

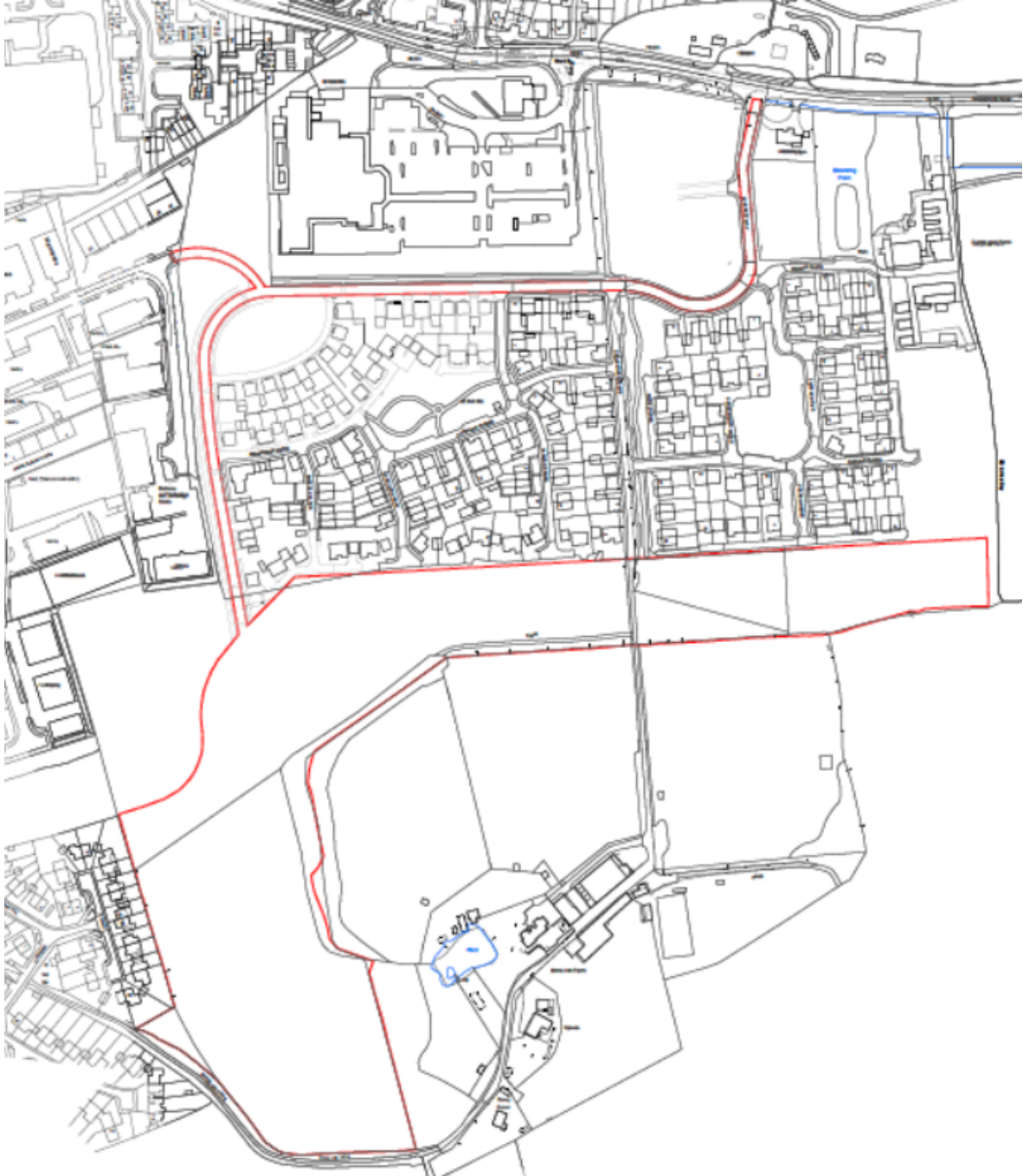
ITEM NUMBER: 8

PLANNING COMMITTEE DATE: 31 August 2022

REFERENCE NUMBER: UTT/22/1598/DOV

LOCATION: Land North of Shire Hill Farm, Shire Hill,
Saffron Walden

SITE LOCATION PLAN:



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Organisation: Uttlesford District Council Date: August 2022

PROPOSAL: Request for variation of 106 agreement made pursuant to section 106 of the 1990 Act dated 13th July 2020 and made between (1) UDC (2) ECC (3) Gordon Carl Kenmure Roberts, John Anthony Shippey, Lucinda Burnett, William Gustav Robert Engelmann and (4) Dianthus Land Limited in relation to UTT/17/2832/OP

APPLICANT: Redrow Homes Limited

AGENT: Mr Ben Pridgeon (Bidwells)

EXPIRY DATE: 7 March 2022

EOT Expiry Date: 2 August 2022

CASE OFFICER: Mr Lindsay Trevillian

NOTATION: Outside Development Limits.

