

## North Northamptonshire North Area Planning Committee Addendum Report 6<sup>th</sup> December 2023

<b>Application Reference</b>	<b>NC/23/00041/RVC106</b>
Case Officer	Robert Young
<b>Location</b>	Little Stanion
<b>Development</b>	Proposed variation of s106 agreement dated 28 <sup>th</sup> August 2016 relating to LPA ref: 04/00442/OUT dated 5 <sup>th</sup> July 2006 and LPA ref:17/00702/DPA (Detailed) dated 21 <sup>st</sup> May 2018 for 66 residential units, retail space and community hall known as the Multi Use Square Development and 17/00703/OUT dated 6 <sup>th</sup> September 2018 concerning outline planning permission for the erection of not less than 99 dwellings, and a maximum of 135 dwellings plus landscaping and associated works.
<b>Applicant</b>	<b>JME Developments Ltd</b>
<b>Agent</b>	iPlan Solutions Ltd
<b>Ward</b>	<b>Little Stanion</b>
<b>Original Expiry Date</b>	<b>8<sup>th</sup> February 2023</b>
<b>Agreed Extension of Time</b>	<b>30<sup>th</sup> December 2023</b>

### List of Appendices

<b>Appendix A</b> (Pg 75 – 160)	Committee Report for 4 <sup>th</sup> October 2023
<b>Appendix B</b> (Pg 161 – 196)	Applicant's response to Committee deferral dated 24 <sup>th</sup> October 2023
<b>Appendix C</b> (Pg 197 – 200)	Applicant's Position Statement: Summary dated 20 <sup>th</sup> November 2023
<b>Appendix D</b> (Pg 201 – 202)	Council's Tree Officer email response dated 27 <sup>th</sup> November 2023

## **1. Introduction**

- 1.1 This application was deferred by members of the Committee at its meeting on 4<sup>th</sup> October 2023 for the following reasons:-
- i) To enable the Council to further investigate the issue of whether or not the Multi Use Games Area (MUGA) had indeed been substituted for the obligation to provide a football pitch and the issue relating to land owned by Tata Steel.
  - ii) Resolve outstanding issues relating to changes to approved landscaping and especially trees on the site;
  - iii) Resolve the financing and construction of a community hall to be provided on the Site and for the security of the same to be delivered at the point of letting the contract for the construction of the community hall to be within 6-9 months of the date of the approved further variation to the 106 Agreement; such bond to be valued in relation to the delivery of the specification for the community hall, such specification to be prepared by the Owner and approved by the local planning authority within the above time frame.
  - iv) Enable negotiations between the Owner, Little Stanion Parish Council and the local planning authority to take place with a view to transferring management of the Community Hall, and parking area once built, to the Parish Council. (Members voted on the motion to defer the application) relates to a major development and a s106 variation application which concerns the delivery of a community asset (Village Hall and Football Pitch), amendments to two current obligations, wider viability issues, and legal matters to be considered.
- 1.2 To assist members the Officer's report to Committee on the 4<sup>th</sup> October 2023 and Committee minutes is appended (**Appendix A**)
- 1.3 Negotiations have continued between the applicant and Council officers, focussing primarily upon securing the construction of the Village Hall and parking area which is nearly four years behind its completion schedule. Officers consider that matters have not been progressed to a conclusion whereby the Village Hall can be securely delivered.

## **2. Further negotiations**

- 2.1 In response to the Committee's deferral on 4<sup>th</sup> October 2023, the applicant sent a detailed response dated 24<sup>th</sup> October 2023. This appended in full (**Appendix B**). In summary:
- i) The applicant reiterated the serious financial consequences of the Council's delay in approving amendments to the existing s.106 obligations and that the development continues not to be financially viable unless and until the amendments proposed by the applicant are formally approved.
  - ii) If they were *freed from the roof tax* (within the existing s106 agreement), they would have sufficient funds to pay for the Village Hall and MUGA.

- iii) They set out how the former Corby Borough Council agreed to replace the proposed football pitch with a MUGA in 2018. They set out the benefits of a MUGA and the ownership issues in securing further land for a football pitch.
- iv) The applicant confirms they will resolve any issues with the on-site landscaping.
- v) To secure delivery of the Village Hall, they offer a 'Security Restriction', whereby they will not be able to start construction of the 22 apartments in Block C unless and until the Village Hall has been constructed. They offer an obligation to submit the Village Hall specification within 3 months.
- vi) They confirm the completed Village Hall will be transferred to the Parish Council or the Council in the usual way.

