

BATH AND NORTH EAST SOMERSET COUNCIL

Development Management Committee

Date 21st November 2018

**OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE MAIN
AGENDA**

ITEM

ITEMS FOR PLANNING PERMISSION

Item No.	Application No.	Address
01	18/02898/FUL	Horseworld, Staunton Lane, Whitchurch

Update Report- Horseworld- 18/02898/FUL

At the last committee meeting, members deferred the application for a second time, this time for legal advice regarding the provisions of the S106 Agreement. In particular, members wanted more detail about why the planning obligations to provide an early years facility had been discharged.

Policy and Legal Background

The National Planning Policy Framework (2018) sets out the government's policy on when planning obligations (section 106) should be required:

54. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

[para 55 deleted as not relevant]

56. Planning obligations must only be sought where they meet all of the following tests:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

The above three tests have a statutory basis because they are also contained in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. The key point is that s106 planning obligations should only be required if they are "necessary to make the development acceptable in planning terms", in other words, required to address a need which is created by the development. Members will be aware of common examples such as a shortfall in school places, replacement trees or additional highways infrastructure.

Occasionally there may be a need for a planning obligation, but there is also a possibility that the need may be met in the near future by some other means. For example, the need might be met by the private market, or another development might come forward which meets the need. It would be contrary to the above tests for the local planning authority to require delivery of infrastructure where the public need for that infrastructure has already been met. In situations where it is uncertain whether a planning obligation will continue to be necessary, it is common for the s106 agreement to contain some flexibility to take account of changing future circumstances.

The section 106 agreement

This section 106 agreement is a complex document which was carefully negotiated with input from a range of expert officers. The agreement provides (page 20) that, subject to certain triggers being met, the developer will pay to the Council financial contributions towards the provision of an early years facility, and transfer land to the Council on which to provide an early years facility.

However, the agreement also contained some flexibility to cater for the situation where there was already adequate early years provision. The relevant section of the agreement is set out in the first update report to which members are referred. However for completeness, the relevant sections of the agreement are also appended to this update report. In summary, the agreement states that the developer shall not be required to pay the financial contribution or transfer the early years land if, prior to occupation of any residential unit, a new early education and/or childcare facility has opened in Whitchurch Village after 1 June 2017, which may include the Mama Bears Nursery, and that such provision at the time of its opening has the capacity to meet the childcare sufficiency demand created by the development which is to say places (whether filled or available) for at least an additional 28 children. The first update report sets out how the figures on capacity were calculated by the education team. The agreement then sets out a formal procedure which the developer and the Council must follow.

The evidence

Members are referred to the first update report which states that the new nursery can accommodate up to 30 children and is currently running at 60% occupancy, meaning that there are still 12 spaces. Therefore, this meets the requirement in the s106 that there are at least 28 places filled or available. Furthermore, the report goes on to state that there is potential for the nursery to expand by up to a further 24 places. Therefore, the evidence is that the identified early years provision is more than covered by the new nursery.

The decision

In accordance with the s106 agreement, the developers made a formal application to the Council to discharge the early years obligations. The application and all of the documents relating to it may be viewed on the Council's website under reference 17/03579/D6A. Members will note that the on-line file contains confirmation from the Council's Early Years Team (21 August 2017 - appended) that, as there is capacity in the existing nursery, the obligation to provide a facility on the Horseworld site can be discharged.

On 19 February 2018 the Council therefore issued a formal decision notice confirming that:

“Pursuant to paragraph 6(a) of Part 2 of Schedule 1 of the Section 106 agreement, dated 12 June 2018, it is confirmed that the information provided

demonstrates that there is now sufficient early years provision in Whitchurch to meet the need generated by the approved development. Therefore the Additional Early Years Land Contribution, the Early Years Contribution and the Early Years Land Contribution are no longer payable.”

Members are advised that the Council is bound by that decision in law.

Conclusion

These planning obligations were required in order to meet the need for early years provision which would be generated by the development. However, the s106 agreement contained flexibility to cater for the situation where, as turned out to be the case, the need was met by the market. Because the need was met, the planning obligations were no longer necessary and so were discharged. The discharge of the obligations meant that the developer was then free to make the current planning application which is now before members and should be determined on its merits.

