

MALTINGS LANE, SECTION 106 AGREEMENT

Agenda Item

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Background Papers: Maltings Lane Committee Report, Witham Committee 30/01/2007 – 06/01143/OUT, Page 5 (Deferred Applications)
Financial Implications: As set out in report
Equalities Implications: NA
Legal Implications: NA
Options: Report for Information Only
Risks: NA

EXECUTIVE SUMMARY

On 30th January 2007, Witham Area Committee resolved to grant outline planning permission for the erection of approximately 268 dwellings, B1 Business Park, Primary School, Neighbourhood Centre, Community Facilities, Open Space, Landscaping and Ancillary Infrastructure, subject to a S106 Agreement. Members requested details of the Section 106 Agreement to come back to Committee for final approval before the decision was issued. Since the resolution to grant planning permission, negotiations have been ongoing between officers and the agents acting on behalf of the owners of the site, along with other parties.

In addition to the Heads of Terms for the S106 Agreement, revisions have also been made to the Master Plan for the site. The revisions to the Master Plan were necessitated by the need to have the site for the Community Centre and the Place of Worship next to one another, to enable the buildings to be linked, following Witham Local Committee's decision to select the Bethel Christian Fellowship as the Council's preferred nominee for the Place of Worship site. The revisions have resulted in an amended layout for the neighbourhood centre, wherein some of the sites for the proposed community facilities have been repositioned. Copies of the Revised Master Plan will be available for Members at the Committee.

Below is a summary of the Heads of Terms for the S106 Agreement which have been negotiated and agreed with the Owners.

DECISION

Given the change to the Council's Committee process, the final approval of the Section 106 Agreement is now the responsibility of the Planning Committee. This item has been scheduled for the Planning Committee on 13th May 2008. It is therefore being reported to this Committee for information prior to its consideration by the Planning Committee.

MALTINGS LANE, SECTION 106 AGREEMENT

PHASING AND CONSTRUCTIONAL REQUIREMENTS

- (Residential)
- Not to commence more than 107 Residential Dwellings prior to the 31st March 2010.
- (Retail)
- Not to occupy any more than 50 Residential Dwellings prior to the completion of the Retail units, which shall include one retail unit in a separate building for A1 use only as a food store of a size not exceeding 1,115sqm net sales area and three separate Retail units for A1 to A5 uses of a total size of 140sq.m net sales area. The separate Retail units shall not be amalgamated.
- (Business Park)
- Not to Commence the Development prior to submitting the Business Park Marketing Plan to the Council for approval.
- To include in the Business Park Marketing Plan any reasonable comments as are made in writing by the Council provided that such comments are reasonably required and are made within a period of two months from the date of submission of the Business Park Marketing Plan to the Council.
- To use their reasonable endeavours to implement at its own expense the Business Park Marketing Plan from the date of its approval by the Council.
- To submit the Reserved Matters application for at least one hectare of the Business Park within twelve months of the Commencement of Development.

AFFORDABLE HOUSING

- 30% of the residential dwellings constructed on the site shall be Affordable Housing dwellings provided in accordance with an Affordable Housing Scheme for each phase of the development.
- Unless otherwise agreed in writing by the Council in any phase of the development comprising residential dwellings, 80% of the Affordable Housing dwellings shall be provided as Affordable Rented Housing and 20% of the Affordable Housing dwellings shall be provided as Shared Ownership Housing.
- Not to submit an application for approval of Reserved Matters in relation to any phase of the development comprising residential dwellings or commence a residential dwelling unless and until an Affordable Housing Scheme for the relevant phase has been agreed with the Council.
- Not to occupy more than 40% of the Open Market Dwellings within any phase of the development comprising residential dwellings unless and until at least 60% of the Affordable dwellings to be provided within that phase have been constructed; and
 - The freehold or leasehold interest in any Affordable Rented Housing has been transferred to an RSL and the freehold or leasehold interest in any Shared Ownership Housing has been transferred to an RSL or an RSL and the intended occupier.