2.2 Officers considered the applicant's response and set out the Council's position (by way of an email dated 2<sup>nd</sup> November 2023) as follows:

- i) In relation to the Village Hall, the applicant could either (1) transfer the land for the Village Hall and £1.2 million to the Council or (2) build out the Village Hall (within the timescales offered) with an insurance bond in the sum of £1.2m in place to secure delivery.
- ii) The 'Security Restriction' being offered does not give the Council adequate security that the Village Hall will be delivered. The Council must have an insurance bond in place if the developer is to deliver the Village Hall.
- iii) Regarding the MUGA, the Council would request that the applicant concludes negotiations with the neighbouring landowner to obtain the land originally allocated for the football pitch being a much more appropriate leisure facility for younger children.
- iv) To lay out the landscaping as per the approved masterplan and landscaping plans, and to rectify any deficiencies identified by the Council.

2.3 The applicant's solicitor responded to the above position and made the following points:

- i) The development will be largely shut down if the Council do not approve the s106A modifications by 31<sup>st</sup> December 2023. There would be no economic basis to continue in the New Year.
- ii) The respective viability consultants have agreed that the development is not viable if the *roof tax* remains imposed but if removed, the development can still fund a community building up to a cost of £1.2 million and the construction of a MUGA (cost approximately £100,000).
- iii) The money to build the Village Hall and MUGA would come from the sale of the 114 apartments/houses for which planning permission has been granted. There is no further money to pay for either an insurance bond or

land for a football pitch. The applicant would have to reduce the design and specification of the Village Hall to cover the cost of an insurance bond.

- iv) The applicant is not able to transfer the land for the Village Hall and £1.2 million to the Council. The only option for delivery of the Village Hall is for the applicant to fund the build cost out of the sale proceeds from the remaining units on the site.
- v) The applicant is unsure whether they could secure an insurance bond or the likely cost. They will only agree to use *reasonable endeavours* to secure an insurance bond.
- vi) The applicant will agree to use *reasonable endeavours* to secure additional land to provide a football pitch. Again, there is no money to acquire the land.
- vii) The applicant suggests the Council uses its compulsory purchase powers to secure land for a football pitch.
- viii) The applicant maintains that a football pitch would not be preferable to a MUGA.

2.4 The applicant's planning consultant has sent a summary of the applicant's position, which is appended (**Appendix C**). In summary:

- i) There is no extra money available for anything if the new Village Hall and MUGA are built.
- ii) If the Council do not agree to the applicant's requested variations to the s106, the site will be *mothballed* at the end of the year.
- iii) The completed Village Hall will be transferred to the Parish Council or the Council.
- iv) The applicant will rectify any deficiencies with the on-site landscaping.
- v) The applicant will use *reasonable endeavours* to negotiate transfer of land for a football pitch but there is no money to cover purchase costs.
- vi) They maintain a MUGA is more versatile and usable than a football pitch
- vii) There is no spare money to pay for an insurance bond for the Village Hall. They will only use *reasonable endeavours* to secure the bond. The cost of any bond will have to come off the cost of delivering the Village Hall.

### **3. The respective positions**

3.1 Officers will respond to the applicant's position in order of the deferral decision at the 4<sup>th</sup> October meeting.

3.2 The Multi Use Games Area -This facility will only be delivered if there is s106A variation removing the *roof tax* and the applicant being able to continue with the final phase of the residential development. Officers would prefer that the

applicant concludes negotiations with the neighbouring landowner to obtain the land originally allocated for the football pitch being a much more appropriate leisure facility for younger children. The applicant has confirmed they would not have the resources to deliver a football pitch in addition to the MUGA, which they advise is fundable. The applicant believes that a MUGA is a more appropriate facility than a football pitch. The applicant will agree to use *reasonable endeavours* to negotiate a transfer of land for a football pitch but maintains there is no money to cover purchase costs. The applicant's view is that the Council should negotiate with the neighbouring landowner direct or use its compulsory purchase powers to secure the football pitch.

Officers would comment that if the Council were to use its compulsory purchase powers, it has to pay the market rate for land and cover professional costs. There is no guarantee that a compulsory purchase would be successful.

- 3.3 Landscaping – The applicant has given assurances that the on-site landscaping will be delivered as per approved plans and that they will rectify any deficiencies. The Council's Tree Officer is surveying the central landscaped area and monitoring is ongoing. Officers will continue to monitor and consider enforcement action if necessary. Please see the Tree Officer's comments **(Appendix D)**
- 3.4 Delivery of the Village Hall – Both parties agree that (if the applicant is to deliver the Village Hall) the applicant will submit a specification for the Village Hall to the local planning authority for approval within 3 months of the variation to the s106 being agreed and will then build the Village Hall within a further 6-9 months of approval of the specification. The Council is seeking to secure delivery of the Village Hall. Officers would advise that the applicant be required to secure an insurance bond on approval of the specification for the Village Hall. The applicant has stated that they are only willing to use *reasonable endeavours* to secure a bond and that the costs of such a bond (they say likely to be up to £250,000) would need to come off the build cost of the Village Hall. The applicant is also willing to offer a restriction on the construction of the Block C apartments until the Village Hall is constructed (referred to them as 'the Security Restriction'). Officers advise that the 'Security Restriction' being offered does not give the Council adequate security that the Village Hall will be delivered. Officers maintain that the Council must have an insurance bond in place if the applicant is to deliver the Village Hall.
- 3.5 Transfer of the Village Hall – The applicant does not object to the transfer of the Village Hall building and parking area to either NCC or the Parish Council and would seek an early transfer once the Village Hall is completed. Officers confirm that the existing s106 provides for transfer of the completed Village Hall to the Parish Council or the Council in the usual way.