From: Philip Frankland

Sent: 21 Aug 2017 16:18:19 +0100

To: Rachel Tadman

Subject: RE: 17/03579/D6A - Horseworld, Staunton Lane, Whitchurch

Hi Rachel

Yes as Mama Bears is now opened that is fine. Here is the nurseries verification of opening <https://mamabear.co.uk/nurseries/bristol/whitchurch>

Kind regards

Philip

Philip Frankland

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From: Rachel Tadman

Sent: 09 August 2017 10:20

To: Philip Frankland

Subject: 17/03579/D6A - Horseworld, Staunton Lane, Whitchurch

Dear Philip

In order to satisfy the requirements of Schedule 1, Part 2 Paragraphs 6 (a) of the S106 the Developer has submitted the attached document for us to consider. Like the situation at the neighbouring Barratts site, can you confirm that there is still capacity in Whitchurch for Early Years and therefore they can be released from their obligations to fund a facility on the Horseworld site.

I look forward to hearing from you.

Regards

Rachel

Rachel Tadman

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"1990 Act" means the Town and Country Planning Act 1990 (as amended).

"Access" means the provision of adopted and unadopted roads and footpaths together with all rights and easements over the said roads and footpaths as are necessary to provide access to the Affordable Housing Units or any one of them.

"Additional Early Years Contribution" means a contribution of 50% of the total costs incurred by the Council in the provision of the Early Years Facility (including, inter alia, land valuations, legal and other professional fees associated with the acquisition of the land including any site investigation costs and any costs that may be required for ground works, remediation, and site clearance to bring the land up to the required standard suitable for use as an early years facility) save to the extent that the same are included in the Early Years Contribution and up to but not exceeding a maximum contribution of sixteen thousand pounds (£16,000).

"Additional Primary Education Land Contribution" means a contribution of 49.84% of the total costs incurred by the Council in the expansion of Whitchurch Primary School (including, inter alia, land valuations, legal and other professional fees associated with the acquisition of the land including any site investigation costs and any costs that may be required for ground works, remediation and site clearance to bring the land up to the required standard suitable for use as school playing land (which is land in the open air used for education or recreation)) up to but not exceeding a maximum contribution of fifteen thousand pounds (£15,000).

"Adjacent Site" means the land to the east of the Mead and north of Queen Charlton Lane, Whitchurch adjacent to the Land which is being developed pursuant to a planning permission under reference 16/02055/FUL (or any subsequent planning permission granted under section 73 of the 1990 Act)"

"Adjacent Site Early Years Land Contribution" means any contribution payable under the Adjacent Site Planning Obligation for the purpose of enabling the Council to acquire the Early Years Land

"Adjacent Site Planning Obligation" means an agreement under section 106 of the 1990 Act (and any subsequent variation of or agreement supplemental to it) in respect of the Adjacent Site

"Adoptable Areas Plan" means the plan at Appendix 2 showing the areas of land to be adopted as public highway.

"Affordable Housing" means subsidised housing as defined in the National Planning Policy Framework that will be made available to eligible households who are unable to afford to buy or rent an appropriate property locally on the open market and who fulfil the criteria for affordable housing as laid out in the Council's allocations policy (or subsequent equivalent document) and which remains at an affordable price where affordable relates to both rent and services charges levied for future eligible households.

"Affordable Housing Plan" means the plan 7850 PL12. Rev D at Appendix 3 or such other plan that the Council shall approve.

"Affordable Housing Scheme" means the delivery of the Affordable Housing Units as shown on the Affordable Housing Plan.

"Affordable Housing Units" means the units of Affordable Housing to be provided by the Developer to be constructed on the Land pursuant to the Permission consisting of 39 Affordable Housing Units as follows:

- (b) the Wheelchair Units have been designed to Habinteg Wheelchair Standards; and
- (c) the Affordable Housing Units have been designed to Council's Design and Quality Standards.

"Certificate of Construction Standards" means a written notice from a suitably qualified professional issued to the Council following Practical Completion of any Affordable Housing Unit to a Registered Provider confirming that the Development has been constructed in accordance with the Certificate of Design Standards.

