

<b>Application No:</b> 12/03764/VAR (Variation to S106)	<b>Case Officer:</b> Tessa Hampden
<p><b>Address of proposal:</b></p> <p>Gammon Plant Hire,  Rock Hall Lane  Combe Down  Bath  BA2 5JF</p> <p><b>Details of proposal:</b></p> <p>Planning permission has previously been granted for the erection of 8 eco homes, 1 apartment and 1 mining interpretation centre. The Centre is the final phase of the stone mines stabilisation programme. This planning permission was accompanied by a S106 agreement to secure highway works, and financial contributions to Children's Services as detailed below;</p> <p>Total for Early Years provision £0 (Sufficient provision in the area)</p> <p>Primary age pupil places – 2.417 places at a cost of £31,405.28  Secondary age pupil places – 1.109 places at a cost of £0 (sufficient provision in the area projected)  Post 16 places – 0.237 places at a cost of £0 (sufficient provision in the area projected)</p> <p>The closest primary school to the proposed development is Combe Down Primary school, which is currently over capacity and projected to remain at or over capacity for the foreseeable future.  Total for school places £31,405.28</p> <p>Youth Services provision places – 1.2 places at a cost of £1,600.00. This contribution applies to all new houses of 2 beds or more as existing provision in Bath and North East Somerset is sufficient to meet the needs of the current population only.  Total for Youth provision £1,600.00</p> <p>Therefore a total contribution for Children's Services was sought of £33,005.28</p> <p>This application relates to a variation to this Section 106 agreement because the delivery of the permission 12/03764/VAR, with the existing Section 106 agreement in place, is argued by the applicants not to be viable. The agent wishes to vary the S106 agreement to remove the clause to pay the above financial contributions. It should be noted that the contributions were required prior to commencement of development, and as the build is now nearing completion, the development is currently unlawful.</p>	
<p><b>Relevant history:</b></p> <p>11/04166/FUL - Permit - 24 August 2012 - Erection of 1no. Mining Interpretation Centre (rated BREEAM Excellent), 8no. Eco-Homes (rated Code 5 zero carbon), 1no. Apartment (rated Code 5 zero carbon) and all associated hard and soft landscaping following demolition of all existing properties, with the exception of a portion of historic stone wall to Rock Hall Lane (resubmission).</p> <p>11/04167/CA - Consent - 26 January 2012 - Demolition of all existing properties with the exception of a portion of historic stone wall to Rock Hall Lane.</p> <p>12/03764/VAR - PERMIT - 20 June 2013 - Variation of condition 30 (plans list) of application 11/04166/FUL (Erection of 1no. Mining Interpretation Centre (rated BREEAM Excellent), 8no. Eco-Homes (rated Code 5 zero carbon), 1no. Apartment (rated Code 5 zero carbon) and all associated hard and soft landscaping following demolition of all existing properties, with the exception of a portion of historic stone wall to Rock Hall Lane (resubmission).)</p>	

<p>Consultation/Representations:</p> <p>Any comments will be reported to Members at Committee</p>
<p>Policy:</p> <p>IMP.1, of Bath &amp; North East Somerset Local Plan including waste and minerals as adopted October 2007</p> <p>Supplementary Planning Document - Planning Obligations –Adopted July 2009</p>
<p>Officer Assessment:</p> <p>Within Part 1 of the Supplementary Planning Document (SPD)- Planning Obligations, it is explained that a change in the Council's standard obligations will be considered an unusual exception. If this occurs the developer will be required to demonstrate what exceptional circumstances would give rise to the case made. If the Council agrees that a scheme cannot reasonably afford to meet all the normal requirements after going through an assessment of a viability appraisal, then these requirements may be prioritised.</p> <p>Information has been submitted by the applicant/developer, the Homes and Community Agency (HCA), and the Combe Down Stone Legacy (CDSL) Trust in support of the position to remove the obligation to pay the financial contributions as outlined above.</p> <p>The argument put forward in support of this this case can be summarised as follows:</p> <p>At the time of the granting of planning permission, there was a misunderstanding by the developers/HCA about where the monies for education would be directed. The developer/HCA that the money could be spent on the Interpretation Centre, as this had links to education. This understanding was given by a member of staff outside of Planning Services. However, this would not be in line with the SPD, and the monies have been requested as a shortfall in school places has been identified. The applicant therefore argues that the legal agreement was signed on this basis that the money could be directed into the Interpretation Centre. However, this in itself is not a justification for accepting that the contributions can be waived.</p> <p><u>Is the scheme unviable?</u></p> <p>The scheme received significant gap funding from the HCA to make this scheme viable. EC Harris, who is the development inspector with a duty of care to the HCA has verified the cost funding position, and the cost plan for the centre. The Local Planning Authority has accepted the EC Harris assessments of the costings. It has been demonstrated that the scheme is not viable without the gap funding from the HCA, which was earmarked for 3 main elements of the project</p> <ol style="list-style-type: none"><li>1. Remediation of the abnormal ground conditions;</li><li>2. Funding the higher than usual build cost of delivering the new homes to Code for Sustainable Homes level 5</li><li>3. Fixed ring fenced budget to build and fit out the new community building, built to BREAAAM very good.</li></ol> <p>It is argued that the re-investment of money required through the s.106 within the interpretation centre is critical to completing the building. The HCA had a fixed budget for the centre and within the original cost estimates the s.106 contribution was budgeted for out of this fixed figure. This now leaves the original budget approximately £33k short on completing the building as originally planned. This would mean that the budget will be short on the final fixtures and finishing. In particular the budget is short on the audio, visual and IT equipment and material which will be crucial to the interpretation centre functioning as an</p>

