

Report to committee in respect of S106 agreement dated 27th October 2014 in respect of outline planning permission WD/D/14/001938

Site Address: Weymouth Football Club, Wessex Stadium, Radipole Lane,
Chickerell, Weymouth, DT4 9XJ

1. Background to the report:

- 1.1 There is a S106 agreement dated 27th October 2014 associated with the outline planning permission (WD/D/14/001938) for the redevelopment of existing football stadium, training pitch and car park with 150 – 170 dwellings (including affordable housing), public open space, access and parking.
- 1.2 The S106 agreement associated with the outline planning permission secured the provision of 35% affordable housing on the site and financial contributions to community venues, education, parks and gardens, libraries, pedestrian and cycle, transport, waste management, allotments and greenspace. The contributions were based on the Council's Supplementary Planning Document "Planning Obligations". However, the S106 agreement also included clauses allowing for "upon the submission of the reserved matters application the developer and/or the club may submit a viability appraisal to the Council for its written approval in order to assess development viability". The agreement goes on to say that where the viability appraisal as approved by the Council identifies there to not be development viability, the developer and/or the club will agree with the Council a reduction in the contributions (save for the pedestrian and cycle contribution which is £200k index linked) and/or the number of affordable units in order for there to be development viability.

2. Applicant's Submission, Town Council comments and appraisal of the submission by the DVS:

- 2.1 At the time of submitting the reserved matters application (WD/D/17/002597) the applicant submitted viability information. That information is available to view on the Council's website under the application reference WD/D/17/002597. Parts of the information have been redacted by the applicant for public view due to what they consider to be the commercially sensitive nature of the application. However officers and the DVS have been able to view all the submitted information without the redactions.
- 2.2 Chickerell Town Council in commenting on the reserved matters application recommended refusal and commented that WDDC's policy is for 35% affordable housing and the outline planning application was

approved on that basis. At the time of the outline planning application the applicant had acquired the land and would be well aware of the costs of the project. The Town Council expects the local planning authority to maintain the 35% affordable housing requirement and say it should be noted that all other developers of housing in Chickerell are meeting their requirements plus providing significant S106 benefits. All comments can be viewed in full on the Council's website under application reference WD/D/17/002597.

- 2.3 The applicant submitted a viability appraisal prepared by a chartered surveyor who is a registered RICS valuer and during the course of the consideration of the application various amendments and revisions have been made reflecting responses from the District Valuer Services who were instructed by officers to consider the viability of the development and the information submitted by the applicant.
- 2.4 The viability appraisals have been carried out on the basis of the developer having to pay £200k as a pedestrian and cycle contribution and having to provide a replacement recreation facility, both of which are requirements of the S106 agreement. This accords with the S106 agreement which defines development costs and includes "the payment of financial contributions and costs associated with the fulfilment of other obligations pursuant to the deed".
- 2.5 No planning permission exists for a replacement recreational facility, nor has a planning application for such a facility been submitted to date. Therefore it is difficult to be definitive regarding the costs of a replacement recreation facility as an exact specification for a replacement facility does not exist. The S106 agreement defines replacement recreation facility as a new recreation facility to be provided in a suitable location within the District or the administrative area of Weymouth and Portland Borough Council comprising equivalent or better provision to the existing stadium in terms of quality, taking into account the present practical use and current parking facilities enjoyed by The Club on match and other days facilities (including parking) of the existing stadium, as approved by the Council in consultation with the Club and Sport England.
- 2.6 As part of the submission and representations on the outline planning permission the applicant submitted a letter detailing that the option agreement allows the applicant to acquire the football club's interest in the Bob Lucas Stadium having first provided a replacement stadium which meets a series of criteria which were principally a spectator capacity of 5000, compliance with the Guide to Safety at Sports Grounds and which has regard to the Weymouth Football Club Vision Statement from August 2008. A solicitor wrote in on behalf of the football club at the time of the outline application (2014) which stated "the application provides the only

realistic prospect of a new community stadium in Weymouth. WFC is determined that any new stadium will be multi-functional and embrace many other sports.” They said they envisaged the new facility having a state of the art 3G pitch.

2.7 The applicant originally advised that the option agreement limited the amount that the applicant had to pay towards a replacement recreation facility to a specific amount. The DVS asked for information regarding the proposed replacement recreation facility and the applicants employed consultants with experience in the provision of new stadiums elsewhere in the country to do a feasibility estimate of costs based upon a stadium with a 5000 capacity. It was based in part on a particular site that the applicants had in mind for the possible replacement facility and it therefore not only included the cost of the football stadium (5000 capacity, clubhouse building, 3G main pitch and floodlighting, stadium perimeter wall, toilet blocks, turnstiles and exit gates) but also other potentially site specific site clearance/demolition costs, external works and infrastructure and landscaping costs etc. The total figure reached by the feasibility estimate of costs far exceeded the capped amount that the applicant said at the time was in the option agreement.

