

# COMMITTEE REPORT

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## APPLICATION DETAILS

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<b>APPLICATION No:</b>	4/13/00694/S106A
<b>FULL APPLICATION DESCRIPTION:</b>	Cancellation of S106 requirements
<b>NAME OF APPLICANT:</b>	Gleeson Homes and Regeneration
<b>ADDRESS:</b>	Former Ushaw Moor County Infants School Temperance Terrace Ushaw Moor Durham DH7 7PQ
<b>ELECTORAL DIVISION:</b>	Deerness
<b>CASE OFFICER:</b>	Henry Jones Senior Planning Officer 03000 263960 <a href="mailto:henry.jones@durham.gov.uk">henry.jones@durham.gov.uk</a>

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. The application site comprises of the former Ushaw Moor County Infants School. The school has previously been demolished and a redevelopment scheme comprising of the erection of 29 no. dwellings has commenced with the dwellings to the site frontage largely complete.
2. The site is located within the settlement boundary of Ushaw Moor towards the western end of the village. Terraced properties are located to the north, east and west of the site with the St Lukes Church building also adjacent to the west. To the south lies Cockhouse Lane and beyond open countryside and fine views are available from the application site towards the south over the Deerness Valley. The village centre, which is a designated local centre within the Local Plan is within close proximity just over 200 metres to the east.

### The Proposal

3. This proposal is not an application for planning permission. It is a submission to seek approval of the Local Planning Authority for the cancellation of the S106 obligations which would thereafter be agreed by a legal deed.
4. The S106 agreement relates to planning permission reference 11/00823/FPA for the erection of 29 no. dwellings, formation of access and associated works. The legal agreement requires the payment of £29, 000 towards the provision or enhancement of

play/leisure facilities and £8, 551 towards the provision of public art resulting in a total of £37, 551.

5. This application is being referred to committee for Members consideration of the merits of the cancellation proposal.

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## **PLANNING HISTORY**

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6. Planning permission for the redevelopment of the former school site was granted following planning committee in March 2012.
7. Previous planning history relates only to minor developments when the site was utilised as a school including the provision of new enclosures and demountable classroom units.

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

8. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.
9. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve ‘core planning principles’
10. The following elements are considered relevant to this proposal;
11. *NPPF Part 4 – Promoting Sustainable Transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
12. *NPPF Part 6 – Delivering a Wide Choice of High Quality Homes.* Local Planning Authorities should use evidence bases to ensure that their Local Plan meets the needs for market and affordable housing in the area. Housing applications should be considered in the context of the presumption in favour of sustainable development. A wide choice of homes, widened opportunities for home ownership and the creation of sustainable, inclusive and mixed communities should be delivered. Where there is an identified need for affordable housing, policies should be met for meeting this need unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and such policies should also be sufficiently flexible to take account of changing market conditions over time.
13. *NPPF Part 7 – Requiring Good Design.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
14. *NPPF Part 10 – Meeting the Challenge of Climate Change, Flooding and Coastal Change.* Planning plays a key role in helping shape places to secure Local Planning Authorities should adopt proactive strategies to mitigate and adapt to climate change.

Local Planning Authorities should have a positive strategy to promote energy from renewable and low carbon sources. Inappropriate development in areas at risk of flooding should be avoided.

15. *NPPF Part 11 – Conserving and Enhancing the Natural Environment.* The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
16. *NPPF Part 12 – Conserving and Enhancing the Historic Environment.* Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance.

*The above represents a summary of the NPPF considered most relevant the full text may be accessed at:*

