

08/01471/FUL: DEED OF VARIATION TO THE FIRST AND SECOND SCHEDULE OF THE S106 AGREEMENT FOR THE PHASE 1 REGENERATION OF THE WERRINGTON CENTRE - PLANNING APPLICATION REF 08/01471/FUL

APPLICANT: HPG DEVELOPMENTS LTD  
AGENT: SAVILLS L P LTD  
REFERRED BY: HEAD OF PLANNING SERVICES  
REASON: ITEM OF PUBLIC INTEREST  
DEPARTURE: NO  
CASE OFFICER: MRS J MACLENNAN  
TELEPHONE: (01733) 454438  
E-MAIL: janet.maclennan@peterborough.gov.uk

## 1 DESCRIPTION OF PROPOSAL

The proposal seeks approval for a deed of variation to the First Schedule 'Car Parking Provision' and Second Schedule 'Public Art' of the S106 Agreement for the regeneration of the Werrington Centre (application reference 08/01471/FUL).

The Head of Planning Services recommends that the proposed deed of variation to the S106 Agreement is **APPROVED**.

## 2 PLANNING HISTORY

Most relevant history:

Ref	Description	Status	Closed Date
08/01471/FUL	Phase 1 regeneration of Werrington Centre	PER	12.06.09
09/00713/FUL	Construction of Community Car Park	PER	27.08.09

## 3 BACKGROUND

### Community Car Park

Planning permission was granted on 12<sup>th</sup> June 2009 for the regeneration of Werrington District Centre (ref. 08/01471/FUL). The planning consent was subject to a S106 agreement which included a requirement to provide a community car park; defined in the agreement as follows:

*"... a car park of between 80-100 spaces to be provided by the Owner or the Council within the vicinity of the Development for the use of members of the community generally including (but not limited to) staff pupils and visitors as appropriate at the Ken Stimpson School the Werrington Library and the Werrington Sports Centre and Bowls Club"*

In summary, the S106 provides for an 80-100 space car park to be provided to replace the present spaces at the car park at the Werrington Centre used by the Ken Stimpson School, the Werrington Library and the Werrington Bowls Club. Prior to the implementation of planning permission for the regeneration of the Werrington Centre the owners would apply for planning permission to construct the community car park and would progress through a series of 4 options as required by the S106 agreement. The options are as follows:

### Option 1 –

To submit a planning application for the construction of the car park at the Ken Stimpson School. If the Council fails to determine the application within 11 weeks or refuses the application then the owners would progress to Option 2.

#### Option 2 –

To submit an application for the construction of the community car park at the Werrington Bowls Club. If the Council fails to determine the application within 11 weeks or refuses this application then the owners would progress to Option 3.

#### Option 3 –

To submit an application to construct the community car park on Council owned land within 500 metres of the boundary of the Werrington Centre. The Council to identify such land within 4 weeks of the owners informing it in writing that it intends exercising this option.

#### Option 4 –

If the Council fails to identify such land within the time scale or fails to determine the application within 11 weeks or refuses the application then the owners shall pay the Community Car Park Contribution of £177,000 for the Council; to provide the car park within 5 years of its receipt. Any money left over from the contribution would be put towards Public Art. If the Community Car Park Contribution has to be paid under such circumstances the owners will not provide any car parking at the existing Werrington Centre Car Park for use by Ken Stimpson School, the Library and the Bowls Club.

Failure to meet options - If the owner fails to provide the car park or to pay the Community Car Park Contribution by the time of the implementation of the planning permission then the owners will provide the Community Car Park Contribution as above and will provide 100 free car parking spaces at the existing car park for the use of the Ken Stimpson School, Library and Bowls Club for a period of 5 years or if the Council can show that they have made reasonable endeavors to provide the new park until such time as the new car park has been brought into use. In respect of all 3 potential planning applications above the Council is under an obligation to provide all necessary consents and licenses to enable the owners to go upon Council land and do the necessary works.

