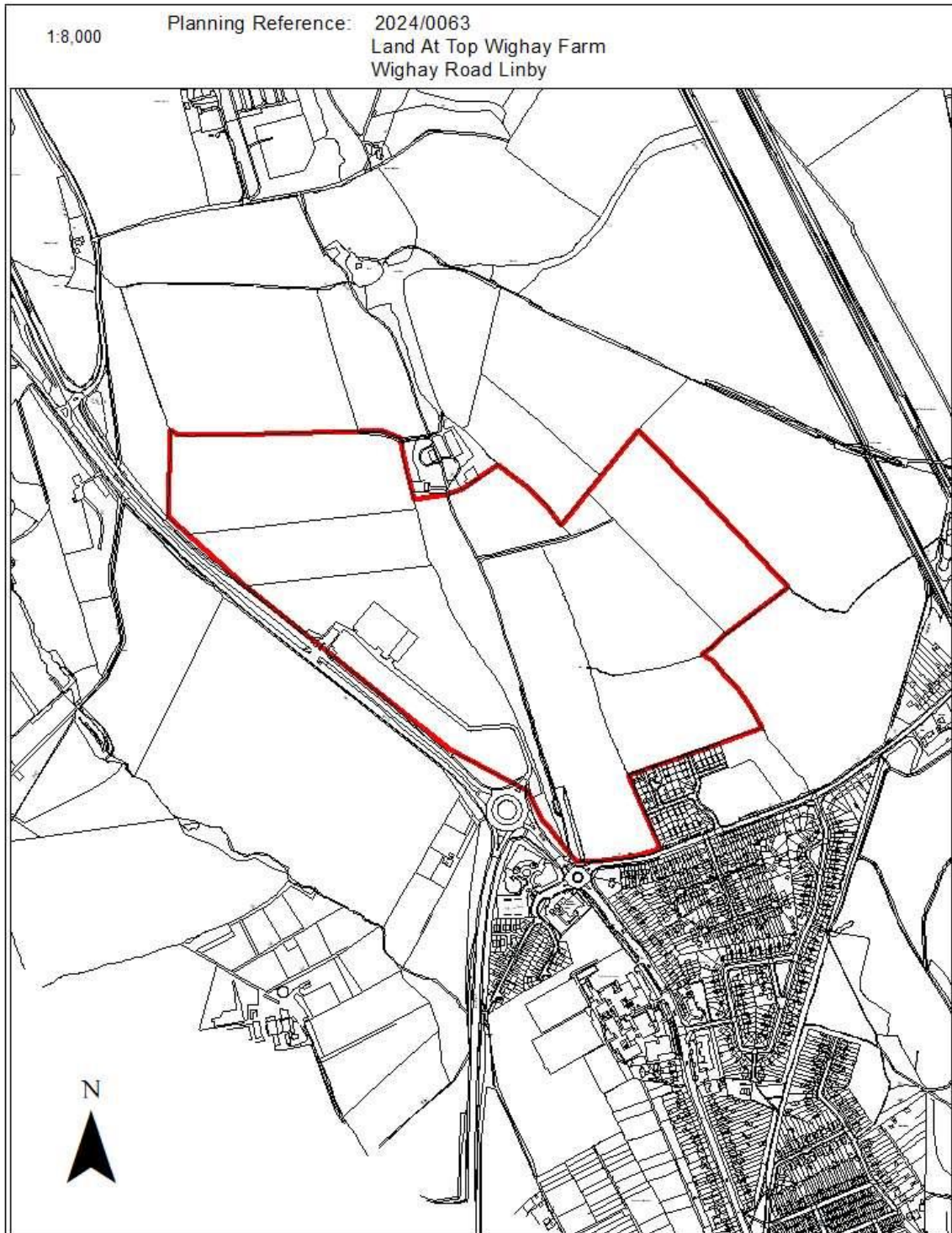




Planning Report for 2024/0063



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:	2024/0063
Location:	Top Wighay Farm, Wighay Road, Linby
Proposal:	Variation of section 106 Legal Agreement (Schedule 5 Provision of Open Spaces – Definitions Section) for outline planning permission 2020/0050.
Applicant:	Nottinghamshire County Council
Agent:	Pegasus Planning
Case Officer:	Criag Miles

The application is referred to Planning Committee to comply with the Council's Constitution because it relates to a change to a S106 legal agreement that was previously consented by Planning Committee as part of a proposed development.