<http://www.communities.gov.uk/publications/planningandbuilding/nppf>

#### **LOCAL PLAN POLICY: (City of Durham Local Plan 2004)**

17. *Policy E14 - Trees and Hedgerows* sets out the Council's requirements for considering proposals which would affect trees and hedgerows. Development proposals will be required to retain areas of woodland, important groups of trees, copses and individual trees and hedgerows wherever possible and to replace trees and hedgerows of value which are lost. Full tree surveys are required to accompany applications when development may affect trees inside or outside the application site.
18. *Policy E16 - Protection and Promotion of Nature Conservation* is aimed at protecting and enhancing the nature conservation assets of the district. Development proposals outside specifically protected sites will be required to identify any significant nature conservation interests that may exist on or adjacent to the site by submitting surveys of wildlife habitats, protected species and features of ecological, geological and geomorphological interest. Unacceptable harm to nature conservation interests will be avoided, and mitigation measures to minimise adverse impacts upon nature conservation interests should be identified.
19. *Policy H3 - New Housing Development within the Villages* allows for windfall development of previously developed sites within the settlement boundaries of a number of specified former coalfield villages across the District, provided that the scheme is appropriate in scale, design location and number of units.
20. *Policy H12 - Affordable Housing* seeks the provision of an element of affordable housing on schemes where over 25 units are provided or where the site area would exceed 1.0ha. Affordable housing should meet the needs of eligible households including availability at low cost and should include provision for the homes to remain affordable in perpetuity.
21. *Policy H12A – Type and Size of Housing* states that the type and size of dwellings will be monitored with where appropriate negotiation with developers to provide the right housing types and sizes to ensure balance.

22. *Policy H13 - Residential Areas – Impact upon Character and Amenity* states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
23. *Policy T1 - Traffic – General* states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and/or have a significant effect on the amenity of occupiers of neighbouring property.
24. *Policy T10 - Parking – General Provision* states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
25. *Policy R2 - Provision of Open Space – New Residential Development* states that in new residential development of 10 or more units, open space will be required to be provided within or adjacent to the development in accordance with the Council's standards. Where there is an identified deficiency and it is considered appropriate, the Council will seek to enter into a planning agreement with developers to facilitate the provision of new or improved equipped play areas and recreational/leisure facilities to serve the development in accordance with Policy Q8.
26. *Policy Q3 - External Parking Areas* requires all external parking areas to be adequately landscaped, surfaced, demarcated, lit and signed. Large surface car parks should be subdivided into small units. Large exposed area of surface, street and rooftop parking are not considered appropriate.
27. *Policy Q5 - Landscaping General Provision* sets out that any development which has an impact on the visual amenity of an area will be required to incorporate a high standard of landscaping.
28. *Policy Q8 - Layout and Design – Residential Development* sets out the Council's standards for the layout of new residential development. Amongst other things, new dwellings must be appropriate in scale, form, density and materials to the character of their surroundings. The impact on the occupants of existing nearby properties should be minimised.
29. *Policy Q15 - Art in Design* states that the Council will encourage the provision of artistic elements in the design and layout of proposed developments. Due regard will be made in determining applications to the contribution they make to the appearance of the proposal and the amenities of the area
30. *Policy U5 - Pollution Prevention* seeks to control development that will result in an unacceptable impact upon the quality of the local environment.
31. *Policy U8a - Disposal of Foul and Surface Water* requires developments to provide satisfactory arrangements for disposing foul and surface water discharges. Where satisfactory arrangements are not available, then proposals may be approved subject to the submission of a satisfactory scheme and its implementation before the development is brought into use.
32. *Policy U11 - Development on Contaminated Land* sets out the criteria against which schemes for the redevelopment of sites which are known or suspected to be contaminated. Before development takes place it is important that the nature and extent of contamination should be fully understood.

*The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at:*

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

33. None

### **INTERNAL CONSULTEE RESPONSES:**

34. The Council's Valuation Officer within Asset Management has previously assessed the development appraisal presented within this submission and also compared it with an original development appraisal submitted prior to the planning permission being granted. The main differences relate to the increased costs within the more recent appraisal relating to site works such as retaining walls, foundations and muck shifts. On the basis of the development appraisal submitted the scheme is unviable.

### **PUBLIC RESPONSES:**

35. None

### **APPLICANTS STATEMENT:**

36. The submission has been accompanied by a supporting statement. The statement explains that the original costs anticipated before purchase of the site were underestimated. Significant additional works have been necessary at the site for instance increased retaining walls and removal of relic foundations. Other factors such as increased costs for service installations, highway works, slow sales and site theft are cited.
37. The applicants also point at the wider community benefits that the development would bring, commitments to local labour and community initiative schemes.
38. Cancellation of the S106 requirements is therefore requested on viability grounds.