"Commencement" means:

- (a) In relation to the obligations in Schedule 1, Part 6 (*Targeted Recruitment and Training*), commencement of development pursuant to the Permission by the carrying out of a "material operation" (as defined in section 56(4) of the 1990 Act); and
- (b) In relation to all other obligations in this Agreement, commencement of development pursuant to the Permission by the carrying out of a "material operation" (as defined in section 56(4) of the 1990 Act) save that the term shall not include works of demolition, surveys, site clearance, works of archaeological or ground investigation or remediation, the erection of fencing or hoardings, the provision of security measures or lighting, the erection of temporary buildings or structures associated with the Development, the laying removal or diversion of services, works to enable temporary access to the Land, or the provision of construction compounds
- (a) and in this Agreement **"Commence"** and **"Commenced"** shall be construed accordingly.

"Conducting Media" means the drains, sewers, conduits, flues, gutters, gullies, channels, ducts, shafts, watercourses, pipes, cables, wires and mains (or any of them).

"Confirmatory Deed" means the deed set out in the form of Appendix 11.

"Contributions" means the Primary Education Land Contribution, the Primary Education Contribution, the Additional Primary Education Land Contribution, the Early Years Contribution and the Additional Early Years Contribution

"Council's Design and Quality Standards" means the Design, Layout, Construction and Affordability requirements set out at paragraphs 3.1.42 to 3.1.55 inclusive of the Council's Planning Obligations Supplementary Planning Document (April 2015) in place at the date of this Agreement, save that (in relation to the relevant units) where there is a conflict with the Lifetime Homes Standards and/or the Habinteg Wheelchair Standards then the Lifetime Homes Standards and/or the Habinteg Wheelchair Standards shall be preferred.

"Development" means the development of the Land as set out in the Application and consented pursuant to the Permission.

"Early Years Contribution" means a contribution of 50% (indexed) of the total costs incurred by the Council for or towards the provision of the Early Years Facility up to but not exceeding a maximum contribution of two hundred and fifty nine thousand pounds, five hundred and sixty two pounds and twenty pence (£259,562.20).

"Early Years Facility" means a facility for the provision of early years education and childcare for children up to 5 years of age to be provided on the Early Years Land or a new (or extension to an existing) alternative early years facility in Whitchurch.

"Early Years Land" means the land for the Early Years Facility comprising .1094 hectares of land in a Serviced Condition to be provided on the Land as shown edged green on the plan attached to this Agreement at Appendix 5.

"Early Years Land Transfer Sum" means the sum of £100,000 (one hundred thousand pounds) payable by the Council to acquire the Early Years Land from the Owner

"Estate Roads" means the roads forming part of the Development to be adopted by the Council as shown on the plan at Appendix 2.

"Fire Hydrant Contribution" means the sum of £7,500 (Indexed) for the provision and maintenance of five (5) fire hydrants at the Development

"Formal Open Space" means those parts of the Open Space that are to be made available to the public.

"Habinteg Wheelchair Standards" means the standard set out in the Wheelchair Housing Design Guide (second edition) dated 2006 published by Habinteg Housing Association Ltd (or such other standard as agreed with the Council) for housing designed to provide independent living for physically disabled people and wheelchair users.

"Highways Agreement" means an agreement (or agreements) between the Owner, Developer and the Council under section 278 and section 38 of the Highways Act 1980 and any other relevant enabling provision, generally in the form set out at Appendix 6, relating to the construction, completion and adoption of the Highway Works, including an enforceable form of security to ensure the works are carried out.

"Highway Plans" means the plans appended to this Agreement at Appendix 7 illustrating the scope and scale of the Highway Works.

"Highway Works" means works comprising off-site highway improvements to Staunton Lane and Sleep Lane to include a mini roundabout, zebra crossing, widening of pavements and amendments to the Staunton Lane/Sleep Lane junction including traffic regulation orders to reduce the speed limit on Sleep Lane and shown for illustrative purposes only on the Highway Plans.

"Homes and Communities Agency" means the Homes and Communities Agency established pursuant to the Housing and Regeneration Act 2008 or such successor body.

"Homesearch Policy" means a choice based letting policy of the Council and the policy documents which support the Council's Homesearch Register.

"Homesearch Register" shall mean the register kept by the Council of those persons who are seeking accommodation within the area and whose need for such accommodation will be assessed by the Council in accordance with the Council's Homesearch Policy.