REASON THIS APPLICATION IS ON THE AGENDA: Deed of Variation to a Legal Agreement of a Major Planning Application - UTT/17/2832/OP.

1. EXECUTIVE SUMMARY

- 1.1** A Deed of Variation (DoV) application has been submitted by the Applicant (Redrow) seeking permission to make revisions/amendments to the Section 106 Legal Agreement that was attached to the outline permission reference UTT/17/2832/OP.
- 1.2** This is submitted following lengthy discussions with the Applicant and both UDC and ECC legal representatives during the assessment of the reserve matters application that there are several anomalies contained within the original legal agreement that need to be rectified. None more so than the lack of a mechanism to secure a link over the existing Public Rights of Way (Bridleway 19) to allow for a new 'Spine Road' to extend from Radwinter Road to Thaxted Road.
- 1.3** This application has been submitted to resolve these anomalies and to allow for the future residential development of the site to come forward as intended by the approval of the outline planning permission.
- 1.4** This report concludes that the proposed variations/amendments to the Legal Agreement attached to the outline permission are appropriate and that the variations/amendments are recommended for approval.

2. RECOMMENDATION

That the Interim Director of Planning and Building Control be authorised to **GRANT** permission for the variation to the Section 106 Legal Agreement attached to application reference UTT/17/2832/OP.

3. SITE LOCATION AND DESCRIPTION:

- 3.1** The area of land subject to this deed of variation application relates to the land known as 'Land North of Shire Hill Farm, Shire Hill, Saffron Walden, Essex.'
- 3.2** The site is located to the South-East of Saffron Walden. The site is an irregularly 'L' shaped piece of land being made up of two roughly perpendicular areas that intersect at their north-western corners. It covers an area of approximately 7.05 hectares whilst its topography generally slopes south to north with the southern part of the site being on the highest point, on a ridge which then plateaus and then slopes towards the south and western boundaries.
- 3.3** The site is free of any built form and consists mainly of arable fields (Grade 2 agricultural land) and lies within the rolling landscape of the River Cam/Granta.
- 3.4** The site to the north is currently being built out by Linden Homes consisting of 200 dwellings. To the south 150 new dwellings is currently being built out by Bellway Homes. The application site sits effectively land locked between the two sites.
- 3.5** There is a Public Right of Way (Bridleway 19) which extends along the southern perimeter of the application site and separates this site from the Bellway site to the south. This bridleway leads into Shire Hill Lane to the west.
- 3.6** Outline planning permission with all matters reserved apart from access was granted 14th July 2020 for the construction of up to 100 dwellings alongside associated works. A reserve matters application to seek approval of details of Layout, Scale, Appearance and Landscaping is currently being assessed by the Local Planning Authority under application reference: UTT/21/3565/DFO.

4. PROPOSAL

- 4.1** This deed of variation application seeks permission to make revisions/amendments to the Section 106 Legal Agreement that was attached to the outline permission reference UTT/17/2832/OP. The main revisions are outline as per below:
- 4.2**
- To secure a mechanism within the agreement for the provision and construction of a link over Bridleway 19 to allow for a new 'Spine Road' to extend from the B1053 Radwinter Road to the B184 Thaxted Road. A new Schedule 8 is an entirely a new schedule in respect of the Link Road and the Link Road Specification is set out in Appendix 1 of the DoV.
 - To extend the trigger points within the agreement to procure the bus service enhancement, making it land ready, to enter into the Highways Works Agreement for the Spine Road to be constructed from the occupation of the 50th residential unit to the 80th residential unit.

- The trigger for the payment of the Bus Service Contribution is extended to the Occupation of the 30th Housing Unit.
- Amend paragraph (a) under the definition of 'Highway works' to co-inside with the removal of condition 25 attached to the outline consent which granted permission to allow for a financial contribution instead of undertaking the works for a footpath/cycleway between Monks Hill and the Land

5. ENVIRONMENTAL IMPACT ASSESSMENT

- 5.1** The development does not constitute 'EIA development' for the purposes of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