1. Site Description

- 1.1 The application site comprises an area of land covering 40.347 hectares. It is located to the north of Linby and Hucknall and is bound by Wighay Road to the south and Annesley Road to the west.
- 1.2 Development has commenced on the wider site, through parts of the road network now being in situ and a commencement of an office building. Besides which, the application site comprises a number of agricultural fields marked by hedgerows and an access track to the adjacent farmstead, which is raised above the surrounding fields. Whilst the majority of the site is intensively farmed there is one local wildlife site within it, Top Wighay Farm Drive.
- 1.3 The application site is allocated for a mixed use development under policy 2 of the Aligned Core Strategy and Gedling Borough Council have also produced a Top Wighay Farm Development Brief Supplementary Planning Document (SPD) to guide the overall development. The site is strategically located to the edge of Hucknall and the wider Nottingham conurbation and falls next to the administrative boundary of Ashfield District Council.

2. Deed of Variation through Section 106A of Town and Country Planning Act

- 2.1 Section 106A of the Town and Country Planning Act 1990 makes provision for existing planning obligations to be modified or discharged by agreement between the authority and the person or persons by whom the obligation is enforceable.

Section 106A enables modification or discharge to be achieved either by an agreement with the Local Planning Authority (which must be executed as a deed), or by an application to the Local Planning Authority.

- 2.2 For obligations entered into after 6 April 2010, an application can only be made after 5 years beginning with the date the obligation has been entered into to. However, the Council may (at its own discretion), agree to vary obligations to a legal agreement within this period. In this case, as the original obligation was made within the last 5 years, an obligation can only be modified or discharged through an agreement with the Local Planning Authority (which must be executed as a deed). In such cases, there is no right of appeal under section 106B if any application is refused.
- 2.3 The proposed change to the Section 106 Agreement relates to the provision of playing pitches associated with the development which is considered in more detail below.

3. Background

- 3.1 The application site is allocated within the Aligned Core Strategy under Policy 2 (The Spatial Strategy). Gedling Borough Council prepared and adopted a Development Brief Supplementary Planning Document for the Top Wighay Farm site in 2017.
- 3.2 In 2020, Nottinghamshire County Council submitted an outline application for mixed-use development comprising; 805 homes, land for employment purposes (up to 49,500m² of B1/B8 uses), a Local Centre comprising A1-A5, B1(a) and D1 uses (up to 2,800m²), a 1.5 form entry Primary School and associated infrastructure, open space and landscaping (EIA Development) (REF: 2020/0050).
- 3.3 The resolution to grant planning permission was made by Gedling Borough Councils Planning Committee in March 2021 and the outline application was subsequently granted permission on 25th March 2022 following the completion of the S106 Legal Agreement.
- 3.4 Permission was granted subject to conditions which require the development be carried out in accordance with details provided at the outline stage including an Illustrative Masterplan and Parameter Plan. These plans set out where certain land uses would be located on the wider site and how much be provided.
- 3.5 The Legal Agreement is made in a standardised Section 106 Agreement format with definitions set out at the start of the Agreement and the necessary provisions set out in following Schedules, which are:

Schedule 1 – Primary School Contribution and School Land Transfer

Schedule 2 – Affordable Housing

Schedule 3 – Employment and Skills Plan

Schedule 4 – Primary Healthcare Contribution

Schedule 5 – Provision of Open Spaces

Schedule 6 – Bus Contribution, toucan Crossing Contribution, Cycle Way Contribution and Travel Plan Monitoring fee

Schedule 7 – Re-assessment of viability
Schedule 8 – Viability Review Mechanism
Schedule 9 – Plan 1 – Site Plan
Schedule 10 – Plan 2 – Illustrative Masterplan with drawing number P19-0346 007 Sheet no.1 Rev K.
Schedule 11 – Plan 3 – Plan D – Green Infrastructure Plan
Schedule 12 – Plan 4 – Primary School Lane
Schedule 13 – Draft Decision Notice
Schedule 14 – County Land Plan

