

Report to District Development Control Committee



**Epping Forest
District Council**

Date of meeting: 6 July 2009

Subject: Section 106 Agreement - Grange Farm, High Road, Chigwell – Request for Variations.

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Recommendation:

That the committee resolves:

Either:

(1) That No change be made to the terms of the current Section 106 Legal Agreement;

Or:

(2) To agree in principle to the relaxation of the Section 106 Agreement, and to set out details to enable and authorise officers to prepare and complete the necessary Deed of Variation in accordance with the committee's decision and requiring the original terms regarding payments and timing of contributions to be reinstated if the 20th dwelling has not been completed by 30 June 2012.

1. This item was deferred by the Committee from the last meeting of DDCC held on 9 June 2009 in order to allow for the provision of additional information and seek observations from the Director of Finance & ICT.

2. Prior to the last meeting, Byrne had supplied figures and information on the viability of the development, but with little supporting evidence. Officers felt that in the absence of such evidence some financial questions should be put to Byrne, to give them the opportunity to substantiate their figures. The Director of Finance & ICT conducted a brief review of the figures and highlighted 4 areas where additional information was needed. These questions and Byrne's responses are attached in the Private and Confidential papers appended to this report. This also includes supporting documents, and observations from the Director of Finance and ICT.

3. Since this item was reported to 9 June meeting, Byrne have updated their proposal and are now requiring that only the £10,000 contribution for contaminated land be removed from the Section 106 Agreement and that the contributions for affordable housing and for education be deferred until the 29th of the approved 32 houses are built.

4. The original report is attached below.

Background

1. Since 2002 there has been outline planning permission to redevelop the core area of the former holiday and camping centre at the above site for residential development in this Green Belt location. On 20 December 2006 after protracted negotiations a S106 Agreement was completed and a renewed planning permission EPF/2190/05 was granted subject to a number of conditions.
2. Byrne Estates (Chigwell) Ltd ('Byrne') purchased the core area from Grange Farm Centre Trust ('GFCT'), who retained ownership of the remainder of the overall site, and in 2008, a detailed residential layout for 32 large detached dwellings was approved under a reserved matters application.
3. Part of the special circumstances that justified the grant of planning permission for residential development was the completion of a Section 106 Agreement. The Agreement provided for access and road improvements to the site and a package of measures to bring about rehabilitation works and create an area of nature conservation and formal and informal recreation on the remainder of the Grange Farm land, outside of the core area, including a sports pavilion and interpretation centre. The Agreement also secured a number of other community benefits for the area, including contributions for transportation, education, contaminated land assessments and affordable housing (see appendix).
4. Under the Agreement, the rehabilitation works and the sports field works are to be carried out by the Developer - Byrne, and the Sports Pavilion and Interpretation Centre are to be constructed by GFCT before it is then leased to Chigwell Parish Council to manage and maintain.
5. The threshold for payment of the maintenance sums, Sports Pavilion and Interpretation Centre contributions, which are to be passed to GFCT and then to Chigwell Parish Council (CPC), as well as the contamination land assessments and affordable housing is that half is payable prior to implementation of the houses and the remainder prior to occupation of the 20th house. The Education and Transportation contributions are both required in their entirety prior to implementation.
6. Work has commenced on the clearing of the core area, ready to begin the residential development, but firstly the road improvements, including a new roundabout and upgrade of the access road from the High Road were carried out and are near completion. Some rehabilitation works have also commenced and land levelled and cleared for the two sports pitches.

Revised Proposal

6. Byrne have now written to the Director of Corporate Support Services seeking variations to the Agreement aimed at cost reductions because their funders are withholding funding of the development until the budget is reduced in view of the changed financial environment. They outline that over time, costs have risen in respect of carrying out the open space and parkland works by £250,000, that the roundabout access works cost increased by approx. £1,000,000 over estimate and the economic downturn has resulted in the development being placed in jeopardy.

7. They are proposing the following, as summarised on the appendix sheet:

Commuted Sums: - Byrne are proposing to defer payments of £399,400 maintenance sums (including the £307,400 Open Space Commuted Sum) as well as the Sports Pavilion and Interpretation Centre commuted sum so that they are not payable until completion of the 20th house and therefore there will be no payment prior to implementation.

Sports Pavilion:- (total contribution sum of £695,000); Ardmore the construction company associated with Byrne are agreeing to build the sports pavilion rather than the GFCT at a discounted construction cost to reflect this contribution and spread it over the course of the construction of the pavilion, rather than provide the full lump sum at the beginning of construction.

