

**HIGH PEAK BOROUGH COUNCIL
DEVELOPMENT CONTROL COMMITTEE**

Date 15th July 2019

Application No:	HPK/2017/0518	
Location	Woods Mill, Milltown, Glossop	
Proposal	Variation of conditions 21, 44 and 45 of HPK/2015/0571	
Applicant	Mr M Ryan, Glossop Land Limited	
Agent	Mr C Smith, Plan A (North West) Limited	
Parish/ward	Howard Town	Date Registered 15 th September 2017
If you have a question about this report please contact: Jane Colley, Jane.Colley@highpeak.gov.uk Tel: 01298 28400 ext. 4981		

1. REFERRAL & BACKGROUND

1.1 Previous Members of the Committee will recall the above application HPK/2017/0518 at the meeting of the 19th March 2018, whereby it was resolved to approve the application, subject to conditions and the applicant entering into a deed of variation. The variation was applied for because of changes to the layout which were necessary to accommodate ground conditions on part of the site being developed for housing. In accordance with any s73 application a variation to the 106 agreement is required to ensure that the original agreement applies to the new consent as it did to the original consent.

1.2 The site itself is currently being built on to provide housing but is part of a larger site which, in summary, is intended ultimately to provide housing, a new supermarket, an up graded existing commercial unit (Unit A), parking, a riverside walk and associated structures.

1.3 The proposed development when built out will deliver the riverside walk which is a key benefit of the scheme providing a pedestrian link between Victoria Street and the Howard Town development with the Shirebrook estate and residences beyond. The scheme also proposed upgrading an existing commercial structure on site referred to in this report as Unit A.

1.4 The minutes of this meeting relating to the variation are as follows:

HPK/2017/0518 WOODS MILL, MILLTOWN, GLOSSOP
(Agenda Item 9)

Variation of conditions 21, 44 and 45 of HPK/2015/0571

Applicant: Mr M Ryan, Glossop Land Limited

RESOLVED:

1. That approval be granted, subject to:
 - a. A Deed of variation to the existing section 106 agreement attached to planning consent HPK/2015/0571 to reference the new consent;
 - b. Repetition of the same conditions attached to outline consent HPK/2015/0571 and compliance with any conditions agreed by a discharge of condition application;
 - c. Amendment to conditions 21, 44 and 45 of planning consent HPK/2015/0571 to reference the amended plans and wording

2. That in the event of any changes being needed to the wording of the committee's decision (such as to delete, vary or add conditions / informatives / planning obligations or reasons for approval / refusal) prior to the decision being issued, the Operations Manager – Development Services be delegated authority to do so in consultation with the Chair of the Committee, provided that the changes do not exceed the substantive nature of the committee's decision.

1.5 Since this time, the applicant has advised the Officers that it has not been possible to complete the Deed Of Variation due to a dispute between the various landowners. The Council has sought to assist the applicant. However, various proposals to overcome the issue proposed by the applicant were not considered to be viable and the relationship between the landowners has now completely broken down. In the alternative officers have suggested that in order to deliver as many benefits of the scheme as a whole, including completion of the housing development, that the applicant enter into a new deed but only to deliver those parts of the previous s106 in respect of the residential element of the scheme.

1.6 At the same time Officers have been engaged in discussions with the owners of the land for the proposed supermarket, who are also willing to enter into a deed, but again only in respect of those obligations regarding the "supermarket land".

1.7 This report deals only with the effect of the revised legal agreements and should be read in conjunction with the previous committee report (appended) which deals with all other planning considerations.

2. OFFICER COMMENT

2.1 Planning permission was initially granted in July 2016 (HPK/2015/0571) for the erection of a new supermarket, refurbishment and extension to an existing retail unit (known as Unit A) and 57 residential units. This was subject to the

completion of a section 106 agreement which secured the following:

1. £15,000 towards the investigation and implementation of any highway works and/or traffic regulation order(s)
 2. £5,000 towards the approval and monitoring of a travel plan relating to the occupation of the dwellings; and
 3. £5,000 towards the approval and monitoring of a travel plan relating to the site of the supermarket; and
 4. The construction of the Riverside Walk prior to the occupation of the supermarket or any dwelling (except any dwelling accessed from Mill Street).
 5. The management and maintenance of the Riverside Walkway.
- 2.2 The legal agreement also prevented the occupation of the supermarket until:
1. 10 dwellings in phase 1 were practically complete;
 2. 8 dwellings were completed to roof level externally including all glazing so as to be weatherproof;
 3. All roads and services had been provided sufficient to serve all the dwellings on the site and constructed to base-course level;
 4. The works to Unit A (refurbishment and extension) were practically complete.
- 2.3 The above restrictions were imposed to ensure that the whole site was developed taking into account that the site lies within a regeneration area and is subject to Policy DS1 of the Local Plan, the Glossop Design and Place Making Strategy Supplementary Planning Document (SPD), including the Design Brief for the Woods Mill Area. Policy DS1 identifies Woods Mill as a Regeneration Area, where mixed use development is acceptable. This Policy, amongst a number of criteria, identifies that incremental development which would undermine the comprehensive redevelopment of the site will be resisted.
- 2.4 The site also lies within the conservation area, and therefore the scheme as a whole was considered important in delivering improvements to the character and appearance of the designated heritage asset. As can be seen from the timing arrangements set out above it was considered that the danger was that the supermarket would come forward without the housing or completion of the other commercial unit; Unit A. In fact it happened the other way around.
- 2.5 The applicant now advises that due to dispute between the various landowners, that a Deed Of Variation cannot be entered into, and as a consequence is now prejudicing the completion of the residential element of the scheme. It is therefore proposed

