Agenda Item 9

Leicestershire County Council

DEVELOPMENT CONTROL AND REGULATORY BOARD

3 APRIL 2025

REPORT OF THE CHIEF EXECUTIVE

APPLICATION UNDER SECTION 106A OF THE TOWN AND COUNTRY PLANNING ACT

PART A – SUMMARY REPORT

APP NO. & DATE:	2025/s106A/0008/LCC
PROPOSAL:	Section 106A Application to modify Section 106 Agreement in relation to obligations relating to delivery of primary school places
LOCATION:	New Lubbesthorpe Primary School, Tay Rd, Leicester, LE19 4BF
APPLICANT:	Mr Martin Ward (Mather Jamie)
MAIN ISSUES:	Whether the application is legally compliant or not
RECOMMENDATION:	To modify the S106 in accordance with the application

Circulation Under Local Issues Alert Procedure

Mrs. L. Richardson CC

Officer to Contact

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PART B – MAIN REPORT

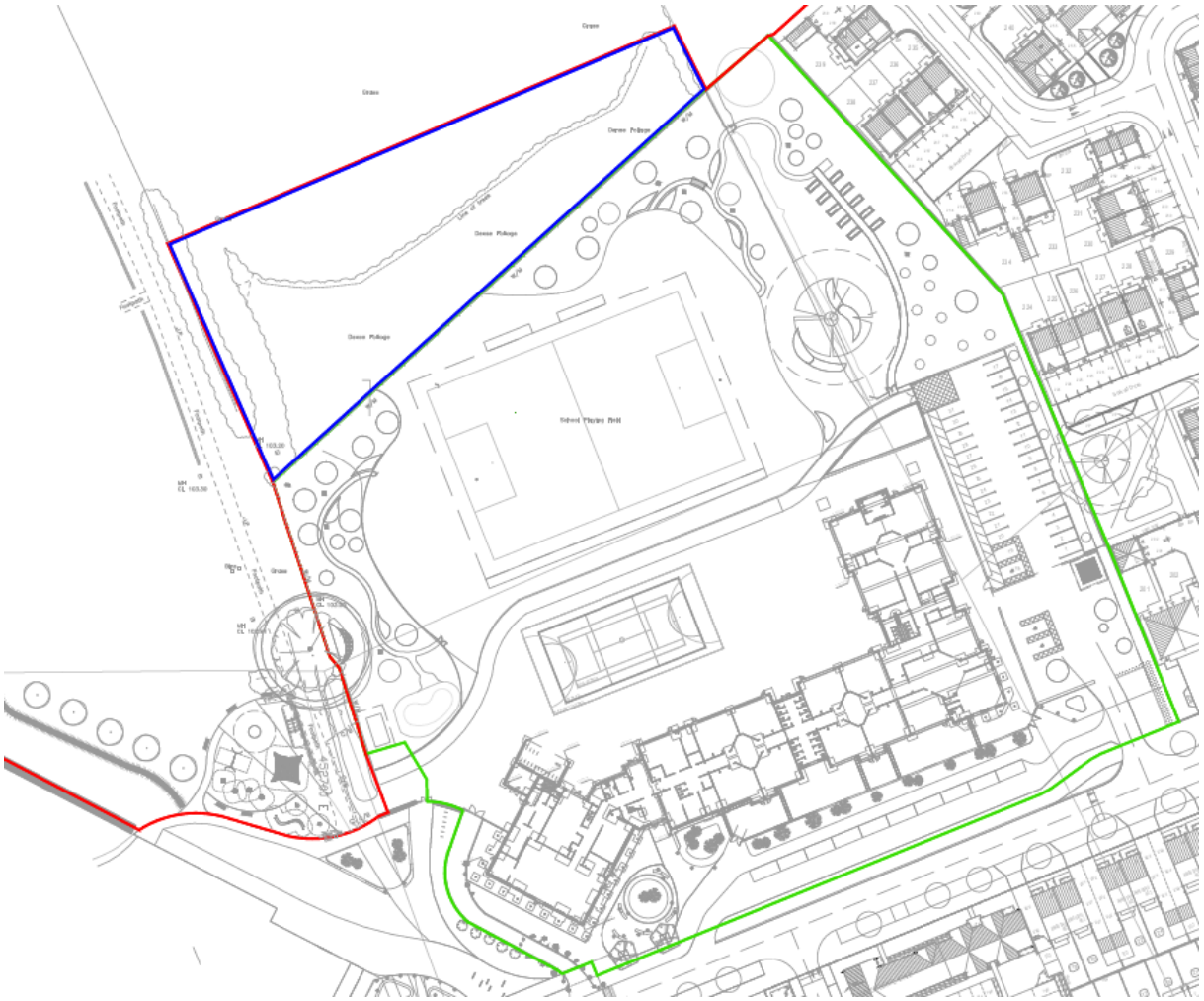
The Site and Surroundings

1. The New Lubbesthorpe Sustainable Urban Extension site lies immediately to the north of Leicester Lane, Enderby, to the west of the M1 motorway and to the south of Forest House Lane, Leicester Forest East. The western boundary adjoins Beggars Lane (for much of its length), the curtilage of Enderby Hall, the former landfill site at Enderby Warrens and the Warren Park Way Industrial Estate. The site is subdivided by the M69 motorway.

