:
- 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.

- 2.2 As a result of these Regulations, local authorities and applicants need to ensure that planning obligations are genuinely 'necessary' and 'directly related to the development.' As such, the Regulations restrict local authorities' ability to use Section 106 Agreements to fund generic infrastructure projects, unless the above tests are met. Where planning obligations do not meet the above tests and restrictions, it is 'unlawful' for those obligations to be taken into account when determining an application.
- 2.3 In October 2018 the Council adopted CIL and implemented the levy on the 1st January 2019. For CIL purposes the application site falls within a 'Generic Site' and is subject to the levy for residential development currently at £200 per square metre on all the market elements of the proposed development

### **3.0 NOISE MITIGATION**

- 3.1 At the previous committee meeting the Committee was advised that an objection had been received from a solicitor acting on behalf of a manufacturer located opposite Golf Club Lane setting out concerns in relation to the additional noise report submitted by the Applicant. Officers advised that the recommendation for a 'delegated permit' provided the opportunity for officers to liaise with the Applicant and the manufacturer to ensure there was agreement on the noise levels, to establish whether mitigation was required and re-consult the Environmental Health Officer.
- 3.2 Following the meeting Officers, in consultation with the Council's Environmental Health Adviser (EHA), fully considered the facts of the site, the submissions submitted on behalf of the nearby manufacturer and the responses from the Applicant in regard to noise and other related matters. It is officer's view that suitably worded planning conditions, tailored to the specific circumstances of the site and environs, satisfactorily addresses the issues raised by the manufacturer in planning terms. The condition would require the development to be carried out in accordance with the Applicant's Acoustic Design Statement Report and require post-completion testing to be carried out before any dwelling potentially affected by noise from the nearby manufacturer can be occupied.
- 3.3 Officers consider that this proposed condition is necessary, relevant to planning and the development permitted, enforceable, precise and reasonable in all other respects having regard to the position of both the nearby manufacturer and the Applicant.

### **4.0 ECOLOGY**

- 4.1 Following April 2019 committee an Appropriate Assessment (AA) was carried out on behalf of the Council in line with the recommendation of Natural England. The Appropriate Assessment considered the potential impact of the proposals on the Cotswolds Beechwoods Special Area of Conservation (SAC).
- 4.2 The AA concluded that no adverse effect on the integrity of the SAC should arise as a result of the development proposed subject to securing the following mitigation:
- contribution towards the implementation of a Natural England access strategy
  - Planning condition requiring an information pack for each dwelling explaining the location and sensitivities of the SAC
- 4.3 Natural England have confirmed that they do not object to the application subject to the above mitigation being secured. The contribution (£50,000) is proposed to be secured by a s106 obligation. The information pack would be secured by an appropriate planning condition, requiring copies to be distributed to all prospective residents before occupation.

## 5.0 S106 MATTERS

- 5.1 JCS Policy INF6 provides that where need for additional infrastructure and services and/or impacts on existing infrastructure and services is expected to arise, the local planning authority will seek to secure appropriate infrastructure which is necessary, directly related, and fairly and reasonably related to the scale and kind of the development proposal, including for education and cultural infrastructure. Planning permission will be granted only where sufficient provision has been made for infrastructure and services to meet the needs of new development and/or which are required to mitigate the impact of new development upon existing communities.
- 5.2 Policy INF7 sets out that financial contributions will be sought through the S106 and CIL mechanisms as appropriate, and allows for consideration of viability through robust assessments. Further, the policy sets out that where there is a concern about the viability of a scheme, an independent viability assessment will be carried out; the explanation to the policy states that this will allow an objective appraisal to inform negotiations. Whilst primarily in the context of delivering additional levels of affordable housing above 40%, Policy SD12 states that the JCS authorities will negotiate with developers to find an appropriate balance to deliver affordable housing and infrastructure needs.
- 5.3 Since planning committee in April 2019 Gloucestershire County Council (GCC) has submitted a revised request for education and library contributions. This follows changes to the way that GCC calculate requests for education contributions.
- 5.4 At the time of the committee resolution in April 2019 GCC required £494,972 towards primary education. No contributions were sought towards pre-school or primary education, or libraries.
- 5.5 At that time, the officer view was that education contributions were most appropriately secured via CIL and as such the recommendation, accepted by the Committee, did not include the education contribution. As members will recall, following changes in government guidance, the CIL regulations and the Stoke Road Bishops Cleeve appeal decision this is no longer the case and officer's view is that where contributions meet the statutory tests for s106 (Regulation 122 of the CIL Regulations), contributions can be secured for on and off site infrastructure which relates directly to the development proposed.
- 5.6 In March 2020, the GCC education/library request was amended as follows:
- |                              |                                     |
|------------------------------|-------------------------------------|
| Pre-school contribution      | - £670,040.40                       |
| Primary contribution         | - £436,884.45                       |
| Secondary - 11-18            | - £951,539.00                       |
| Total education contribution | - £2,058,463.85                     |
| Library contribution         | - £32,536.00 (166 dwellings x £196) |
- 5.7 The GCC response advises that it is based on updated Cost Multipliers in line with current building costs, and updated Pupil Yields supported by two studies in 2018 and 2019.
- 5.8 Following GCCs response the Applicant presented a Financial Appraisal Supporting Statement (FASS) which assessed the viability of the scheme.