that the applicant enter into a new s106 deed which will contain all the same obligations as the original section 106 agreement, ie in respect of the riverside walk but only as it relates to the residential land.

- 2.6 Equally, the proposed supermarket operator, who was signatory to the original section 106 agreement has also approached the Council seeking to vary the section 106 agreement. They advise that the original contractual arrangements to construct the supermarket and Unit A have broken down and therefore the restrictions placed on the occupation of the supermarket prevent its construction. The supermarket provider has stated that they wish to construct the supermarket as soon as possible. Accordingly the operators of the supermarket are now seeking to enter into a new section 106 agreement to remove the prohibition on occupation of the supermarket until the works to Unit A (refurbishment and extension) are practically complete and which will contain all the other restrictions as the current agreement, ie in relation to the riverside walk and travel plan. Unit A is not in the ownership of the supermarket operator and they have no control over it's refurbishment.
- 2.7 At the present time, the residential element of the scheme is well under way, with a number of the dwellings to the north of Glossop Brook in occupation. No works have commenced in respect of the supermarket, other than the demolition of Woods Mill which took place a number of years ago.
- 2.8 In terms of the original section 106 agreement, more than 18 dwellings are now practically complete and the vast majority of roads and services serving the residential part of the scheme are constructed. Indeed a number of the internal roads are constructed with a tarmac surface. Moreover the section of the riverside walk towards the front of the houses, adjacent to Glossop Brook is almost completed.
- 2.9 The original section 106 agreement also secured a number of financial contributions including £15,000 towards the investigation and implementation of any highway works and/or traffic regulation order(s) on surrounding roads, £5,000 towards the approval and monitoring of a travel plan relating to the occupation of the dwellings and £5,000 towards the approval and monitoring of a travel plan relating to the use of the supermarket. To date, £15,000 towards the off site highway works and £5,000 towards the travel plan for the residential part of the site have been received.
- 2.10 The effect of separating the residential element from the remaining areas of the site, will enable the revised layout, which was found to be acceptable at the March 2018 committee

meeting to progress towards completion. If the supermarket provider also enters into a deed of variation, removing the restrictions placed on it, this will allow this element of the scheme to be constructed. The only element which would then be left without any formal mechanism to ensure its delivery would be the refurbishment and extension of Unit A.

- 2.11 The owners of Unit A consider that the refurbishment works should now be linked to the sale of the residential development (rather than the supermarket) which they say will force the residential developer to carry out his contractual obligations by undertaking the extension and refurbishment works to Unit A as originally envisaged. The owners of Unit A also advise that the the supermarket provider has agreed to give the applicant access to their land to install main services across their land which is required to facilitate the works to Unit A.
- 2.12 The supermarket provider has confirmed to the Council that there would be no objection to the installation of the required services for Unit A, but this would be subject to easements, licence and the location of the services being agreed with the applicant.
- 2.13 The applicant states that he will not under any circumstances take any responsibility for the delivery of any part of the retail development on the site, whether for Unit A or the supermarket. In these circumstances, it is breakdown of the relationship between the various landowners which now threatens the regeneration benefits of the site.
- 2.14 As a matter of fact even if the applicant were willing to enter negotiations to enter onto the supermarket land the Council could not guarantee that agreement could be reached, particularly given the background between the parties, or that it could be reached in a timely way. In the meanwhile the housing development would be stalled.
- 2.15 In addition, if the Council were to require the housing development to be tied to the delivery of Unit A, not only would the ultimate successful development of Unit A be uncertain (because of reliance on other parties to cooperate and enter into legal agreements as between them) but it would also be imposing a brand new requirement on the applicant part way through his development of the site, which will of necessity lead to substantial delay (and costs) and which could be deemed to be unreasonable in the circumstances.
- 2.16 In planning terms it is necessary to consider what benefits, or otherwise, would be gained by either retaining the current position i.e. that the site be built in accordance with the original planning consent HPK/2015/0571, or that two section 106

agreements be entered into thus allowing the section 73 decision to be issued.