6. RELEVANT SITE HISTORY

- 6.1** The application site contains the following relevant recorded planning history:
- 6.2** UTT/21/3565/DFO - Approval of reserved matters subject to permission UTT/17/2832/OP for up to 100 dwellings, for the following: - Layout - Strategic highway masterplan for the spine road- Scale- Public open space- Landscaping – Appearance.
- 6.3** The above application is currently being assessed by the Local Planning Authority and will be presented to members of the planning committee following a decision of this deed of variation application.
- 6.4** UTT/17/2832/OP - Outline application (with all matters reserved except access) for up to 100 dwellings, including affordable accommodation, in addition to the provision of land to facilitate an extension to the approved primary school (Planning Application Ref: UTT/13/3467/OP), and associated open space, drainage, landscaping, access and parking.
- 6.5** This application was approved by Uttlesford District Council on 14 July 2020 subject to conditions and to a Section 106 Agreement which secured various obligations and outlined specifications for the proposed development.
- 6.6** UTT/21/1920/NMA - Non Material Amendment for the removal of condition 25 (pedestrian/cycle access details) attached to UTT/17/2832/OP. This condition stated that:
- “Before the commencement of development, details of the provision of pedestrian and cycle access onto Monks Hill, to consist of a shared use footway/cycleway 3.5m wide, shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highways Authority, and thereafter implemented in accordance with the approved details.”*
- 6.7** This application was approved by Uttlesford District Council on 09 July 2021. The effect of this is to remove condition 25 from planning permission UTT/17/2832/OP.

7. PREAPPLICATION ADVICE AND/OR COMMUNITY CONSULTATION

- 7.1 Although there was no formal pre-application submission, extensive discussions were held between the Applicant, both ECC and UDC legal officers, UDC planning officers and ECC highway authority to address the issues surrounding how to best proceed with securing a mechanism to allow for the link over the bridleway to be constructed to allow for the spine road to extend through the application site and beyond to the south.

8. **SUMMARY OF STATUTORY CONSULTEE RESPONSES**

8.1 **Highway Authority – No Objection**

- 8.1.1 The application was consulted to the highway authority due to the ongoing conversations prior to the submission of this application in respect to addressing the need for the missing link to the spine road.

- 8.1.2 The Highway Authority confirmed that in order to ensure mitigations for traffic, sustainable transport and air quality of the outline application are fulfilled the spine road must be completed by a link across Bridleway 19. The applicant has agreed to enter into a S106 obligation and design and build a link across the bridleway. It will be necessary for the applicant to liaise with the developers to the south of the site. The Highway Authority has started the process and will continue to work closely with the applicant to ensure that the delivery of the spine road is as smooth as possible.

9. **SAFFRON WALDEN TOWN COUNCIL COMMENTS**

- 9.1 Saffron Walden Town Council in their formal response date 27th June resolved to make no comments regarding the proposals.
- 9.2 A further response from the Town Council was received on the 5th August confirming that they object to the removal of the 3m wide footpath/cycleway between Monks Hill and the land obligation (education) and that the trigger point should ideally remain at 50% occupation so the works are carried out prior to completion of building works.

10. **CONSULTEE RESPONSES**

- 10.1 There is no statutory obligation to notify non-statutory consultees in respect to the application proposals.

11. **REPRESENTATIONS**

- 11.1 There is no statutory obligation to notify residents in respect to the application proposals.

12. **MATERIAL CONSIDERATIONS**

- 12.1.1 In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, The Development Plan and all other material considerations identified in the “Considerations and Assessments” section of the report. The determination must be made in accordance with the plan unless material considerations indicate otherwise.

12.1.2 Section 70(2) of the Town and Country Planning Act requires the local planning authority in dealing with a planning application, to have regard to

- (a) The provisions of the development plan, so far as material to the application:
(a) a post-examination draft neighbourhood development plan, so far as material to the application,
(b) any local finance considerations, so far as material to the application, and
(c) any other material considerations.

12.2 The Development Plan

12.2.1 Essex Minerals Local Plan (adopted July 2014)
Essex and Southend-on-Sea Waste Local Plan (adopted July 2017)
Uttlesford District Local Plan (adopted 2005)
Felsted Neighbourhood Plan (made Feb 2020)
Great Dunmow Neighbourhood Plan (made December 2016)
Newport and Quendon and Rickling Neighbourhood Plan (made June 2021)
Thaxted Neighbourhood Plan (made February 2019)
Stebbing Neighbourhood Plan (made July 2022)

13. POLICY

13.1 National Policies

13.1.1 National Planning Policy Framework (2021)

13.2 Uttlesford District Plan 2005

13.2.1 Relevant development plan policies and material considerations:

Uttlesford Local Plan (2005):

- GEN1 - Access
- GEN6 – Infrastructure Provision

13.3 Saffron Walden Neighbourhood Plan

13.3.1 The Saffron Walden Neighbourhood Plan has been prepared in draft and has currently just been to examination. In respect to the SWNP, the examiner has confirmed that the Plan on the 28th April 2022 has undergone Examination and that the Plan can now go to referendum subject to the suggested modifications which includes the deletion of a number of policies and amending the wording to others. It officers understanding that these modifications are currently being prepared to the Plan prior to it going to a referendum. It is therefore considered that limited to moderate weight can be given to the SWNP.