#### Public Art

The Second Schedule to the S106 agreement provides for a contribution to Public Art. Within 5 working days of implementation of the development the owners are to pay a public arts contribution of £50,000, this is in addition to any money which might be left over from the community car park contribution if it has to be paid.

A planning application was submitted on 2<sup>nd</sup> July 2009 and approved under the Chairman's list procedure on 27<sup>th</sup> August 2009 for the construction of the community car park at the Ken Stimpson Community School site (Option 1) (ref. 09/00713/FUL). The car park would have been located to the far north east of the sports centre on the existing tennis courts and accessed from the existing school entrance. The proposal also included the relocation of the tennis courts to the rear of the sports centre. The proposal was acceptable in all planning respects, however, the applicant has not been able to implement the scheme; primarily due to the PFI interests on the school land which was not explored at the time of drafting the S106 agreement. The provision of the car park would involve a variation of the PFI contract and would incur significant cost implications for the Council along with a lengthy negotiation process and where, at the present time, there is no guarantee that the variation of the contract would be supported by those involved. In addition, the applicant underwent a tendering process and the estimated cost for the provision of the car park and relocation of the tennis courts is estimated at £420,000. The owner is committed to pay £177,000 as a contribution under the terms of the S106 agreement which represents a significant shortfall. The figure was arrived at through discussion with Council Officers and using Spons Civil Engineering and Highway Works Price Book 2009.

The owner envisaged commencing work on Phase I of the regeneration of the Werrington Centre by Spring 2010 and is currently unable to implement the scheme until the community car park issue has been resolved. Although planning permission was granted for the construction of the car park at Ken Stimpson School (Option 1) this option is no longer feasible due to the constraints posed by both the PFI contract and the additional cost involved. Option 3 of the S106 agreement cannot be realised as there is no Council owned land within 500 metres of the Werrington Centre.

## **4 PROPOSAL**

In order to avoid any further delay to the implementation of the scheme for Phase I of the Regeneration of the Werrington Centre it is proposed that a variation to the S106 agreement is approved to allow the owner to progress to Option 4 and for the owner to make the contribution of £177,000 to the Council. The delay to date is not the fault of the applicant and it seems unreasonable to delay further the start of the development. The Council could then provide the car park at the Bowls Club Site (Option 2) subject to budget provision to make up the shortfall. The owner also offers that the claw back be extended from 5 to 10 years.

Internal meetings have taken place and an indicative scheme has been produced by Strategic Property. The scheme is considered acceptable and has been agreed in principle by the Highways Section and Landscaping Team.

The Asset Management Manager had requested funds to provide a car park at the Ken Stimpson School (Option 1) to be identified within the 2010 to 2011 budget, up to the value of £500,000. The provision of the community car park has been highlighted as a priority and would cover all issues including PFI costs. The estimated cost of providing a 100 space car park at the Werrington Bowls Club (Option 2) is £360,000, however this proposes a high specification construction which could be reduced. Discussions are continuing with Strategic Property. It must also be acknowledged that while costs can be reduced, long term maintenance/management of the car park must be considered. It is envisaged that the car park will be managed by City Services. However, these are matters that are the responsibility of the Council rather than the owner.

The owner has always maintained that it cannot enter into an agreement to allow the community car park to form part of the new Centre Car Park as the third party purchaser will not agree to this restriction. However, the owner has made an undertaking that there is no intention to introduce any changes to the present management of the car park in the immediate future while it remains in the ownership of the Howard Group.

Furthermore, it is proposed that the Second Schedule for a contribution of £50,000 to public art to be amended to read 'public art or community projects'. This will enable flexibility and allow for monies to benefit community projects as identified.

## **5 EVALUATION**

Planning permission was granted for Phase I of the redevelopment of Werrington Centre on 12 June 2009. This is a major scheme which will deliver significant benefits to the Werrington area, not least the provision of a roundabout on David's Lane which is known to be a particular accident black spot. The owner entered into a S106 agreement in good faith for the additional car park facility to address concerns raised by Members and the Werrington Neighbourhood Council that the Centre car park would no longer be available for use by the school, sports centre, Library, and so on. In planning terms there was no policy requirement for additional car parking however, the provision of the car park or the contribution by the owner would provide a means to offset any potential parking problems and is a benefit to the users of the community facilities.

