

NORTH ELY SECTION 106 AGREEMENTS

To: Economy and Environment Committee

Meeting Date: 16th September 2014

From: Graham Hughes, Executive Director, Economy Transport and the Environment

Electoral division(s): Ely North and East

Forward Plan ref: 2014/006 **Key decision:** Yes

Purpose: To consider the Section 106 measures required to make the north Ely developments acceptable in the context of current viability negotiations.

Recommendation: Committee is asked to:

- a) Approve the draft Section 106 package as set out in section 5.1 of the report;
- b) Approve the principle of a Section 106 review mechanism to capture uplift in development value as set out in section 4 of this report; and
- c) Delegate to the Executive Director for Economy, Transport and the Environment in consultation with the Chairman and Vice Chairman of the Committee the authority to amend any changes to the Section 106 agreements.

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1.0 BACKGROUND

Planned Growth

- 1.1 East Cambridgeshire District Council (ECDC), through its Local Plan process, proposes that up to 3,000 dwellings and associated infrastructure should come forward in north Ely on land either side of Lynn Road. A copy of the approved master plan for these sites is attached as Appendix 1 and shows the over-arching context for the combined development.
- 1.2 Outline planning applications were submitted in the summer and autumn of 2013 by Endurance Estates and the Church Commissioners for up to 1,300 and 800 dwellings respectively. ECDC's Planning Committee resolved to grant outline planning permissions for both sites on 28th March 2014, subject to the subsequent signing of section 106 agreements. The balance of the 3,000 houses is expected to come from a second phase of development on Church Commissioners land.
- 1.3 In summary, the developments aim to provide:-
- 30% affordable housing
 - 30-40% of the site to be multi-functional green space
 - 2 primary schools of up to 3 forms of entry (FE) each
 - Sufficient employment uses to deliver 1300-1500 jobs
 - 2 local centres providing retail and community uses
 - An extension to ElyCountryPark
 - On and off-site transport improvements
 - Play areas for young children and teenagers
 - Allotments and community orchards
- 1.4 Both planning applications and emerging section 106 packages were considered by County Council Cabinet on 4th March 2014 prior to ECDC's planning committee. At that time, neither the full details and implications of the viability position for both sites were known, nor the impact on the proposed section 106 packages.
- 1.5 The final section 106 package is now put before Members, so that a decision can be made on the acceptability and risk associated with the proposed offer to which the County Council will be expected to agree.
- 1.6 A copy of the County Cabinet report of 4th March 2014 can be viewed here: <http://www2.cambridgeshire.gov.uk/CommitteeMinutes/Committees/AgendaItem.aspx?agendaltemID=9413>

Viability - Implications for Infrastructure

- 1.7 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied.
- 1.8 In making its planning decision, ECDC, as the local planning authority, will need to take account of the impact of the planning obligation requirements on the proposed developments. Where the applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligations

sought would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations.

- 1.9 This is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. These contributions should not be sought without regard to individual scheme viability. The financial viability of the individual scheme should be carefully considered in line with the principles of the NPPF.
- 1.10 Assessing viability should lead to an understanding of the scale of planning obligations which are appropriate. However, the National Planning Policy Framework is clear that where safeguards are necessary to make a particular development acceptable in planning terms, and these safeguards cannot be secured, planning permission should not be granted for unacceptable development.
- 1.11 ECDC has appointed independent viability consultants to provide advice on viability negotiations and has shared this information with the County Council.
- 1.12 The policy position of ECDC is that development should provide for 30% affordable housing and that development should mitigate its impact through either direct provision of infrastructure, section (S) 106 or Community Infrastructure Levy (CIL) contributions.
- 1.13 The failure to demonstrate and maintain a 5 year housing land supply is critical to the implementation of the Local Plan and may expose the District Council to potential speculative applications on sites not compliant with the development strategy. The North Ely area comprises a significant proportion of the housing supply identified in the East Cambridgeshire Local Plan. The successful delivery of this housing is therefore critical to achieving the growth targets and other objectives in the development strategy for the District and, more generally, for the County.

2. MAIN ISSUES

- 2.1 Both applicants have sought to demonstrate that their sites are unviable having regard to the returns expected by the landowner and developer, the anticipated sales values and the costs of the development, including the level of planning obligations being sought by the County and District Councils. The costs associated with transport measures and the new primary schools are a significant part of the overall section 106 funding requirement arising from the County Council.

Funding Gap

- 2.2 The viability exercise has identified a potential gap between what the developments can afford and what they are required to provide. The table below compares the policy compliant planning obligation requirement (total S106 costs) with the amount the developers consider to be affordable (the budget).

