



CABINET – 17 DECEMBER 2019

**BARWELL SUSTAINABLE URBAN EXTENSION SECTION 106
AGREEMENT**

REPORT OF THE CHIEF EXECUTIVE

PART A

Purpose of the Report

1. The purpose of this report is to record the County Council's concerns in respect of the draft Section (S)106 Agreement for the Barwell Sustainable Urban Extension (SUE), circulated on behalf of Hinckley and Bosworth Borough Council (HBBC) and to advise HBBC of those concerns with a view to early renegotiation of the Agreement.

Recommendations

2. The Cabinet is recommended to:
 - a) Note that the draft Section 106 Agreement for the Barwell Sustainable Urban Extension is out of date in several important respects;
 - b) Note that, whilst the County Council supports a successful delivery of the Barwell Sustainable Urban Extension, it is not possible for the County Council to sign an Agreement at this time as requested by Hinckley and Bosworth Borough Council;
 - c) Request that Hinckley and Bosworth Borough Council report the County Council's position to its Cabinet and Planning Committee with a view to an early meeting between the Borough Council, the County Council and the developer in order to negotiate an up-to-date Agreement to include a mutually acceptable period review mechanism; and
 - d) Receive a report on the outcome at its next meeting on 7 February 2020.

Reasons for Recommendations

3. The Barwell SUE is an essential component of HBBC's adopted Local Plan. When completed, it will help to deliver significant housing and employment growth.

4. The draft S106 Agreement, received by the County Council in November 2019, is out-of-date. Planning permission was granted by HBBC in 2013, subject to a S106 Agreement. HBBC has asked that the Agreement is signed as drafted. Officers cannot recommend that is done when there is a substantial risk that the contributions as presently specified would not cover the total cost of County Council infrastructure, such as off site road improvements and schools. There is a further risk that monies allocated under the out of date draft Agreement would not be spent and therefore be returned to the developer.
5. It is essential that the applicant can fund the cost of infrastructure if the development and its community impacts are to be successful.

Timetable for Decisions (including Scrutiny)

6. The timetable for concluding the S106 Agreement is a matter for negotiation between HBBC, the County Council and the developer. The County Council would want to ensure that the S106 Agreement is finalised as quickly as possible.

Policy Framework and Previous Decisions

7. The Leicester and Leicestershire Strategic Growth Plan (SGP) details the strategy for the growth and development of the area up to 2050. It was approved by partner authorities, including the County Council and the seven district councils in Leicestershire, in Autumn 2018. The SGP identifies 4 priorities –
 - (i) Creating conditions for investment and growth.
 - (ii) Achieving a step change in the way that growth is delivered.
 - (iii) Securing essential infrastructure.
 - (iv) Delivering high quality development.
8. The County Council's Planning Obligations Policy was approved on 10 July 2019. It explains the requirements for, and the approach to, the type and level of infrastructure the Council will seek through planning obligations and provides the framework for developer contributions towards county-wide services and infrastructure. The Policy notes that the planning system requires Local Planning Authorities (in Leicestershire, the district councils) to ensure that new development is supported by appropriate infrastructure.
9. The planning application for the Barwell SUE development was determined by HBBC in 2013.
10. Requests for developer contributions are made in accordance with relevant Development Plan policies, the National Planning Policy Framework and the Leicestershire Planning Obligations Policy. All planning obligations must conform with the Community Infrastructure (CIL) Regulations 2010 as amended. The recent changes to the CIL Regulations include the ending of the pooling requirements that previously only allowed a maximum of 5 obligations to contribute to a piece of infrastructure.

11. Responses to planning application consultations in relation to contributions towards County Council infrastructure are made by officers under delegated powers, following consultation with the relevant Lead Member(s).
12. Delegated authority to complete S106 Agreements is given to the Director of Law and Governance in accordance with the recommendations of the Chief Officer provided that when the agreement includes provision for contributions towards additional educational facilities, such authority is not to be exercised if, after consultation with the local member and appropriate Cabinet Lead Members, the Director of Law and Governance considers the matter to be sensitive locally.