- 5.9 The Applicant has also submitted a note on education matters which challenges the justification put forward by GCC for the above request for contributions. Amongst other things, the Note sets out that there are funding mechanisms in place for the impact on the school infrastructure of new housing in areas with a CIL charging regime set at zero or sites where the LPA agrees that viability matters prevent funding by new development, and that there is also a funding pot where developer funding is delayed.
- 5.10 For this reason the Note suggests that *"New housing that is, because of full consideration by the LPA, without CIL or S106 mitigation counted in the Basic Need funding calculation of school place need and thus not a burden on local taxation. Because of the potential safeguard provided by Basic Need funding any objection from GCC whilst a technical consideration as are all representations under planning, cannot be a material consideration"*.
- 5.11 The FASS summarises two appraisals, the first of which is based on the resolution made by committee in March 2019 (40% affordable housing/CIL/LEAP). The FASS concludes that the development would be marginally viable on that basis. The second appraisal in the FASS adds the education requests made by GCC in March 2020 and concludes that on that basis the development would be unviable.
- 5.12 Following the receipt of the FASS officers instructed an independent specialist consultant to review the viability of the proposals. The Council's consultant carried out a financial viability assessment (FVA) which challenged some of the assumptions in the Applicant's FASS, but ultimately concluded that the development could afford a contribution of £345,000 towards education/library contributions in addition to the 40% affordable housing, CIL payments (estimated to be £1,983,125) and LEAP contributions (estimated to be £70,000).
- 5.13 In response to the FVA, the Applicant has drafted a Unilateral Undertaking which provides for an education/library contribution of £345,000.
- 5.14 GCC has considered the outcome of the FVA and has confirmed that it now OBJECTS to the application unless TBC undertake [in writing in a legal agreement] to directly provide GCC with the remaining £1.746M from the CIL funding received from this application.
- 5.15 GCC advise that this is because the only way the County Council can mitigate the impact of this proposal in terms of addressing the need for additional pre-school, primary and secondary school places and increasing library capacity to accommodate the children and additional users in this growing community is by way of financial contributions secured via S106 or CIL. GCC say it is not sustainable or good planning and place-making to allow developments if the necessary infrastructure mitigation cannot be delivered.
- 5.16 In respect of GCC's comments in respect of an undertaking by TBC to guarantee the difference between the £345,000 contribution and the full GCC request, this is not possible as the arrangements for how CIL receipts will be spent have not been agreed.
- 5.17 The reservations of GCC are understood; education infrastructure is an important part of place-making and is a material planning consideration. Nevertheless, officers agree in principle with the Applicant that, whilst Government guidance promotes the use of the planning process (via CIL/s106) to secure funding, these are not the only funding streams available to GCC as the Local Education Authority. It is officer's view therefore that the absence of 100% education contributions as requested by GCC does not warrant refusal of the application. For the same reasons, it is recommended that the full 40% affordable housing requirement is retained.

## 6.0 OTHER MATTERS

- 6.1 It is not considered that there have been any changes in material planning circumstances since the previous committee resolution to affect the officer recommendation. A s106 Unilateral Undertaking has been completed which provides for a sum of up to £20,000 to be paid to the County Council as local highways authority to carry out streetworks and amendments to guard railings on the highway.

## 7.0 CONCLUSION AND RECOMMENDATION

- 7.1 Matters in respect noise and ecology have been addressed as set out above.
- 7.2 In respect of s106 matters, ultimately planning is about balancing the merits of proposals and any adverse impacts. In this case there are substantial benefits arising from the proposal as set out in section 18 of the March 2019 Officer Report, including the economic and social benefits associated with the delivery of 165 homes, 40% of which are proposed to be affordable.
- 7.3 The weight to be given to any particular consideration is one for the decision-maker. It is therefore open to the Planning Committee to give more weight to the GCC request for education contributions than to the delivery of affordable housing. It is officer's view that, on balance and given that there are alternative funding streams available for the delivery of education infrastructure, more weight should be given to the delivery of on-site affordable dwellings. In this context it is considered that the current proposal is an appropriate balance to deliver affordable housing and infrastructure needs of the area.
- 7.4 It is therefore recommended, that permission is **DELEGATED to the Development Manager subject to addition of the conditions in respect of noise and ecology; the addition of the conditions set out in this update report and amendment addition of conditions as appropriate; completion of a Unilateral Undertaking to secure a £345,000 a contribution towards education/libraries; and completion of a s106 to secure the following heads of terms:**
- 40% affordable housing;
  - dog bin and signage contribution (£73 per dwelling);
  - provision of on-site LEAP;
  - waste and recycling contributions (£73 per dwelling); and
  - Cotswold Beechwood SAC mitigation contribution (£50,000).