	Church Commissioners	Endurance
Compliant	£17.86m	£14.12m
Budget (S106)	£5.62m	£13.21m
Deficit	-£12.24m	-£0.91m

2.3 The deficit for both sites together is in the region of -£13.15m, even allowing for a reduction in the percentage of affordable housing to 15% from the policy compliant 30%.

2.4 There will also be a CIL receipt from each development that will contribute towards funding of CIL items within East Cambridgeshire:

- Church Commissioners - £4,483,394
- Endurance Estates - £6,270,000

Primary School Provision

2.5 The greatest risk to the County Council is the potential financial impact for the funding and delivery of the two primary schools and this matter was considered in greater detail by the Children and Young Person (CYP) Committee on 29th July 2014.

2.6 A copy of the CYP Committee report can be found at the link below:-

<http://www2.cambridgeshire.gov.uk/CommitteeMinutes/Committees/AgendaItem.aspx?agendaItemID=10096>

2.7 The CYP Committee resolved to:

1. *Send the following comments to the Environment and Economy (E&E) Committee on the level of education contributions to be sought as a basis for concluding the Section 106 agreement with the developers of the two sites:*
 - *The E&E Committee is reminded that the Council has a statutory duty to provide school places, meaning that these should be a priority in Section 106 negotiations*
 - *The E&E Committee is asked to make every effort to increase the Section 106 contributions for the two primary schools*
 - *The E&E Committee is asked to provide feedback to the Children and Young People Committee in due course*

2.8 The table below sets out the primary school requirement to mitigate each planning application, the cost of provision and the offer from each developer current at the time of the CYP Committee. It also shows the deficit for which funding will need to be identified.

Applicant	Primary School Cost	Developer Liability	Offer	Deficit
Endurance Estates*	£15.2	£4.1m (2FE extension)	£3,158,794	-£941,206
Church Commissioners	£9.8m	£9.8m (1FE school + 3FE core)	£4,480,000	-£5,320,000

** £4m additional cost arising from provision of upfront infrastructure which will also serve the housing development. This cost is recoverable through a separate agreement.*

- 2.9 The amount available in the offer is subject to further discussions with ECDC regarding the prioritisation and sharing of S106 and CIL funding. Recommendation c) seeks approval to delegate authority to the Executive Director for Economy, Transport and the Environment in consultation with the Chairman and Vice Chairman to make any changes, as appropriate, to conclude the Section 106 agreement.

Other Infrastructure

- 2.10 The developers will also be providing or funding on and off-site transport provisions including:-
- New roundabout on A10
 - A10/A142 roundabout improvements
 - Bus service enhancements
 - Public rights of way improvements
 - Cycle improvements
 - Lynn Road improvements
 - Travel Plan coordination
- 2.11 Other contributions for Sustainable Drainage Systems (SuDS) if required and library contributions have been requested. A secondary school contribution (including Special Educational Needs (SEN)) would be secured through the Community Infrastructure Levy which would be allocated to the Littleport Secondary School project.
- 2.12 A list of the County Council's original requirements is set out in Appendix 2, and includes the priorities for the Council as discussed with the Lead Cabinet Member at the time and at the Joint Member Liaison Group.

3.0 THE SECTION 106 PACKAGE

Church Commissioners

3.1 The total Section 106 requirement (a policy compliant development) for Church Commissioners is £17.86m and 30% affordable housing. The Church Commissioners current offer is £5.62m based on 15% affordable housing. This represents a -£12.24m shortfall.

3.2 The proposed allocation to the high priority items for the County Council are set out below. The costs are provisional and may be subject to change as the viability work and discussion over prioritisation with ECDC progresses.

• Primary School	£4,526,297
• A10/A142/Witchford Road	£200,000
• Off Site cycle/pedestrian routes	£150,000
• Passenger Transport	£170,000
• Total	£5,046,297

Endurance Estates

3.3 The total Section 106 requirement for Endurance Estates is £14.12m and 30% affordable housing. The agreed appraisal shows affordable housing provision of 16.5% and S.106 contributions of £13.21m. This results in an overall deficit of -£0.91m.

3.4 The proposed allocation to the high priority items for the County Council are set out below. The costs are provisional and may be subject to change as the viability work and discussion over prioritisation with ECDC progresses

• Primary School	£4,100,000
• A10/A142/Witchford Road	£200,000
• Off Site cycle/pedestrian routes	£500,000
• Passenger Transport	£170,000
• Total	£4,970,000

3.5 Both schemes are based on significantly reduced affordable provision.

3.6 Both schemes will generate the following CIL receipts:

- Church Commissioners - £4,483,394
- Endurance Estates - £6,270,000

3.7 Discussions are continuing with East Cambridgeshire District Council regarding how these funds will be allocated. The priority for the County Council will be to maximise the potential for additional funding towards

secondary and special educational needs in East Cambridgeshire (Littleport Secondary School).

