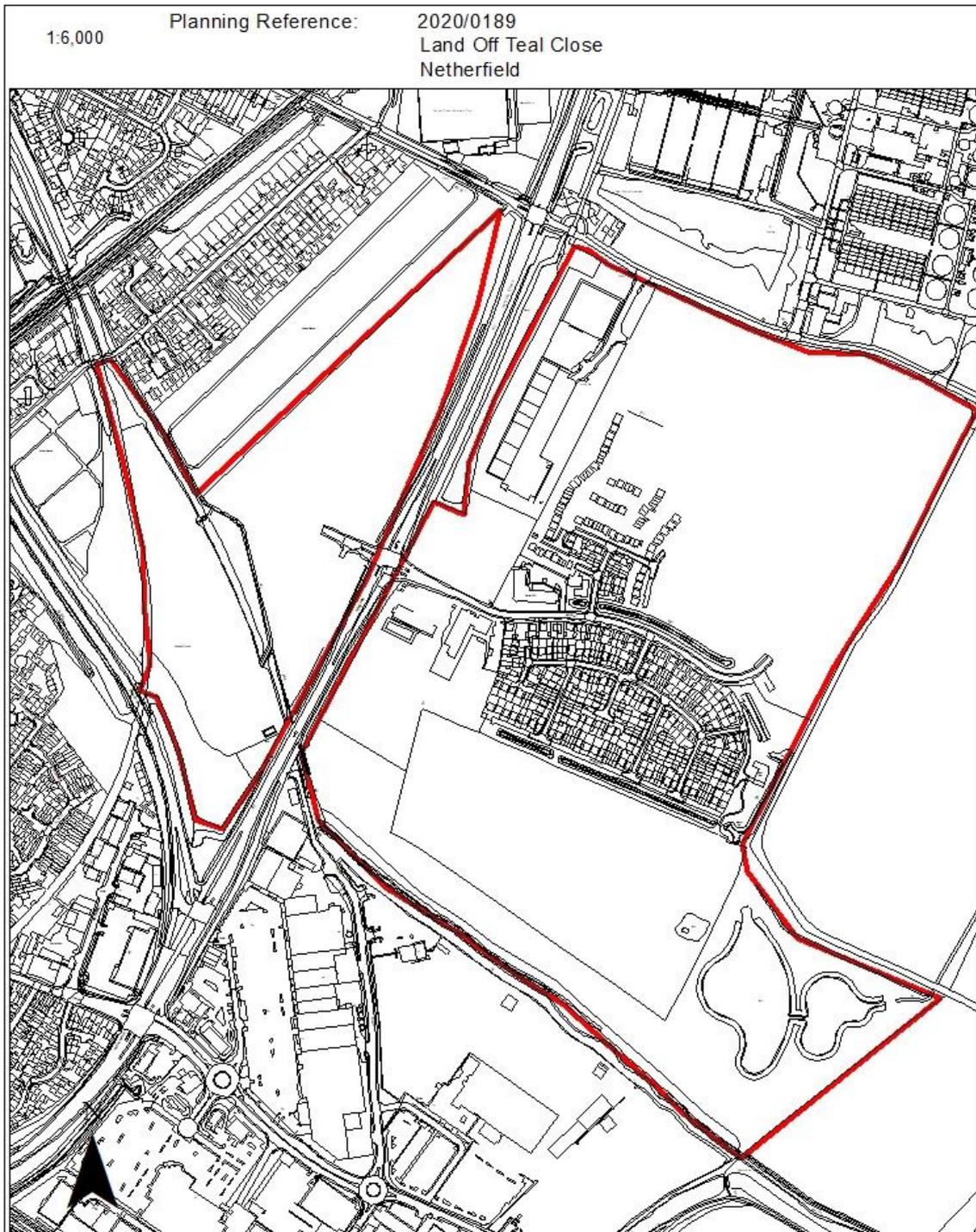




Planning Report for 2020/0189



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:	The proposed modification of the Section 106 agreement in relation to planning permission 2017/0999 for the provision of the school by 31st May 2022, bus Service 50 by Nottingham City Council by 2032 and bus Services no. 5 and 73 by Nottinghamshire County Council by 2027
Applicant:	Persimmon Homes Nottingham
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. The school, changing rooms and commercial units are substantially complete as are a number of the commercial units.
- 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 financial contributions towards education and transport amongst other matters were secured through a Section 106 Agreement between the Gedling Borough Council, Nottinghamshire County Council, Nottingham City Council and Midlands Land Portfolio Limited which

was completed on the 30th June 2014 ('**Section 106 Agreement**'), 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 in respect of the timeline for the delivery of the school (which includes completion by 31 May 2022) and to ensure that it is delivered to the specification agreed with Nottinghamshire County Council as Education Authority.

