

Legal Comments

1. The existing agreement pursuant to section 106 Town and Country Planning Act 1990 (TCPA) dated 30 June 2014 obliges the developer to pay a transport contribution of £710,000 to the City Council. This sum is comprised of 4 instalment payments of £170,000 (index linked) each in respect of the City Link bus contribution and £30,000 (index linked) in respect of free travel passes for residential occupiers of the development. The outline permission granted in 2014 is for residential (up to 830 units), employment uses, a community hub, primary school, hotel, care home, playing pitches, public open space, allotments, an ecology park and other ancillary matters. Payment of the contributions is due at various stages in the occupation of the residential element of the development, and the 2014 agreement becomes effective only on the implementation of the 2014 outline planning permission to which it was linked.
2. As stated in the Reasons for the Decision section of this Report, the developer submitted a section 73 application to vary certain conditions of the 2014 permission (ref: 2017/0999) in relation to the timing and implementation of highway improvement works, which did not affect the extent or substance of the developer's obligations under the Section 106 agreement, but for which a deed of variation under section 106a TCPA was required to link the obligations contained in the 2014 Section 106 agreement to the variation permission, so that the developer's obligation to pay the transport contributions to the City Council continue to apply. A deed of variation was entered into on 27 February 2018.
3. The developer has now submitted further applications (i) to vary the section 106 obligations in relation to the delivery of education benefits (ref 2020/0189) and (ii) a further section 73 application to vary conditions relating to highways and cycle improvement works (ref: 2019/0374). Again a deed of variation under section 106a TCPA is required to link the obligations contained in the 2014 section 106 Agreement to the variation permission so that the developer's obligation to pay the transport contributions continue to apply.
4. Under the terms of the 2014 section 106 Agreement the City Council is contractually committed to use the City Link Contribution of £680,000 for the purpose of extending the City Link 2 Bus Service to the Teal Close development.
5. As the City Link service is now operated by a third party (Nottingham City Transport (NCT)) rather than by the City Council amendments have been made in the deed of variation to reflect the change to the service name and operator. Amendments have also been made to the City Council's contractual commitment in the deed of variation to confirm that the contribution, once received, will be transferred to NCT to be used towards the provision of the extension of what is now called the service 50 to serve the development, subject to NCT first confirming that they will use the contribution for that purpose and subject to that payment being otherwise lawful. If the contribution is not used in this way, and within a set time limit, the City Council will continue to be liable to repay it to the developer.
6. The travel pass contribution will continue to be paid to the City Council under the deed of variation, and must be used towards the provision of free access to public transport for residential occupiers of the Teal Close development in accordance with the terms of the deed of variation. As with the City Link Contribution, if the contribution is not used in this way, also within a set time limit, the City Council is liable to repay it to the developer.
7. The deed of variation will also amend the triggers for payment of the travel pass contribution and the instalments of the bus service extension contribution and the period during which interest will be payable. The deed of variation will require that the travel pass contribution and all instalments of the bus service extension contribution are paid within 10

working days of the date that the deed of variation is completed in the amounts specified in the “reasons for the decision” section of this Decision.

8. As the Service 50 Bus Service is provided by NCT, an agreement or a series of agreements between the City Council and NCT will be needed, and further legal support and advice will be required prior to entering into any such agreement with NCT. These agreements will need to ensure that the City Council’s obligations to the developer within the section 106 agreement (as varied) are reflected by commitments on the part of NCT to the City Council. As noted in the decision, a further approval will be required prior to the onward allocation to NCT of what is now referred to as the “Service 50 Contribution” in the deed of variation.
9. The value of the decision is within the financial threshold for the Portfolio Holder and the subject matter is within their terms of reference in the Council’s Constitution.

Advice provided by Tamazin Wilson, Senior Solicitor 22 April 2022