

DEVELOPMENT AT CAMBRIDGE SOUTHERN FRINGE – SECTION 106 AGREEMENTS

To: **Cabinet**

Date: **7 July 2009**

From: **Executive Director: Environment Services**

Electoral division(s): **All**

Forward Plan ref: **2009 / 042**

Key decision: **Yes**

Purpose: **To inform Cabinet of the current position that has been reached on the Section 106 negotiations for the proposed developments at Cambridge Southern Fringe and to consider officers recommendations to move forward to conclusion of negotiations and sealing of agreements.**

Recommendation: **Cabinet is invited to consider the current position and to:**

- i) Approve use of a Parent Company Guarantee and a Section 111 agreement under the Town and Country Planning Act (1990) to provide security for the s106 payments due to the Council for the Addenbrooke's 2020 site and to authorise officers to seal the Section 106 agreement;**
- ii) Approve use of a Parent Company Guarantee to provide security for the s106 payments due to the Council for the Trumpington Meadows site and to authorise officers to seal the Section 106 agreement.**
- iii) Authorise Officers to continue negotiations on the Section (s)106 agreement with Countryside Properties for the proposed development at Clay Farm and Glebe Farm and as part of this, to approve use of a Parent Company Guarantee to provide security for the s106 payments due to the Council and prudential borrowing up to £5m, repayable through the s106 agreement.**
- iv) Authorise officers to seal the Section 106 agreement for the proposed development at Bell School.**

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1. BACKGROUND

- 1.1 The principle of the extensive development proposed for the Southern Fringe of Cambridge City was established through the 2003 Cambridgeshire and Peterborough Structure Plan. The Cambridge City Local Plan (2006) and South Cambridgeshire Local Development Framework (2007) provided a finer level of detail to further shape the characteristics of development by specifying numbers of dwellings and the quantum and type of development that would be acceptable for the Cambridge Biomedical Campus (known as the Addenbrooke's 2020 site).
- 1.2 The development proposals were all subject to detailed planning applications and all have been approved and planning permission granted by the Cambridge City Council or the Cambridge Fringes Joint Development Control Committee subject to the completion of Section 106 (S106) legal agreements.
- 1.3 A Section 106 agreement is made under Section 106 of the Town and County Planning Act 1990 and is a contract that binds the signatories (in the case of these developments, the local authorities and landowners/developers) to a set of actions in relation to the delivery of the development. These requirements are known as 'planning obligations' and such obligations can include requiring developers to make payments to provide infrastructure and services required to support development at the sites or making direct provision of such infrastructure and services themselves.
- 1.4 A plan showing the development areas in Cambridge Southern Fringe is attached at Appendix 1. Table 1 notes the key characteristics of the development proposals.

Table1 - Development Proposals, Cambridge Southern Fringe

Development Site	Development Proposals
Clay Farm and Glebe Farm – residential	2,600 homes plus supporting infrastructure
Trumpington Meadows – residential	1,200 new homes plus supporting infrastructure
Bell School - residential	350 new homes plus supporting infrastructure
Addenbrooke's 2020	215,000 square metres of medical and biomedical development plus supporting infrastructure

- 1.5 The County Council was a consultee on all of the planning applications in the Southern Fringe and consultation responses were considered and approved by Cabinet. Each of these consultation responses contained the County Council's comments and s106 requirements. Negotiation has now concluded on some of the sites and continues on others. A summary of the Cabinet endorsed decisions is contained within Table 2.

