

Rother District Council

Report to	-	Planning Committee
Date	-	12 March 2020
Report of the	-	Executive Director
Subject	-	Application RR/2019/2405/P
Address	-	Cricketers Field – land to east of, Northiam Road, Staplecross, EWHURST
Proposal	-	Modification to Section 106 Legal Agreement imposed on planning permission RR/2014/1256/P to allow the County Council Secondary Education Contribution to be paid prior to occupation of the 15 th dwelling.

[View application/correspondence](#)

RECOMMENDATION: It be **RESOLVED** to **GRANT MODIFICATION** of **Clause 1 of the Fourth Schedule**.

Head of Service: Tim Hickling

Applicant: AMI Structural Ltd
Agent: CLM Planning
Case Officer: Mrs S. Shepherd
(Email: sarah.shepherd@rother.gov.uk)
Parish: EWHURST
Ward Member(s): Councillors R.K. Bird and A.S. Mier

Reason for Committee consideration: Head of Service Strategy and Planning referral: Section 106 financial matter

Statutory 8 week date: 19 December 2019
Extension of time agreed to: 31 March 2020

1.0 SITE

1.1 The land east of Cricketers Field in Staplecross is a new housing development on the edge of the village. It was granted planning permission in 2015 for a development of 25 dwellings. A 26th dwelling was added in 2017. The development is policy compliant and includes the provision of 10 affordable housing units, seven of which are already occupied. 10 market units have been completed with two occupied (at start of December 2019).

2.0 PROPOSAL

2.1 This application seeks a modification of the Section 106 Agreement. It does not propose any changes to the development, which is continuing.

- 2.2 The amendment has arisen from a cashflow situation. Somewhat unusually the affordable housing units have been occupied first and the developer is seeking to sell more of the market units prior to payment of the Secondary Education Contribution that had been requested by East Sussex County Council (ESCC) and secured as part of the Section 106 Agreement.
- 2.3 The developer initially suggested deferment of the education payment to allow the 12th unit to be occupied. This has been amended following discussion between the Applicant and ESCC and it is now proposed that payment be made “prior to occupation of the 15th dwelling”.
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3.0 HISTORY

- 3.1 RR/2014/1256/P Outline: Erection of 25 dwellings with vehicular access onto Northiam Road (B2165). Approved conditional and subject to a Section 106 Agreement.
- 3.2 RR/2016/653/P Proposed surface water attenuation pond and associated drainage in connection with proposed housing development on land adjacent to Cricketers Field, Staplecross. Approved conditional.
- 3.3 RR/2016/647/P Reserved matters for the erection of 25 dwellings with vehicular access from Northiam Road (B2165) pursuant to outline permission RR/2014/1256/P. Approved conditional.
- 3.4 RR/2016/2952/P Erection of detached dwelling. Approved conditional (south east corner of site).
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4.0 POLICIES

- 4.1 The following policies of the [Rother Local Plan Core Strategy 2014](#) are relevant to the proposal:
- CO4: Supporting Young People
- 4.2 The National Planning Policy Framework and Planning Policy Guidance are also material considerations.
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5.0 CONSULTATIONS

5.1 ESCC, Strategic Economic Infrastructure – NO OBJECTION

- 5.1.1 The ESCC team have been in consultation with the Applicant and local County Councillor. ESCC Education Department have advised that “*the proposed variation is not a cause for concern – because the variation will not prevent or delay the proposed project at Robertsbridge Community College (RCC), which the contribution has been provisionally identified to help fund.*”

5.1.2 The team advice that “having discussed the current progress on site, (construction of the last five houses is near to completion and nine units are currently occupied), ESCC is reassured that the development will be implemented in full and that there will only be a short delay in the payment of the education contribution.”

5.1.3 The team further advices that proposals by the local Councillor to impose a specific date are not considered to be appropriate or necessary.

5.1.4 A revised wording for the variation was agreed by ESCC with the Applicant and they say that given that the variation will only cause a short delay in the payment and that it will not make any noticeable difference to the RCC they have no objection to the proposed variation.