Other Payments:- Byrne have already paid the Transportation Payment of £130,000 to ECC, but because of their current funding position, the Affordable Housing payment (£280,000), Contaminated Land Sum (£10,000) and Education Contribution (£90,000) are not “currently viable”. They are suggesting that £90,000 of the Transportation payment be transferred and cover the Education contribution, leaving the remaining balance of £40,000 as the Transportation contribution. They state that the affordable housing payment is unviable and that the contaminated land sum is not necessary.

8. GFCT have through their solicitor by letter dated 17 March 2009 confirmed that it is in agreement with these suggestions.
9. Officers requested from Byrne more information on the viability of the development to justify the rescheduling and reductions in financial payments. This has been supplied and subsequent anomalies queried by the Director of Finance (see para.15 below).

Consultation Responses

10. Essex County Council Planning & Transportation consider that the Transportation sum was appropriate for a development of this nature and size and that the change in circumstances necessitated by the funder of the development should not alleviate the need for highway mitigation. However, they would be willing to return the Transportation contribution for a temporary period and not require its repayment (index linked) until the completion of the 20th dwelling if this were to assist with cash flow.
11. The Director of Housing points out that the requirement for the provision of affordable housing on large development schemes is a policy in the Adopted Local Plan. In the case of a financial contribution, this is worked out as equivalent to the subsidy that the developer would provide if the affordable housing was provided on site. Therefore the £280,000 was always grossly less than the Council would have ordinarily accepted, mainly because it was part of a package of other community benefits. The Director of Housing objects to a reduction in the contribution. If there is to be any compromise made, it would be to defer the payment, but if not implemented and completed by specified dates, then revert back to the current terms of the Section 106 Agreement.

12. Essex County Council Schools Department have confirmed that they are not happy to forego the Education contribution as there is a justified need associated with a development of this nature and location.
13. The Contamination Land Sum payment was agreed to aid in the funding of assessing the decontamination of the site and other sites. Since the planning application was granted, there is now a Planning Directorate budget for the Council to use a named consultant to assess any submitted contamination remediation reports. Such reports have been submitted by Byrne's consultants to the Council as part of a planning condition attached to the permission, but predominantly as a result of the quality of the submission, this has already involved expense within the thresholds of the £10,000.
14. The consultees on the planning application, including Chigwell Parish Council, have been consulted on Byrne's proposed deferment and waiving of payments, but this report has been prepared before the deadline for any responses have been received. Should representations be made they will be verbally reported to the meeting.
15. Byrne has provided certain financial information to the Council which, due to its commercial nature, is to be treated as private and confidential. Officers have reviewed the information and raised issues on some of the figures. Explanations have been provided. However, without a full investigation and analysis of all the background information which form the basis of the figures provided, officers are not really in a position to advise members whether the viability of the scheme is seriously threatened without the £400,000 savings and restructure of payments to provide cashflow.

Officer Comments

16. Officers recognise the importance of the proposed development. It was a key policy in the 1998 Local Plan to return the bulk of Grange Farm to a public recreational facility allowing some redevelopment of the core area. Indeed, work has already taken place for this site needing a great deal of 'front loading' before any return could be expected by the developer. For example the road and the roundabout access have been carried out at the developer's expense before work has begun on constructing the houses. It is considered that in the wider interest, the Council should work on encouraging the scheme to a conclusion.
17. **Commuted Sums:** As already stated, part of some contributions in the Agreement were to be paid upon completion of the 20th house and Byrne wishes to defer these further payments until that trigger. The commuted sums for maintenance of the open space, the access way and for plant defects were to be paid half up front prior to commencement and the balance upon completion of the 20th house. The need for these payments upfront was to reflect that the open space and its access would be provided before the housing development commenced and there could be call upon these sums before completion of the 20th house. However, so long as GFCT will undertake to provide any necessary funds in the interim, which they have indicated they are prepared to do, there would appear to be no adverse consequences of deferring payment.

