

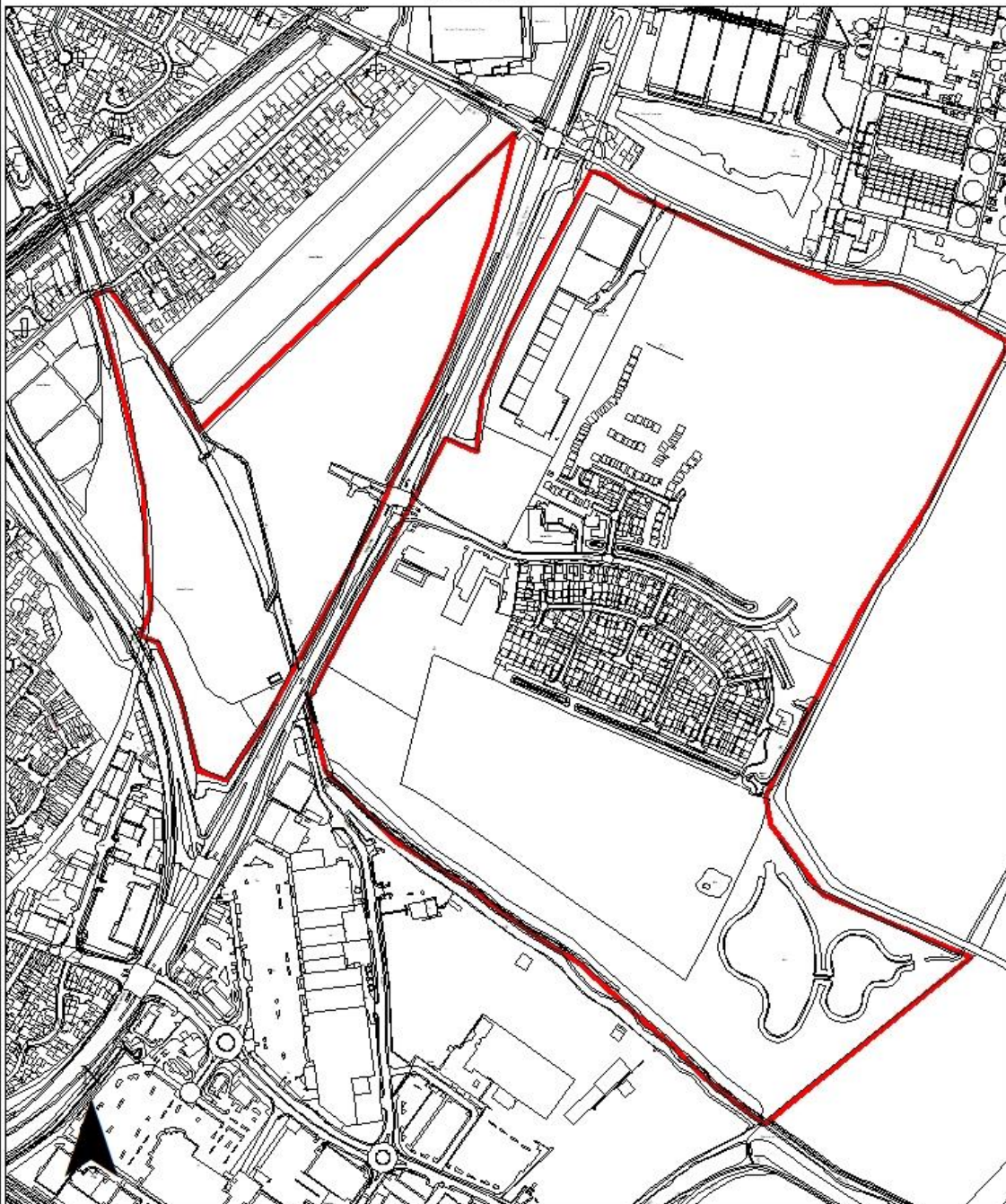


Planning Report for 2020/0189

1:6,000

Planning Reference:

2020/0189
Land Off Teal Close
Netherfield



NOTE This map is provided only for purposes of site location and should not be read as an up to date representation of the area around the site.
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Report to Planning Committee

Application Number:	2020/0189
Location:	Land at Teal Close Netherfield
Proposal:	Modification of Section 106 agreement in relation to planning permission 2017/0999 for the delivery of the school.
Applicant:	Persimmon Homes
Agent:	
Case Officer:	Bev Pearson

The request is required to be considered by Planning Committee as there are no officer delegations under the Constitution to allow the variation of a Section 106 Agreement.