- Not to occupy any more than 80% of the Open Market Dwellings within any phase of the development comprising residential dwellings until the remaining Affordable Housing dwellings to be provided have been constructed; and
 - The freehold or leasehold interest in any affordable rented housing has been transferred to an RSL and the freehold or leasehold interest in any shared ownership housing has been transferred to an RSL or an RSL and the intended occupier.

HIGHWAYS AND TRANSPORTATION MATTERS

Part One – Highway Works

- The Highway works shall comprise: -
 - (a) The construction of a new four arm roundabout on Gershwin Boulevard approximately 100 metres from the roundabout junction of Gershwin Boulevard with Hatfield Road;
 - (b) The provision of 2 new bus stops on Gershwin Boulevard between the roundabout referred to in a) above and the roundabout junction of Gershwin Boulevard with Hatfield Road to include raised kerbs, bus shelters, seating, lighting, timetable information, bus stop flag type signs and poles and bus telematics so that the bus stops are available for use by public transport vehicles;
 - (c) The provision of a 2 metre wide footway on the southern side of Hatfield Road beginning at the footway/cycleway at the roundabout junction of Gershwin Boulevard with Hatfield Road and ending where the north western boundary of the Application Area no longer fronts Hatfield Road;
 - (d) The improvements to the junction of Hatfield Road/Bridge Street/Spinks Lane/Howbridge Road as shown in principle on plan ama.maltingslane.1/hrbst1 rev A to include: -
 - i) Widening Spinks Lane approach to the junction to allow for 2 approach lanes;
 - ii) Reconfiguration of the Hatfield Road approach to the junction to incorporate 2 approach lanes;
 - iii) New signal equipment to replace the existing to include the provision of MOVA control facilities to a specification to be agreed with the highway authority for Essex and the payment of a commuted sum to be agreed with the highway authority for Essex for the maintenance of the said signal equipment for a period of 10 years from the date of appropriate maintenance certificate issued under the Highway Works Agreement;
 - iv) A dedicated left turn filter from Hatfield Road into Spinks Lane.
- The owners will not commence any residential dwelling prior to entering into the Highway Works Agreement with the Highway Authority for the Highway Works.
- The owners shall not allow any residential dwelling constructed on the site to be occupied prior to the issue of the certificates of completion under the Highway Works Agreement, for the Highway Works described above in (a), (b), (c) and (d) and the owners will use all reasonable endeavours to complete the Highway Works prior to the 31st May 2009.

- Prior to the 31st May 2009 or the Occupation of the any of the Residential Dwellings to be constructed on the Site whichever is the sooner to complete the construction of the estate roads within the Development that give access to and from the Neighbourhood Centre and which allows the bus service improvement as set out in Part 1 1b) above to include raised kerbs, bus shelters, seating, lighting timetable information, bus stop flag type signs and poles and bus telematics at locations to be agreed by the Engineer so that the bus stops are available for use by public transport vehicles.

Part Two – Footway Contribution

- The owners shall not commence any residential dwellings on the site prior to depositing the Footway Contribution with the Council. The Footway Contribution comprises a financial contribution of £23,000.

Part Three – Public Transport Contribution

- The owners shall not commence any residential dwellings on the site prior to depositing the Public Transport Contribution with the Council. The Public Transport Contribution shall comprise a financial contribution of £45,000.

Part Four – Traffic Management Contribution

- The owners shall not commence any residential dwelling on the site prior to depositing the Part 1 of the Traffic Management Contribution with the Council and to deposit Part 2 of the Traffic Management Contribution with the Council within 28 days of the service of written notice on the owners of the commencement of construction of the Primary School.
- Part 1 of the Traffic Management Contribution comprises a financial contribution of £41,000 and Part 2 of the Traffic Management Contribution comprises a financial contribution of £82,000.

Part Five – Cycleway Contribution

- The owners shall not commence any residential dwelling on the site prior to depositing the Cycleway Contribution with the Council. The Cycleway Contribution comprises a financial contribution of £50,000.

