

NORTH ELY SECTION 106 AGREEMENTS

To: Economy and Environment Committee

Meeting Date: 21st October 2014

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

Electoral division(s): Ely North and East

Forward Plan ref: 2014/038 **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 3 of this 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 make changes to the Section 106 agreements prior to signing.

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1.0 BACKGROUND

Planned Growth

- 1.1 The East Cambridgeshire Local Plan proposes up to 3,000 dwellings and associated infrastructure in north Ely. The North Ely Supplementary Planning Document (SPD) has been approved and a copy of the masterplan for the whole area is attached in Appendix 1.
- 1.2 In summary, the development covered by the SPD aims to provide:-
- 30% affordable housing, subject to viability considerations;
 - 30-40% of the site to be multi-functional green space;
 - 2 primary schools of up to 3 forms of entry 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.
- 1.3 Outline planning applications have been submitted by Endurance Estates and the Church Commissioners for up to 1,300 and 800 dwellings respectively. The balance of the allocation (1,000 dwellings) is planned to come forward from a second phase of development on Church Commissioners land and does not form part of the current applications.
- 1.4 Both planning applications and emerging Section 106 packages were considered by County Council Cabinet on 4th March 2014. At that time, the full details of the respective packages or the implications on viability for both sites were not known.
- 1.5 East Cambridgeshire'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.
- 1.6 The greatest risk to the County Council is the potential financial impact for the funding and delivery of the two primary schools. This matter was considered by the Children and Young Person (CYP) Committee on 29th July 2014.
- 1.7 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*

- 1.8 Since the CYP Committee, Officers have reviewed the options for delivering the school on the Church Commissioners site. The revised approach avoids the need to build all of the core facilities required by a 3 Form of Entry (3FE) school during the first phase of development. Consequently the capital cost and risk to the County Council will be reduced.
- 1.9 The final Section 106 package is now put before Members. The Committee is asked to consider the acceptability of the respective package provided by each applicant and the associated risk to the County Council.

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.

Five Year Land Supply

- 2.2 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.

Impact of Viability on Section 106 and Affordable Housing

- 2.3 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied.
- 2.4 East Cambridgeshire District Council (ECDC) will need to consider the impact of the planning obligation requirements on the proposed developments. Where the applicant demonstrates satisfactorily that the planning obligations sought would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations.
- 2.5 The policy position of ECDC is that development should provide for 30% affordable housing and that development should mitigate its impact through direct or in kind provision of infrastructure.
- 2.6 The viability assessment undertaken for both applications has demonstrated that policy compliant development (30% affordable housing and full Section 106) would be unviable.

3.0 THE SECTION 106 PACKAGE

Church Commissioners

- 3.1 The total budget available for Section 106 in the Church Commissioners development following the viability review is £5,848,853. The proposed allocation of the Section 106 contributions or value of works in kind to County Council infrastructure items are set out below.

• Primary School	£4,316,692
• A10/A142/Witchford Road	£200,000
• Off Site cycle/pedestrian routes	£150,000
• Passenger Transport	£170,000
• Bus shelter maintenance	£20,000
• Bus Real Time Passenger Information	£28,800
• Lynn Road crossing	£15,000
• Total	£4,900,492

- 3.2 A number of items have been foregone to assist with viability:

• Primary School (balance)	£2,010,015
• A10/A142/Witchford Road (balance)	£175,000
• Travel plan coordinator	£27,509
• Total	£2,212,524

- 3.3 There is potential for the County Council to recover some or all of the above through the proposed viability review (see Section 4), especially given the long time horizon for implementing Phase 1 of the school which is not programmed until 2022.

- 3.4 The item above which places the greatest risk onto the County Council is the primary school contribution. The contribution required for the 1.2FE of need generated by this application is £6,326,707. At present there is a shortfall in the primary school contribution of £2,010,015, which will need to be recovered through the viability review.

Endurance Estates

- 3.5 The total budget available for Section 106 in the Endurance development following the viability review is £10,808,916. The proposed allocation of the Section 106 contributions to County Council infrastructure items are set out overleaf.

• Primary School	£3,694,000
• A10/A142/Witchford Road	£375,000
• Off Site cycle/pedestrian routes	£499,055
• Passenger Transport	£180,000
• Bus shelter maintenance	£15,000
• Bus Real Time Passenger Information	£20,596
• Lynn Road crossing	£7,500
• Travel plan coordination	£35,758
• Total	£4,826,909

- 3.6 The Endurance development will deliver the entire Section 106 requirement to the County Council and consequently there is no shortfall in contributions to be recovered through the viability review.

Community Infrastructure Levy (CIL)

- 3.7 There will also be a CIL receipt from each development that will contribute towards funding of CIL items within East Cambridgeshire.

	Church Commissioners	Endurance
Total CIL	£4,256,224	£5,487,703

- 3.8 A proportion of these sums will be directed towards support for the provision of Littleport Secondary School.

4.0 VIABILITY REVIEW

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. A review mechanism is proposed that will capture any uplift in the value of the development over time. Whilst it is not possible to quantify how much additional money will be secured, 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 review does not generate sufficient funding to cover the costs of Section 106 contributions foregone.
- 4.2 It is recommended that a viability appraisal mechanism is included in the Section 106 agreement to be carried out on a phase by phase basis.
- 4.3 The basic principle for both reviews is that the local authorities will receive a share of any further uplift in value over a defined level as agreed with the developers. Under NPPF and CIL rules, the total amount received will be capped at the value of the contributions foregone prior to the review.

Church Commissioners

- 4.4 There is potential for the County Council to receive a further £2,212,524 for contributions foregone due to viability which would be recovered through the review mechanism.
- 4.5 The review will come into effect once sales values exceed an agreed threshold. At this point the local authorities will receive an agreed proportion of subsequent increase in value.
- 4.6 The greatest risk to the County is the shortfall in funding for the primary school which may require the County borrowing to make up the deficit if the sufficient value is not generated through the review.
- 4.7 The arrangements for sharing the uplift have been agreed with East Cambridgeshire. The school is necessary to make the development acceptable in planning terms and carries a high level of risk to the Council. It is agreed that the County Council will receive 100% of the local authorities' share of the uplift, up to £1,600,000, to go towards primary education costs.
- 4.8 Thereafter, the District and the County Council will share equally in the uplift until such time each party has secured the financial contributions previously foregone. The sum due to the County Council from this stage of the review is £600,000.

Endurance Estates

- 4.9 The review for the Endurance development will be used to recover the level of affordable housing which has been foregone in the initial phase. There is no requirement for a viability review in relation to County Council contributions.

5. ALIGNMENT WITH CORPORATE PRIORITIES

Developing the local economy for the benefit of all

- 5.1 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

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

Supporting and protecting vulnerable people

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

6. SIGNIFICANT IMPLICATIONS

Resource Implications

- 6.1 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

- 6.2 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

- 6.3 There are no significant implications within this category.

Engagement and Consultation Implications

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

Localism and Local Member Involvement

- 6.5 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

- 6.6 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 http://www.cambridgeshire.gov.uk/info/20146/council_meetings