1.0 Site Description

- 1.1 The site is the Teal Close development site which has outline planning permission reference 2013/0546 as varied by planning permission 2017/0999 for residential development (up to 830 units), employment uses (Use Classes B1/B2/B8), a community hub (Use Classes A1-A5 and D1), primary school, hotel (Use Class C1), care home (Use Class C2), playing pitches and changing facilities, public open space, allotments, structural landscaping, access arrangements and an ecology park, and demolition of existing structures. Various approvals have been granted pursuant to this permission. The relevant planning history is detailed below.
- 1.2 To date approximately 220 dwellings, and a care home have been completed and work has commenced on a significant number of other dwellings and on a number of the commercial units and the school some of which are now complete.
- 1.3 It is approximately 26 hectares in overall site area split into two parcels of land which straddle the Colwick Loop Road.

2.0 Relevant Planning History

- 2.1 **2019/0374** – an application was presented to Planning Committee on the 13th October 2021 seeking to vary Conditions 2 (approved plans), 7 (parameters plan written statement), 10 (flood risk), 28 (highway works), 30 (highway works), 31 (highway works), 32 (highway works), 33 (highway works) and 35 (footway/cycleway) on planning permission reference 2017/0999 – resolution

to grant planning permission subject to the applicant entering into a Deed of Variation amending the original Section 106 Agreement dated 30th June 2014 and the Deed of Variation dated 27th February 2018

- 2.2 **2020/0190** – permission was granted in October 2020 for the Modification of Section 106 Agreement in relation to planning permission 2017/0999 in relation to the wording of the affordable housing clauses.
- 2.3 **2020/1281**- permission was granted in November 2021 for the Modification of the Section 106 Agreement in relation to planning permission 2013/0546 as varied by permission 2017/099 in relation to the wording of the affordable housing clauses.
- 2.4 **2019/0131** – A Reserved Matters application was submitted in February 2019 and approved in April 2020 for the erection of a 1-form entry primary school with a 26 place nursery with associated external play areas, car parking and associated landscaping and infrastructure pursuant to outline planning permission 2017/0999.
- 2.5 **2018/0951** – an application to vary conditions 32 (highway works), 33 (highway works) & 35 (footway/cycleway works) on outline planning permission reference 2017/0999 was submitted in September 2018 – pending decision.
- 2.6 **2017/0999** –Variation of Conditions 32, 33 & 35 and removal of Condition 34 attached to outline planning application No. 2013/0546 was approved in February 2018. Although this involved a Deed Of Variation in terms of updating the planning permission reference number, the provisions of the original Section106 associated to outline permission 2013/0546 remain in force.
- 2.7 **2013/0546** - Outline permission was granted in June 2014 for development comprising residential development (up to 830 units), employment uses (Use Classes B1/B2/B8), a community hub (Use Classes A1-A5 and D1), primary school, hotel (Use Class C1), care home (Use Class C2), playing pitches and changing facilities, public open space, allotments, structural landscaping, access arrangements and an ecology park, and demolition of existing structures. A Section 106 Agreement was completed on the 30th June 2014.
- 2.8 A number of conditions attached to the planning permissions have been discharged.

3.0 Background

- 3.1 Planning obligations in respect of both education and a financial contribution towards transport amongst other matters were secured through a Section 106 Agreement between the Gedling Borough Council, Nottinghamshire County Council, Nottingham City Council and Persimmon Homes Ltd which was originally completed on the 30th June 2014, the provisions of which remain in force.

4.0 Proposal

4.1 Education

This application seeks to vary the wording of the Section 106 Agreement to achieve the timeline for the delivery of the school (which includes the completion by 31 May 2022) and to ensure it is delivered to the specification agreed with the Nottinghamshire County Council Education.

As the school is now nearing completion the need for financial contribution in lieu is no longer necessary and the wording of the Section 106 Agreement removes the reference to a payment of an education contribution and now refers to the construction and delivery of the school only.

4.2 Transport

This application seeks to replace the definition of City Link 2 Bus Service and City Link Contribution with Service 50 as that is now the bus service that operates between Victoria Retail Park, Netherfield, Nottingham Racecourse Park and Ride and Nottingham city centre and will be extended to this site.

4.3 Off site Highway Works

An additional provision is sought to afford the opportunity to capture the financial contributions in lieu of the off-site highway works that were considered and approved by the Planning Committee on 13th October and to secure financial contributions towards off-site highway improvement works at Lowdham Roundabout and at the Mile end Road/Colwick loop Road traffic signals.

5.0 Consultations

5.1 A site notice has been posted at the site which expires on the 21st April 2021 and consultation undertaken with Nottinghamshire County Council Education Authority and Nottingham City Council.

5.2 The Education Authority have requested that in order to ensure that the school is delivered at the start of the Autumn term 2022 the dates in the revision to the Section 106 Agreement in relation to the school building should therefore read “the transfer of the school site must be completed by 31st May 2022 to ensure that the school is open to pupils no later than August 31st 2022 which is the date of the start of the Autumn 2022 term”.

