

PLANNING COMMITTEE: 13th February 2018
DIRECTORATE: Regeneration, Enterprise and Planning
HEAD OF PLANNING: Peter Baguley

APPLICATION REF: N/2018/0111

LOCATION: Sites F And G Upton , High Street, Upton

DESCRIPTION: Variation to Section 106 Agreement in relation to Planning Permission 11/0046/FULWNN to amend BREAAAM rating for the development

WARD: Upton Ward

APPLICANT: HDD Limited
AGENT: HDD Limited

REFERRED BY: Head of Planning
REASON: S106 Agreement

DEPARTURE: No

APPLICATION FOR DETERMINATION:

1. RECOMMENDATION

- 1.1 That the Committee **AGREE** to vary the Section 106 Legal Agreement dated 27th March 2012 so that requirement for the British Research Establishment Environmental Assessment Method (BREEAM) rating for the commercial units within development is varied to a rating of “very good”.

2. THE PROPOSAL

- 2.1 The applicant has applied to vary the existing Section 106 Agreement pursuant to planning permission 11/0046/FULWNN for Sites F and G Upton, to vary the BREAAAM requirements on the site for the commercial units from “excellent” to a “very good” rating.

3. SITE DESCRIPTION

- 3.1 The application site is being developed to provide a mixed use development comprising public house, convenience store, nursery, retail units, café/restaurant, 324 no. dwellings (70 no. 1 and 2 bedroom houses), 77 no. apartment extra care facility, associated roads, parking and landscaping.
- 3.2 This part of the Upton development fronts onto the Weedon Road and is substantially complete. The commercial units are being marketed with some interest.

4. PLANNING HISTORY

- 4.1 N/2002/915 – outline mixed use development.
- 4.2 11/0046/FULWNN – Erection of mixed use development comprising public house, convenience store, nursery, retail units, café/restaurant, 324 no. dwellings (70 no. 1 and 2 bed flats, 17 no. live/work units and 237 no. 2, 3 and 4 bedroom houses) 77 apartment extra care facility, associated roads, parking and landscaping. Approved 28/03/12.
- 4.3 N/2012/0510 – Non-material amendment to planning permission 11/0046/FULWNN for erection of mixed use development – substitution to various plots. Approved 19/06/2012.
- 4.4 N/2015/0898 - Variation of condition 2 and removal of condition 33 of planning permission 11/0046/FULWNN (erection of 324no. dwellings and 77no.apartment extra care facility) to remove requirement for works to Harlestone Road/Mill Lane roundabout and Upton Way/Telford Road roundabout. Current application.
- 4.5 N/2016/0534 Creation of public open space, including hard and soft landscaping features and play equipment. Current application.
- 4.6 N/2016/1517 - Proposed 12 new apartments over two levels at ground and first floor within Block 1. Reconfigure front and rear parking bays and associated bin and cycle storage. Approved 23/03/2017.

5. PLANNING POLICY

5.1 Statutory Duty

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise. The Development Plan for the purposes of this application comprises the adopted West Northamptonshire Joint Core Strategy (2014) and Northampton Local Plan (1997) saved policies.

5.2 National Policies

The National Planning Policy Framework (NPPF) sets out the current aims and objectives for the planning system and how these should be applied. In delivering sustainable development, decisions should have regard to the mutually dependent social, economic and environmental roles of the planning system. The NPPF should be read as one complete document. However, the following sections are of particular relevance to this application:

Paragraph 7 – There are three dimensions to sustainable development giving rise to the need for the planning system to perform an economic, social and environmental role.

Paragraph 14 – Central to the National Planning Policy Framework is a presumption in favour of sustainable development.

Paragraphs 19 and 20 relate to the need to support economic growth and meet the development needs for business.

5.3 West Northamptonshire Joint Core Strategy (2014)

The West Northamptonshire Joint Core Strategy (JCS) provides an up to date evidence base and considers the current Government requirements for plan making as it has been prepared in full conformity with the NPPF. Policies of particular relevance are:

Policy SA – Presumption in favour of sustainable development
Policy S10 – Sustainable development principles
Policy S11 – Low carbon and renewable energy
Policy BN9 – Planning for pollution control

5.4 Northampton Local Plan 1997 (Saved Policies)

Due to the age of the plan, the amount of weight that can be attributed to the aims and objectives of this document are diminished, however, the following policy is material to this application:

Policy R11 – Shopping facilities in major residential developments

6. APPRAISAL

6.1 The original planning application for the development was determined by the former West Northamptonshire Development Corporation (WNDC), and was subject to a Section 106 Legal Agreement which was completed on 27th March 2012.

6.2 Schedule 11, Paragraph 1.1 of the Agreement relates to ‘sustainability’ and requires the developer to ensure that all Commercial Units within the development are constructed so as to achieve a BREEAM “excellent” rating. Paragraph 2.1 of the same schedule requires that the owner and developer covenant not to allow or permit any commercial unit to be occupied until it has been assessed and certified with a BREEAM “excellent” rating.

6.3 BREEAM measures a number of values across a number of sustainable categories:

- Energy
- Land use and ecology
- Water
- Health and wellbeing
- Pollution
- Transport
- Materials
- Waste
- Management

Each of these categories influence reduced carbon emissions, low impact design, adaption to climate change, ecological value and biodiversity protection.

6.4 BREEAM ‘excellent’ rating represents the top 10% of UK new non-domestic buildings and represents best practice. A ‘very good’ rating represents the top 25% of UK new non-domestic buildings and represents advanced good practice. The step between these two ratings includes features that will be outside the control of the individual occupier and more the responsibility of the developer or Management Company responsible for the site and possibly other agencies. This arrangement is therefore a potentially difficult one to monitor and influence for an individual company.