2. The application was granted planning permission by Blaby District Council in 2014 under planning application reference 11/0100/1/OX. Part of the application sought permission to accommodate two primary schools and associated playing fields and associated children's nursery facilities.

3. New Lubbesthorpe Primary School is the first of those schools, which opened in September 2019 and is located centrally within the emerging New Lubbesthorpe Sustainable Urban Extension, which is currently at approximately 1,000 occupations, with permission granted to build up to 4,250.

4. A site plan is shown on the following page. The outline shown in green is the existing primary school boundary, which has been transferred to the County Council, with the proposed extension shown outlined in blue (this land is under the applicants control).



Background

5. As part of the original planning application, the County Council entered into a Section 106 Agreement (a "deed") with the local planning authority (Blaby District Council), the applicant, developers and planning agents, and the owners of the land which constitutes the whole site subject to the planning permission. This agreement was completed 13 January 2014.

6. A Section 106 (S106) agreement is a legally binding agreement setting out planning obligations entered into by a person with an interest in land. They are generally entered into as a prerequisite to the grant of planning permission where the development of land would not be acceptable in planning terms. The purpose of a S106 agreement is to mitigate the impact of the development on the local community and infrastructure. The S106 agreement will set out schedules which explain the terms binding on the owners or developer to provide, facilitate or fund the provision of infrastructure, services or other measures that may be needed for the development to be acceptable in planning terms. The agreement may relate to measures on or off site and may restrict development for example pending the satisfactory performance of measures or development coordination.

7. This application is made, under Section 106A of the Town and Country Planning Act ("the Act"), to vary the obligation given in relation to the provision of school places (the sixth schedule of the S106 agreement, attached as Appendix A) in connection with the development granted planning permission by Blaby District

Council under planning reference 11/0100/1/OX.

8. Section 106A enables modification or discharge to be achieved either by agreement (which must be entered into by an instrument executed as a deed) with, or by an application to, the local planning authority by whom the planning obligation is enforceable. In this instance, the obligation is enforceable by the County Council.

9. For planning obligations entered into after 6 April 2010 an application to modify or discharge an obligation can be made after 5 years beginning with the date the obligation has been entered into to (as is the case with this application).

10. Unlike other planning applications, there is no opportunity to negotiate or vary the applicant's proposal under Section 106A of the Act; the decision to be made by the determining authority (the County Council in this case) is whether it agrees to the modification proposed or not.

11. There have already been 2 modifications of the original S106 agreement but these were made by agreement rather than by application.

Planning History

12. Blaby District Council granted outline consent in January 2014, which granted the following planning permission:

'Outline application for 4,250 dwellings, a mixed use district centre and two mixed use local centres featuring a supermarket, retail, commercial, employment, leisure, health, community and residential uses, non-residential institutions including a secondary school, primary schools and nurseries, an employment site of 21 hectares, open spaces, woodlands, new access points and associated facilities and infrastructure, and detailed proposals for two new road bridges over the M1 motorway and M69 motorway, and two road access points from Beggars Lane and new accesses from Meridian Way, Chapel Green/Baines Lane and Leicester Lane.'

13. It is usual for developments of this size to be delivered in phases, and reserved matters applications are submitted to seek permission for relevant developers to commence work on delivering these phases. This development is currently at Phase 1. application.

14. There have been several applications to the District Council to vary the existing planning conditions and there have been associated agreements to vary the planning obligations given in relation to the development site, but the applicant has chosen in this case to proceed by way of a S106A

15. The purpose of this report is not to consider the planning application, or any reserved matters applications; the principle of development has been already established and approved by the outline planning approval 11/0100/1/OX by Blaby District Council. The presence of a school in this location complies with the principles and parameters of the outline approval, and the purpose of this report seeks only to consider the variation of the obligation relating to the provision of pupil places.

16. The proposed changes will require the extension of the current primary school, in respect of which Blaby District Council are in receipt of a reserved matters application. They will also be the determining authority in respect of future in respect of the second primary school and the secondary school site/s.