5.3 The Highway Authority have requested that as an alternative to the originally approved highway improvement works financial contributions would contribute to larger planned improvements required to mitigate the impact of this development (this was the subject of Section 73 application ref. 2019/0374 that has a resolution to approved from Planning Committee on 13th October 2021).

6.0 Planning Considerations

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires that ‘if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise’.

7.0 Development Plan Policies

7.1 National Planning Policy Framework 2021

Paragraph 57 Sets out the three tests in relation to planning obligations:-

- 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.

7.2 Gedling Borough Council Aligned Core Strategy (2014)

Policy 19: Developer Contributions sets out that:-

1. All development will be expected to:

- a) meet the reasonable cost of new infrastructure required as a consequence of the proposal;
- b) where appropriate, contribute to the delivery of necessary infrastructure to enable the cumulative impacts of developments to be managed, including identified transport infrastructure requirements; and
- c) provide for the future maintenance of facilities provided as a result of the development.

8.0 Planning Considerations

The main considerations with regards to the proposed modifications are whether the changes to the s106 agreement impact on the following:-

- The amount of the financial contributions secured as planning obligations
- The scope of the planning obligations
- The timescales for delivery of any of the measures secured through planning obligations

8.1 Education

The revised wording in relation to the delivery of the school is the result of the original timetable for delivery expiring whilst discussions have been undertaken between the developers and the Nottinghamshire County Council as Education Authority regarding the internal specification of the school. The new timetable is noted at paragraph 5.2 of this report and the modified

wording of the S106 Agreement has been accepted by the Education Authority and has now been agreed with all parties.

8.2 Transport Contribution

The S106 Agreement obliged Nottingham City Council to spend the Transport Contribution on extending an existing bus service to serve the development. Nottingham City Council would not be providing the service but would transfer the monies to an external bus service provider, Nottingham City Transport. The total amount of contribution at £680,000 remains unchanged. The modified wording with regard to the trigger for payment to Nottingham City Council would provide for two payments:

1) £510, 000 within 10 days of the date of the Deed of Variation and for any further occupation of any dwellings on the development until the payment is made; and

2) £170, 000 prior to the occupation of any dwelling after 31st March 2022.

Previously the £680,000 was payable in four instalments from first occupation of a dwelling with the final payment within 36 months of this first occupation.

Ordinarily financial contributions secured through a s106 Agreement have an indexation sum applied from the date of the agreement to the date of payment. This ensures that the amount of the financial contribution is adjusted to reflect inflation. Indexation is applicable to the financial contributions in the original s106 agreement for this development.

The planning obligation to pay the financial contribution in respect of extending the former City Link bus service was delayed whilst Nottingham City Council considered the potential implications of the state aid regime (which changed to the subsidy control regime following Brexit). The state aid/subsidy control regime regulates any advantage granted by a public authority, through state resources, on a selective basis, to any organisations, that could potentially distort competition. Therefore Nottingham City Council needed time to consider the legal implications of paying the transport contribution directly to a private company to deliver the bus service to serve the development.

This impact of this delay was that the financial contribution would have an indexation sum applied for the whole period whilst these legal matters were considered.

As discussions regarding state aid/subsidy control were ongoing it was agreed by the parties to pause the application of the indexation sum until those matters were resolved. The amendment to the s106 Agreement is to reflect the agreed period when indexation should apply.

The period when indexation should apply to the financial contribution is currently being negotiated by all parties and a verbal update will be provided at the Planning Committee meeting.

8.3 Off site Highway Contributions

This Deed of Variation also provides the opportunity to capture the financial contributions in lieu of the off-site highway works that were considered by the Planning Committee on 13th October 2021.

Members will recall that these are:

The off-site contribution of £150,000 towards works at the A612 Mile End Road, Colwick Loop Road Junction and of £64,932.75 towards improvements to the Lowdham Roundabout remains unchanged from those presented to Planning Committee.

The modified wording in terms of the use of the highway contributions and pay back timescales has been agreed by all parties.

9.0 Conclusion

9.1 The proposal relates to revisions to update definitions within the Section 106 Agreement and to the triggers in relation to the delivery of School and the payment of transport contributions together with the additional paragraphs to secure developer contributions in lieu of off-site highway improvement works. It is not considered that these modifications would alter the policy compliant position that was provided under the Deed of Variation of the Section 106 Agreement associated to planning applications 2013/0546 and 2017/0999.

9.2 As a result it is recommended that a proposed modification would be acceptable. There are no material planning considerations or implications that would arise as a result of this Deed of Variation.

10.0 Recommendation: That the Head of Development and Place be authorised to instruct the Head of Service for Governance and Customer Service to undertake the necessary work to prepare and finalise a Deed of Variation amending the timescale for the delivery of the school, the transport contributions and the additional paragraphs to secure developer contributions towards the off-site highway improvement works as set out above in the Section 106 Agreement associated to planning permission 2013/0546 as amended by permission 2017/0999.