13.4 Supplementary Planning Document or Guidance

13.4.1 Uttlesford Interim Climate Change Policy (2021)

14.1 CONSIDERATIONS AND ASSESSMENT

- 14.1.1** The main issues to consider in the determination of this application is whether the proposed revisions/amendments to the original S106 agreement attached to the outline consent are appropriate.
- 14.1.2** It is important to understand the recent planning history of the site as this helps to provide an understanding behind the submission of the Deed of Variation application.
- 14.1.3** On the 14th July 2020 outline planning permission was approved under application reference UTT/17/2832/OP for the construction of up to 100 dwellings and the provision of land to facilitate an extension to the approved primary school with all matters reserved apart from Access. This permission was granted subject to conditions and to a Section 106 Agreement which secured various obligations and outlined specifications for the proposed development.
- 14.1.4** Although not forming part of the indicative plans that were approved as part of the outline application, it was agreed during the decision-making process that a new 'Spine Road' be constructed between B1053 Radwinter Road and B184 Thaxted Road. The 'Spine Road' would extend through the Linden Homes development to the north, extend through the application site, across the Public Rights of Way (Bridleway 19) and exit through the Bellway development to the south. It was agreed that a new 'Spine Road' be constructed between the three sites to improve traffic connections and reduce the impact of air quality.
- 14.1.5** Conditions were imposed on the decision notice and the wording contained within the S106 Agreement reflected the details of the new 'Spine Road' that was to form part of the proposals.
- 14.1.6** Thereafter, the applicant submitted a full application on the 6th December 2021 seeking approval of the details of Appearance, Scale, Layout and Landscaping known as the reserve matters in association with the outline planning approval above.
- 14.1.7** It was during officers' assessment of this reserve matters application that although it was the intention of the wording of the S106 Legal Agreement attached to the outline permission for the applicant to provide a link over the Public Right of Way (Bridleway 19) so that a new 'Spine Road' could link the B1053 Radwinter Road and B184 Thaxted Road, it was found that there was no mechanism or hook contained with the S106 Agreement. The wording of the agreement only stipulated that the new 'Spine Road' was to be constructed up to the southern boundary of the application site and not extend over Bridleway 19 linking to the development to the south.
- 14.1.8** The S106 Legal Agreement has been thoroughly checked by both the District Council's and Essex County Council's legal teams, and the Applicant's legal representatives and all parties agree that unfortunately no mechanism was contained with the agreement to secure the link over Bridleway 19.
- 14.1.9** As such, this Deed of Variation application has been submitted to correct the wording and secure an appropriate mechanism or hook within the S106 Legal Agreement for the Applicant to provide and construct a link over the Bridleway 19 to allow for the 'Spine Road' to be constructed as intended.

- 14.1.10** To accommodate the additional works, costs, and timings for the Applicant to provide the link, the trigger points to procure the bus service enhancement, making it land ready and financial contributions have been extended from the occupation of the 50th residential unit to the 80th residential units which has been agreed in principle by the lead local highway authority.
- 14.1.11** Furthermore, following the granting of a non-material amendment UTT/21/1920/NMA which allowed the removal of condition 25 (pedestrian/cycle access details) attached to UTT/17/2832/OP, this is being sought to amend the obligations within the legal agreement to allow for a financial contribution instead of actually undertaking the works so that the obligation does not impact on the commencement of the development.
- 14.1.12** The variations to the original Section 106 Legal Agreement as discussed above are considered appropriate in that they will rectify and address the previous unfortunate oversights contained within the Legal Agreement and will ensure that the proposals will be built out to provide a link over Bridleway 19 allowing for a new 'Spine Road' to extend from the B1053 Radwinter Road to the B184 Thaxted Road and allow for the provision of a new bus link.

15. ADDITIONAL DUTIES

15.1 Public Sector Equalities Duties

- 15.1.1** The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers.
- 15.1.2** The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 15.1.3** Due consideration has been made to The Equality Act 2010 during the assessment of the planning application, no conflicts are raised

15.2 Human Rights

- 15.2.1** There may be implications under Article 1 (protection of property) and Article 8 (right to respect for private and family life) of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions; however, these issues have been taken into account in the determination of this application

16. CONCLUSION

- 16.1** The proposed variations to the original S106 legal agreement which includes securing a mechanism for the construction of a link over Bridleway 19 to allow

for the construction of a Spine Road to extend Radwinter Road to Thaxted Road, revising the trigger points to accommodate bus provision and highway works, and other additional irregularities are appropriate and will help to deliver the future residential scheme for the site. The proposals comply with the Uttlesford District Adopted Local Plan and the National Planning Policy Framework and thereby it is recommended to grant permission for the variation to the Section 106 Legal Agreement attached to application reference UTT/17/2832/OP.