

ITEM:		RECOMMENDATION: Allowed
REF NO:	3OB/2019/0033/OB	CASE OFFICER Rebecca Collins
LOCATION:	SAHAM TONEY Warwick Farm Cley Lane Saham Toney	APPNTYPE: Planning Obligation POLICY: Out Settlemnt Bndry CONS AREA: N LB GRADE: N TPO: N
APPLICANT:	Clayland Estates Limited The Glass House Lynford Road	
AGENT:	Clayland Estates Limited The Glass House Lynford Road	
PROPOSAL:	Modification of S106 -3PL/2013/0869/F- to remove recreation contribution	

REASON FOR COMMITTEE CONSIDERATION

Whether the proposed variation to remove the recreation contribution is acceptable?

KEY ISSUES

Principle of removal of the recreation contribution

DESCRIPTION OF DEVELOPMENT

Modification of Section 106 dated 29 January 2014 for application reference 3PL/2013/0869/F- to remove recreation contribution

SITE AND LOCATION

The site, previously a yard for vehicles and storage of various builders' materials, now a residential development.

The site is located to the east of the village and adjoins the existing development that has formed around the crossroads with Bell Lane and Cley Lane. The development in this area comprises a mixture of traditional cottages and more recent mix of bungalows and houses.

EIA REQUIRED

No

RELEVANT SITE HISTORY

3PL/2013/0869/F

Permission

29-01-14

Erection of 29 new dwellings

POLICY CONSIDERATIONS

The following policies of the Breckland Local Plan, including the Proposals Maps, have been taken into consideration in the determination of this application. The provisions of the National Planning Policy Framework and National Planning Policy Guidance have also been taken into account, where appropriate

COM01	Design
COM02	Healthy Lifestyles
COM03	Protection of Amenity
ENV04	Open Space, Sport & Recreation
ENV06	Trees, Hedgerows and Development
GEN01	Sustainable Development in Breckland
GEN02	Promoting High Quality Design
INF02	Developer Contributions

OBLIGATIONS/CIL

This application seeks to modify the S106 dated 29/1/2014 for application reference 3PL/2013/0869/F- to remove recreation contribution.

The section 106 also requires the provision of 40% affordable housing, which would not be affected by this variation of obligation.

CONSULTATIONS

SAHAM TONEY P C

The monies was expected to fund local facilities and should have been paid when 13 houses were occupied. Building should not have been allowed to continue whilst this money was due. Why did it take the developer so long to realise they could not afford the recreation contribution? Any honorable developer would have ring fenced the monies, if there was any intention of payment. The amount involved is a very small percentage of the value/cost of the development.

FACILITIES MANAGEMENT

Although not directly affected by this application, Facilities Management object to the proposed removal of the recreation contribution as it would result in the loss of play facilities that could have otherwise been provided in the village. I note from the S106 Agreement that this contribution should have been paid following the occupation of 8 properties and is overdue.

ENABLING OFFICER

No comments.

HOUSING ENABLING OFFICER

No Comments Received

REPRESENTATIONS

No public consultation has been undertaken for this application as none is required. However, 41 letters of objection have been received, their comments are summarised as follows:

- The developer has breached the requirements of the s106 by not providing the monies for recreation in accordance with the triggers of the s106. Had the 106 monies been paid when they were due, this would not be an issue and they can not expect to be excused payment in retrospect because they have been in default of the terms of the original agreement for so long.
- The developers should still be liable for the full contribution, with interest.
- All of the costings of this development were known to the developer before construction began. If they did not wish to abide by the 106 agreement, they should not have signed it.
- The developers justification for removal of the contribution is flimsy and unsubstantiated
- The provision of affordable housing at 40%, as per policy should have been factored into the costs of the development, as should surface water disposal/drainage and site costs
- The costs sited should not be regarded as extraordinary development costs (affordable housing, drainage etc)
- There should be some up front payback to compensate the community for the disruption the development has caused
- It is not for the local population to in effect subsidize the profits of development companies.
- If the developers didn't make as much as they hoped then that is their problem and theirs to absorb.
- To allow this would set a precedent that other developers would all too quickly follow.
- These commitments by developers everywhere are part of upgrading local services and facilities that cannot be done otherwise.
- Where will the children play if the agreed play area is to be ditched and the money not paid.
- A development contingency figure would have been included at the site design stage, why can this not be used?
- This will detriment the quality of life for all Parishioners
- Further housing is not required.

ASSESSMENT NOTES

1.0 Principle

1.1 The applicant seeks a variation to the original section 106 agreement dated 29th January 2014 for application reference 3PL/2013/0869/F to remove the recreation contribution. A recreation contribution is required, which sets out a contribution per dwelling dependent on the number of bedrooms for children's play and outdoor sport. The required contribution is considered to be £37,480.

1.2 The officer report for the original planning permission set out, with regards to open space:

'A contribution is being provided for off-site open space/recreation facilities in accordance with Policy DC 11. It is considered that this is the most appropriate and beneficial in this situation given the close proximity of the adjacent Wells Cole Recreation Ground.'

1.3 The applicants have submitted with their application a viability assessment demonstrating why they are unable to afford the recreation contribution. The applicants have set out that taking account of the following then the requirement for the £37,480 recreational contribution is excessive:

- Footpath link to the adjacent playing field/community centre
- Overhead power lines have been put underground
- Relocation of the surface water pipe and its upgrade
- 40% provision of affordable homes (12 houses).

1.4 The submitted viability information has been independently checked by the DV who agree the recreation contribution is unaffordable. This included a review of the above requirements along with projected profit margins, which were considered less than the benchmark land value. On this basis the DV consider the scheme not to be viable and cannot support a recreational contribution. The situation is considered to worsen if the actual purchase price for the site was used in the viability assessment.

2.0 Conclusion

2.1 For the reasons given above, the applicants have demonstrated that the recreation contribution is not viable and the variation to the section 106 dated 29 January 2014 for application reference 3PL/2013/0869/F is agreed.

RECOMMENDATION

For the reasons given about the application is recommended for approval.

CONDITIONS

1 Planning Obligation - Decision Notice Text

The proposed removal of the recreation contribution as set out in Schedule 3 of the Section 106 Agreement dated 29th January 2014 attached to planning permission reference 3PL/2013/0869/F is considered acceptable.

Please be aware there are further ongoing obligations in this legal agreement.