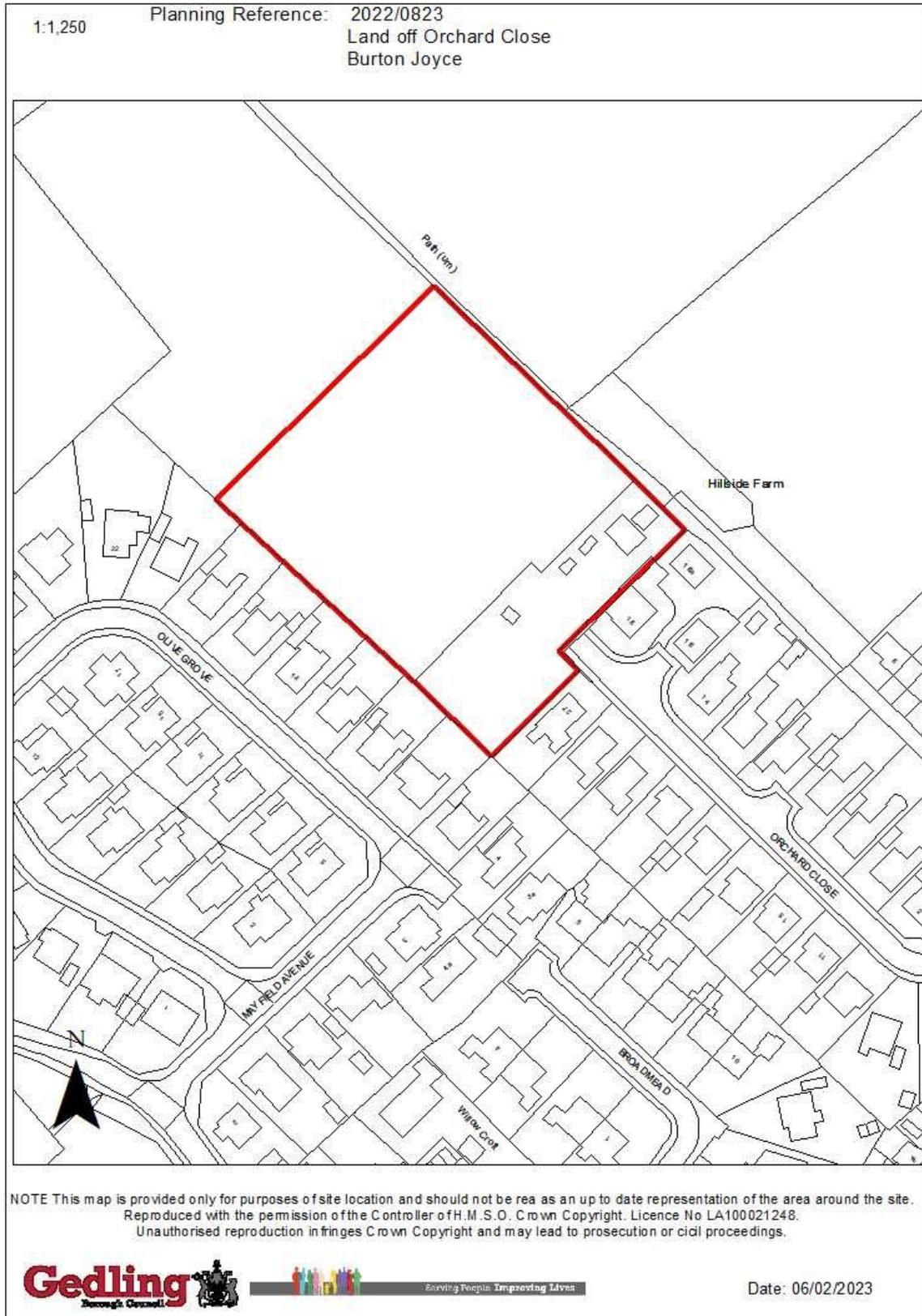




Planning Report for 2022/0823



Report to Planning Committee

Application Number:	2022/0823
Location:	Land off Orchard Close Burton Joyce
Proposal:	Modification of S106 agreement (2018/1034) to amend the public Open space clauses to allow for either on-site or off-site provision and future maintenance of the same.
Applicant:	1NA (Mansfield Road) Limited
Agent:	Roythornes Solicitors
Case Officer:	Nigel Bryan

The application is referred to Planning Committee to comply with the Council's constitution as further planning obligations are required to secure the mitigation of the impacts of the development.