4.0 REVIEW MECHANISM

Maximising the Developer Contribution

- 4.1 Senior officers are exploring ways to maximise the level of contribution and affordable housing that can be delivered through the Section 106 agreement, in particular, the inclusion of a review mechanism to capture any uplift in the value of the development over time. Whilst it is not possible to quantify how much money will be clawed back, as this is dependent on the market, there is a general expectation that sales values will continue to rise. The risk to the Council is that the mechanism does not generate sufficient funding to cover the additional education costs.
- 4.2 Should ECDC be minded to grant consent with less than policy-compliant S.106 contributions, or provision of affordable housing, it is recommended that a viability appraisal mechanism is included in the S.106 agreement to be carried out on a phase by phase basis.
- 4.3 The basic principle for both reviews is that once the development value exceeds an agreed threshold the local authorities will receive 100% of any further uplift in value. Under NPPF/CIL rules the total amount received will be capped at the value of the contributions foregone prior to the review.
- 4.4 The greatest risk to the County is the shortfall in funding for the Church Commissioners School which may require the County borrowing to make up the deficit.
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|-----------------------------------|------------|
| • Church Commissioners (1FE+Core) | £9,800,000 |
| • Section 106 contribution | £4,526,297 |
| • Shortfall | £5,273,703 |
- 4.5 Given that the school is necessary to make the development acceptable in planning terms, it is reasonable that first call on additional monies from the review go towards meeting these costs.
- 4.6 Once the education deficit is met, any additional monies can be shared with ECDC either based on the proportion of deficit outstanding for other infrastructure or a more favourable balance for ECDC to recognise the earlier foregoing of monies to clear the outstanding school deficit.
- 4.7 The viability consultant has estimated that based on current rises in sales values the threshold after which the review would kick in on the Church Commissioners site could be reached in about 15 months. There is potential for the review to generate an additional £11m, although this is dependent on the performance of residential sales during the life of the development.

- 4.8 Assuming that this level of uplift is achieved, it will be more than sufficient to cover the shortfall in funding for the primary school. There will also be a surplus for less urgent S106 items which should be prioritised with ECDC.
- 4.9 There is a lower level of risk to the County in terms of funding for the Endurance school with the Section 106 covering a greater proportion of the costs. There will still be a need to make up some shortfall. However, if similar increase in values assumed for the Church Commissioners scheme is achieved on Endurance there is potential for a net surplus to be generated.

5.0 SUMMARY

- 5.1 The independent viability work has indicated that the best package available to the Councils is as set out below, and therefore Members are asked to consider and approve the following:
- £5.62m S106 contribution (based on 15% affordable provision, with £4.48m accruing through CIL) on the Church Commissioners development; and
 - £13.21M S106 contributions (based on 16.5% affordable provision, with £6.27M accruing through CIL on the Endurance Estates development; and
 - Secure a review mechanism in the s106 agreement to the satisfaction of the County Council to receive 100% of the initial uplift in development value to target the deficit in primary school funding with subsequent receipts being shared with East Cambridgeshire District Council.

6. ALIGNMENT WITH CORPORATE PRIORITIES

Developing the local economy for the benefit of all

- 6.1 The new developments will provide for and enhance the education and community offerings for residents in the north of Ely.

Helping people live healthy and independent lives

- 6.2 The new developments will improve employment opportunities and provide open space which will help promote independence and good health.

Supporting and protecting vulnerable people

- 6.3 The development will be designed to meet all relevant accessibility criteria and consideration is being given to senior care living facilities.

7. SIGNIFICANT IMPLICATIONS

Resource Implications

- 7.1 The package of measures set out in section 3 is considered acceptable to mitigate the impacts of the site and will provide for on-site primary school provision and appropriate transport measures.

Statutory, Risk and Legal Implications

- 7.2 The County Council has a statutory duty to provide a school place for every child living in its area of responsibility that is of school age and whose parents want their child educated in the state sector. The developer will make contributions to on and off-site education provision through section 106 and CIL payments.

Equality and Diversity Implications

- 7.3 There are no significant implications within this category.

Engagement and Consultation Implications

- 7.4 Both planning applications have been fully consulted upon and Members have previously considered the emerging s.106 requirements.

Localism and Local Member Involvement

- 7.5 Local Members are aware of this development and there has been involvement from Members at the North Ely Joint Members Group (with ECDC Members)

Public Health Implications

- 7.6 There are no significant implications within this category.

SOURCE DOCUMENTS GUIDANCE

Source Documents	Location
Cabinet Report 4 March 2014 CYP Committee Report 29 th July 2014	Council website Council website