Part Six – Bus Service

- Prior to the occupation of any residential dwelling on the site, the owners shall use their reasonable endeavours to secure the commencement at no cost to the Council of the Bus Service Improvements for a period of 5 years from the first occupation of a residential unit, provided that the Bus Service Improvements shall cease if the cost exceeds £1,200,000.
- The Bus Service Improvements comprises: -
 - The diversion of the existing number 72 bus to serve the Site along Gershwin Boulevard at whatever frequency and hours of operation as shall be agreed between the Council, the Owners and the operator of the said service number 72; and
 - The provision of a new bus service between the Site (on a route to include the Neighbourhood Centre) Witham Town Centre, Witham Railway Station and during off peak hours Morrisons store between 06.30 and 20.00 Monday to Saturday with a minimum frequency of 30 minutes and coordinated with the service referred to in paragraph a) above so as to provide an even frequency service to the Application Area.

Part Seven – Transport Marketing Strategy

- Implement and carry out the Transport Marketing Strategy for a period of 5 years from the occupation of a residential dwelling on the site.
- Not to occupy any residential dwelling on the site until the Transport Marketing Pack has been submitted to and approved by the Highway Authority.
- Not to occupy any residential dwelling on the site unless and until the owners at their own cost have provided the prospective occupiers of each and every residential dwelling on the site with a Transport Marketing Pack.

Part Eight – Travel Plan

- Not to occupy the Business Park prior to depositing the appropriate Travel Plan Fee with the Council, whereupon the Council shall transfer the Travel Plan Fee to the Highway Authority.
- Within three calendar months of the first occupation of any part of the Business Park it will appoint a travel plan co-ordinator who shall be responsible for liaising with the Council and the Highway Authority with regard to the approval and implementation of the Travel Plan.
- To submit to the Council and the Highway Authority a Travel Plan within three to six months of the first Occupation of any part of the Business Park.
- To use its reasonable endeavours to comply with and implement at its own expense and in accordance with an agreed programme the terms of a Travel Plan at all times and to provide all persons employed at the business Park with the Transport Marketing Pack.
- To submit a revised and updated Travel Plan annually on the anniversary of the date on which the first Occupation of any part of the Business Park took place for the first five years from that date.
- To use reasonable endeavours to procure that all leases and licences relating to the Occupation of the Business Park shall include a covenant on the part of the Occupier to comply with the terms of the relevant Travel Plan.

EDUCATION

Part One – First Education Contribution and Second Education Contribution

- The owners shall provide to the Council written notice including information as to the total number and the number of each type of residential dwelling to be built on the site, three months prior to commencement of the 1st residential dwelling on the site; and commencement of the 108th residential dwelling on the site.
- Not to Commence the 1st Residential Dwelling on the Site prior to depositing the First Education Contribution with the Council
- To deposit the First Education Contribution with the Council prior to the Commencement of the 1st Residential Dwelling on the Site
- Not to Commence the 108th Residential Dwelling on the Site prior to depositing the Second Education Contribution with the Council

- To deposit the Second Education Contribution with the Council prior to the First day of April Two Thousand and Ten (01/04/2010) and in any event prior to the Commencement of the 108th Residential Dwelling on the Site.
- The Education Contribution is calculated on the basis of Essex Council's standard formula.
- This agreement and the existing agreement contain provisions for the transfer of the school site to Essex County Council and for its use by the community if a school is built.

ART CONTRIBUTION

- Not to occupy any more than 50 residential dwellings prior to the providing the Art Contribution.
- The Art Contribution comprises EITHER a financial contribution of £100,000 payable to the Council towards a work or works of art, OR the provision of a work or works of art on the site by the developer to the value of £100,000, with a covenant that if the work or works of art are of a monetary value of less than £100,000, the difference is paid to the Council in the form of a financial contribution.