2.8 A quantity surveyor from the DVS reviewed the cost estimates acknowledging that whilst they have reviewed the costs they need to be considered in the context that they may differ if an alternative site was identified. The conclusion was that the DVS considered that the scheme would cost more than was estimated by the applicant but the difference in costs was only 1%. Both the applicants cost estimate and that of the DVS was greater than the capped figure that the applicant said was in the option agreement and which limited the amount the applicant was to pay towards the replacement facility, although that begs the question of how the WFC would make up the difference.

2.9 The DVS concluded at that time that “DVS are of the view that the applicant probably will not be able to make any additional contributions over and above the re-location of the football club, but currently feel the level of detail is insufficient to give an unqualified recommendation”. The applicant was asked at this stage to provide officers with a copy of the option agreement but were told in response that it was the subject of a non-disclosure agreement with The Club. Officers have pressed this matter with the applicants on a number of occasions since then but the applicant has not been forthcoming in allowing officers to see the agreement or sections of it.

2.10 Following that initial conclusion from the DVS the applicants submitted an updated report which addressed some of the issues raised in the initial conclusion and recommendations of the DVS. At that time the

applicant advised that the re-provision costs for the stadium had increased significantly and advised that the full cost would be payable by the development and that being the case the scheme would be even less viable than in the original assessment. However the DVS used their appraisal tool assuming a 100% open market scheme, capping the cost of the replacement recreational facility at the amount originally advised by the applicant as being within the option agreement (given that officers have not seen a copy of the option agreement which would demonstrate otherwise this seems a reasonable approach), including the £200K for cycle and pedestrian improvements required by the S106 agreement (but no other S106 contributions) and including developer's profit at 20% as stated by the S106 agreement (the applicant had originally included a lesser developer's profit of 17.5% reflecting that they were prepared to take a lesser amount of profit but that is contrary to the S106 agreement). With all of the above the total value of the scheme minus the development costs and the assumed profit of 20% results in a negative figure (significant deficit) demonstrating that based on these figures there is no development viability and that there is a significant negative difference between the site value and the existing use value.

2.11 Clearly assumptions have had to be made regarding the costs of a replacement recreational facility given that there is no proposal either consented or otherwise currently with the local planning authority on which to be able to accurately estimate the costs. Any recreational facility as required by the S106 agreement would have to be of equivalent or better provision to the existing stadium in terms of quantity and quality and reflect the current parking provisions enjoyed by The Club. The applicants have based the costs of the proposed stadium on what both they and The Club set out in writing as being the requirements of the option agreement in 2014 when the outline application was considered and also included site specific costs in respect of a site that the applicant was considering at the time, which is not an unreasonable approach in the view of officers. The S106 agreement says that the development costs can be either forecast or incurred, with justification provided.

2.12 It could be that if and when a planning application is submitted for a replacement facility there may be very site specific costs not currently envisaged or a better facility may be proposed (the standard of any replacement recreation facility would have to be considered by the Council in consultation with The Club and Sport England, as required by the S106 agreement) which would increase costs even further. That may be irrelevant if the cost to the developer is capped within the option agreement, but if it is capped the DVS appraisal already demonstrated that the development is not viable to provide affordable housing and SPD contributions and if the cost to the developer is not capped and the stadium and site specific costs relating to the replacement recreational

facility exceed that amount the development viability would be even more in the negative.

3. Conclusion:

- 3.1 Officers consider that the scheme should be 100% market housing and the only financial contribution payable would be the £200k to pedestrian and cycle enhancements at Wessex Roundabout, given the requirement to provide a replacement recreation facility ready for use prior to the commencement of development. This would mean that there would be no contributions to community venues, education, parks and gardens, libraries, transport, waste management, allotments and greenspace
- 3.2 Given the above Members are being asked to agree to officers confirming to the developer in writing a reduction in affordable housing to nil provision and a reduction in contributions to £200k (plus indexing) for the pedestrian and cycle contribution.
- 3.3 As this is not an application to modify the S106 agreement a refusal cannot be issued. Members could state that they do not agree with the officer conclusion reached and that being the case Section 6.9 Dispute Resolution of the S106 agreement would become relevant and clauses 6.11 – 6.20 would be engaged. This would result in the dispute between parties (developer and Council) being considered by an independent expert to be appointed jointly by the parties. The expert would invite written representations from each of the parties and the findings of the expert shall be final and binding on the parties. The costs of the dispute shall be payable by the parties in such proportion as may be determined by the expert and failing such determination to be borne in equal shares by the parties.

4. Recommendation:

- 4.1 That Members agree to officers confirming to the applicant in writing a reduction in affordable housing to nil provision and a reduction in contributions to £200k (plus indexing) for the pedestrian and cycle contribution.