

# OFFICER REPORT

**Application Ref:** N/A (related to: EPF/2924/20 & EPF/0917/21)

**Application Type:** S106 Deed of Variation

**Applicant:** Qualis Commercial Ltd

**Case Officer:** Nick Finney

**Site Address:**

- Bakers Lane Car Park, Bakers Lane, Epping CM16 5BD; and
- Former School, Centrepont Building and Council Depot Land at St John's Road, Epping, CM16 7JU.

**Proposal:** Deed of Variation to cross-site s106 Legal Agreement

**Ward:** Epping Lindsey and Thornwood Common

**Parish:** Epping Town Council

**View Plans:** No plans to view

**Recommendation:**

Approve Deed of Variation by varying the wording that links the delivery of development on the St John's Road site with that on the Baker's Lane site by replacing the words 'Substantial Implementation' with 'Committed Delivery', including a definition of "Committed Delivery"

***This application is before this committee since it relates to a 'major' development where the Council is a landowner as defined in Article 10 of the Constitution.***

***The St John's Road site has been transferred from Council ownership to Qualis Commercial Ltd, however given that this is a wholly owned company of the Council, the proposal is considered to meet the DDMC terms of reference.***

**Description of Proposal**

This Deed of Variation proposal seeks to amend the cross-site s106 Legal Agreement to vary the wording that links the delivery of development on the St John's Road site with that on the Baker's Lane site. Within the Local Plan Submission Version 2017 (subsequently carried through to the adopted Local Plan 2022-2033), the Bakers Lane site is allocated for residential development and the St John's Road site for mixed use leisure and commercial development. The proposed loss of the residential allocation on Bakers Lane to be replaced by a new Epping leisure centre was remedied via the use of St John's Road as a donor site where the housing delivery numbers were to be made good.

This issue was considered at paragraph 14.35 of both the St John's Road (EPF/0917/21) and Bakers Lane (EPF/2924/20) committee reports (District Development Management Committee 27.10.21) as follows:

*These material considerations on their own do not balance against the overriding need to provide housing delivery. The loss of housing is to be given significant weight that if not mitigated would result in the proposal being an unacceptable departure from the LPSV. A mitigation however has been secured via the proposed development of the Land at St John's Road site for 184 new dwellings. This site is proposed to act as a 'donor site' site and will meet and exceed the shortfall by*

*providing at least 112 dwellings (78 dwelling shortfall plus the 34 dwelling allocation on St John's itself). The Legal Agreement Heads of Terms set out in this report include the placement of a restriction on the implementation of the Bakers Lane development until such time as substantial implementation on the Land at St John's Road site for a residential development of at least 112 dwellings.*

The definition of substantial implementation was not considered during the Committee determination. This requirement was however set out within the overarching cross-site s106 Legal Agreement subsequently concluded as follows:

*"Schedule 1*

*4 Bakers Lane Development and St Johns Development linkage*

*4.1 In relation to the Bakers Lane Application Site only, the First Owner covenants with the County not to implement or cause or permit or suffer Implementation of the Bakers Lane Development (save for the Permitted Below Ground Works) until the Council has served the St Johns SI Confirmation Notice....."*

The St Johns SI Confirmation Notice follows Substantial Implementation, which is defined as follows:

*"Substantial Implementation means completion of all demolition works necessary to carry out the St Johns Road Permission and completion of the foundations (including all services), ground floor slab, and erection of the frame up to the first floor of the Blocks shaded pink on the St Johns Road Block Plan (or such alternative block(s) as agreed in writing by the Council provided that the block(s) shall contain a minimum of 78 Dwellings) to be constructed pursuant to the St Johns Road Permission and Substantially Implemented shall be construed accordingly. "*

Epping Forest District Council which are taking forward the delivery of the new Epping leisure centre on the Bakers Lane site are therefore currently reliant on the delivery of development on the St Johns Road site being undertaken by Qualis Commercial Ltd before any substantive works can commence. The current Qualis development programme on the St Johns Road site is not anticipated to deliver the required stage of development for the quantum of homes for a number of years. The new Epping leisure centre however is being brought forward at an earlier stage with site preparatory works intended to commence shortly after the opening of the new Cottis Lane car park.

As a result, Epping Forest District Council in discussion with Qualis Commercial Ltd have sought a deed of variation to the cross-site s106 Legal Agreement.