- 3.6 Since the grant of planning permission, Nottinghamshire County Council gained full planning permission for the erection of an office building on the land identified for employment development within the outline planning permission (Application Ref:FR3/4371). This development has started and due to be complete at the end of 2024.
- 3.7 Separately, prior to the submission of the outline application, Strata Homes also obtained full planning permission for the erection of 38 dwellings on land adjacent the site, to the east along Wighay Road. This development is complete and fully occupied.
- 3.8 More recently, Countryside Partnerships have now submitted the reserved matters application (pursuant to the approved outline application) for 763 dwellings within the residential parcels as shown under Parameter Plan P19-0346_005 Revision D, including bell mouth entrances for the School and Local Centre, Public Open space, comprising of informal games area, 3No. LEAP, 1No. Community Hub/MUGA and Allotments, and associated infrastructure – reference 2023/0872. This application is currently pending subject to the outcome of this Deed of Variation application.

4. Proposals

- 4.1 Nottinghamshire County Council have made a request to change the existing Section 106 Agreement (the Agreement) at Top Wighay Farm.
- 4.2 The original Agreement, dated 25th March 2022, and was made between Gedling Borough Council and Nottinghamshire County Council in respect of an application for outline planning permission for; mixed-use development comprising; 805 homes, land for employment purposes (up to 49,500m² of B1/B8 uses), a Local Centre comprising A1-A5, B1(a) and D1 uses (up to 2,800m²), a 1.5 form entry Primary School and associated infrastructure, open space and landscaping (EIA Development) (REF: 2020/0050).
- 4.3 It is stated by the applicant that it is not possible to deliver all the proposed open space requirement as indicated in the Agreement because there is a conflict with the requirement of Paragraph 1 of Schedule 5 as it necessitates the submission and approval of an “Open Spaces Scheme”. The Open Spaces Scheme is defined as a scheme to be submitted to and approved in writing by the Council pursuant to Schedule 5 which gives details of the Open Spaces. These include:

allotments, Community Hub, Local Equipped Area for Play (LEAP), Local Wildlife Site, a sustainable urban drainage system (Suds) and crucially Playing Fields.

- 4.4 The playing fields themselves are defined as being *“two full size football pitches including run-off areas to be provided on the site in accordance with the relevant approved subsequent application in the location identified on Plan 2 or such alternative location.”*
- 4.5 When the land requirements for all the typologies is added together, the space required to deliver the “Open Spaces” far exceeds the space available within the open space areas of the approved Illustrative Masterplan. As it is a requirement for both the Open Spaces to be provided and for them to be provided “as defined on Plan 2 and Plan 3”. It is not possible to comply with both stipulations as there is not the physical space to deliver the number of houses and provide the level of open space required by the wording of the Agreement.
- 4.6 It should be noted that there would be no less open space provided compared to the approved outline application and associated illustrative masterplan. The matter relates to not being able to fit 2 full sized football pitches on to the defined area of open space that is the main consideration of this application. Condition number 3 on the outline application also states that the development should comply with the illustrative masterplan.
- 4.7 The Deed of Variation proposes to amend the specific definition of “Playing Fields” within the Agreement as detailed above. It is proposed to amend this definition to: *“Playing Fields – means two 11 year old/12 year old (9v9) pitches including run off areas to be provided on the Site in accordance with the relevant approved Subsequent Application in the location identified on Plan 2 or such alternative location approved in a Subsequent Application which shall be provided in accordance with an approved Open Spaces Scheme and this Schedule 5.”*
- 4.8 The definitions proposed align with the size and specification of the provision being proposed by Countryside Partnerships within their current reserved matters application, and this is the only definition which requires amending as all other definitions are accommodated within the masterplan.
- 4.9 Importantly, the applicant confirms that the delivery of these provisions has therefore been tested at detailed design stage and are feasible and deliverable. They have taken account of a detailed drainage strategy for the site and particularly the attenuation proposals adjacent to the central open space area (where the proposed pitches are located). The approved illustrative masterplan was informed by a site wide drainage strategy developed at the time of the outline submission. However, detailed calculations have now revealed that the storage requirements within the area of the central open space significantly exceed the space shown on the illustrative masterplan. However, Countryside Partnerships

have a design solution in place which is to create underground cellular tanks to accommodate additional storage and therefore the basin can remain mainly as indicated on the Illustrative Masterplan.