At the present time the Centre car park is available for use by these facilities albeit in an informal capacity. The land is not owned by the City Council and this agreement can be revoked at any time or the owner may impose a parking charge. Indeed, if the regeneration of the centre were to be abandoned there is no legal requirement for parking to be provided by the present owner of the Centre car park.

The constraints posed by the planning application process were always considered as a major risk to the owner, hence the 11 week deadline caveat being built into the S106. This gave the owner comfort that within 33 weeks all three applications/options would have been progressed until finally arriving at option 4 whereby the contribution of £177,000 would be paid to the Council. The Council would have a period of up to five years to construct the car park. Had the owner progressed along this route to option 4 there would have been no responsibility for the owner to provide 100 spaces within the Centre.

In accordance with the requirements of the S106 parking provision for 100 spaces within the Centre car park would only be retained should the owner default and commence work without progressing through the various options. It was never the intention of the owner to provide car parking within the Centre for use by the facilities.

It is proposed that the Council provide the car park and deal with the planning process to prevent further delay in the implementation of Phase I. This will also enable the Council to determine the specification of the car park. In any event the contribution of £177,000 will not cover the cost of the car park and so the delivery of the car park will be dependent on funding allocated and agreement within the 2010-2011 budget. The owner is not required to make up the shortfall. It is also acknowledged that the Bowls Club Site (Option 2) is designated as 'Community Related Asset' land and may incur a claw back charge. However, as the land would remain in community use and there will be no financial gain to the Council through charging, it is hoped that the claw back will not apply. Discussions are currently underway with the Homes and Communities Agency and Strategic Property.

The Werrington Neighbourhood Council (WNC) raises no objection in principle to the proposal to construct the car park on the Bowls Club site (Option 2) however, concern is raised over the proposal for the Council to take over full responsibility for its provision and the obligation on the owner being removed from the S106 agreement. WNC argues that the users of the community facilities could be left without parking facilities in the interim period, whilst the original proposals envisaged that the new facility would be in place prior to construction of the store. The situation has now reached an impasse. Option 1 is undeliverable, option 2 will require additional funding and option 3 is not feasible as there is no Council land within 500m of the Centre. The owner has worked closely with Council Officers and has attempted to progress through the options, however it has been demonstrated to the Officers' satisfaction that it will not be possible to provide the car park under the terms of the S106. It was always the intention for the owner to progress to option 4 and to resist the responsibility for providing car parking within the Centre as this would prejudice the overall development.

In addition WNC has no confidence that the Council will deliver the car park and further issues could arise during the planning application process for Option 2. As noted above funds have been identified within the 2010-2011 budget, although the final budget will not be decided until February 2010. Substantial progress has been made on working up an acceptable scheme which has the approval from the Highways and Landscaping Sections. The final specification for the car parking is currently being considered with the objective of making reasonable reductions to the cost without compromising the longevity and subsequent maintenance costs.

## **6 CONCLUSIONS**

The Head of Planning Services recommends that this proposal is APPROVED:

- Variation to the First Schedule 'Community Car Park' to allow the developer to progress to option 4 and make the contribution of £177,000 to the Council; and to the Second Schedule 'Public Art' to include 'Public Art and Community Projects' to the S106 Agreement for Phase I of the regeneration of the Werrington District Centre (ref. 08/01471/FUL)
- The City Council to deliver the Community Car Park on the Werrington Bowls Club Site (Option 2) (subject to final budget being agreed).
- To allow the owner to commence development on Phase I of the Regeneration of Werrington District Centre without undue delay providing benefits for the Werrington Community and the City as a whole.

Copy to Councillors J R Fox, J A Fox, Lane