6.5 Policy S11 of the JCS requires all new non-residential developments over 500m² gross internal floor space to achieve a minimum rating of at least BREEAM ‘very good’ standard (or equivalent). In this instance, the Section 106 Agreement negotiated by WNDC requires an ‘excellent’ rating, which is more onerous than that required by Policy S11.

6.6 The Developer has been marketing the commercial units and a national retailer has expressed an interest in the larger of the retail units. The requirements of BREEAM are proving restrictive on

potential occupiers, but the national retailer has indicated that other initiatives may be operated by them that offer equally sustainable measures, but cannot be part of the BREEAM assessment for an individual premises.

- 6.7 Whilst there was good intention behind the obligation in the Section 106 Agreement, the step between 'very good' and 'excellent' is a significant one, and it is very difficult for shops to achieve this level.
- 6.8 In order to encourage the completion and occupation of the development and to provide necessary facilities to serve local residents, the request to vary the obligation, therefore, does not seem unreasonable and a 'very good' rating would still ensure a high level of sustainable measures are incorporated in the development and in line with the JCS policy.

7. CONCLUSION

- 7.1 Given the requirements of Policy S11, the obligation set out in the Section 106 Agreement is considered to be an onerous obligation on the developer and future occupiers. The Council are keen to see the development completed in a timely manner and facilities completed and occupied to serve the local community around the local centre. It is considered that in this instance, the proposed amendment is therefore acceptable.

8. BACKGROUND PAPERS

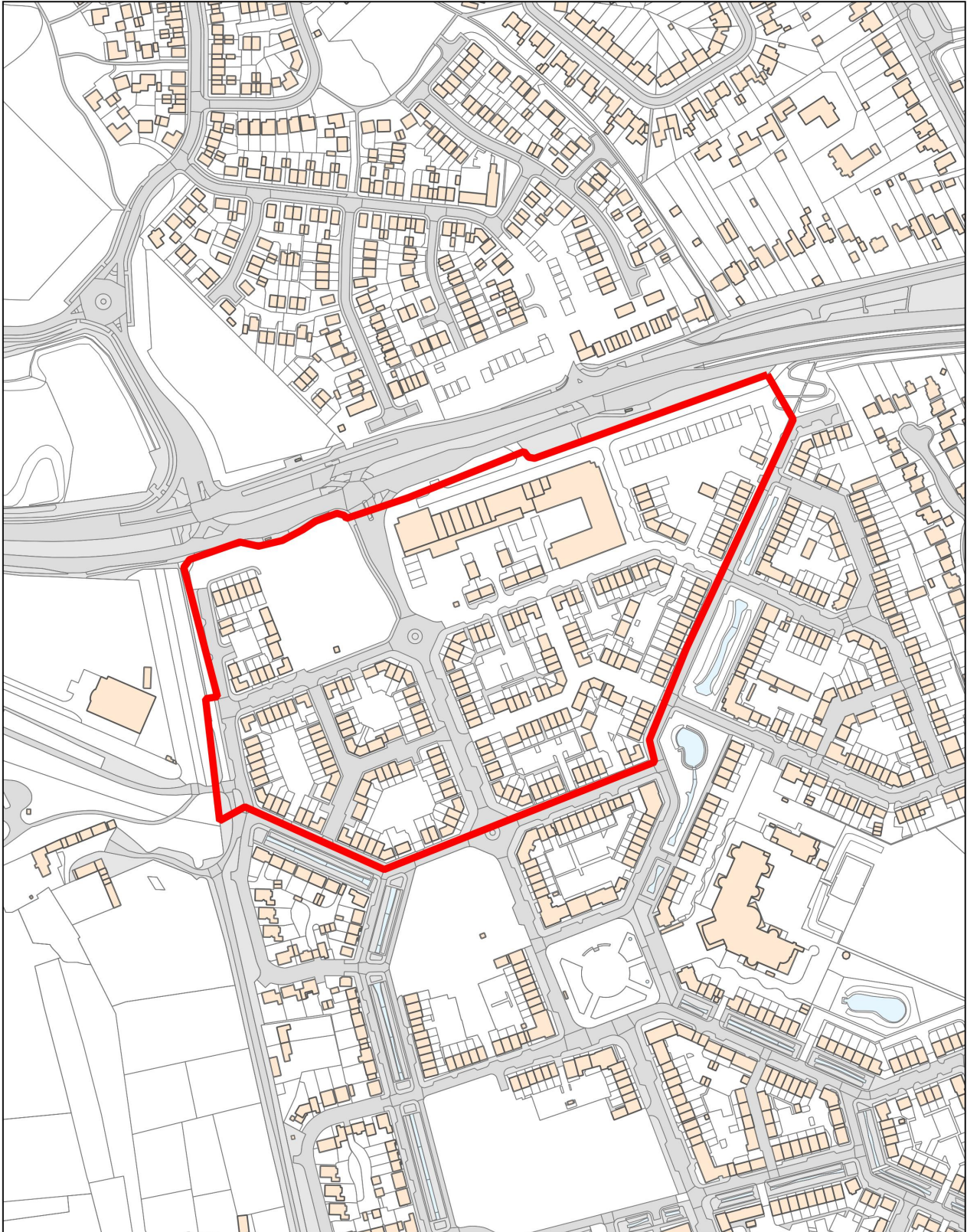
- 8.1 N/2018/0111 and 11/0046/FULWNN

9. LEGAL IMPLICATIONS

- 9.1 None.

10. SUMMARY AND LINKS TO CORPORATE PLAN

- 10.1 In reaching the attached recommendations regard has been given to securing the objectives, visions and priorities outlined in the Corporate Plan together with those of associated Frameworks and Strategies.



Title: **Sites F & G Upton, High Street**

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