education resource centre.

Further, as stated above costing of the development has been submitted to the Local Planning Authority in line with the Councils SPD. The current estimated cost for the interpretation centre significantly exceeds the original estimates and the fixed budget by the HCA. This shortfall needs to be met by the developer which further impacts upon the viability of the scheme. This increase in costs was mainly due to additional ground works which were unknown at the time of cost estimating.

It has been demonstrated that the scheme was not viable without the HCA gap funding. The actual build costs have increased from the original cost estimates further impacting on the viability of the scheme. The developer argues that there is not the finance to complete the interpretation centre.

#### What are the benefits of the Interpretation Centre?

The submission in support of this application includes an explanation of why there is the need for the money to be spent within this centre and the resulting benefits that this centre will have to the wider community.

The building will be run by Combe Down Stone Legacy Trust (CDSL) which was formed as a charity. They cite that they have worked closely with all parties to design a state of the art Education and Community centre, known as CornerStone that will facilitate presentation of heritage material, be an asset to the community and provide rich educational facilities to local schools and students. The S106 monies put aside for educational purposes are required to develop the educational material for CornerStone. In order to fulfil their charitable obligations the CLSL Trust requires that the building be completed and fit for purpose. CDSL will consider CornerStone complete when facilities exist that enable the building to function as an Educational Centre, provide for community activities and generate self-funding income.

Funding has already been achieved to archive material but the additional funding is essential if interpretation of that archive is to take place, the fundamental component of the Interpretation Centre. The available archive is essentially digital, requiring expensive media/software to interpret and develop it.

The CDSL explains that the centre will have strong links to education, engaging with local schools with links to the National Curriculum. This includes developing a relationship with local primary schools, Senior Schools, Colleges/Universities. Further the CDSL are working with partners in the B&NES Museums Group and other outreach organizations to tell the Ralph Allen story to a wider audience.

It is the intention that the Interpretation Centre/Cornerstone building will be transferred to Bath and North East Somerset Council and leased to the CDSL Trust. Property Services are currently holding discussions with regards to this. This will include an endowment from the HCA to secure its financial future.

#### Conclusion

It is noted that the centre to which this application relates will bring educational benefits to the local schools and the wider community. However the financial contributions were requested in line with the SPD which is specifically for primary school places, and youth service provision and the LPA note that these contributions can be critical in allowing a service to be provided. However, it is considered that it has been demonstrated that this scheme is not viable and has only been made viable due to the HCA gap funding that was committed to the development. The estimated costs of the overall build and the costs of the centre have increased, further increasing the unviability of the scheme. If the monies are directed towards Children's Services in line with the requirements of the S106, it has been demonstrated that there will not be the budget to complete this interpretation centre to a standard that was envisaged at the start of the proposal, or to a standard that would allow the CDSL to deliver a centre that would provide the community benefits to an appropriate standard. If the monies for the educational contributions are redirected to the interpretation centre, this would ensure that the centre is fit for purpose.

Officers consider that this case demonstrates exceptional circumstances. It has been demonstrated that the requests for this contribution makes contributes to this scheme being unviable. The benefits of the centre are recognised and it is considered that in this instance, the requirements to complete this centre should be prioritised. It is therefore the opinion of officers that the S106 be varied to remove the requirement to pay the contributions to Children's Services.

#### Recommendation

It is recommended that a deed of variation is prepared to remove the financial contributions to Childrens Services from the S106 agreement.

Recommendation: To agree to the requested variation of the planning obligations entered into in respect of the above Development as set out above and that if the Committee is minded to accept this recommendation:

#### Background Papers

CDSL Trust submission - Ralph Allen CornerStone  
EHarris –appraisal review  
EHarris – viability and appraisal costs - Position Statement May 2013  
Developer –position statement  
Savilles – Values  
HCA – Position statement