

Development Control Committee

22 April 2008

REPORT OF THE HEAD OF PLANNING & BUILDING CONTROL

Proposed Deed of Variation to S106 Obligation in relation to Planning Permission 04/0231/FL/E2 – Morris Homes Residential Development at former Filon Products, Aldridge Road, Streetly

1.0 PURPOSE OF REPORT

To secure authority from Committee to vary the Section 106 Agreement associated with permission 04/0231/FL/E2, by removing the phasing provisions to allow the second phase of development to occur at the site.

2.0 RECOMMENDATIONS

That the Assistant Director - Legal and Constitutional Services in consultation with the Head of Planning and Building Control, be authorised to amend the Section 106 in respect of application 04/0231/FL/E2, to remove the phasing clause from the Agreement, as set out in the report.

3.0 FINANCIAL IMPLICATIONS

The developers will need to meet the Council's reasonable costs in preparing the Deed of Variation.

4.0 POLICY IMPLICATIONS

Unitary Development Plan Policies GP2 and ENV10 seek to prevent unacceptable adverse effects on nearby land uses where the safety or amenity of occupants would be unacceptably affected by pollution. Policies ENV32 and H10 state that in assessing the quality of design of any development proposal consideration will be made to community safety and security, proposed vehicular and pedestrian patterns and creation of a high quality living environment well integrated with surrounding land uses. Policy GP3 states that Planning Obligations will be used to ensure the implementation of an agreed phasing scheme.

5.0 LEGAL IMPLICATIONS

None arising from the report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

The noise assessment

8.0 WARDS AFFECTED

Streetly.

9.0 CONSULTEES

Legal Services have advised on the efficacy of the proposed Deed of Variance in accordance with Table 2 Section 6(a)(1) the Power to enter into agreements regulating the development or use of land under Section 106 of the Town & Country Planning Act can only be taken by the Development Control Committee. Pollution Control has no objections following submission of a Phase 2 Noise Assessment.

10.0 CONTACT OFFICER

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11.0 BACKGROUND PAPERS

All published.

David Elsworthy
Head of Planning & Building Control

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12.0 BACKGROUND AND REPORT DETAIL

12.1 Permission was granted on 8th July 2005 (application 04/0231/FL/E2) for residential development comprising houses and apartments plus garages, parking and ancillary developments at this former industrial site off Aldridge Road, Streetly. The scheme was granted subject to conditions and subject to a Section 106 Agreement. The terms of the Agreement sought to secure contributions towards public open space and education and to control the phasing of the development. As the contributions towards public open space and education have already been paid the only outstanding issue is the control over phasing of the development.

12.2 The Clause in the Agreement stated that no dwelling shall be constructed on Phase 2 of the approved development until or unless the access and egress from and to Aldridge Road has ceased use in perpetuity for the provision of access/egress to the industrial and commercial uses and premises on land to the east of the site. Phase 2 of the approved development relates to Plots 40-46 fronting Enterprise Drive. In order to address the terms of the clause satisfactorily and fully evidenced notification should be received by the Local Planning Authority.

12.3 The reason for imposition of the phasing clause was due to the fact that at that time there was potential conflict between existing industrial occupiers and proposed residential occupiers. The industrial occupiers were restricted to using the access road off Enterprise Drive for all lorry deliveries as a height restriction exists on the Bridle Lane access. Due to the lack of restrictions on operating hours large articulated lorries could therefore have used the combined residential/industrial road at any hour of the day causing potential disturbance to residential occupiers. The phasing prevents the properties immediately fronting Enterprise Drive from development until use of this access/egress by industrial occupiers has ceased.

12.4 In support of the request to remove the phasing clause the applicants have provided a Transport Statement and a Phase 2 Noise Assessment. The Transport Statement highlights that a full Transport Assessment was prepared in 2004 to support the original application for change of use of the site from industrial to residential use. The Transport Assessment considered development of 150 dwellings in total, including the industrial estate to the east of the application site. This concluded there were no reasons in transport terms why full residential development of 150 dwellings (i.e. including the adjacent industrial estate and including plots 40-46) should not be permitted. There were no objections in principle from the Transportation officer at that time in relation to this matter.

12.5 The Phase 2 Noise Assessment was completed in December 2007 and concludes that an appropriate and commensurate set of remedial measures have been included within the report to ameliorate against noise to ensure a reasonable internal noise level is experienced within noise-sensitive

buildings on the site in order to protect future occupiers against noise from industrial occupiers. The report also concluded that the impact of industrial noise on the prevalent background noise will not be audible within the development area. Pollution Control officers agree with the consultant's findings and are satisfied that the recommended mitigation measures in respect of noise are acceptable.

12.6 In addition to the above it is noted that there has also been a change in the circumstances of the adjacent sites since the original permission was granted. Planning permission has been granted for residential development on the majority of industrial premises off Bridle Lane (reference 07/1617/FL/E11) on 18th October 2007. Morris Homes have also applied for planning permission for erection of 13 apartments on Unit 25 Enterprise Drive (reference 07/2491/FL/E6) immediately adjacent plots 40-46. This leaves only two remaining commercial/industrial occupiers between the residential development sites. These are Ascom Tele Nova Limited, a telecommunications firm offices and Paraday Fabrications. A plan is attached to this report that identifies the planning applications referred to and highlights the phase 2 land.

12.7 The principle of residential development adjacent to the office use has already been established in granting planning permission for the original scheme and the Bridle Lane application. The only likely remaining industrial occupier is therefore Paraday Fabrications. In granting the Bridle Lane application Committee have accepted that the area between the Morris Homes site and the Bridle Lane site is capable of being comprehensively developed as a Master Plan and layout for that approved scheme shows how the intervening sites could be incorporated in the future. Also, Committee did not impose such phasing conditions on this permission as the applicant had demonstrated how the wider site could be developed for residential purposes whilst maintaining access to the remaining commercial/industrial occupiers and protecting residential amenities of future occupiers from noise or disturbance from these occupiers. The supporting statements for removal of the phasing on the current application have also demonstrated that residential amenities will not be adversely affected.

12.8 In light of the above the residential amenities of future occupiers on plots 40-46 are therefore reasonably protected and release of the phasing clause is recommended.