It is proposed that while the cross-site linkage between the Bakers Lane and St Johns Road sites is maintained that it is modified to better align with current understanding of the development programme. It is proposed to replace the words '**Substantial Implementation**' with '**Committed Delivery**' and make any consequential amendments to ensure the inserted phrase works grammatically and procedurally. The definition of 'Committed Delivery' would be included as follows:

*"Committed Delivery means completion of all demolition works and site clearance necessary to carry out the St Johns Road Permission and the completion of contracts to commence the development and Committed Delivery shall be construed accordingly."*

### **Relevant Planning History**

The relevant planning history to this proposal is the five planning applications submitted by Qualis Commercial Ltd for development in Epping town centre comprising:

- Bakers Lane Car Park / EPF/2924/20 / Approved 25.02.22
  - Full application for the redevelopment of existing surface level car park to provide a leisure centre to include swimming pool, gymnasium, sports hall, squash courts and studio (mixed Class E (d) and F.2 (d)) together with disabled parking provision, new vehicular and pedestrian access, all hard and soft landscaping, and associated works.
- Cottis Lane Car Park / EPF/2925/20 / Approved 25.02.22
  - Full application for the redevelopment of existing surface level car park comprising the demolition of public toilets and the construction of a multi-deck car park, cinema (sui generis), commercial floorspace (mixed Class E), replacement public toilets and cycle store, all associated plant, together with new vehicular and pedestrian access, all hard and soft landscaping, and associated works.
- Former School, Centrepoint Building and Council Depot Land at St John's Road / EPF/0917/21 / Approved 25.02.22
  - Redevelopment of the former school buildings and depot. Demolition of five buildings and the retention of three locally listed buildings. Development to comprise erection of new apartment buildings and the conversion, extension and change of use of the existing locally listed Centrepoint building and Cookery School to provide a mix of residential units (Use Class C3) and ancillary communal amenity areas. Extension and refurbishment of two existing locally listed semi-detached caretaker cottages. Revised vehicular and pedestrian access from St Johns Road and new pedestrian access from High Street, all associated car and cycle parking, servicing, hard and soft landscaping and associated works.
- Epping Sports Centre / EPF/0918/21 / Approved 25.02.22
  - Redevelopment of existing Sports Centre and car park. Demolition of existing Sports Centre. Development to comprise a new apartment building and houses to provide a mix of residential units (Use Class C3), new vehicular and pedestrian access from Nicholl Road and new pedestrian access from Hemnall Street, all associated car and cycle parking, servicing, hard and soft landscaping and associated works.
- Civic Offices, Conder Building and Car Park / EPF/0919/21 / Approved 25.02.22
  - The redevelopment of the existing office building and car park. Demolition of the existing office building and alterations to connection to existing Listed Civic Centre. Development to comprise new apartment buildings and houses to provide a mix of residential units (Use Class C3), revised vehicular and pedestrian access from High Street, all associated car and cycle parking, servicing, hard and soft landscaping and associated works.

The five sites were considered collectively for the purposes of the planning assessment undertaken during their determination. As a result, a number of linkages between the developments were established (and secured via a cross-site s106 Legal Agreement) to ensure the appropriate sequencing of development and that the objectives of the site allocations within the Local Plan were secured.

**Consultation**

None required.

**Main Issue and Consideration**

Section 106A of the Town and Country Planning Act 1990 (as amended) states that a planning obligation can be modified or discharged by agreement (at any time) between the appropriate authority and the person or persons against whom it is enforceable.

Subsequently to the original drafting of the s106 Legal Agreement Qualis Commercial Ltd have shown intent to bring forward the St Johns Road development having undertaken a programme of site demolition and site preparation. In addition, a number of pre-commencement planning conditions have been discharged to enable the first phase of the development to commence. It is understood that Qualis are in the process of agreeing contracts to commence the first phase of the development that will comprise Block G on the former Council depot element of the site fronting Epping High Street. Qualis have also shown intent to deliver residential properties elsewhere in Epping with the Civic Offices/Conder Building development having commenced.

While a stricter form of control was originally felt appropriate, the progress on site demonstrated by Qualis and the revised information on the respective development programmes provides a material basis to consider a change to the wording to ensure development can commence.

In addition the delivery of the new Epping leisure centre is a priority for the Council and the material planning benefits it will deliver could be put in jeopardy if the development was held back at the current time.

**Conclusion**

It is considered that the obligation continues to serve a useful purpose but can serve that purpose equally well if the proposed modifications set out are put into effect.