

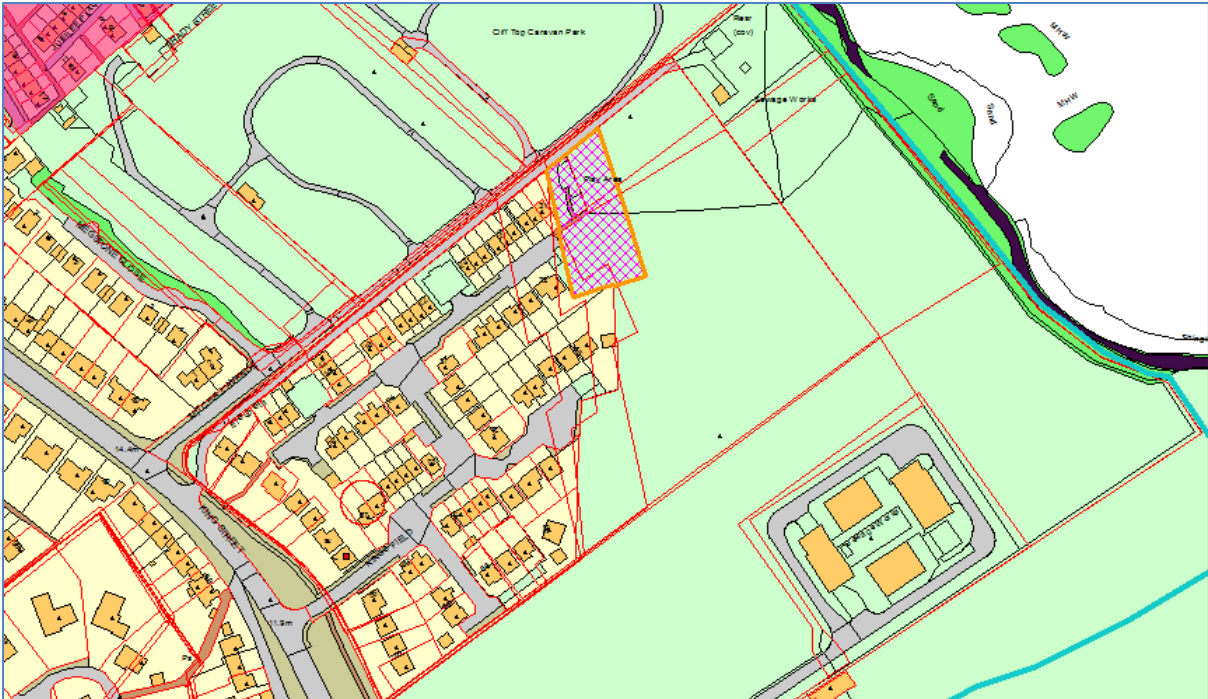


Northumberland County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL PLANNING COMMITTEE 22nd July 2021

Application No:	20/01155/S106A		
Proposal:	Variation of S106 agreement pursuant to planning application N/99/B/0848 dated 19.02.2002		
Site Address	Land at Mitchell Avenue, Seahouses		
Applicant	Northumbria Leisure Ltd And Granger Homes Ltd		
Agent	Simon Kirkup Womble Bond Dickinson (UK) LLP St Ann's Wharf 112 Quaysidew Newcastle Upon Tyne NE1 3DX		
Ward	Bamburgh	Parish	North Sunderland
Valid Date	14.04.2020	Expiry Date	04.07.2020
Case Officer Details	Name: Mr Anthony Lowe Job Title: Senior Planning Officer Tel No: 01670 622 704 Email: tony.lowe@northumberland.gov.uk		

Recommendation: That this application be GRANTED permission



1. Introduction

1.1 Following a 'call in' request by a local Councillor and the concerns raised by the Parish Council the application was referred to the Director of Planning and Chairs of the North Northumberland Local Area Council (NNLAC) where it was decided that the application should be referred to the Planning Committee for determination.

1.2 The application was presented to the NNLAC on 24th June 2021 where it was resolved that the provisions and requirements of the Section 106 Planning Obligation relating to application N/99/B/0848 be varied. However, during the meeting the Ward Member raised a concern regarding notification letters to members of the public. On investigation, following the meeting, it was discovered that, due to an IT error, notification letters were not posted to all contributors; to address this error the application is again presented to committee for consideration.

2. Description of the site and proposals

2.1 The application site is located toward the east side of Seahouses, a village spatially associated with North Sunderland within the North Northumberland Coast. The application site specifically relates to an area of open space immediately adjacent the housing development at Kingsfield / Mitchell Avenue.

2.2 The original grant of planning permission granted permission for 77no. Houses on the site subject to a S106 Legal Agreement securing a legal obligation which required the provision of the following:-

- an area of open space (2041sqm)
- an equipped play area (not less than 400sqm)
- pedestrian access to above.

2.3 All of the above are in situ on site. A maintenance contribution for the above has also been paid to the Council to the sum of £7900.