Further, as the school is now nearing completion the need for a financial contribution in lieu is no longer necessary and the wording of the Section 106 Agreement should be varied to remove the reference to a payment of an education contribution and to the construction and delivery of the school only.

4.2 Transport

Nottingham City Council

- 4.2.1 Nottingham City Council seek to vary the timescale for the City Link contribution to be spent or committed for expenditure from 5 years from the date of receipt of the payment to 10 years. It also seeks to change the name of the contribution to the Service 50 Contribution as this is the bus service which replaced the City Link service (hereinafter referred to as the 'Transport Contribution'). Nottingham City Council also seek to vary the dates to which indexation provisions apply in respect of the Transport Contribution.

Nottinghamshire County Council

- 4.2.2 This application seeks to vary the timescale for the bus service contribution to be spent or committed for expenditure from 5 years from the date of receipt of the payment by Nottinghamshire County Council to 8 years. It also seeks to remove specific reference to named bus services.

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 resolved to approve subject to a deed of variation by the Planning Committee on 13th October 2021 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. Planning Ref: 2019/0374 refers.

5.0 Consultations

- 5.1 A site notice was initially advertised on the 2nd February 2020 and subsequently on the 31st March 2021 and 8th January 2022 consultation was

also undertaken with Nottinghamshire County Council Education Authority, Nottinghamshire County Council and Nottingham City Council.

- 5.2 Nottinghamshire County Council as Education Authority have requested that in order to ensure that the school is delivered at the start of the Autumn term 2022. Nottinghamshire County Council require the transfer of the school site to 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 Nottingham City Council, who have yet to receive its any instalments of the Transport Contribution, have requested an extension to the timescale for expending or committing the contribution for expenditure from five years to ten years (2027 to 2032) from the date of the first payment to ensure that there is sufficient time for the bus service to be able to operationally access the development and be sustained on a commercial basis before the Transport Contribution would need to be repaid.
- 5.4 Nottinghamshire County Council, who received payment of the bus service contribution in 2019, have requested an extension to the repayment period from five to eight years (2024 to 2027) given that there is no timescale yet for the completion of the spine road giving the bus service access to the development.

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 Section 106 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

- 8.1.1 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 proposed variation to the Section 106 Agreement is considered to be acceptable to Nottinghamshire County Council as it secures transfer of the school site in readiness for its planned opening in Autumn 2022.

8.2 Transport Contribution

Nottinghamshire County Council

8.2.1 Repayment timescale

Under the Section 106 Agreement the bus service contribution (a total sum of £450,000 index linked) to Nottinghamshire County Council must be spent or committed for expenditure on the extension of the bus services 5 and 73 to serve the development within 5 years from the date of receipt of the payment by Nottinghamshire County Council. If the bus service contribution is not spent or committed for expenditure within this time period then person that made the payment can request that it be returned to them.

The requested revised wording in relation to the delivery of a bus service by Nottinghamshire County Council arises as a result of the first £180,000 instalment of the bus service contribution being received by the County Council in July 2019 with a current five year expenditure deadline until July 2024. There is currently no timescale for the completion of the spine road which would allow the bus service access to the development and this would not be within the control of Nottinghamshire County Council's transport provider. Nottinghamshire County Council advise that it intends to deliver the bus service

as soon as the spine road access is available. This would potentially mean that the County Council could be left with only limited time to spend this funding and, if the period for expenditure was not to be amended from 5 years to 8 years from the date of receipt of the payment then the existing payback arrangements would require some, or all, of the funds to be returned to the developer.

As Nottinghamshire County Council received the bus service contribution in 2019 the effect of the proposed variation would be to increase the time for the contribution to be spent or committed for expenditure from 2024 to 2027.

It is considered that an extension to time period for spending or committing the monies for expenditure to eight years from the date of receipt of payment (i.e. until 2027) is reasonable in these circumstances.

Nottingham City Council

8.2.2 Repayment timescale

The Section 106 Agreement states that the Transport Contribution (total sum of £680,000 index linked) must be spent or committed for expenditure on the extension of the City Link 2 bus service to serve the development within 5 years from the date of receipt of the payment by Nottingham City Council. If the Transport contribution is not spent or committed for expenditure within this time period then person that made the payment can request that it be returned to them.

Nottingham City Council seek to vary the timescale for the City Link contribution to be spent or committed for expenditure from 5 years from the date of receipt of the payment to 10 years. Nottingham City Council have yet to receive an instalment of the Transport Contribution. The effect of this requested change if payment were received in 2022, would be to require the contribution to be spent or committed for expenditure by 2032 rather than 2027.