Resource Implications

13. It is essential that the financial contributions secured through the S106 Agreement recognise current and potential future requirements and cover the cost of the substantial works required. Any funding for infrastructure that cannot be recovered through the S106 Agreement would have to be found from other sources if possible or the infrastructure would not be provided at the required level to support the development.
14. The report elsewhere on this agenda on the County Council's Medium Term Financial Strategy emphasises the pressures on the capital programme and the importance of external/developer contributions.
15. Funding for legal costs and for monitoring and recovering developer contributions will be included within the S106 Agreement.

Circulation under the Local Issues Alert Procedure

16. This report will be circulated to Mr. B. Crooks CC (Mallory division).

Officers to Contact

John Sinnott, Chief Executive

John.sinnott@leics.gov.uk

0116 305 6000

Chris Tambini, Director of Corporate Resources

Chris.tambini@leics.gov.uk

0116 305 6199

Lauren Haslam, Director of Law and Governance

Lauren.haslam@leics.gov.uk

0116 305 6240

Anthony Cross, Head of Law

Anthony.cross@leics.gov.uk

0116 305 6169

PART B

Background

Policy Allocation

17. The Barwell SUE development is a strategic allocation for up to 2,500 homes and employment within the Hinckley and Bosworth Core Strategic 2009 (Policy 3).
18. In September 2014, the Earl Shilton and Barwell Area Action Plan was adopted by HBBC following independent examination. This contained detailed proposals for the development of up to 2,500 homes (Policy 13), 6.2ha of employment (Policy 14), and a new primary school within a new neighbourhood centre (Policy 15).

Planning Application

19. In April 2012, an outline planning application was submitted to HBBC by Barwood Homes, Ainscough Strategic Land and Taylor Wimpey (the applicant) for up to 2,500 homes, employment, local centre, community facilities and associated infrastructure. The County Council was consulted in the normal way and comments were provided to HBBC to advise what S106 obligations (in the main financial contributions and land for a new primary school) were required.
20. HBBC's Planning Committee determined in April 2013 that permission be granted for the Barwell SUE development, subject to a S106 Agreement. All the County Council requested obligations were deemed by HBBC to be CIL compliant. As well as planning obligations to the County Council, the S106 Agreement also required planning obligations to HBBC, one of which concerned the provision of affordable housing.

S106 Agreement

21. In the summer of 2014, the applicant submitted the findings of a viability appraisal, seeking to demonstrate that the package of S106 obligations was not affordable. This was independently reviewed on behalf of HBBC and a negotiated position was eventually agreed upon a reduced financial contribution towards affordable housing, secured by a commuted sum. In March 2015, HBBC's Planning Committee agreed to revise the S106 Agreement Heads of Terms in regard to affordable housing. All County Council requirements for S106 contributions remained unaltered.
22. At times between 2015 and 2018 it looked as if the Barwell SUE development would proceed with the S106 Agreement concluded, but nothing materialised. In that time Taylor Wimpey dropped out and Barwood Homes took on the role of lead developer.

23. In November 2019 lawyers acting for the lead developer indicated to the County Council that all land owners and other parties to the Agreement had finally signed it and so it was ready to be signed by the County Council and then HBBC so the planning permission could be issued. HBBC separately contacted the County Council to urge signing.
24. For the purposes of this report, attention is paid to education and highway provisions. The contributions requested by the County Council for other provisions such as civic amenities (waste), libraries and public rights of way are modest and should be capable of easy resolution in an overall renegotiation.
25. It should be noted that since the 2013 HBBC decision to grant planning permission for the Barwell SUE development subject to completion of a S106 Agreement, the planning landscape, nationally and locally, has moved forward. The following are considered to be particularly pertinent:
- i. The decision pre-dates the 2019 National Planning Policy Framework;
 - ii. The decision pre-dates the Leicestershire Strategic Growth Plan;
 - iii. The decision pre-dates the adoption of the Earl Shilton and Barwell Area Action Plan;
 - iv. The decision predates the Leicestershire County Council Planning Obligations policy and does not factor in the updated methodology for the calculation of contributions;
 - v. The decision pre-dates the adopted Leicestershire County Council Minerals and Waste Local Plan;
 - vi. The decision was at a time when the Earl Shilton SUE (which is intended to part-fund some of the highway mitigation) was due to come forward quickly. No planning application has yet been submitted.
26. It is not clear to the County Council how the above have been taken into account thus far by HBBC in its wish now to conclude the S106 Agreement as it stands and issue a planning permission.
27. In the case of education infrastructure, the table shows what is in the draft S106 Agreement and the updated requirement.