1.0 **Site Description**

- 1.1 The application site covers an area of 0.7 hectares in size and is located at the end of Orchard Close in Burton Joyce. The site is bound by residential development on its western and southern edge with the remainder adjacent to open countryside. Development has commenced on site with large parts of the site cleared of vegetation and ground works are underway. The site slopes steeply up from the south-east up towards the north-west.
- 1.2 The application site is allocated for residential development under policy LPD68.

2.0 **Relevant Planning History**

- 2.1 2018/1034 – 'Outline planning application (all matters reserved except for access) for the erection of up to 15 No. dwellings and associated infrastructure', was considered at the Planning Committee of 13th February 2019 with the decision issued on the 27th March 2020, following the signing of the Section 106 Legal Agreement which secured planning obligations.
- 2.2 2021/0301 – 'Erection of 14 dwellings (reserved matters approval (appearance, landscaping, layout and scale) pursuant to outline permission 2018/1034)', was considered at the planning committee of 28th July 2021, with the decision notice issued on the 02 August 2021.

2.3 2022/1258DOC – ‘Approval of details reserved by conditions 4 (Levels), 5 (Foul and Surface Water), 6 (Contamination), 8 (Trees), 11 (EV Charging) and 12 (CEMP) of planning permission 2018/1034’, the application is pending determination.

3.0 Proposed Development

3.1 The application seeks to vary the approved Section 106 Agreement secured with outline permission 2018/1034 so that alternative planning obligations in relation to the provision of on-site open spaces can be secured. The proposal is to enable the delivery of open spaces to be provided either on site or through off site capital and maintenance contributions in lieu of onsite provision.

3.2 All contributions secured through the original Section 106 Legal agreement are outlined below;

- Affordable Housing - the agreement, based on the erection of 15 dwellings, would secure four affordable dwellings, 3 affordable rent and 1 is intermediate sale. However, the agreement identifies that if less than 15 dwellings are proposed at reserved matters stage then there would be no requirement for affordable housing.
- Education – the agreements secures £40,968 towards primary school provision and £35,506 towards secondary school provision.
- Public Open Space - as the site exceeds 0.4 hectare in area a contribution of £33,930.40 (capital) and £15,400 (maintenance) towards off-site provision is secured to be spent in Burton Joyce.
- Bus stop improvements at two bus stops on Chesterfield Drive close to the site – £5,000 is secured toward the standard of bus stop infrastructure in the vicinity of the development and could be used for, but not limited to; Real Time Bus Stop Poles & Displays including Associated Electrical Connections, Extended Hardstands/Footways, Polycarbonate or Wooden Bus Shelters, Solar Lighting, Raised Boarding Kerbs, Lowered Access Kerbs and Enforceable Bus Stop Clearways.
- A Local Labour Agreement.

3.3 For the avoidance of doubt, as originally submitted the application was to vary a number of Schedules within the Legal Agreement. This included alterations to the planning obligations in respect of affordable housing, education financial contributions and bus stop provision through financial contributions; however, the education financial contribution remains the same in that the County Council have indicated a reduction in number of dwellings by one would not alter the predicted number of pupils generated. The cost of works to the bus stop would remain the same. Furthermore, the clause which secures planning obligations in respect of affordable provision is still pertinent in that the outline remains extant and a further reserved matters application for 15 dwellings could still be made.

4.0 Consultations

- 4.1 Burton Joyce Parish Council – Object to the application on the grounds that the original agreement should stand in its entirety and not be watered down.
- 4.2 Parks and Street Care – Note that the changes would allow for either on-site or off-site provision of public open space. Therefore, they raise no objection to the application.
- 4.3 NCC Education – note that the reduction in number of dwellings by one would still result in the same number of school places required and the original figures sought should remain.
- 4.4 NCC Highways – Raise no objection to the application.
- 4.5 A site notice was displayed near to the application site and consultation letters sent to local residents. Furthermore, following an updated application title, outlined in more detail of section 3.3 of this report, further consultation was undertaken. As a result of consultation undertaken a total of 4 responses have been received, all of which object to the application. A summary of the objections are reproduced below;
- The developer should not be allowed to renege on promises in respect of affordable housing, public open space, education and bus stop provision achieved through the original outline permission;
 - The development is inappropriate within the Green Belt and should not be allowed to happen;
 - The proposed dwellings would have a detrimental impact on residential amenity through their scale; the design of the development is out of character with the area; traffic generation would not be acceptable and the wider green environment will be harmed, including wildlife.