OFF SITE OPEN SPACE CONTRIBUTION

- Not to occupy any more than 107 residential dwellings prior to paying to the Council the Off Site Open Space Contribution.
- The Off Site Open Space Contribution comprises a financial contribution of £40,000.
- The contribution shall solely be for the provision, enhancement, or maintenance of public open space within the administrative area of the town of Witham, with the unexpended balance at the tenth anniversary of the receipt of the Off Site Open Space Contribution by the Council shall be returned to the developer.

COMMUNITY FACILITIES

Part One – Public Open Space

- Prior to the submission of a Reserved Matters application in relation to any phase of the Development comprising Residential Development on the Application Area, areas of the relevant phase reasonably suitable in terms of size, shape, location and drainage as Public Open Space shall be identified and details of such area have been submitted to the Council for approval.
- Within each submission of a Reserved Matters application, a Public Open Space Programme, a Public Open Space Specification and a Public Open Space Maintenance Plan shall be submitted to the Council for approval, and development shall not be commenced until the above specifications and programmes and any reasonable amendments have been agreed by the Council.
- Not to occupy residential dwellings in any phase until: -
 - The Public Open Space for that phase has been laid out in accordance with the relevant Public Open Space Programme/Specification;
 - A Public Open Space Completion Inspection in respect of the Public Open Space for that Phase has been carried out;

- The Council has issued a Public Open Space Completion Certificate in respect of the Public Open Space for that phase.
- The developer to maintain the Public Open Space in accordance with the Maintenance Plan for one year following the issue of the completion certificate.
- Prior to the expiration of one year following the issue of the completion certificate, the developer shall transfer the Public Open Space to the Management Company.
- The Management Company shall maintain the Public Open Space to the reasonable satisfaction of the Council and in accordance with the Public Open Space Maintenance Plan.

Part Two – Community Land

- Prior to the commencement of a residential dwelling on the site, the owners shall identify a site, not less than 0.4 hectares in size, for the Community Land and submit details for approval to the Council. At any time prior to the commencement of development, the Council may instruct the owners that the Community Land shall be located adjacent to the Place of Worship site.
- Prior to the occupation of the first Residential Dwelling on the site and in any event prior to the 31st May 2009 offer to transfer the Community Land to the Council.
- Prior to the occupation of the first Residential Dwelling on the site and in any event prior to the 31st May 2009 the owner may offer to construct at the owners expense a Community Centre on the Community Land in accordance with the Community Hall Specification.
- If the above offer is accepted by the Council, the owners will use their reasonable endeavours to obtain all necessary consents required for the construction of the building and complete the building within 18 months of the receipt of such consents. Once completed, the transfer to the Council will take place within 3 months.
- If the offer referred to above is not made by the Owners, the Owners shall pay the Community Contribution to the Council prior to the occupation of the first residential dwelling on the site. The Community Contribution comprises a financial contribution of £1,400,000.
- If the offer referred to above is made by the Owners, but not accepted by the Council, the Owners shall pay the Community Contribution to the Council on the expiry of eight months from the date of the making of the offer by the Owners or two months from the date the Owners receive written notice of the Council's refusal of the above offer, whichever is sooner.
- If the offer referred to above is made by the Owners, and is accepted by the Council, the Community Contribution shall not be payable.

Part Three – Place of Worship

- Prior to the commencement of a residential dwelling on the site, the owners shall identify a site, not less than 0.2 hectares in size, for the Place of Worship and submit details for approval to the Council. At any time prior to the commencement of development, the Council may instruct the owners that the Place of Worship site shall be located adjacent to the Community Land.
- Prior to the occupation of the first Residential Dwelling on the site and in any event prior to the 31st May 2009 offer to transfer the Place of Worship site to the Council.