2.4 The application seeks permission to modify the requirements of the S106 Legal Agreement forming part of a grant of planning permission under the provisions of Section 106A of the Town and Country Planning Act 1990 (as amended) attached to planning application N/99/B/0848 (as varied by N/02/B/0356) to allow for changes to the area of open space.

2.5 It is proposed that the area of open space will be the same in terms of its size (2041sqm), purpose / use and located at the edge of the housing as currently agreed however, it is proposed that it will be re - orientated on its plot from a broad horizontal east west axis (along Mitchell Avenue) to a vertical north south alignment adjoining the houses.

2.6 The reason given for the for the modification is:

“The Original Agreement and Variation require the Owner to provide a dedicated means of access to the area of land to be provided as public open space under the terms of the Section 106 Agreement, as a hard surfaced pathway through or across the Development from the nearest public highway.

There is some ambiguity as to the ownership of the path that has been constructed and whether this falls outside of the development boundary. To provide clarity and ensure this obligation can be discharged, Northumbrian Leisure Limited, as adjacent landowner, has proposed an alteration to the location, but not the amount of land to be provided as public open space, so that this can be accessed directly from the Development, and there is no longer a need for a dedicated access route. The alternative area (2,041m²) being offered is shown on the plan attached to this application.

The modification would secure the provision of the land shown hatched red as a fenced play area in a condition suitable for use by the residents in lieu of the land edged in green in the original section 106 agreement and a £5,000 contribution for the maintenance of the open space.”

2.7 No changes are proposed in terms of the equipped play and access arrangements.

3. Constraints

3.1 The site is subject to the following policy constraints:

- Without allocation within the Berwick-Upon-Tweed Local Plan (white land)
- Outside the Seahouses & North Sunderland Settlement Boundary in the North Northumberland Coast Neighbourhood Plan (NNCNP).
- Within Designated Coastal Strip within the NNCNP.

3.2 The site is subject to the following environmental constraints:

- Within the Northumberland Coast Area of Outstanding Natural Beauty (AONB) and Heritage Coast
- Impact Risk Zone SSSI
- Ecologically designated sites of North Northumberland Dunes Special Area of Conservation.
- Low Risk Coal Area

4. Planning History

Reference Number: N/99/B/0848

Description: Outline - residential development with associated highways, landscaping and infrastructure works.

Status: Permitted subject to S106 Legal Agreement dated 19th February 2002

Reference Number: N/02/B/0356

Description: Reserved Matters - erection of 77 detached, semi-detached and terraced dwellings and associated garages, parking areas, roads, footpaths and landscape planting.

Status: Permitted subject to S106 Deed of Variation dated 20th June 2002

Reference Number: 13/00124/OUTES

Description: Outline: Mixed use development with market housing, affordable housing, new health village and self catering holiday accommodation (access, layout and scale to be considered).

Status: Withdrawn

Reference Number: 17/00931/FULES

Description: 32 Principal Occupancy Dwellings (100% Affordable) - Amended 16/08/18

Status: Refused

5. Planning Policy

5.1 Development Plan Policy

North Northumberland Coastal Parishes Neighbourhood Plan 2017 – 2032 (NNCPNP):

Policy 2: Landscapes and Seascapes

Policy 4: Coastal Management and the Coastal Strip

The Borough of Berwick-upon-Tweed Local Plan 1999:

Policy F6 Special Protection Areas, Special Areas of Conservation and Ramsar Sites

Policy F7 National Nature Reserves and Sites of Special Scientific Interest

5.2 National Planning Policy

The National Planning Policy Framework

Planning Policy Guidance

5.3 Other Documents/Strategies

Northumberland Local Plan - Publication Draft Plan (Reg 19) and Proposed Minor Modifications, submitted for examination 29th May 2020

ENV 2 Biodiversity and geodiversity

6. Consultee Responses

North Sunderland Parish Council	<p>North Sunderland Parish Council are very concerned about this proposal and feel that the 106 agreement should remain as it is.</p> <p>Berwick Council agreed this and received money for the original proposal and agreed to take over the play Park so surely the land is now owned by the Council.</p> <p>We would request this proposal goes to full committee due to this issue and the fact that so many proposals have been made for the land and the surrounding land all of which have been refused.</p>
Strategic Estates	<p>No objections.</p> <p>We have checked the areas and as best as we can tell from the drawing provided the exchange land is equivalent to the original site in area.</p> <p>Based on this and to resolve the long outstanding issues the County Council as proposed Landowner is prepared to accept the alternative site.</p>
Area of Outstanding Natural Beauty Partnership	No comment
County Ecologist	No comment

6. Public Responses

Neighbour Notification

Number of Neighbours Notified	N/A
Number of Objections	20
Number of Support	0
Number of General Comments	0

Notices

Site Notice posted at the site on 26th May 2020

Summary of Responses:

21no. letters of objection have been received. The reason for objections can be summarised as follows:-

- Need for the change questioned;
- Change may cause nuisance to residents because it will bring the play space closer;
- Size of the play area, is it the same;
- Maintenance queries;
- Why is the open space being changed after all of this time;
- Residents have not been able to use the open space because it has not been maintained properly;

7. Appraisal

7.1 Section 106A of the Town and Country Planning Act 1990 (as amended) allows the modification or discharge of any planning obligation, including by the developer making an application to the Local Planning Authority. Where an application is made, the authority may determine:

- (a) that the planning obligation shall continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) if the obligation continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

7.2 The applicant seeks to modify the existing agreement and replace it with a new one. The existing Section 106 agreement provided for an equipped play area and an area of open space along with access.