"Housing Need" means a person in need of housing who is unable to secure housing suitable for his/her needs in the local housing market as a result of the

"Targeted Recruitment and Training Contribution" means the sum of seven thousand and forty pounds (£7,040) (Indexed) to be applied towards targeted recruitment and training in the construction of the Development.

"Targeted Recruitment and Training Management Board" means a management board as identified in writing by the Council if already formed, or if no such management board is in existence to be established by the Owner and Developer and approved by the Council in writing, to include the Council and Bath and North East Somerset Learning Partnership, and whose purpose is to have responsibility for monitoring outcomes and addressing issues as they arise in connection with the Owner and Developers' obligations in connection with the Targeted Recruitment and Training Method Statement.

"Targeted Recruitment and Training Method Statement" means a method statement as required pursuant to Part 6 of Schedule 1 setting out:

- (a) The actions to be taken by the Owner and Developer to maximise opportunities for at least 5% of the construction workforce being a New Entrant Trainee, subject to the scale, duration and nature of the Development;
- (b) The delivery of the Targeted Recruitment and Training Outcomes; and
- (c) The contribution that the Owner and Developer will make to the Targeted Recruitment and Training Management Board.

"Targeted Recruitment and Training Outcomes" means in relation to the construction phase of the Development the provision of the following roles in accordance with Part 6 of Schedule 1:

- (a) Work experience placements of not less than 16 hours per opportunity;
- (b) Apprenticeship starts;
- (c) New jobs advertised through the Department of Work and Pensions ("**DWP**") and filled by DWP clients.

"Transfer" means Form TP1 to transfer the Early Years Land generally in the form of transfer appended at Appendix 10 the consideration for which shall be the Early Years Land Transfer Sum payable immediately prior to completion of the Transfer.

"Transport Link" means public routes for vehicles and pedestrians to provide links from the Land to adjoining sites as set out on the plan at Appendix 8 to this Agreement.

"Transport Link Highways Agreement" means an agreement (or agreements) between the Owner, Developer and the Council under section 38 of the Highways Act 1980 (and section 278 of the Highways Act 1980 as the case may be) and any other relevant enabling provision, generally in the form set out at Appendix 12, relating to the construction, completion and adoption of the Transport Link and Estate Roads including an enforceable form of security to ensure the works are carried out.

"Transport Management Contribution" means the sum of twenty thousand pounds (£20,000.00) to be paid for traffic management measures on Staunton Lane

**Schedule 1
Owner's Covenants**

**Part 1
Notifications**

- 1 The Owner covenants with the Council to provide the Council with at least 10 Working Days' prior written notice of the occurrence of the following:
 - (a) Commencement of Development;
 - (b) First Occupation of the Residential Units;
 - (c) Occupation of 50% of the Open Market Units; and
 - (d) Occupation of 75% of the Open Market Units.
- 2 Following a written request from the Council, the Owner shall provide the Council within 10 Working Days with such evidence as the Council shall reasonably require in order to confirm the actual stages of Occupation of the Residential Units.

**Part 2
Education**

- 1 The Owner covenants with the Council:
 - (a) to pay the Primary Education Land Contribution (Indexed) and the Primary Education Contribution (Indexed) to the Council prior to Commencement of the Development; and
 - (b) not to Commence the Development until the Primary Education Land Contribution (Indexed) and the Primary Education Contribution (Indexed) has been paid to the Council.
- 2 The Owner covenants with the Council:
 - (a) to serve on the Council the Primary Education Land Notice as soon as reasonably practicable following Occupation of the 40th Residential Unit; and
 - (b) to pay the Council the Additional Primary Education Land Contribution within twenty (20) Working Days of receipt of a written request from the Council such request to include a full breakdown of the Council's estimated costs which go to make up the Additional Primary Education Land Contribution and to be served no earlier than the date of Commencement and no later than:
 - (i) the Occupation of the 50th Residential Unit; and
 - (ii) six (6) months following the Council's receipt of the Primary Education Land Notice;