5. Consultations

- 5.1 Public consultation has been undertaken on the proposed modifications via a press notice. No public comment has been received.
- 5.2 It should be noted that there is no statutory requirement to carry out public consultation on an application under Section 106A to modify or discharge existing planning obligations. However, given the nature of development Sport England have been consulted about the proposals.
- 5.3 Sport England have responded to state that they object to this application as it would not meet their objectives. They explain that “the occupiers of new development, especially residential, will generate demand for sporting provision. The existing provision within an area may not be able to accommodate this increased demand without exacerbating existing and/or predicted future deficiencies. Therefore, Sport England considers that new developments should contribute towards meeting the demand that they generate through the provision of on-site facilities and/or providing additional capacity off-site. The level and nature of any provision should be informed by a robust evidence base such as an up-to-date Sports Facilities Strategy, Playing Pitch Strategy or other relevant needs assessment.”
- 5.4 They conclude that the Gedling Playing Pitch & Outdoor Sports Strategy (PPS) (2023) identifies current shortfalls in adult grass football pitches, senior rugby union pitches and cricket pitches and future shortfalls in all sizes of football pitch, senior rugby union pitches and cricket pitches. The PPS also states that in total 2.61 pitches would be required to meet the demand across the sports/pitch types, with the capital cost of providing this estimated at £379,846 in addition to lifecycle costs of £56,159. In addition, 3.18 changing rooms will be needed at a predicted cost of £612,931. It should be noted that the youth football pitch type groups together demand for youth 11v11 and 9v9 pitches.
- 5.5 To resolve the matter, they state that a suitable financial contribution towards sports provision within the local area should be agreed to mitigate the reduction in outdoor sports provision proposed on-site.
- 5.6 The Borough Council’s Parks and Open Space team have also been consulted. They comment that for pragmatic reasons they consider that Gedling Borough Council should accept this change, the main reason being that 2 x 11 a-side pitches do not fit onto the approved area of open space consented in the outline application. Sport England’s consultation comments are recorded for note, but they cannot foresee at the stage in the proceedings how this lack of available land, situation that has arisen can otherwise be resolved.
- 5.7 They also state that should further development to the north of the overall development site come forward through the Greater Nottingham Strategic Plan, it would allow for an extension to the recreation ground (as approved) which, could potentially allow a small changing facility and additional playing pitches to be delivered, effectively extending the proposed provision..

6. Assessment

- 6.1 The effect of the proposed amendment is to provide two sports pitches which meet the needs of younger sports players (around 11 and 12 year olds) who play on smaller pitches with less players (9 versus 9) instead of providing two larger adult pitches which would cater for adult matches of 11 versus 11.
- 6.2 In the consultation section of committee report 2020/0050, presented to Planning Committee in March 2021, the report does not reference a need for two full size pitches, and instead, states that “The details as submitted and as shown on the indicative layouts* would appear acceptable; however, greater detail would be required at the reserved matters stage to ensure that the requirements are met”. (The Illustrative Masterplan also referred to in these comments has always shown two junior pitches).
- 6.3 Similarly, paragraph 7.29 “Planning Obligations” of the Committee Report outlines the requirement for Public Open Space and references the need for “Sports Pitches” but makes no reference to the size explaining that the “final details of the POS to be provided on-site would be agreed through the reserved matters applications and be based around the masterplan”. This paragraph goes on to report compliance with Policy LPD21 and the New Housing Development SPG for Open Space Provision.
- 6.4 From a planning policy perspective, Policy LPD 21 – Provision of New Open Space requires residential development of sites 0.4ha and above to provide a minimum of 10% open space but states that the form of new open space provision will be assessed on a site-by-site basis depending on local needs. There is no reference to full sized sports pitches within Policy LPD21.
- 6.5 The New Housing Development SPG for Open Space Provision (adopted in 2001), under section 3.3 also states that: “The general requirement for 10% of the gross site area is a minimum provision but the Local Plan is not able to stipulate detailed matters such as the location and design of the open space or financial matters.” Furthermore, at section 3.4, it states that: “For development over 400 dwellings, the exact formal sport field requirements will need to be assessed on an individual basis and may be stipulated in a development brief.” No part of the New Housing Development SPG for Open Space stipulates the size of formal sports pitches required for the development proposed in application 2020/0050 (up to 805 dwellings).
- 6.6 In respect of the Top Wighay Farm Development Brief SPD which sets out the development and design principles for the site and was a strong material consideration in the determination of the outline planning application, it is stated (in Section 6 – Development principles) that, its 3.94ha of the site is expected to be brought forward as Open Space and that “The additional public open space