5.0 Relevant Planning Policy

- 5.1 The Local Planning Authority adopted the Local Planning Document (LPD) on the 18th July 2018. The most pertinent policies to the determination of this application are as follows:
- LPD21 – Provision of New Open Space
 - LPD68 – Housing allocations – Burton Joyce
- 5.2 The Aligned Core Strategy was Adopted in September 2014, the following policies are considered most pertinent to the determination of the application; A: Presumption in favour of sustainable development; 1: Climate change; 2: The Spatial Strategy; 10: Design and Enhancing Local Identity and 19 – Developer Contributions
- 5.3 With respect of the National Planning Policy Framework 2021 (NPPF) the following chapters are considered to be most pertinent to the determination of the application; 2 – achieving sustainable development; 4 – decision making; 5 – Delivering a sufficient supply of homes; 6 – building a strong, competitive economy; promoting sustainable transport; 11 – making effective use of land;

12 - achieving well-designed places; 14 – Meeting the challenge of climate change, flooding and coastal change and 15 – Conserving and enhancing the natural environment. Paragraph 57 of the NPPF is particularly pertinent and outlines the three tests against which planning obligations must be assessed.

- 5.4 Burton Joyce Neighbourhood Plan Burton Joyce Neighbourhood Plan was adopted on 10th January 2019. The relevant policies in the Neighbourhood Plan for determination of this application are as follows:

NP 1: Spatial Strategy – sets out the locational objectives for development in the village.

NP 3: Design Principles for Residential Development – sets out the design principles for new residential development.

- 5.5 Other policy guidance of note is the ‘New Housing Development Supplementary Planning Guidance for Open Space Provision’ (2001).

6.0 Planning Considerations

Principle of development

- 6.1 Section 38(6) of the Town and Country Planning Act indicates that development shall be determined in accordance with the development plan, unless other material considerations indicate otherwise, with the Local Planning Document forming part of the development plan. Therefore, the principle of development is supported in that the site is allocated for residential development under policy LPD68. Outline planning permission and a subsequent reserved matters application has been granted.
- 6.2 This application seeks to vary the s.106 agreement to provide new planning obligations should open spaces to be provided on site whilst retaining the planning obligations in respect of off-site open spaces in the form of financial contributions for capital and maintenance having regard to the policies in the development plan and any other material considerations. It is not permissible to consider the principle of development.

S.106 agreement details

- 6.3 Having regard to the above, the only aspect of the development that could be amended is the clause in respect of public open space, which was drafted on the understanding that no on-site provision would be provided and that a contribution of £33,930.40 toward play equipment and £15,400 toward its future maintenance on an alternative site within the village would be secured. The agreement did not take into account the fact that on-site public open space could be secured. The reserved matters application as approved has secured on-site public open space. Therefore, it is intended to amend the agreement to reflect this in that payment for off-site play equipment would not be required, nor the payment toward maintenance of the equipment should this reserved matters be implemented. The varied agreement would also secure a maintenance sum of £15,400 should the on-site public open space be adopted by Gedling Borough Council. If the land is to be maintained by a

management company, details of this would need to be approved by the Borough Council.

- 6.4 As a result, the amended legal agreement will allow greater flexibility to reflect the reserved matters application that is currently being constructed with on-site public open space but, at the same time, will allow for an alternative should a further reserved matters application be submitted. Therefore, having regard to the above it is considered that the application as amended complies with policies LPD21, ASC19 guidance within the NPPF and the New Housing Development Supplementary Planning Guidance for Open Space Provision.

Other considerations

- 6.5 As previously noted, the only matter under consideration through this application is the proposed variation of the s.106 agreement to secure alternative planning obligations. A number of other matters have been raised by the Parish Council and local residents that relate to the loss of other contributions, residential amenity, design, traffic generation and whether or not the principle of development should have been sought at the outset. However, these matters are noted but are not material in the determination of this application. Nor is the site within the Green Belt, having been removed following the adoption of the LPD in 2018

7.0 Conclusion

- 7.1 Having regard to the above it is noted that the principle of the development is supported by policy LPD68 and planning permission is in place for the site. The change to the s.106 agreement is considered to be acceptable and reflect the reserved matters approval granted consent allowing greater flexibility for the developer whilst still complying with Policy LPD21, without prejudicing any future reserved matters application that may be forthcoming. As a result the application is deemed to comply with policies LPD21, LPD68, ACS19, NP1, NP3, 'New Housing Development Supplementary Planning Guidance for Open Space Provision' and guidance within the NPPF.

- 8.0 Recommendation: That the section 106 agreement be varied to secure new planning obligations in relation to on-site public open space and to retain the planning obligations in respect of capital and maintenance financial contributions in-lieu of such provision.**