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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39. This proposal is not an application for planning permission. It is a request that the S106 financial contributions applicable to a development are removed which, if accepted, would be formalised via a legal deed. Ordinarily such a request to alter a S106 agreement would be sought via an application under S106A of the Town and Country Planning Act, however, as this S106 agreement is not 5 years old such an application cannot be made.
40. As a result, the only matter for consideration is the acceptability of the proposed cancellation of the S106 agreement having regards to the viability arguments put forward and also the need for those S106 contributions.
41. Policy R2 of the Local Plan relates to recreational and amenity space in new, major residential developments and essentially seeks on site provision or where considered appropriate financial contributions towards off site improvements via a S106 agreement.

42. Similarly, Policy Q15 of the Local Plan relates to art in design and where on site provision is not being provided requires developers to provide a financial contribution towards off site provision.
43. The NPPF advises that planning obligations should only be sought where necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
44. The previously agreed contributions are considered to meet these NPPF requirements. The latest evidence available with regards to open space within the Durham Open Space Needs Assessment (OSNA) demonstrates that within the Ushaw Moor/New Brancepeth ward there is inadequate provision of park and garden space, semi-natural greenspace and allotments.
45. Paragraph 173 of the NPPF stresses the importance of viability as a material planning consideration and that sites should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. Paragraph 160 also advises that Local Planning Authorities must consider the needs of businesses and any changes in circumstances and require LPAs to work closely with the business community to understand their changing needs and identify and address barriers to investment, including a lack of housing, infrastructure or viability.
46. Advice has been sought from the Council's Valuation Officer within Asset Management who has considered both the original and last submitted development appraisal and made comparisons between the two. Effectively on the basis of the latest development appraisal submitted the scheme is considered unviable the valuation officer.
47. On a development of this nature it would be expected that a developer would demand a 20% profit of the development value of the site and this matches the profit developer has stated would be expected within this development through their development appraisal. Such a profit is not considered excessive it aligns with the Local Authorities assumptions contained within the Affordable Housing & CIL Development Viability Study. A competitive profit for a developer is to be factored into the consideration of the viability of a scheme and is effectively a cost to be taken out of the gross development value of the site and is a factor which can affect the ability of a development to pay for planning contributions. Once the amount paid for the site and development costs are taken from this 20% profit expectation then only around a 1% profit is actually being achieved.
48. With the advice within the NPPF in mind such a figure is not considered to constitute an adequate return. Although the policy requirements and OSNA evidence base support the requirements for the financial contributions, the redevelopment of the site itself does bring its own regeneration benefits within a struggling market area.
49. The developer will still be hoping that from this point to the completion of the development that through marketing and/or changes in the market that an improved return could still be made. However, as LPA we cannot bank on this subjective market uplift but look at the snapshot of the situation shown within the development appraisal.
50. Given the content of the development appraisal and with the advice of the NPPF in mind cancellation of the S106 requirements via a legal deed is recommended.

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## **CONCLUSION**

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51. This proposal seeks to gain approval from the Local Planning Authority for the cancellation/removal of the S106 planning obligations on planning permission 11/00823/FPA involving a financial contribution of £37,551 to be later formally agreed by a legal deed.
52. In support of this request a development appraisal has been submitted and is considered to demonstrate that the development is not providing a viable scheme with a competitive return. Although the S106 requirements are considered reasonable/necessary requests having regard to policy guidance and the latest evidence bases the redevelopment of the site itself brings benefits to the village and it is considered acceptable that the S106 is cancelled to ease the economic problems/burdens at the site.
53. As a result approval of the cancellation request is recommended.

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## **RECOMMENDATION**

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That the **S106 requirements are cancelled** via a legal deed

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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The applicant has been informed on the progress of the planning application and discussions/correspondence held on the submission. The proposal has been brought to planning committee at the earliest possible date for a decision.