Part Four – Health Centre

- Prior to the commencement of a residential dwelling on the site, the Owners shall identify a site, not less than 0.4 hectares in size, for the Health Centre and submit details for approval to the Council.
- Prior to the occupation of the 51st residential dwelling on the site and in any event prior to the 31st May 2009: -
 - Provide to the Council, evidence that a contract has been let for the construction of a Health Centre, which shall result in a Health Centre being constructed and opened on the Health Centre site within two years from the commencement of a residential dwelling on the site; or
 - If no such evidence is provided, offer to transfer the Health Centre Site to the Council or its nominee.

Part Five – Nursery

- The Owners shall use all reasonable endeavours to procure the operation of a Day Nursery on the site prior to the occupation of the 150th residential dwelling on the site.

Part Six – Playing Fields

- Prior to the Commencement of a residential dwelling on the site: -
 - Identify the Outdoor Sports Facilities associated with and ancillary to the Community Land, comprising not less than two football pitches, two tennis/basketball courts and the changing facilities, and submit details to the Council for approval.
 - Prepare a detailed design and specification for the Playing Fields, including the changing facilities, submit the specification for approval and make any amendments to the specification that the Council may reasonably require.
- The Owners shall prior to the Occupation of the 101st residential dwelling on the site and in any event with 30 months of the commencement of a residential dwelling: -
 - Lay out the Playing Fields and the Changing Facilities in accordance with the specification at the owners expense; and
 - Offer to transfer the Playing Fields and Changing Facilities to the Council.
- The owners shall maintain at their own expense in accordance with the Playing Field Specification, the Playing Fields for a period of one year from the date of completion.
- Prior to the completion of the transfer of the Playing Fields to the Council, pay to the Council a commuted sum as a contribution towards the costs of maintaining the Playing Fields, including the changing facilities. The commuted sum shall comprise a financial contribution of £62,000.

Part Seven – Play Areas

- The owners shall not submit an application for reserved matters approval in relation to any phase of the development comprising residential development on the application area unless and until an area of the relevant phase has been identified for outdoor equipped and unequipped play areas.

- With each submission of Reserved Matters submit a Play Area Programme, a Play Area Specification and a Play Area Maintenance Plan to the Council for approval and development shall not be commenced until the above specifications and programmes and any reasonable amendments have been agreed by the Council.
- Not to occupy more than one half of the residential dwellings within a phase until: -
 - The play area for that phase has been laid out in accordance with the relevant Play Area Programme and Play Area Specification;
 - A play area completion inspection in respect of the play area for that phase has been carried out;
 - The council has issued a play area completion certificate in respect of the play area for that phase.
- The Owners shall maintain the Play Areas in accordance with the Play Areas Maintenance Plan for one year following the issue of each Play Areas Completion Certificate, or until the transfer described below has been completed, which ever is the later.
- Prior to the expiration of one year following the issue of each Play Areas Completion Certificate the owners shall transfer the Play Areas to a Management Company and manage and maintain the Play Areas in accordance with the Play Areas Maintenance Plan.

AVOIDANCE OF NUISANCE

- Includes a clause that until the issue of the Certificate of Completion under the Highway Works Agreement for the Highway Works described in Schedule Three, all construction traffic shall enter and leave the Application Area via the temporary right turn lane on Hatfield Road.
- Following the issue of the Certificate of Completion under the Highway Works Agreement for the Highway Works described in Schedule Three, all construction traffic (other than that accessing the area as shown on the Plan edged red) enters and leaves the Application Area from Gershwin Boulevard and not via Hatfield Road or the Blue Land and provided the Highway Authority give their consent to remove the temporary right turn lane on Hatfield Road and carry out reinstatement works at the site of the temporary right turn lane on Hatfield Road prior to the Occupation of the 213th Residential Dwelling on the Site.

CONSIDERATE CONTRACTORS CLAUSES

- Council's standard Considerate Contractors Clauses.

COMMUNITY HALL SPECIFICATION

- This schedule contains a detailed specification for the Community Centre, in the event that the owner offers (and the Council accepts) to construct at the owners expense a Community Centre on the Community Land, as described in Part Two of Schedule Seven above. This Specification has been agreed by the Council's Asset Management Department and the Council's Street Scene Department.