

Report of the Corporate Director of Planning, Environment, Education and Community Services

- Address:** RAF EASTCOTE, LIME GROVE, RUISLIP
- Development:** REDEVELOPMENT FOR RESIDENTIAL PUPOSES AT A DENSITY OF UPTO 50 DWELLINGS PER HECTARE, INCLUDING AFFORDABLE HOUSING, LIVE WORK UNITS, A COMMUNITY FACILITY AND OPEN SPACE
- LBH Ref Nos:** 10189/APP/2007/3383 (S73 approval amending the original outline planning permission Ref: 10189/APP/2004/1781 dated 09/03/2006)
- Drawing Nos:** As per approved committee reports.
- Date applications approved at Committee** North Planning Committee – 31 March 2005
North Planning Committee - 21 February 2008
- Summary:** This report seeks approval for a deed of variation to the s106 Agreement attached to the outline planning permission for the redevelopment of the former RAF site for residential purposes. The deed of variation would allow flexibility in providing a more sympathetic pathway to be constructed through the adjoining Highgrove Nature Reserve and outdoor sports facilities. It is also requested that the remainder of the obligation relating to the Nature Reserve be spent in an alternative way to that of hedgerow removal as this hedgerow has already been removed. It is proposed to use these funds to purchase plant and machinery to assist with the maintenance and improvement of the nature reserve and its surrounding area. A further 12 months is sought to enable the Green Spaces team enough time to prepare and install this pathway. In addition, a further amendment to the main agreement is sought in relation to the definition of Outdoor Sports facilities, to enable greater flexibility in the spending of this contribution.
- S106 Agreement** That the recommendation to enter into a Deed of Variation to the original s299a (s106) dated 24 February 2006, (as amended by deeds of variation DED13700 and DED 13702 dated 28 February 2008) as proposed below, is approved to enable the removal of wording from Annex 2 to the agreement and replacement with more appropriate wording for delivery of improvements to the Highgrove Nature Reserve and an extension of time to enable the spending of this contribution. It is also proposed to remove the word 'Pitch' from the definition of outdoor sports facility.

1.0 CONSULTATIONS

1.1 Internal Consultees

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| <p>Planning Obligations Officer</p> | <p>Green Spaces have requested this variation to address the notated pathway through the Highgrove Nature Reserve as was prescribed in the original s106 agreement in 2006. Annex 2 requires that a tarmacadam pathway is constructed through the nature reserve and a financial contribution paid to address this.</p> <p>Green Spaces in conjunction with the local conservation group are requesting this variation to enable a pathway with a more sympathetic material to be constructed. It is not considered appropriate to construct a path of this material through the nature reserve, and this is the reason the contribution to undertake these works has not yet been spent.</p> <p>Deletion of the 2nd part of Annex 2 has also been sought and replacement with an alternative clause to enable the remainder of the obligation to be spent as the hedgerow has already been removed.</p> <p>Given the time that has lapsed from when the contribution was first received, the expiry for use of this obligation is September 2011. As a result of this an extension of time for a further 12 months is also sought to enable the green spaces team enough time to prepare, and approve an alternative material for creating the path.</p> <p>Green Spaces have also sought the addition of the words and/or in the definition of Outdoor Sports facilities this is to enable greater flexibility for the spending of this outdoor sports facilities contribution. It is proposed to spend the contribution on a MUGA at Warrender Park and an outdoor fitness gym at Bessingby Park, subject to receiving formal approval.</p> <p>The owner of the site, Taylor Wimpey has agreed to enter into this deed of variation for the above matters if the planning committee are minded to agree its completion.</p> |
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2.0 RECOMMENDATION

a) That Clause 2 of Schedule 7 of the s299a agreement dated 24 February 2006 (as varied by DED 13700 and DED13702 dated 28 February 2008), be deleted and replaced with the following:

“The Council covenants with the Applicant to carry out the works as specified at Annex 2 and in respect of which the Nature Reserve Contribution has been paid within 24 months of the date of this Deed”; and

b) That Annex 2 of the s299a agreement dated 24 February 2006 (as amended) be deleted in its entirety and replaced with the following:

1. Path Network

To construct and lay a path network being 1105 metres consisting of a material that is sympathetic to the surrounding nature reserve

2. Habitat Improvements

To carry out pond clearance works and to purchase plant and machinery to assist with the maintenance and improvement of the nature reserve and its surrounding area”.

c) That the s299a Agreement shall be varied by deleting Clause 2 of Schedule 7 and replacing it with:

“the Council covenants with the Applicant to carry out the works as specified at Annex 2 and in respect of which the Nature Reserve Contribution has been paid within 24 months of the date of this Deed”.

d) That the definition of outdoor Sports facilities be deleted and replaced with the following:

“Outdoor Sports Facilities Contribution – means the financial contribution referred to in Schedule 4 towards the provision of providing or improving sports and/or pitch facilities within a 3000m radius of the Land.”

e) That if the Deed of Variation is not finalised within a period of 6 months from the date of this committee resolution, or any other period deemed appropriate by the Head of Planning, Trading Standards and Environmental Protection, then the application may be referred back to the Committee for determination.

f) That subject to the above, the application be deferred for determination by the Head of Planning, Trading Standards and Environmental Protection under delegated powers, subject to the completion of the legal agreement under Section 106 of the Town and Country Planning Act 1990 and other appropriate powers with the applicant.

g) That if the application is approved, it be subject to the conditions and informatives agreed by the North Planning Committee on 31 March 2005 and the North Planning Committee on 21 February 2008 (detailed in the Committee report and minutes) and attached to this report.

3.0 KEY PLANNING ISSUES

- 3.1** The North Planning Committee resolved on 31 March 2005 to grant planning permission for residential development, subject to the application being referred to the Secretary of State, the signing of the s299 legal agreement and appropriate conditions (ref. 10189/APP/2004/1781). The outline planning permission was issued on the 9th of March 2009, subject to the conditions imposed by the Planning Committee.
- 3.2** Application reference 10189/APP/2007/3383 (A) was a section 73 application which varied condition 40 of the outline planning permission, to remove the requirement for traffic signals on Eastcote Road and n the intersection of Eastcote Road and Fore Street, as the signals would no longer be necessary, if the alternative access scheme (10189/APP/2007/2954 approved 3 March 2008) goes ahead. This new outline planning permission was approved on the 21st of February 2008.
- 3.3** Reserved matters applications 10189/APP/2007/2463 (approved access) and 10189/APP/2007/3046 (alternative access) relate to alternative schemes and cover details of siting, design, external appearance and landscaping pursuant to discharge of condition 3 of outline planning permission 10189/APP/2007/3383 dated 21/2/2008. Both reserved matters schemes were approved on 31 March 2008 for 385 residential units, including 12 live work units and 134 affordable dwellings, along with a Community Hall and associated parking, landscaping and open space. The developers have elected to proceed with the alternative access scheme, having overcome technical obstacles.
- 3.4** Annex 2 as originally attached to the s299a agreement (as amended) required that a tarmacadam pathway be established through the Highgrove Nature Reserve. There is very limited information on the reasons why this surfacing was agreed and included in the final s299a agreement. Green Spaces in conjunction with the local conservation group have sought the removal of this wording and replacement with wording to enable a more sympathetic pathway to be constructed through the nature reserve. This is deemed to be acceptable given the location of where this path is to run.
- 3.5** It is also requested that the second part of Annex 2 is deleted and replaced with a clause to enable the remainder of the obligation to be spent in an alternative way to that of the hedgerow removal as this hedgerow has already been removed. It is proposed to use these funds to purchase plant and machinery to assist with the maintenance and improvement of the nature reserve and its surrounding area.
- 3.6** The current expiry of the time limit from when the contribution was first received for use of this obligation is September 2011. Given this a further 12 months is sought to enable the Green Spaces team enough time to prepare and install this pathway.

- 3.7** A further amendment to the main agreement is sought in relation to the definition of Outdoor Sports facilities. Currently the Outdoor Sports Facilities contribution is defined as means the financial contribution referred to in Schedule 4 towards the provision of providing or improving sports pitch facilities within a radius of 3000 metres of the land. Green Spaces have sought for an amendment to this definition to include the words “and/or” before pitch facilities. This is to enable greater flexibility for the spending of this contribution.
- 3.8** Green Spaces are proposing to spend the Outdoor Sports Facilities contribution on a MUGA and new tennis court at Warrender Park and to provide an outdoor fitness gym at Bessingby Park. It is important to note that these two proposals have yet to achieve formal approval and allocation through the s106 allocation process.
- 3.9** The precise terms of the rewording have been agreed with the Council's legal team to ensure that the terms of the agreement are enforceable.
- 3.10** Approval is therefore recommended, subject to the conditions and informatives contained within the report heard by the North Planning Committees on 31 March 2005 and 21 February 2008, conditions imposed by the Committee and recorded in the minutes of those meetings.

OBSERVATIONS OF BOROUGH SOLICITOR

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application.

In addition Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached. Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

OBSERVATIONS OF THE DIRECTOR OF FINANCE

The report indicates that the costs of the development will be fully met by the developer, and the developer will make a Section 106 contribution to the Council towards associated public facilities. The developer will also meet the reasonable costs of the Council in the preparation of the Section 106 agreement and any abortive work as a result of the agreement not being completed. Consequently, there are no financial implications for this Planning Committee or the Council.

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