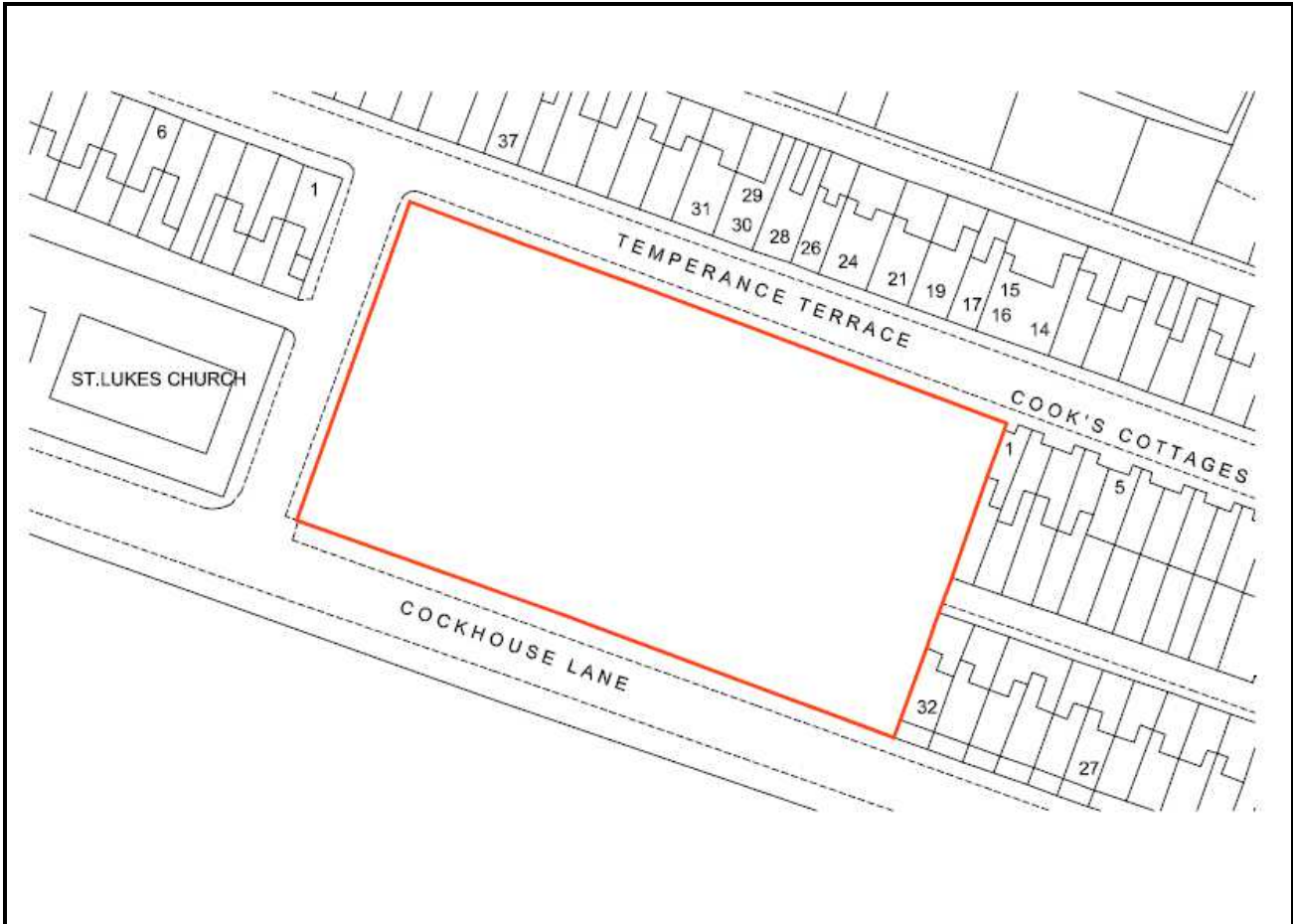
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## **BACKGROUND PAPERS**

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Submitted supporting documentation  
City of Durham Local Plan 2004  
National Planning Policy Framework  
Internal consultee responses  
Affordable Housing & CIL Development Viability Study





**Planning Services**

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Cancellation of S106 requirements

**Date 3<sup>rd</sup> September 2013**