- 2.17 If the Council were to refuse the applicants request, building works for the residential element of the scheme would need to be completed in accordance with the approved layout. The applicant sought a section 73 application because of the difficulties with the layout of the southern section of the site and the presence of a sewer and retaining wall structures. Therefore the applicant is physically unable to comply with the approved layout plans and the difficulties between the various parties would continue. Moreover, the supermarket provider would not build the superstore, due to the restriction placed on its opening and Unit A would not be refurbished as there would be no supermarket present on the land. In this situation, there would be significant harm to the conservation area, due to the absence of the supermarket, Unit A and a partially completed residential area. The land would remain in its present condition, the residential element would be partially completed, and a large and unsightly area of vacant land at the heart of the regeneration area would remain.
- 2.18 Despite the suggestion of the owners of Unit A to “flip” the restriction of development onto the completion of the residential development, given that any access agreements onto the supermarkets land to install the required services for Unit A are yet to be agreed, (notwithstanding an informal indication from the supermarket that it would be willing to allow it), and the stated refusal by the applicant to enter into such an agreement, the delivery of all three elements would be undermined, which would significantly and demonstrably harm the conservation and regeneration areas.
- 2.19 It is extremely disappointing that landownership and contractual matters have prevented the supermarket and Unit A being brought forward at the same time. However, the separation of the various elements of the scheme, will ensure that both the supermarket and residential elements of the scheme are brought forward with their benefits to the local economy in terms of jobs and improving a regeneration area within the conservation area. Moreover, with the delivery of both the residential and supermarket elements, this will have a less harmful impact on the conservation area, than if the applicant were to revert back to the original approved plans and the consequential loss of the supermarket and Unit A.
- 2.20 Unit A would become severed from the occupation of the supermarket, and this element could not be positively secured in terms of its delivery. However, planning permission would remain in place for its refurbishment and extension at a future date. The

refurbishment of Unit A would have obvious benefits to the conservation area. However, if this were the only element which was not secured, the harm to the conservation area, would be less than securing both the residential and supermarket elements of the scheme.

- 2.21 By entering into two separate 106 agreements with the developer of the residential part of the site and the supermarket provider, both elements of the original scheme would be delivered. If the Council were to refuse either option or attempt to impose an agreement on an unwilling applicant and dependent on agreements to enter land, as set out above, there is a danger that the area of land associated with both the supermarket and unit A would remain undeveloped to the significant detriment of the conservation area within the regeneration area and the remaining housing development would have to be abandoned as the original plans cannot be built out due to ground conditions.
- 2.22 The remaining elements of the section 106 agreement in terms of the provision of the riverside walkway, connecting both the residential and retail parts of the site to Howard Town to the west, would remain. Moreover, the supermarket provider would still be required to provide the £5,000 contribution towards the approval and monitoring of the travel plan.

3. PLANNING BALANCE AND CONCLUSIONS

3.1 Overall, it is considered that releasing some of the restrictions imposed by the original legal agreement, will enable the site to be developed and allow the Council to issue the section 73 decision. The release of the section 73 decision will enable the houses to be completed, whilst still ensuring that the riverside walkway is delivered. Equally, by severing the ties which prevent the occupation of the supermarket, the supermarket provider will be able to construct the supermarket. Although this course of action will not deliver the extension and refurbishment of Unit A and the comprehensive redevelopment of the whole site, a requirement of Policy DS1, it will ensure that two elements of the scheme are delivered, a significant benefit which outweighs the regeneration benefits associated with Unit A. The proposal to require the applicant to enter into an agreement they have indicated they will not agree to and dependent on a number of other agreements for entry to property not owned by the applicant is considered to be too uncertain to be relied upon and potentially also unreasonable .

3.2 In summary the Section 106 was originally attached to the planning permission to ensure the comprehensive redevelopment of the site. It is now serving to prevent two of the 3 elements from being delivered. It is considered that it is no longer serving a useful planning purpose in its current form and is, in fact, preventing what it was intended to secure.

Replacing it with 2 new modified agreements will enable the housing and supermarket to be delivered unimpeded. Whilst this course of action does not ensure the delivery of Unit A, it does not remove the planning permission and does not prevent it either. Accordingly, it is recommended that the committee resolve to approve the application subject to the 2 revised Section 106 agreements as detailed below.

4. RECOMMENDATIONS

A: That in consideration of the report to Committee dated 13.3.2018 and this report approval be GRANTED, subject to:

- **A Section 106 obligation be entered into by the supermarket provider as set out in the report**
- **A Section 106 obligation be entered into by the developer of the residential elements of the scheme as set out in the report.**
- **Repetition of the same conditions attached to HPK/2015/0571.**
- **Amendments to conditions 21, 44 and 45 of planning consent HPK/2015/0571 to reference the amended plans and wording.**

B In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Operations Manager – Development Services has delegated authority to do so in consultation with the Chairman of the Development Control Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.

Informative

This recommendation is made following careful consideration of all the issues raised through the application process and thorough discussion with the applicants. In accordance with Paragraph 38 of the NPPF the Case Officer has sought solutions where possible to secure a development that improves the economic, social and environmental conditions of the area.

Site Plan