Table 2 – Summary of Cabinet Decisions

Development Site	Cabinet Date	Summary of Decision
Clay Farm	22/1/08	<ul style="list-style-type: none"> • Objection as affordable housing is not policy compliant • Objection - no Library S106 contribution • Numerous transport issues which can be mitigated through conditions • Objection due to insufficient archaeological mitigation • Other S106 contributions are sufficient
Trumpington Meadows	22/1/08	<ul style="list-style-type: none"> • Objection - no Guided Busway S106 contribution • Numerous transport issues which can be mitigated through conditions • Other S106 contributions are sufficient
Bell School	22/1/08	<ul style="list-style-type: none"> • All S106 contributions agreed in principle • Numerous transport issues which can be mitigated through conditions
Addenbrooke's 2020	19/12/06	<ul style="list-style-type: none"> • Objection due to insufficient transport information and inconsistency • Objection due to lack of certain transport S106 contributions within the Planning Obligations Strategy • Objection due to lack of information on waste management

- 1.6 This report sets out the key features of the S106 packages for the proposed developments at Cambridge Southern Fringe for approval by Cabinet and a number of elements of the agreements on which a clear decision of the acceptability or otherwise is required.

2. CURRENT STATUS OF S106 AGREEMENTS

- 2.1 Table 3 shows the current costs of services and infrastructure that will be funded through the S106 agreements.

Table 3 - Proposed s106 obligations

Site	S106 County	S106 Other	Total S106
ClayFarm / Glebe Farm	£31.7M	£9.7M	£41.4M
Addenbrooke's 2020	£12.3M	£1M	£13.3M
Trumpington Meadows	£21.7M	£9.5M	£31.2M
Bell School	£3.4M	£1.6M	£5M

- 2.2 The figures in Table 3 include recovery of £8m of Housing Growth Fund (HGF) Rolling Fund that has been applied to the construction of the

Addenbrooke's Access Road (AAR) Phase 2. This was approved through the Cambridgeshire Horizons Board. The S106 agreements will also recover both the capital costs and prudential borrowing costs to the County Council for the construction of the Addenbrooke's Access Road phase 2 (£4.4M) and the Cambridgeshire Guided Busway (£7.7M).

- 2.3 Negotiations with all of the developers have progressed well and the current position is that the s106 agreements are ready to be signed for Trumpington Meadows and Addenbrooke's 2020. Negotiations are continuing with Countryside Properties although a parallel appeal for non determination of the planning application has been lodged.
- 2.4 Full details of the negotiated s106 packages for the Trumpington Meadows and Addenbrooke's 2020 sites are attached as Appendix 2. These largely match the key s106 requirements previously considered by Cabinet. However, through the course of the negotiations and given the current difficult economic climate, a number of changes within the s106 agreements to that originally envisaged have been requested by the developers in order to allow the developments to proceed. In the course of the negotiations, officers from the County and the City Council's have considered these carefully and scrutinised and challenged the developers rationale. These points are set down in the following sections for Cabinet to consider.

Addenbrooke's 2020

- 2.5 The Addenbrooke's 2020 site consists of a range of proposed developments including the Papworth Hospital relocation, medipark buildings and additional facilities for Addenbrooke's Hospital. For the purposes of the s106 agreement, it is proposed that the development is split into three phases:

Phase 1 – up to 65,000 square metres (sq.m) expected to consist largely of the relocated Papworth Hospital

Phase 2 – 65,000 sq.m to 95,000 consisting of medipark and Addenbrooke's development.

Phase 3 – above 95, 000 sq.m as phase 2.

- 2.6 The first significant issue that has arisen during the course of the negotiations is around the security provided to the County Council that s106 contributions will be paid. It is normal practice for the County Council to have security in place to minimise S106 payments by requiring developers to provide a bond to an equivalent value of the s106 obligations. This would mean that should the developer default on the payments, the value of the outstanding obligations could be drawn down from the bond. At the current time, bonds are largely unavailable and so the developers are indicating that they can only sign the agreement if this requirement is waived.
- 2.7 To provide maximum security for the Council as an alternative, officers have negotiated with the developer that for phase 1 of the site, the security for the County Council be provided through a Parent Company Guarantee on the developers of the site - Countryside Properties and Liberty property Trust. For phase 2 and phase 3 of the development, Officers are suggesting that the

requirement in the s106 agreement be for the developers to use best endeavours to secure a bond and if one is not available, to provide Parent Company Guarantees as with phase 1.