to be provided should be in line with the indicative site layout in Plans B and D*. It should include sufficient land for recreational use, including informal play space, allotment land and children’s play areas”. It should be noted that the approved Illustrative Masterplan detailed two junior pitches to accord with the principles of Plan B “Concept Plan” and Plan D Green Infrastructure Plan.”

- 6.7 Gedling Borough Council published a new Playing Pitch & Outdoor Sport Strategy (September 2023). The Strategy was not available at the time of the consideration of the outline planning application and was not a material consideration. However, the Strategy would now be a material consideration when considering the appropriate approach to mitigation from the development with regards to increased pressure on sports pitches (as referenced by Sport England).
- 6.8 The Strategy reviews the quality and usage of existing provision within the Borough and then forms a view as to whether there is existing capacity or capacity could be created at existing sites. It then suggests an Action Plan is created on a site by site basis to address the key issues identified in the Assessment Report. It concluded that “the current and future shortfalls identified can in most instances be met by better utilising existing provision, such as through improving quality, installing additional sports lighting, improving ancillary facilities and enabling access to existing unused sites, such as schools. However, there is also a requirement for new provision in relation to rugby union pitches and cricket squares at some club sites”.
- 6.9 Specifically in relation to Top Wighay table 6.4 estimates the demand for new pitches as detailed below.

Table 6.4: Estimated demand and costs for new pitch provision (for scenario two)

Pitch type	Estimated demand and costs for new pitches			Changing rooms	
	Number of pitches to meet demand	Capital cost ¹³	Lifecycle Cost (per annum) ¹⁴	Number	Capital cost
Adult football	0.33	£35,348	£7,459	0.66	£127,086
Youth football	1.18	£102,577	£21,541	1.52	£292,891
Mini soccer	0.61	£18,529	£3,891		
Rugby union	0.21	£35,087	£7,509	0.43	£82,783
Rugby league	-	-	-	-	-
Cricket	0.16	£54,254	£10,959	0.32	£62,063
Hockey	0.01	£11,779	£365	0.03	£5,170
3G	0.11	£122,272	£4,435	0.22	£42,937

- 6.10 It should be noted that that there is greater demand for youth football pitches (i.e. 9 a side pitches) than there is for adult football pitches (11 a side). It should also be noted that the number of pitches to meet demand for adult football pitches is 0.33. The Strategy explains that if the figure is less than 1 then it is not necessary to provide a new pitch as there is not the demand for it. There is demand

however for a youth football pitch and 2 would be provided as a result of this application.

- 6.11 The comments from Sport England focus in Gedling-wide statistics and not locally for the development of Top Wighay Farm and Linby, as detailed in the table.
- 6.12 The request by Sport England to provide a financial contribution for off-site sport facilities is therefore not considered to be reasonable. Not only has no specific facility been indemnified, no amount has been suggested. Even if it was, the original outline planning application was subject to a viability assessment which concluded that if all the contributions were agreed there would not be sufficient capacity to provide all of the affordable housing. As a result, a reduced capacity of affordable housing was agreed (17.6%). Should further contributions be necessary, the entirety of the viability would need to be revisited which would likely result in a lower provision of affordable housing across the site.

7. Conclusion

- 7.1 It is recognised that there is a need to deliver open space provision as a result of the approved development and that all parties agree that anomalies are present within the existing Agreement.
- 7.2 It is considered that there are exceptional circumstances for the proposed change to the Agreement to be supported in this instance, as detailed out above. This offers greater public benefit by ensuring the public open space, and in particular the sports pitches, are delivered in a manner that meets local need.
- 7.3 The benefits of the development are considered to outweigh the harm associated with the scheme.

Recommendation: That the Head of Development and Place and the Monitoring Officer, be authorised to enter into a Deed of Variation as detailed in the report.