



Request to Vary Section 106 Agreement in relation to management of Public Open Space Above White Building Car Park and Removal of Landscape Strip on Kingsclere Road Frontage from Public Open Space provision and Payment in Lieu – 19/01132/VLA – Land at Chapel Hill, Kingsclere Road, Basingstoke

Report to	Development Control Committee
Ward(s):	Norden
Key Decision:	No
Papers relied on:	19/01132/VLA Committee Report – 12/08/2020

1 This Report

- 1.1** This request to vary a Section 106 Agreement was considered by the Development Control Committee at its meeting on 12th August 2020. At the meeting the Committee expressed its concern over the proposal to remove the open space on the roof of the White Building car park from the transfer to the Council and for the area instead to be managed by a private management company due to the potential for additional maintenance costs that may be incurred falling on residents.
- 1.2** Members were content with the recommendation for the removal of the thin strip of landscape verge at the front of the site bounding Kingsclere Road from the previously approved public open space provision (and thus from the public open space transfer since this area was now required by Hampshire County Council Highway Authority and had been dedicated as highway within the Section 278 Highways Agreement) and to make a financial contribution towards off-site public open space in lieu.
- 1.3** The Committee therefore resolved to:
- Reject the request to allow private management company to maintain public open space above car park.
 - Accept the removal of landscape verge from public open space to highway land and financial contribution to off-site public open space in lieu.

- 1.4 Following this, the description of the proposed variation has been amended to include legal mechanisms to allow the Council's ongoing maintenance and management of the Public Open Space above the roof of the White Building, whilst still proposing the removal of the landscape strip from the Kingsclere Road frontage, with a financial contribution to off-site public open space in lieu.

2 Recommendation

2.1 It is recommended that:

Members of the Development Control Committee approve the following amended resolution:

The applicant be invited to enter into a Deed of Variation (in accordance with the Community Infrastructure Levy Regulations 2010 and Policies CN6 and EM5 of the Basingstoke and Deane Local Plan 2011-2029) between the applicant and the Borough and County Councils to secure:

- Secure legal mechanisms to allow the Council's ongoing maintenance and management of the Public Open Space above the roof of the White Building car park;
- Remove a thin strip of landscape verge at the front of the site bounding Kingsclere Road from the previously approved public open space provision (and thus from the public open space transfer since this area is now required by Hampshire County Council Highway Authority and has been dedicated as highway within the Section 278 Highways Agreement) and make a financial contribution towards off-site public open space in lieu.

3 Background, corporate objectives and priorities

- 3.1 This report references the previous committee report in relation to the resolution to part approve/part reject the request to vary the Section 106 Agreement attached to outline planning permission 14/00865/OUT for the redevelopment of the site for the erection of up to 578 dwellings and the Deed of Variation attached to planning permission 17/02279/FUL for the conversion of the White Building for 96no residential units. The report relates to the Council Plan in helping to provide a range of homes for the Borough's residents.

4 Assessment

- 4.1 The amended clauses within the Deed of Variation effectively give a

covenant to grant the Council a right of access to maintain the open space above the White Building underground car park at the Council's expense in perpetuity (without taking on any liability for the carpark) rather than the Council taking a transfer of the land.

- 4.2 There are implications of not varying the agreement as now proposed, particularly in relation to the Council taking on liability for the underground car park and the potential financial implications to the Council as and when the underground car park, or its roof, need maintenance or repair. It would clearly be in the Council's interest to avoid taking on any such liability.
- 4.3 Should Members agree to vary the agreement as proposed above, the obligation would then run with the land and allow the Council to maintain all the open space as originally envisaged under the original Section 106 Agreement, secured under outline permission 14/00865/OUT.
- 4.4 The revised wording now proposed within the Deed of Variation responds positively to the concerns raised by Members of the Development Control Committee at its meeting on 12th August 2020. It is therefore recommended that the request to vary the terms of the original Section 106 Agreement secured under the outline permission (14/00865/OUT) and subsequent Deed of Variation in relation to the White Building (17/02279/FUL), be approved.
- 4.5 Whilst the proposal would not be in full compliance with Local Plan Policy EM5 or the advice set out in the Council's Green Infrastructure Strategy, given the constrained nature of the site and that appropriate provisions are in place (to be secured within the Deed) to ensure an off-site contribution in lieu of the shortfall of public open space, appropriate measures to ensure the area remains accessible for all and mechanisms to ensure proper maintenance of the area, the request to vary the terms of the original Section 106 Agreement secured under the outline permission (14/00865/OUT) and subsequent Deed of Variation in relation to the White Building (17/02279/FUL) is considered acceptable.
- 4.6 The removal of a thin strip of landscape verge at the north eastern part of the site bounding Kingsclere Road from the overall public open space provision for use as dedicated highway land is considered acceptable, since the land may be required for highway improvements in the future, in the interests of highway safety and the free flow of traffic. As such this variation would be in accordance with the National Planning Policy Framework (February 2019) and Policy CN9 of the Basingstoke and Deane Local Plan 2011-2029.

Corporate Implications

5 Legal Implications

- 5.1 There are no legal implications of this report.

6 Financial implications

- 6.1 There are no financial implications of this report.

7 Risk management

7.1 There are no risk implications of this report.

8 Equalities implications

8.1 There are no equalities implications of this report.

9 Consultation and communication

9.1 Consultations on planning applications and associated appeals are undertaken in accordance with statutory requirements. There are no additional consultation and communication requirements related to this report.

10 HR implications

10.1 There are no HR implications related to this report.

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Status	
Confidentiality	It is considered that information contained within this report (and appendices) do not contain exempt information under the meaning of Schedule 12A of the Local Government Act 1972, as amended, and therefore can be made public.












Appendix A - Useable Public Open Space Plan



Appendix B - Public Open Space Completion Dates



Total useable open space = 1.85 hectares

<p> (A1) Main public space and part frontage = 0.626 hectares. (BDBC Inspection - Oct 2019)</p> <p> (A2) Main public space and part frontage = 0.289 hectares. (BDBC Inspection - April 2021)</p> <p> (B) Kingsclere road frontage = 0.125 hectares. (BDBC Inspection - April 2021)</p> <p> (C) Kingsclere road frontage = 0.088 hectares. (BDBC Inspection - April 2021)</p> <p> (D) Public open space = 0.130 hectares. (BDBC Inspection - Aug 2018)</p> <p> (E1) Linear Park fronting railway lines = 0.313 hectares. (BDBC Inspection - April 2019)</p>	<p> (E2) Linear Park fronting railway lines = 0.079 hectares. (BDBC Inspection - Oct 2019)</p> <p> (F) LEAP - (excluded from total useable space) = 0.070 hectares. (BDBC Inspection - Oct 2019)</p> <p> (G) Pocket park in north west corner = 0.021 hectares. (BDBC Inspection - April 2020)</p> <p> (H) Open space - central area = 0.010 hectares. (BDBC Inspection - April 2021)</p> <p> S278 Land dedicated as highway under the S278 agreement = 0.099 hectares.</p> <p>L.E.A.P Local Equipped Area for Play</p> <p>L.A.P Local Area for Play</p>
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