- 2.8 Although this approach in overall terms, slightly reduces the security to the County Council, the developers have agreed a rephrasing of the s106 payments for phase 1 so they will be significantly more front loaded (paid earlier than was originally envisaged / planned), as a means of compensating the Council. Under the new arrangement, approximately £2m more than was originally suggested will be paid on commencement of the development, thus reducing the Council's borrowing for the Addenbrooke's Access Road and Guided Busway more quickly. The s106 payments originally envisaged and now proposed are set down in table 4.

Table 4 – Before and after cashflow – Addenbrooke's 2020 site

Phase 1	Original position	Revised position	Revised Cumulative position
Commencement	£1,387,834	£3,291,500	£3,291,500
After 12 months	£1,387,834	£328,000	£3,619,500
After 24 months	£1,387,834	£328,000	£3,947,500
After 36 months	£400,000	£328,000	£4,275,500
After 48 months	£400,000	£328,000	£4,603,500
Total	£4,603,502	£4,603,500	£4,603,500

- 2.9 The developers have made it clear that without these changes, they will not sign the agreement and the consequence will be that the opportunity for the development and the Papworth hospital relocation will be lost.
- 2.10 A second issue that has arisen relates to how the planning obligations transfer should the land ownership change. Under normal terms of s106 agreements, the obligations will transfer with the title in the land so if for example, the site is sold on, the obligations transfer to the new owner. In the case of this development, the landowners and developers are not prepared to accept this but instead will enter into a section 111 (s111) agreement under the Town and Country Planning Act 1990.
- 2.11 The s111 agreement is a personal covenant on the current developer (Countryside Properties and Liberty property Trust) and will not pass on to any subsequent owners should the site be sold. It does mean, however, that the obligations can be enforced against those developers whatever the subsequent land ownership. Combined with the proposed Parent Company Guarantee, it is considered that this provides an acceptable level of security for the Council and again would allow the agreements to be signed and the developments to commence. The implication of not signing on this basis would be that the development will not go ahead and the timescale for the Council to secure back the investments it has already made in the southern fringe in terms of the Addenbrooke's Access Road (AAR) and the Guided Busway (GB) will be extended.

- 2.12 In the event of the Papworth (or similar sized) development not coming

forward as currently anticipated, an alternative approach for payments is included in the current drafting of the S106/S111 agreements. Table 4 above explains how the payments would become 'front loaded' in favour of the County Council and based upon a development of at least 40 000 sq.m. coming forward as the first building(s) on site. However if smaller scale development comes forward first and ahead of the expected relocation of Papworth Hospital, then a pro-rata approach will be used. A worked example is included below.

First building of 5,000 sq m

Pro-rata contribution = $5,000/65,000$ sq m = 7.7%

Total contribution from first trigger = £4,603,500

Sum payable prior to commencement of phase = £354,469

This is for the AAR and CGB capital contributions. This methodology would also be used to secure revenue contributions to the CGB operation and the methodology would be identical to that shown here.

Trumpington Meadows

- 2.13 As with the Addenbrooke's 2020 site, the developers of Trumpington Meadows, Grosvenor and the Universities Superannuation Scheme, have stated that they will not be able to provide a bond but again are prepared to offer a Parent Company Guarantee. The same issues of security to the Council as noted above apply here. Given the need to encourage developers to move forward with new house building and the financial investment that the Council already has in the Southern Fringe developments, it is also recommended that the Council moves to sign the s106 agreement for Trumpington Meadows on this basis.

Clay Farm / Glebe Farm

- 2.14 The same issue in respect of bonds applies to the Clay Farm and Glebe Farm developments and again, it is proposed that negotiations proceed on the basis of securing Parent Company Guarantees as an alternative. However, there is still a significant amount of negotiation that needs to take place prior to conclusion of these agreements and a further report will be brought back to Cabinet before the agreement is finalised.
- 2.15 In the course of these negotiations, discussions with the developers have indicated that there is a significant up front cash flow problem for the developer given the way that the agreement was originally constructed. As a consequence, the developers have asked for financial assistance in the early years of the development, to be paid back at a later date. As such, officers have discussed the possibility of the County Council using its prudential borrowing powers to borrow up to £5M to assist the developers cash flow in relation to the education payments for construction of the secondary school. All borrowed monies would be returned to the Council with accrued interest through the s106 agreement. This will need to be split between Clay Farm and Trumpington Meadows as both contribute towards the cost of the school and the details of how this will be split are not finalised yet. As a consequence, an in principle decision on this point is sought from Cabinet to

allow these negotiations to be concluded.

