

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

4626

Author:

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Department:

Growth and City Development

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Subject:

Public transport contribution from development at Teal Close, Netherfield

Total Value:

£710,000 (Type: Revenue)

Decision Being Taken:

To authorise the Council to enter a section 106A deed of variation relating to the development at Teal Close, Netherfield (ref: 2013/0546) in relation to those matters at paragraphs 4, 5, 6 and 7 below;

To allocate the funds received by the City Council pursuant to that further deed of variation to the purposes specified therein;

To note that further approval with respect the onward allocation of the money to NCT referred to at paragraph 5 and 8 below will be required

1. In June 2014 planning permission was granted for a large residential development at Teal Close, Netherfield, by the neighbouring local planning authority, Gedling Borough Council. As Nottingham City's transport infrastructure would be significantly affected by the development in the neighbouring authority area, prior to the issue of the permission a section 106 agreement was completed which secured payment of two contributions to the City Council, as follows:

 - <! £680,000 (plus indexation) contribution towards what was then known as the City Link bus services to extend the service to the Teal Close development , and
 - <!- £30,000 (plus indexation) towards travel passes for the residents of the development.
2. Other planning obligations within the agreement secured benefits either in the form of provision or financial contributions for the County Council as highway and education authority, and for Gedling Borough Council in relation to affordable housing and open space.
3. Subsequently the developer, Persimmon Homes Limited, submitted a section 73 variation application to Gedling Borough Council (ref: 2017/0999) to vary certain conditions of the 2014 permission, in relation to the timing of implementation of highway improvement works. As the grant of a section 73 application would result in a fresh permission for the development, a section 106A deed of variation was required to transfer the obligations contained in the 2014 agreement to the variation permission. A Portfolio Holder decision under DDM 3056 authorised the City Council to enter into a deed of variation, which was completed on 27 February 2018. This deed of variation did not make any substantive changes to the obligations or benefits so far as the City Council was concerned.
4. The developer has now submitted an application to vary the section 106 obligations in relation to the delivery of education benefits (ref 2020/0189) as well as a further section 73 application to vary conditions relating to highways and cycle improvement works (ref: 2019/0374). Again, the grant of the section 73 application will result in a fresh permission being granted, so a further deed of variation is required to transfer the existing obligations to the new variation permission.
5. In the intervening years since the 2014 agreement was completed, the operation of the City Link bus service is now being delivered by Nottingham City Transport (NCT) who are running the service as the Number 50. The 2014 agreement will therefore also require amendment by the further deed of variation to reflect the change to the service name and operator. Due to this change of operation it was initially agreed that NCT should be joined as a party to the s106 agreement and for NCT to receive the contribution towards the extension of what is now the Number 50 service plus indexation directly from Persimmon. As NCT will be providing the service, they agreed indexation of the bus service extension instalments with Persimmon as follows:

 - The first instalment of £170,000 plus indexation from 30 June 2014 to 31 March 2019;
 - The second instalment of £170,000 plus indexation from 30 June 2014 to 31 March 2020;
 - The third instalment of £170,000 plus indexation from 30 June 2014 to 31 March 2021; and
 - The fourth instalment of £170,000 plus indexation from 30 June 2014 to the date of payment.

Gedling Borough Council, the local planning authority, subsequently decided that NCT should not be a party to the s106 agreement, and therefore the bus service extension contribution (with the indexation agreed by NCT who will be providing the service) will be paid directly to the City Council. The deed of variation therefore now confirms that the contribution, once received by the City Council, will then be transferred to NCT to be used towards the provision of the extension of what is now known as the Number 50 service to serve the Teal Close development, provided that the City Council have first received a written confirmation from NCT that they will use the contribution for that purpose and subject to that payment being otherwise lawful.

6. The further deed of variation also amends the triggers for payment of the instalments of the bus service extension contribution to take account of the fact that the residential development has already been partially occupied, and other associated amendments.

7. Under the further deed of variation, once completed, the City Council will remain entitled to receive the contribution of £30,000 plus indexation from 30 June 2014 to 31 March 2019 in respect of the travel passes for residents of the development.

8. The application of the service 50 extension contribution element of the s106 monies, when received by the City Council, will involve payments being made to a third party, namely NCT. Any payments made to NCT will first require future agreement(s) to be entered into to ensure that the money is used towards the extension of what is now the Number 50 service to serve the development and to ensure that the City Council's obligations under the s106 agreement are complied with. A further approval will be required in respect of the onward allocation of this contribution to NCT.

Other Options Considered:

If the City Council declined to enter into the s106A deed of variation, it could lead to Gedling BC not issuing the planning permission for the variation application, and the changes of circumstances due to the City Link bus service now being operated by NCT not being correctly reflected in the section 106 agreement.

If Gedling BC did issue the variation permission without the City Council having entered into a modification agreement to transfer the benefits of the 2014 agreement, this would result in the loss of this contribution (£710,000) to public transport provision. This is not considered an acceptable option.

Background Papers:

Published Works:

Affected Wards:

Citywide

Colleague / Councillor Interests:

Consultations:

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

None

Equality:

EIA not required. Reasons: N/A

Decision Type:

Portfolio Holder

Subject to Call In:

No

The call-in procedure does not apply to the proposed decision because the delay likely to be caused by the call in process would seriously prejudice the Council's or the public's interests. The Chair of the Overview and Scrutiny Committee (or Vice-Chair) in his/her absence has been consulted and agreed both that the decision proposed is reasonable in all circumstances and that it should be treated as a matter of urgency.

Person Consulted: Councillor Samuel Gardiner

Consultation Date: 12/05/2022

completion of the DoV is extremely urgent due to the County Council's imminent new school construction contract deadline.

Advice Sought:

Legal, Finance

Legal Advice:

Please see attached advice. Advice provided by Tamazin Wilson (Solicitor) on 22/04/2022.

Advice documents: Legal comments.docx

Finance Advice:

This decision seeks approval to comply with the terms and conditions as per the section 106 Town and Country Planning Act 1990 dated 30 June 2014.

The Authority will receive a contribution of £710k (plus indexation), £680k towards bus services relating to Teal close and £30k in respect of travel passes for residents is required to enable a bus service.

This DDM relates to previous DDM 3056 which was invalidated by the developer, Persimmon Homes Ltd submitting a section 73 variation application.

The £680k will be received by the Council and held within the S106 fund, prior to being transferred to NCT upon receipt of written confirmation that the sum will be used for the provision of the specified services.

The £30k for travel passes for residents will be held within the S106 fund, to be drawn down by the Public Transport team as the travel passes for residents are issued.

Full evidence and audit trail will be retained in order to prove upon request of the developer that the monies have been expended on their intended purpose.

Advice Provided by Paul Rogers (Finance Business Partner) on 29/04/2022 Advice provided by Paul Rogers (Commercial Finance Business Partner (G&D)) on 29/04/2022.

Signatures

Audra Wynter (Portfolio Holder for Highways, Transport and Parks)

SIGNED and Dated: 17/05/2022

Sajeeda Rose (Corporate Director of Growth & City Development)

SIGNED and Dated: 12/05/2022