#### **4.0 Conclusion**

- 4.1 The applicant's solicitors and planning consultant's statements in support of the s106 Variation is set out in full in Appendices B and C to enable members to examine both statement in full.

- 4.2 Officers' position is set out in this report.
- 4.2 If the applicant is to deliver the Village Hall, the applicant will agree to submit a specification for the Village Hall and parking area to the LPA for approval within 3 months of the variation being agreed and a commitment to then build the Village Hall within 6-9 months of approval of this specification.
- 4.3 Officers view is that if the s106 obligations are rescinded without an insurance bond in place and a short-term build contract that the risks of non-delivery of the Village Hall and the MUGA would be too high. The applicant will only agree to use *reasonable endeavours* to secure an insurance bond and the cost of such a bond would need to come off the build cost of the Village Hall. Officers maintain that an insurance bond must be in place.
- 4.4 Taking into account the Council's concerns, the applicant has suggested an alternative agreeing a restriction upon the construction of Block C until the new Village Hall and its parking area are completed. Officers consider this could present enforcement difficulties in the event of non-compliance and would not ultimately guarantee delivery of the Village Hall.
- 4.5 This is a complex situation with the delivery of the Village Hall and MUGA at risk. Officers maintain that either land and money for the Village Hall must be transferred to the Council or if the applicant is to deliver the Village Hall, there must be an insurance bond in place to secure its delivery.

## **Recommendations**

### **Recommendation A:**

That the Council agree to modify the s106 agreement by removing the "The Little Stanion Community sum" and "The Little Stanion Up-lift sum" obligations (together referred to as the *roof tax*) subject to EITHER:

The applicant will transfer the land (fully serviced and with public rights of access) for the Village Hall and parking area known as Block E on plan 1616-P1001 to the Council, together with the sum of £1.2 million, prior to the commencement of the final residential phase (114 units ) of the Little Stanion development

OR

The applicant will submit a specification for the Village Hall and parking area to the local planning authority for approval within 3 months of the variation being agreed; the applicant will then build the Village Hall within 6-9 months of the LPA's approval of the specification; upon approval of the Village Hall specification, the applicant will obtain an insurance bond at their own expense and to the reasonable satisfaction of the local planning authority to secure delivery of the Village Hall

TOGETHER WITH the applicant will use reasonable endeavours to conclude negotiations with the neighbouring landowner to acquire land for a football pitch at their own expense and will then provide a football pitch in lieu of a MUGA.

### **Recommendation B:**

That the proposed s106 variation sought by the applicant to omit planning obligations set out in para 2.1 of the 4th October 2023 committee report be refused. This would be due to an unacceptable risk that the applicant's proposed phasing of the residential development without pre-payment and a land transfer for the Village Hall would not enable the Council to recover the funds related to the remaining planning obligations. Alternatively, if the applicant were to deliver the Village Hall without an insurance bond in place, there is an unacceptable risk that the Village Hall and MUGA would not be delivered.

### **Recommendation C:**

That the proposed s106 variation sought by the applicant to omit planning obligations set out in paragraph 2.1 of the 4<sup>th</sup> October 2023 committee report be approved, subject to: (1) the applicant will submit a specification for the Village Hall and parking area to the local planning authority for approval within 3 months of the variation being agreed; (2) the applicant will then build the Village Hall within 6-9 months of approval of the specification; (3) the appellant using *reasonable endeavours* to obtain an insurance bond to secure delivery of the Village Hall on approval of the specification (with the cost of such bond coming off the build cost of the Village Hall) and (4) a restriction on the construction of the Block C apartments until the new Village Hall and MUGA have been constructed (referred to by the applicant as 'the Security Restriction')

**Members are asked to note that the existing s106 agreement provides for the completed Village Hall and MUGA to be transferred to either the Parish Council or the Council in the usual way.**

**Members are asked to further note that the applicant has given assurances that the on-site landscaping will be delivered as per approved plans and that they will rectify any deficiencies. Officers will continue to monitor and consider enforcement action if necessary.**