17. As planning obligations precede the grant of planning permission the applicant is seeking a variation of the current arrangements for delivery of school places in advance of determination of the reserved matters application to enable the delivery of a larger primary school on the existing site. Should the reserved matters application be refused, and the applicant is unable to deliver the additional school places in this way, there would need to be a further variation of the planning obligations to resolve the school places issue.

18. Blaby District Council have indicated that they will determine the reserved matters application after the County Council have determined this application.

Description of Proposal

Primary School 1

19. In its original consultation response as part of the 2011 application, the County Council sought contributions towards providing a maximum of 1,050 primary school places, using the school yield multiplier of 24 primary school places for each 100 dwellings. This demand would be spread across up to 2 primary schools, and a review mechanism to assess planned provision and delivery of pupil places in the second primary school was established as part of the S106 agreement which was completed in 2014.

20. The S106 agreement set out that the owner was to either directly provide one or more of the two (2) primary schools, (and one (1) secondary school), or to pay a financial contribution for the County Council to build one or more of the school/s (or a combination) as well as providing suitable land.

21. The S106 agreement set out that Primary School 1 (PS1) should be intended to accommodate a maximum of 420 pupils, and the owner elected to construct the school in accordance with the agreement, and the school opened in September 2019. The number of pupil places to be provided by the second primary school was subject to determination following a review of primary school needs. This review followed completion of PS1.

22. PS1 is currently a two-form entry Primary School (420 place). The proposed extension to PS1 will increase the size of PS1 to a three-form entry school with a pupil capacity of up to 630.

23. Because of the extension to PS1, additional land is required to meet play space standards for a three-form entry primary school, and this land will be transferred to the County Council following completion of the extension should this application be approved.

24. There are no obvious constraints limiting the expansion of the site. The proposed area for development will not be near existing or future residential development.

25. There are no other obligations on the owner in relation to Primary School 1 which are yet to be discharged.

Primary School 2

26. Instead of proceeding in accordance with the original S106 agreement and the determination of the review the owner wishes to provide or fund the new primary school (PS2) as two forms of entry with a pupil capacity of no more than 420, on a slightly smaller site, located in close proximity to the anticipated location of the secondary school. This is dependent upon the approval of the reserved matters application to enable the extension of PS1

27. Without the extension of PS1, PS2 should have been constructed to accommodate 630 pupils, as confirmed by the review. This current application to vary the S106 agreement therefore has an impact on the obligations in relation to the delivery of PS2.

28. Because of the expansion to PS1, the decision on the delivery of PS2 has been pushed back from a decision on delivery being required prior to the occupation of 1,200 dwellings to being required prior to the occupation of 2,000 dwellings.

29. Applications to construct PS2 and the secondary school will be the subject of future reserved matters application to Blaby District Council and should not be factored into the decision making on this application under Section 106A.

Secondary School

30. As part of this application, the owner is still committing to providing the land for the secondary school (SS) and either electing to build the school or providing contributions.

31. However, there are some changes proposed to the schedule considered as part of this application, and they are;

    (a) That the school be delivered to accommodate 930 pupils aged 11-18 (and not between 800 and 930) on a site of 8 hectares (and not 7 hectares)

    (b) That the County Council must decide whether the school is required before the occupation of 1,400 dwellings (and not 1,200)

    (c) If the owner has not decided to build the school before the occupation of 1,400 dwellings, it must transfer the land to the County Council (and not at 1,000 dwellings)

32. The owner has set out that a revised Travel Plan will be submitted as part of the application, which will address any traffic impact and concerns. This will be considered as part of the existing obligation that lies with the Local Highway Authority to undertake a review of the Highway impact under the Highway Delivery Review Strategy.

33. The County Council are continuing to engage positively with the owner on its commitment to fulfilling the obligations in lieu of the current and amended schedule as part of the Section 106 agreement. The current schedule (schedule six) is included as Appendix A and the revised schedule is included as Appendix B.

Consultations

32. **LCC Education –** No Objection

33. **Highways Authority –** No Objection

34. **Borough Council (Blaby District Council)** – No objection but did raise a query about the total land requirements to deliver the school as they are not the same as is set out in the planning conditions linked to the original permission, which is also different to the schedule in the original schedule of development. This opinion is without prejudice to the determination of the reserved matters application

35. **Local Member(s) –** Mrs L Richardson CC – No objection but raised concerns about the impact of increased traffic.

Publicity and Representations

36. The application has been publicised by means of site notice(s), in accordance with the County Council's adopted Statement of Community Involvement and the regulations on publicising applications made under Section 106a of the Act.

37. Three site notices were displayed; one at either end of the existing PS1 site, and one in the middle of the drop off zone.

38. 1 letter (email) of representation has been received raising objections on the following grounds:

(a) Impact of traffic and parking

(i) Firstly, the representation suggests that there is inappropriate parking for the school as it is currently, and expanding the school will make this worse.