EDUCATION	November 2019 Draft Agreement	Updated Requirement
New Primary School	£5.3m (+ 1.93 ha. land)	£6.7m (+ 2.93 ha. land)
Extensions	£2.1m	£4.8m
Secondary Provision	£5.02m	£393,000*
SEND	0	£671,000
Early Years	0	£1.9m

[*Note. If an equitable sharing of surplus places with the Earl Shilton SUE was followed, as was originally suggested by HBBC, the Secondary Provision Updated Requirement would be £3.1m.]

28. The draft Agreement takes no account of current and projected capacity – there is a surplus of secondary places in the area. It was also drawn up prior to the Leicestershire Planning Obligations Policy introduced by the County Council in 2014 and most recently refreshed and approved in July 2019, which, inter alia, includes requirements to fund early years and SEND provision, higher pupil yield rates and new cost multipliers.
29. In the case of road infrastructure, the table shows what is in the draft S106 Agreement and the updated position.

ROAD	November 2019 Draft Agreement	Updated
Ashby Road/ Normandy Way Junction	£1.47m	Lower cost measures may suffice.
Dodwells Road Junction	£628,000	The proposed road widening scheme cannot now be delivered.

30. The Ashby Road/Normandy Way scheme was costed taking into account other developments, which have not progressed, making a financial contribution. The Dodwells Road scheme cannot be constructed because improvements have already been made by Highways England and because a new entrance is soon to be built for a McDonald's Restaurant, after planning permission was granted on appeal. In both cases there is the potential for funds requested from a developer in the draft S106 Agreement not to be required or fully required and therefore they would be returned. Further, the effect of planning permissions granted by HBBC since the 2013 decision to grant planning permission for the Barwell SUE development also needs to be taken into account. This may result in additional requirements to mitigate the highways implications that will arise. Note also (paragraph 24vi) that the Earl Shilton SUE was intended to part-fund some of the highway mitigation.
31. The County Council also has a further concern to ensure the financial contributions secured retain their value from the correct "start date" through appropriate indexation until the infrastructure they are to fund is provided. This is to reflect the reality of when a development the size of the Barwell SUE actually comes on stream in terms of phasing and reserved matters and any applications to vary conditions.

Conclusion

32. Whilst it is understood that HBBC has a concern about meeting its '5 year housing land supply' (National Planning Policy Framework requirement) and therefore wishes to bring forward speedily a major development such as the Barwell SUE, the County Council cannot sign off a S106 Agreement it knows to be out of date and when it carries significant financial risk to the County Council.
33. The recommendations are to give assurance that the requisite infrastructure will be provided to ensure the success of the Barwell development from a community as well as a developer perspective, and to request HBBC not to progress the S106 Agreement without an urgent renegotiation of the financial contributions, involving HBBC, the County Council and the lead developer.

Equality and Human Rights Implications

34. There are no equality or human rights implications directly arising from the recommendations in this report.

Other Relevant Impact Assessments

35. The planning application has been subject to Environmental Impact Assessment. This has required the applicant to carefully consider all relevant environmental impacts and explain how those impacts can be effectively mitigated. As decision maker, HBBC took account of the Equality Impact Assessment regulations in reaching its decision to grant planning permission, subject to S106 Agreement, in 2013.

Background Papers

Report to the Cabinet "Infrastructure Plan" - 16 September 2016
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MID=4775#AI48852>

Report to the County Council - 10 July 2019 "Leicestershire County Council Planning Obligations Policy"
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=134&MID=5788>

Report to the Cabinet - 23 November 2018 "Leicester and Leicestershire Strategic Growth Plan - Consideration of Revised Plan for Approval"
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MID=5185#AI57659>

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