18. **Sports Pavilion:** No objection is raised to the arrangements of Ardmore carrying out the construction. However, the figure quoted includes a sum of £250,000 that was to have been used by Chigwell Parish Council on general community projects at Grange Farm. It needs clarification from Chigwell Parish Council that it intended using this sum entirely on an upgraded pavilion and associated facilities. At the time of preparing this report, the Parish Council had not formally agreed to this sum being used entirely for that purpose. It is also understood that there will be a loss of grant funding if there is a delay in the sports pavilion being constructed although officers are not aware of the details of the funding or its terms.
19. A concern is that whilst the Councils (EFDC and ECC) are being asked to consider a reduction in the payments they are to receive, the GFCT, who received a large sum on the sale of the core area and will be receiving significant contributions under the Section 106, is not being asked to make any major concessions. When the Section 106 was being negotiated, the developer's financial contribution towards the cost of the GFCT constructing the Sports Pavilion and an Interpretation Centre reflected the anticipated costs of constructing such a building, in accordance with specification set out in the Agreement. However, the GFCT has commissioned a much higher specification building with higher costs (in the region of £2.3m) that combines both the pavilion and interpretation centre in one building as well as a caretaker's flat. Planning permission has been granted for this building. Reducing the cost of the Sports Pavilion building more towards the originally envisaged specification without the need of a developer's contribution to its construction would mean there would be no requirement for the Councils to forgo the Affordable Housing, Transportation, Education and Contaminated Land Sum contributions.
20. However, the GFCT have advised that the increase in size has been dictated largely as a result of the combination of the Interpretation Centre with the Sports Pavilion and the need for caretaker's accommodation and the Football Foundation's requirement that accommodation be provided to service 4 pitches together with changing and other facilities for senior, junior and ladies football. The GFCT confirmed that whilst funding will require a significant additional sum from them, a large contribution will be the grant from the Football Foundation if the scheme meets their standards.
- 21.. **Other Payments:** The amounts and distribution of the Transportation and Education sums are entirely a matter for ECC, whilst the Director of Housing has strongly objected to removal of the Affordable Housing payment. The Contaminated Land sum, however, was proposed to go into a general purse to offset the cost of consultants for decontamination assessments, but much of this is now being dealt with in-house and other funding has been identified, although contamination reports relating to this development have involved officer time of about £2,000. There is though a general planning budget for assessing such reports on planning applications and it may be difficult to argue that the payment is a necessity.
22. If the Council and ECC were minded to agree forgoing the Education and the Affordable Housing contributions this could be on the basis that the development is completed by a certain date, so as to avoid the possibility of Byrne obtaining the benefit of these reductions and then 'banking' the planning permission until the financial climate has improved.

Conclusion

23. In general, there has been a great deal of dissatisfaction that Grange Farm has been lost as a public recreation facility and efforts have been made over a considerable period to return the bulk of the site to public use. This latest legal agreement and planning permission was considered to provide that long sought-after opportunity. There would be considerable disappointment if this project failed and the Council should not be seen to put unnecessary obstacles in the way. The decision to forego some of the negotiated benefits must lie with Members.
24. Members therefore have two main options: either to insist that the Agreement in its original form is maintained or to agree that the Agreement can be varied. The variations could include only varying the triggers for payment of the sums or for waiving certain of the sums altogether.
25. The committee is advised that, whilst this is the first request of this type to be received by this Council, the planning technical journals have carried reports of similar requests being negotiated in other parts of the country during this time of financial recession. Clearly, the specific circumstances of each case determines the approach taken, though when a variation has been agreed it is on the basis of a temporary period only to encourage the developer to proceed within a relatively short time frame.
26. As the s106 agreement is less than 5 years old, the obligations can only be varied by consent. There is no right of appeal against the Council's decision but an unreasonable decision could be challenged by any interested party.

APPENDIX

CONTRIBUTION	AMOUNT	PAYMENT DATE UNDER S106	PROPOSED PAYMENT DATE OR CANCELLATION
Accessway Commuted Sum (For future maintenance)	£81,200.00	50% pre commencement 50% on 20 th Unit	All on 20 th Unit
Signage	£15,200	Appointed Date (12 months from date of approval of last reserved matter or 6mths from date of commencement)	No Change
Affordable Housing Sum	£280,000.00	50% pre commencement 50% on 20 th Unit	NO PAYMENT AT ALL
Community Project Sum	£250,000.00	50% pre commencement 50% on 20 th Unit	Contribution held by developer and to be drawn down by developer during construction of pavilion.
Transport Contribution Sum	£130,361.00	Prior to commencement. Sum already paid to ECC	Payment to be used for Education Contribution and balance for Transport.
Contaminated Land Sum	£10,000.00	50% pre commencement 50% on 20 th Unit	NO PAYMENT AT ALL
Open Space Commuted Sum (For future maintenance)	£307,400.00	50% pre commencement 50% on 20 th Unit	All on 20 th Unit
Plant Defect Sum (For future maintenance)	£10,440.00	50% pre commencement 50% on 20 th Unit	All on 20 th Unit
Secondary Contribution (Education)	£89,952.00	Prior to Commencement	EITHER NO PAYMENT OR TO BE TAKEN FROM THE TRANSPORT SUM
Sports Pavilion and Interpretation Centre Building Sum	£440,000.00	Prior to Commencement	Contribution held by developer and to be drawn down by developer during construction of pavilion.
Sports Pavilion and Interpretation Centre Commuted Sum (For future maintenance)	£699,300.00	100% on 20 th Unit	No change