7.3 The proposed change will provide an equipped play (already on site), and an area of open space that will be the same in terms of its size (2041sqm), purpose / use and located at the edge of the housing, however, it is proposed that it will be re - orientated on its plot from a broad horizontal east west axis (along Mitchell Avenue) to a vertical north south alignment adjoining the houses. A sum of £5,000 will also be provided, to help meet future maintenance costs.

7.4 Legal precedent has established that four questions need to be considered when considering an application to modify a planning obligation:

- What is the current obligation?
- What purpose does it fulfil?
- Is it a useful purpose?
- If so, would the obligation serve that purpose equally well if it was subject to the proposed modifications?

In addition, legal precedent has also provided that a “useful purpose” can be given its ordinary meaning and that it doesn’t necessarily mean a useful ‘planning’ purpose.

7.5 The current obligation provides for an area of open space of 2041sqm and requires the provision, layout and equipping of an area for children, of not less than 400sqm, along with a hard surfaced, dedicated access. This provision is of clear public benefit (‘useful purpose’), for local residents providing play areas for children and others alike. The proposed modification will continue to provide these spaces, but with the open

space reorientated north-south, this will provide for the same public benefit equally well and provide a 'useful purpose' in providing outdoor play areas for local residents.

7.9 The equipped play area and footpath access will remain in their current location and the proposed open space area will be adjacent to the rear of residential properties, in particular 32 and 46 Kingsfield, with potential amenity impacts from disturbance/ noise etc. This is balanced by the area being both physically and visually closer to existing development but better separated from the now defined Coastal Strip, set out within the NNCPNP and the potential for improved passive surveillance of the public areas, from nearby residents/ properties.

7.10 Since the initial grant of consent and the signing of the legal obligation the NNCPNP has been adopted. Policy 4 defines (Proposals Map) and sets out management principles for the 'Coastal Strip'; the subject site is set within this area and both the AONB and the County Ecologist have been consulted on the proposal - neither has provided comment. With regard to the existing requirements, the proposed modification will not have any greater adverse impact on the area. The £5,000 fee within the proposed, modified obligation will help ensure the maintenance of the areas into the future.

7.11 In the context of the above, the proposed modification is supported, and the application is acceptable in planning terms.

7.12 A number of neighbour objections have been received and the PC have objected to the modifications. The main reasons for objection are considered to be addressed within the report. The proposed change will meet the tests set out above, continuing to provide a public benefit.

Equality Duty

7.13 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers have had due regard to Sec 149(1) (a) and (b) of the Equality Act 2010 and considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics. Accordingly, no changes to the proposal were required to make it acceptable in this regard.

Crime and Disorder Act Implications

7.14 These proposals have no implications in relation to crime and disorder.

Human Rights Act Implications

7.15 The Human Rights Act requires the County Council to take into account the rights of the public under the European Convention on Human Rights and prevents the Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in accordance with the law and necessary in a democratic society in the interests of (inter alia) public safety and the economic wellbeing of the country. Article 1 of protocol 1 provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.

7.16 For an interference with these rights to be justifiable the interference (and the means employed) needs to be proportionate to the aims sought to be realised. The main body of this report identifies the extent to which there is any identifiable interference with these rights. The Planning Considerations identified are also relevant in deciding whether any interference is proportionate. Case law has been decided which indicates that certain development does interfere with an individual's rights under Human Rights legislation. This application has been considered in the light of statute and case law and the interference is not considered to be disproportionate.

7.17 Officers are also aware of Article 6, the focus of which (for the purpose of this decision) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for planning matters the decision-making process as a whole, which includes the right of review by the High Court, complied with Article 6.

8. Conclusion

8.1 The proposed change will not have an increased impact on the Coastal Strip.

8.2 The impact of re-siting the open space area closer to residential properties is balanced against better separation between residential impact and the Coastal Strip/shoreline and potential improved passive surveillance of the area.

8.3 The proposal will not have any greater adverse impact on the AONB or, local and protected ecology.

8.4 The obligation continues to serve a useful purpose but would serve that purpose equally well if subject to the proposed modification to the obligation. The proposal is acceptable and is supported.

9. Recommendation

That the provisions and requirements of the Section 106 Planning Obligation relating to application N/99/B/0848 (as varied by N/02/B/0356) in respect of re-siting of open space be varied in the manner set out above.

Background Papers: Planning application file(s) 20/01155/S106A