

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

3056

Author:

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Department:

Development and Growth

Contact:

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Subject:

Public transport contribution from development at Teal Close Netherfield

Total Value:

£710,000 (Type: Capital) (Type: Capital)

Decision Being Taken:

- 1. To authorise the Council to enter into a section 106A deed of variation to transfer the obligations contained in the agreement dated 30 June 2014 in relation to the development at Teal Close Netherfield (ref: 2013/0546) to the variation permission (ref: 2017/0999);**
- 2. To allocate monies received pursuant to that deed of variation to those projects set out at paragraph 1 of the "Reasons for the Decision(s)" section of this report;**
- 3. To delegate authority to the Director of Transport to enter into further agreements in relation to the above funding and services to be provided in return**

Reasons for the Decision(s)

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, prior to the issue of the permission a section 106 agreement was completed which, amongst other things, secured payment of two contributions to the City Council, as follows: :

- £680,000 towards City Link bus services, and
- £30,000 towards travel passes for the residents of the development.

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 BC in relation to affordable housing and open space.

2. The developer Persimmon Homes Limited has now applied (ref: 2017/0999) to vary certain conditions on that permission; those conditions relate to the timing of implementation of highway improvement works and are unrelated to the s106 contributions due to the City Council.

3. When approved, the new planning permission will replace the original. In order to transfer the s106 obligations from the 2014 agreement to the new planning permission, a section 106A deed of variation is required.

4. The application of the City Link bus services element of the s106 monies when received by the City Council, will involve payments being made to a third party, namely Nottingham City Transport (NCT). Any payments made to NCT will require future agreement(s) to be entered into under which NCT will be contractually committed to use those monies to extend the City Link 2 bus service to the Teal Close development. This will reflect the City Council's own obligations within the s106 agreement (as varied by the s106A) and ensure that the City's obligations are complied with.

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, so the developer would have to either implement the original planning permission or not proceed with the development at all. If no development occurred, no financial contribution would become due to the City Council.

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:

None

Published Works:

1) Gedling Borough Council Planning Permission for Teal Close, Netherfield (ref: 2013/0546) - <https://pawam.gedling.gov.uk/online-applications/applicationDetails.do?keyVal=MN5671HL03700&activeTab=summary>
2) Gedling Borough Council Planning Permission, variation (ref: 2017/0999) - <https://pawam.gedling.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Affected Wards:

Citywide

Colleague / Councillor Interests:

None

Consultations:

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

None

Equality:

EIA not required. Reasons: This is not a new or changing policy, service, or function.

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

07/02/2018

Advice Sought:

Legal, Finance

Legal Advice:

1. The existing agreement pursuant to section 106 Town and Country Planning Act 1990 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 each in respect of the City Link bus contribution and £30,000 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. The developer has applied to vary certain of the conditions of the 2014 permission. None of these affect the extent or substance of the developer's obligations under the s106 towards the City Council. Gedling BC's Planning Committee has resolved to grant the variation application. However, any variation permission granted will have a separate reference number to that of the 2014 permission, and can be implemented independently of the 2014 permission. A deed of variation under section 106A Town and Country Planning Act 1990 is therefore needed to link the obligations contained in the 2014 s106 agreement to the variation permission, so that in the event that it is the variation permission which is implemented rather than the 2014 outline permission, that the developer's obligations to pay the transport contributions to the City Council apply.

3. Under the terms of the 2014 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 (operating between Victoria Retail Park Netherfield, Racecourse Park and Ride Site and Nottingham City Centre) to the Teal Close development. If the contribution is not used in this way, and within a set time limit, the City Council is liable to repay it to the developer. None of these obligations will be altered by the deed of variation. As the City Link service is provided by a third party (Nottingham City Transport) rather than by the City Council itself, an agreement or a series of agreements between the City Council and Nottingham City Transport will be needed in the future and further legal support will be required at that point. These agreements will need to ensure that the City Council's obligations to the developer within the s106 agreement (as varied) are reflected by corresponding contractual commitments on the part of Nottingham City Transport to the City Council.

4. The value of the decision is within the financial threshold for the Portfolio Holder and the subject matter is within her terms of reference in the Council's Constitution.

Advice provided by Judith Irwin (Senior Solicitor) on 17/01/2018.

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 £0.680m for the purpose of extending the City Link 2 bus, receivable in four instalments due at various stages during the development, as set out in the agreement.

The authority will receive a contribution of £0.030m for the purpose of providing time limited travel passes to residential occupiers of the development, this will be reimbursed as the costs are incurred, as set out in the agreement.

All receipts are index linked from the date of agreement 30 June 2014

The administrative and financial arrangements are to be managed by the Public Transport service, it is also the services responsibility to ensure compliance to all terms and conditions as set out in the agreement. Finance will provide support where necessary.

Advice provided by Chanelle Poyser (Commercial Business Partner) on 19/01/2018.

Signatures

Sally Longford (PH for Neighbourhood Services & Local Transport)
SIGNED and Dated: 30/01/2018
David Bishop (Deputy CE, CD for Development and Growth)
SIGNED and Dated: 30/01/2018