(ii) Secondly, the representation suggests that drivers are speeding along Tay Road and driving erratically, and that more children attending the school are more likely to be at harm.

39. The issues raised are considered in the Assessment of Proposal section of this report.

Assessment of Proposal

40. It is important to understand at this section of the report that this is the first time that the County Council have been asked to determine an application of this type, and the decision is not related to the principle of the development itself and should be focussed on the application to vary the obligations relating to the provision of school places.

41. Applications made under Section 106A of the Town and Country Planning Act must be determined as they are specified in the application. There is no scope to negotiate or amend the proposals or impose any further obligations or planning conditions to make it acceptable. The decision here is to either approve or refuse the application as it has been presented by the applicant.

42. Since the original consultation response was issued the Blaby District Council in 2011, a number of changes have occurred. In direct relation to this application to vary the Education obligation, the primary school child yield per 100 dwellings has increased from 24 pupils per 100 dwellings to 30, this means that the demand for the existing school is higher than originally anticipated. Further the cost of the County Council constructing a new or expanding an existing school has increased significantly.

43. If this application had not have been received, or if the application is not approved, then any demand for primary places not able to be accommodated at PS1 would result in primary aged pupils wanting to attend PS1 having to travel to other primary schools in the area, potentially exacerbating transport and highway issues in the surrounding areas. Further, the County Council may have to provide school transportation for these pupils, costing in the range of ~£50,000 per school year for up to 50 pupils.

44. The original S106 provided for the delivery of up to 1,050 primary school places as part of the development, either as physical infrastructure (i.e., 2 primary schools) or financial and land contributions for the County Council to deliver the school places.

45. These 1,050 places would be split between 420 primary places as part of PS1, and up to 630 places as part of PS2.

46. This application varies the delivery mechanism and timescales to deliver those primary school places; instead of PS1 being 420 places, it will deliver 630 places, and instead of PS2 being up to 630 places, it will deliver up to 420 places, later in the development on a smaller site.

47. Similarly, the application also is to vary the delivery of Secondary School places, pushing the timescale back slightly, but committing to delivering 930 places, rather than “between 800 and 930” on a bigger site.

48. In essence, the same number of primary pupil places will be delivered, albeit in a slightly different way at a slightly different time than planned; but because of the increase in pupil yield (as set out in paragraphs 18 and 42), the pupil places are needed earlier, so the amendments set out in this application are favourable to both the County Council and local residents.

49. An objection has been received specifically in respect of the modifications relating to the extension of PS1, those objections being related to the impact of additional traffic along Tay Road, parking issues, and careless driving. A concern was also raised by the local Member in relation to additional traffic; both the objection and the concern were raised in context of the additional children attending the school should the application be permitted.

50. The Local Highway Authority has not raised any concerns or objection to the application on safety grounds, and the development is subject to a Highways Delivery Review Strategy (HDRS), which is an existing obligation set out in the Section 106 agreement that sets out a review of the Highway impact prior to the occupation of 1,000 dwellings, and then prior to the occupation of every 500 dwellings thereafter, or earlier as agreed.

51. The first HDRS has taken place, and no concerns relating to traffic, parking, or driving on Tay Road were noted.

52. Should the HDRS highlight any concerns relating to safety along Tay Road (or any other part of the development covered as part of the HDRS) then the HDRS is the mechanism by which any additional traffic calming measures will be secured in agreement with the owner.

53. It should be noted that a reserved matters application is currently lodged with Blaby which, if approved, facilitates the extension of PS1. This application cannot be determined until the County Council has determined this application.

54. Where an application to modify an obligation is lodged, the authority must determine;

    (a) That the planning obligation shall continue to have effect without modification;

    (b) If the obligation no longer serves a useful purpose, then it shall be discharged, or;

    (c) If the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

55. Where an authority determine that a planning obligation shall have effect subject to modifications specified in the application (as shown in (c), above), the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

56. In effect, should the application to the County Council be approved, then the application to vary the education obligations becomes “live” on the date of approval. This means that the S106 agreement will be modified and the existing sixth schedule will be replaced with the one shown in Appendix B.

57. If the application is not determined within the statutory period of 8 weeks from receipt (or as otherwise agreed with the applicant) or if the authority determine

that the planning obligation shall continue to have effect without modification, then the applicant has the right to appeal under Section 106B of the Act.

58. It should be noted that the applicant has agreed to an extension of time for the application to be presented to this meeting of the Development Control Regulatory Board.

Recommendation

59. ALLOW the application to vary the obligations so that the obligations as set out in the Sixth Schedule to the S106 agreement as set out in Appendix A are substituted by the wording of the Sixth schedule shown in Appendix B.

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