The requested revised wording by the City Council in relation to the delivery of the Service 50 bus service arises from Nottingham City Transport – the service provider - confirming that it would be operationally unable to run a bus service on an unadopted road by reason of liability and insurance and that neither the service provider nor the City Council would have any control in terms of the completion and adoption of the spine road which would allow the bus to access.

8.2.3 The extension to timescale for spending or committing the monies for expenditure from five years to ten years from the date of receipt of a payment is therefore requested to ensure that there is sufficient time for the bus service to be able to access the development and build up its patronage in order that it can be sustained on a commercial basis before the City Council's Transport Contribution would need to be repaid. The City Council consider that this would provide additional time to allow for the delivery of the bus service should there be a delay in the completion and the adoption of the spine road.

8.2.4 It is considered that 10 years as requested by the City Council is somewhat excessive based on the current build out rates of the dwellings and the terms of the Section 106 Agreement which only require the contribution to be

expended or to be committed to be expended within a five year timeframe. Therefore providing the City Council committed the monies within 5 years of receipt the Section 106 Agreement would be complied with and it would not be necessary for any of the contributions to be refunded to the developer.

8.2.5 It is therefore considered that maintaining the a repayment timescale of five years from the date of receipt of the contribution by the City Council would be in line with the timescale requested by the County Council and would be entirely reasonable in this instance. Officers therefore do not support this request by the City Council.

8.2.6 Indexation

The Section 106 agreement provides that all financial obligations under the agreement are indexed 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.

In respect of the Transport Contribution due to be paid to the City Council, the Section 106 Agreement provides for payment of the total £680,000 contribution in 4 equal instalments of £170,000. To date, three of those payment are outstanding. Payment has been 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 (at the time of the Section 106 Agreement the bus service was provided by the City Council but is now provided by Nottingham City Transport, an external commercial operator).

The 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.

The developer, Nottingham City Council and Nottingham City Transport have engaged in discussions regarding payment of the Transport Contribution and have provisionally agreed that indexation should apply to the three outstanding instalments from the date of the Section 106 Agreement to the date when the payments were due under that agreement (notwithstanding the fact that no Transport Contributions have yet been received by Nottingham City Council). This is on the basis that as state aid/subsidy control was raised as an issue by the City Council and the application of the indexation sum should be paused until those legal matters were resolved. Nottingham City Council have provided assurances to Gedling Borough Council's planning department that the proposed revised indexation applicable to the Transport Contribution would not impact on the delivery of the extension to the Service 50 bus service to serve the development. Indexation would apply to the fourth and final as per the original Section 106 Agreement (from the date of the agreement until the date of actual payment).

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 contributions towards the delivery of bus services to serve the development together.
- 9.2 It is not considered that the following proposed variations would alter the policy compliant position that was provided under the Section 106 Agreement as varied by planning applications 2013/0546 and 2017/0999:-
- Variation of the wording of the Section 106 Agreement removing reference to a payment of an education contribution and now referring to the construction and delivery of the school.
 - Variation of the timescale for the expenditure or committed expenditure of the bus service contribution to Nottinghamshire County Council from five to eight years; and
 - Variation of the indexation period applicable to the Transport Contribution as requested by Nottingham City Council to reflect the period when indexation should apply. The change would be from the date of the Section 106 Agreement to the date the Transport Contribution is received by Nottingham City Council to the date of the Section 106 Agreement to the date the payment of the Transport Contribution was due under the Section 106 Agreement. It is considered that this would be reasonable and acceptable in this instance:
- 9.3 As a result it is recommended there are no material planning considerations or implications that would arise as a result of the proposed variations to the original S106 noted above at paragraph 9.2 and as such these would be acceptable.
- 9.4 With regards to the modifications requested by Nottingham City Council in relation to the repayment timescale for the Transport Contribution, the justification provided for this is noted. However it is considered that a proposed change in the period for expenditure or commitment to expend the Transport Contribution from five years to ten years from receipt of the contribution payment is not reasonable given that the City Council has yet to receive its first payment and taking account of the current build out rates, it would take this repayment period to 2032 at the earliest.
- 10.0 Recommendation: That members approve variation of the Section 106 Agreement (as previously varied) between the Gedling Borough Council, Nottinghamshire County Council, Nottingham City Council and Midlands Land Portfolio Limited which was completed on the 30th June 2014 associated to planning permission 2013/0546 as amended by permission 2017/0999 amending the timescale for the delivery of the school and the transport contributions as set out above in this report.**