

LOCATION: Underhill Stadium And Hockey Club
Barnet Lane
Barnet
EN5 2DN

REFERENCE: 17/4840/FUL

Received:

Accepted:

WARD: Underhill

Expiry:

Final Revisions:

APPLICANT: Bowmer & Kirkland/ESFA

PROPOSAL: S106 Deed of variation – Underhill Stadium And Hockey Club

It is proposed to vary the wording contained within the section 106 agreement dated 29th March 2018 by agreement between London Borough of Barnet and The Secretary of State for Communities and Local Government in relation to the planning permission which was granted for:

Demolition of the former Underhill Stadium and associated structures and redevelopment of the site to provide a part two, part three storey building for a secondary school and 300 place sixth form, provision of external sports facilities including MUGA, restoration of former sports pitches. Provision of car and cycle parking and landscaping.

Background

This report relates to the need to vary a S106 agreement pertaining to application: 17/4840/FUL, dated 29th March 2018 between the applicant and local planning authority. Application 17/4840/FUL allows for the redevelopment of the site to provide a secondary school.

The consented scheme was approved subject to a Section 106 Agreement which secured a financial contribution of £1,572,472.95 towards the remodelling of the junction of the A1000/Underhill/Fairfield Way. This contribution represented 60% of the total cost of the proposed works with the remaining 40% of the cost provided by the Council.

Paragraph 5.5 of Schedule 3 requires that the Highways Works be completed prior to the occupation of the school. The works were to be carried out by the Council however due to problems associated with Council work programmes, the works will not be completed prior to the first occupation of the school in September 2019.

Consequently, it is necessary to vary the principal agreement dated 29th March 2018 to vary the trigger to allow for the Highways Works to be completed subsequent to the first occupation of the school.

Legal Basis

Government guidance suggests that:

Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see section 106A of the Town and Country Planning Act 1990).

Paragraph: 009 Reference ID: 23b-009-20160519

In practice there is no set process for varying a S106 by agreement. S106 agreements are normally varied when a later planning permission is granted which varies the original planning approval resulting in the need to revise the original S106; in this current situation there is no revised planning application requiring a revision to the original S106, however, there is a need to revise the wording of the original S106 on the basis that the current wording is no longer appropriate.

Consequently a S106a application is not an appropriate vehicle in this case, as the relevant S106 was signed in October 2018 which is less than 5 years ago.

Therefore the requirement is to vary the agreement by agreement between all parties against whom the S106 would be enforceable against. In this case, it is understood that the following parties have interest in the land:

- The Secretary of State for Communities and Local Government

The deed of variation therefore needs to be made between The Mayor and Burgesses of the London Borough of Barnet, and the abovementioned parties.

Policy Background

Policy CS9 of the Barnet Core Strategy (Providing safe, effective and efficient travel) identifies that the Council will seek to ensure more efficient use of the local road network and more environmentally friendly transport networks, require that development is matched to capacity and promote the delivery of appropriate transport infrastructure.

Policies DM17 and CS9 seek that proposals ensure the safety of all road users and make travel safer, reduce congestion, minimise increases in road traffic, provide suitable and safe access for all users of developments, ensure roads within the borough are used appropriately, require acceptable facilities for pedestrians and cyclists and reduce the need to travel.

Assessment

The parent application was approved subject to a S106 obligation requiring that the highways works outlined below be completed prior to the first occupation of the development:

- A1000 Barnet Hill/Underhill/Fairfield Way Junction Mitigation as shown on Drg.No.16011/TA05 Rev B or other approved.
- Barnet Lane/Underhill/Mays Lane Mitigation including uncontrolled crossing point, right turn lane as shown on Drg.No.16011/TA06 Rev A or other approved.
- Works identified in the PERS and CERS Audit subject to approval by LPA.
- Works identified from School 20mph Zone Review subject to approval by LPA.
- Closure of existing crossover access on Westcombe Drive as shown on Drg.No.16011/TA01 Rev C or other approved; and new access and associated footway upgrade works to be agreed. Upgrade of existing vehicle crossover on Barnet Lane to be agreed following investigation by the highway authority.

The S106 mechanism required that the applicant make a payment of £1,572,472.95 towards the aforementioned works, out of a total cost of £2,172,472.95 with the remaining £600,000 to be covered by the Council. The Council were to undertake the works.

Due to delays in the payment being received and delays in work programmes with the Council's contractors, the works will not be delivered prior to the first occupation of the development. In order to ensure that the school can open, the current report therefore seeks authority to vary the trigger to allow for the works to be delivered within 12 months of the first occupation.

The Ark Pioneer Academy School is due to open on phased basis in September 2019 with an initial intake of 180 pupils in Year 7. The school will therefore not be at full capacity of 1,200 pupils until 2025. The junction capacity assessments which informed the proposed mitigation works were predicated on the school at full capacity and as such it is considered that the mitigation would not be fully required until 2025. However, in order to ensure timely delivery of the works and to minimise any additional highway delays resulting from the early phased opening of the school, an extension of 12 months to the trigger is sought. The revised trigger would allow for the works to be delivered during the 2020 summer holidays to minimise disruption.

Highways officers have been consulted on the application and are fully supportive of the proposed approach. It is therefore considered that the proposed Deed of Variation is acceptable and should be approved.

Recommendation

That all parties to the agreement dated 29th March 2018 and any other person having a requisite interest in the site be invited to enter into a Deed of Variation, varying the extant Section 106 Agreement dated 29th March 2018 as set out below:

1. Vary Paragraph 5.5 of Schedule 3 of the agreement to allow for the Highways Works to be delivered within 12 months of the first occupation of the development.

Site Location Plan