5.2 Planning Notice

5.2.1 Three letters of objection have been received. The concerns raised are summarised as follows:

- Contribution is low anyway and primary school probably needs the help.
- Adjacent field has been used for car park/storage.
- This was put in place for a reason and planning was based on this condition so should be enforced as is.
- Properties should be cheaper to sell quicker.
- Developers should pay for the inconvenience caused.
- Could set a precedent if allowed.

5.3 Ewhurst Parish Council – OBJECTION

5.3.1 The Parish maintained an objection to the amendment as well, commenting that: This was a Section 106 Legal Agreement imposed for a reason and therefore should be paid as per this agreement. If allowed, this could set a precedent for future developers.

6.0 LOCAL FINANCE CONSIDERATIONS

6.1 The proposed modification of the Section 106 has no financial implications for Rother District Council (RDC).

6.2 The modification does relate to financial matters affecting ESCC but it does not involve the loss of any finance, merely the deferral of a payment relating to secondary education. As noted by ESCC the proposed payment would still occur in the first half of this year and as such it does not impact on their proposed use of the monies, which is currently earmarked for proposed works at RCC.

7.0 APPRAISAL

7.1 This application relates to a modification only of the Section 106 Agreement. That modification relates to a County matter. The modification does not change any of the development on site and does not seek to preclude any payments. It is seeking to defer a payment for a short spell.

- 7.2 While the Section 106 requires a contribution towards secondary education to be made, the exact details of payment date were imposed by the County Council and not the District Council. As such it is a matter for ESCC to decide whether any variation of the payment details is acceptable or not.
- 7.3 By way of information, it should be noted that education contributions are not now required via Section 106 as they are a matter that is covered by Community Infrastructure Levy.
- 7.4 Contrary to the contentions of the parish and objectors, a variation to the payment date would not let the developer off but would merely defer the date the payment is due. ESCC has clearly explained that the payment is provisionally required for works to RCC but that development is yet to start and hence they have no objection to a deferment of the payment.
- 7.5 The Section 106 requires payment of the education contribution '*prior to the occupation of the 12th dwelling*'. (Unlike the payment of the play space contribution set by RDC, which is to go to the Parish, and which is required to be paid '*prior to occupation of more than 12 of the open market dwellings*'. My emphasis to clarify the differentiation).
- 7.6 As already referenced, the 10 affordable units are likely to be occupied first, with only two market units having so far been occupied. While sales are proceeding, by varying the payment to '*prior to the occupation of the 15th dwelling*' allows for sales completion of further market units as well as the affordable ones and thus eases the cash flow situation.
- 7.7 ESCC has accepted a deferment of the payment. The payment will still be due well before the development is completely occupied, i.e. there will still be another 10 dwellings to become occupied.
- 7.8 Many of the references in the objections are not material to the planning considerations in respect of the proposed variation.
- 7.9 As with all planning applications, each site is judged on its own merit. The developer here is not seeking to renege on any of his obligations. He still fully intends to make all payments and given the early provision of affordable housing on site, which many developers struggle to achieve, there is no reason for this development not to deliver all it is intended to.

8.0 PLANNING BALANCE AND CONCLUSION

- 8.1 The proposed modification does not result in the loss of any monies. It only relates to a slight deferment of payment. The revised payment formula does not impinge on the ability of ESCC to carry out their proposed education improvements.
- 8.2 The financial payment does not affect RDC. It is a matter for ESCC. The payment and wording of the Section 106 was originally drafted by the County legal team and it is they who have agreed the proposed wording for modification now.

- 8.3 Each site and matters relating to it are considered on their own merits. In this instance construction is well under way with the majority of affordable housing units already completed and occupied. Unusually it is delays in occupation of the market units that has led to this request for a deferment of payment. The payment will still be made.
- 8.4 Given all the above points, there is no valid reason for the District Council to object to a variation of the payment detail.
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RECOMMENDATION: GRANT MODIFICATION OF Clause 1 of the Fourth Schedule, to read:

- 1.1 **Prior to Occupation of the 15th Dwelling to pay the County Council the Education Contribution.**
- 1.2 **Not to Occupy or cause or allow the Occupation of any more than 14 Dwellings until the Education Contribution has been paid to the County Council; in full.**
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