(whichever is the later) and for the avoidance of doubt the Council may serve the written request whether or not the primary school facility has yet been purchased or works commissioned or the precise costs are yet known.
- 3 Subject to paragraph 6 and paragraph 7 below, in the event that the Development Commences prior to the Council receiving the Adjacent Site Early Years Land Contribution, the Owner covenants with the Council:

- (a) to pay to the Council the Additional Early Years Contribution and the Early Years Contribution within twenty (20) Working Days of receipt of a written request from the Council such request to include a full breakdown of the Council's estimated costs which go to make up the Additional Early Years Contribution and the Early Years Contribution and to be served no earlier than the Occupation of the first Residential Unit and no later than:
 - (i) the Occupation of the 50th Residential Unit; and
 - (ii) six (6) months following the Council's receipt of the Primary Education Land Notice,whichever is the later; and
 - (b) to Transfer to the Council the Early Years Land:
 - (i) prior to Occupation of the 50th Residential Unit; or
 - (ii) if later, receipt by the Council of the Adjacent Site Early Years Land Contribution or an alternative means of funding the Early Years Land Transfer Sum.
- 4 Subject to paragraph 6 and paragraph 7 below, in the event that the Council receives the Adjacent Site Early Years Land Contribution prior to Commencement, the Owner covenants with the Council:
- (a) to pay to the Council the Additional Early Years Contribution and the Early Years Contribution within twenty (20) Working Days of receipt of a written request from the Council or on the date twenty-eight days from the date of Commencement, whichever is the later, such request to include a full breakdown of the Council's estimated costs which go to make up the Additional Early Years Contribution and the Early Years Contribution; and
 - (b) to Transfer to the Council the Early Years Land no later than:
 - (i) within twenty (20) Working Days of receipt of a written request from the Council; or
 - (ii) on the date three months from the date of Commencement,whichever is the later.
- 5 For the avoidance of doubt the Council may serve the written request pursuant to paragraph 3 or paragraph 4 whether or not the Early Years Facility has yet been purchased or the works commissioned or the precise costs are yet known.
- 6 The Owner shall not be required to pay the Additional Early Years Contribution and the Early Years Contribution and shall not be required to Transfer the Early Years Land if:
- (a) the Council has confirmed to the Owner in writing that such payments are not required which shall be in circumstances where prior to Occupation of any Residential Unit:
 - (i) a new early education and/or childcare facility has opened in Whitchurch Village after 1 June 2017 (to the extent that it is within the boundary of the Council's administrative area and which may

include the proposed new Mama Bears Day Nursery in Whitchurch);
or

- (ii) an existing early education and/or childcare facility in Whitchurch Village (to the extent that it is within the boundary of the Council's administrative area) has expanded after 1 June 2017;

and such provision or expansion at the time of its opening has the capacity to meet the childcare sufficiency demand created by the Development which is to say places (whether filled or available) for at least an additional twenty eight (28) children; and

- (b) the Owner has complied with the procedure set out in paragraph 7 below.

7 The Owner and the Council shall comply with the following requirements:

- (a) prior to Occupation of any Residential Unit, the Owner shall serve notice on the Council requiring the Council to confirm whether the circumstances in paragraph 6(a) above have been met and, accordingly, whether the Additional Early Years Contribution or the Early Years Contribution are payable;
- (b) following receipt of notice from the Owner in accordance with paragraph 7(a) above, the Council shall serve notice on the Owner confirming whether the circumstances in paragraph 6(a) above have been met, and accordingly, whether the Additional Early Years Contribution or the Early Years Contribution are payable;
- (c) the Owner shall provide the Council with any information reasonably required by the Council to enable it to confirm whether the circumstances in paragraph 6(a) above have been met.

Part 3 Affordable Housing

1 The Owner must construct the Affordable Housing Units:

- (a) in accordance with:
 - (i) the approved Affordable Housing Scheme and the programme and timetable thereunder;
 - (ii) the Council's Design and Quality Standards;
- (b) provided with Services and Service Installations and Access to the Affordable Housing Units;
- (c) with the Lifetime Homes Affordable Housing Units to be constructed in accordance with the Lifetime Homes Standards; and
- (d) with the Wheelchair Units to be constructed in accordance with the Habinteg Wheelchair Standards.

2 The Owner shall not Occupy or permit Occupation of the Residential Units otherwise than in accordance with the Affordable Housing Scheme.