Bell School

- 2.16 The negotiations for the Bell School have secured agreement in principle for all of the capital and revenue contributions noted in Appendix 2. No significant changes have been requested by the developers to timing or amount of payments during the negotiations. Officers are of the view that it is reasonable to proceed to sealing of the S106 and require authorisation from Cabinet to do so.

Summary

- 2.17 Combining these points, although the key terms of each of the negotiated s106 agreements differs in some respects from that previously considered by Cabinet, it is recommended that in the interest of encouraging development to commence and as a means of securing back the financial investments the Council has already committed to the Southern Fringe, the Council moves towards signing the agreements for Addenbrooke's 2020 and Trumpington Meadows and continues to negotiate on the basis set down here in respect of Clay Farm/Glebe Farm and the Bell School site.

3. SIGNIFICANT IMPLICATIONS

Resources and Performance

- 3.1 There are a range of financial implications from the current negotiations on s106 agreements. The critical issue is that the Council has committed funding to both the Addenbrooke's Access Road and Guided Busway and needs to secure contributions back from developers to pay for this infrastructure. Under the terms of the s106 agreements, all of the Council committed funding will be re-paid with interest. The timing of this is also important. Should the current form of the s106 agreements not be signed, this will delay any repayment. Conversely, there are some additional risks on the Council as a result of the proposals contained in this report, but these are largely balanced by the changed profiling of payments proposed for the Addenbrooke's 2020 site agreement which means that if the agreement is signed and implemented, funding will return to the Council quicker than it otherwise would have done.
- 3.2 In terms of the specific contributions themselves, all capital contributions are index linked to nationally recognised indices to protect the contributions. The baseline for the indexation is the 2nd quarter of 2007. This helps to limit the ability for the cost to have increased between the determination of the planning applications and the sealing of the S106 agreements.
- 3.3 Parent Company Guarantees and / or a combination of Bonds have been secured against the capital contributions for all of the sites. In the event of the developer getting into difficulty these can be relied upon and drawn upon to secure funding.

- 3.4 Cabinet needs to be aware that the S106 as currently drafted means that the provider of affordable housing would not be liable / cannot be enforced against in the event that the developers get into difficulty.
- 3.5 In terms of performance, Local Area Agreement National Indicators (NI) 154 & NI155 – Number of homes delivered and number of affordable homes delivered are relevant here. If there is a delay in issue of planning permissions as a result in the delay of S106 completion, this will directly affect the performance against these two indicators.

Statutory Requirements and Partnership Working

- 3.6 The following points contain details of significant implications identified by Officers.
- 3.7 The S106 agreements will enable the County Council to provide facilities and services that discharge its statutory duties in relation to education, transport, waste, community learning and development. Failure to secure the funding will have a direct impact on the ability of the Council to undertake these duties.
- 3.8 The development proposals have been subjected to significant public consultation and debate. This includes through the Structure Plan and Local Plan processes noted in section 1 of this report. County Members sit on the Cambridge Fringes Joint Development Control Committee. County Members and Officers participated in the Cambridge Southern Fringe Member Reference Group that considered the proposals that were confirmed in the Cambridge Southern Fringe Area Development Framework.

Climate Change

- 3.9 There are no significant implications for any of the headings under this category.

3.10 Access and Inclusion

There are no significant implications for any of the headings under this category.

3.11 Engagement and Consultation

There are no significant implications for any of the headings under this category.

Source Documents	Location
Cambridge City Local Plan, South Cambridgeshire District Council Local Development Framework, Planning applications for the sites.	Head of New Communities 2 nd Floor Castle Court, Shire Hall Castle Hill, Cambridge