

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING COMMITTEE**

DATE: **2nd SEPTEMBER 2020**

REPORT BY: **CHIEF OFFICER (PLANNING, ENVIRONMENT AND ECONOMY)**

SUBJECT: **GENERAL MATTERS APPLICATION - VARIATION OF S.106 AGREEMENT DATED 14TH AUGUST 2009 IN RELATION TO LAND AT HIGH STREET AND BRIDGE STREET, SALTNEY, FLINTSHIRE.**

APPLICATION NUMBER: **060741**

APPLICANT: **WM MORRISONS SUPERMARKETS PLC**

SITE: **MORRISONS
HIGH STREET
SALTNEY
FLINTSHIRE**

APPLICATION VALID DATE: **12TH DECEMEBER 2019**

LOCAL MEMBERS: **COUNCILLOR R. LLOYD**

TOWN COUNCIL: **SALTNEY TOWN COUNCIL**

REASON FOR COMMITTEE: **DELEGATED POWERS ARE NOT CONFERED TO THE CHIEF OFFICER (PLANNING, ENVIRONMENT AND ECONOMY) FOR THE VARIATION OF S.106 AGREEMENTS RESOLVED TO BE ENTERED INTO BY COMMITTEE.**

SITE VISIT: **NO**

1.00 SUMMARY

1.01 This is an application to modify a Section 106 Agreement, pursuant to S.106A(3), relating to a full planning application (045999) for the 'Erection of retail superstore, petrol filling station and car wash together with associated external works including car parking, trolley storage shelters, landscaping and enclosed service yard with separate vehicular access, and associated ancillary works' to land at High Street, Saltney. Application 045999 was granted permission 17 August 2009.

- 1.02 Members will recall that this matter has been the subject of General Matters reports to Committee on 17.12.2014 and 18.11.2015 respectively. These reports outlined proposals for the County Council to retain the land in the first instance. However, subsequently it was confirmed that the land had not been transferred in the first instance and the 2015 report proposed that the land be transferred to the Town Council for use for some beneficial community purpose. However, the proposed transfer did not take place.
- 1.03 This Application now seeks the removal of obligations contained in paragraph 3 of the First Schedule to the S106 Agreement. Paragraph 3 declares that if by 7 years after planning permission was granted the Library Property detailed has not been developed for use as a public library the Library Property will be transferred to the Second Owner (WM Morrison Supermarkets PLC) free from encumbrances and with vacant possession.
- 1.04 Members are advised that notification of an appeal upon the grounds of non-determination has been received from The Planning Inspectorate (Wales). The appeal is to be considered via the written representative method and as such, the Local Planning Authority has until 9th September 2020 to state its position in respect of the appeal.
- 1.05 The purpose of this report is to provide Members with the advice of officers in this matter with a view to the resolution of Members forming the basis of the Council's position in response to this appeal.
- 1.06 Members are also advised that the dual determination provisions usually applied to non-determination appeals, are not conferred upon applications for the modification or discharge of S.106 Agreements.

2.00 RECOMMENDATION: TO MODIFY THE S.106 AGREEMENT SUCH THAT PARAGRAPH 3 TO THE FIRST SCHEDULE IS DELETED.

3.00 CONSULTATIONS

- 3.01 Local Member
Councillor R. Lloyd
Asks that the application to be dealt with under delegated powers.

Saltney Town Council
No response at time of writing.

4.00 PUBLICITY

4.01 The application was publicised via the display of a Site Notice and via Neighbour Notification letters.

4.02 At the time of writing no neighbour consultation responses have been received

5.00 SITE HISTORY

5.01 046828

Variation of condition no. 14 of planning permission ref: 045999 to allow extension of opening hours of petrol filling station: - Monday to Saturday 7:00am to 11:00pm, Sunday and Bank Holidays 8:00am to 8:00pm – Approved 14.01.2010

047292

Variation of condition No.14 attached to planning permission ref: 045999 to allow for extension of opening hours of store and petrol filling station on Bank Holidays from 8.00am to 10.00pm. – Approved 23.06.2010

047133

Illuminated and non-illuminated signage to new superstore and petrol filling station. – Approved 14.05.2010

045999

Erection of retail superstore, petrol filling station and car wash together with associated external works including car parking, trolley storage shelters, landscaping and enclosed service yard with separate vehicular access, and associated ancillary works. – Approved after completing Legal Agreement 17.08.2009

042788

Outline - Mixed-use development comprising retail, leisure and residential facilities, off-site highway improvements plus associated engineering works (Full details submitted for retail elements with the exception of landscaping, only means of access is dealt with in detail for the residential element). – Approved 31.12.2008

6.00 PLANNING POLICIES

6.01 Flintshire Unitary Development Plan
Policy IMP1 Planning Conditions and Planning Obligations

National: Guidance
Planning Policy Wales Edition 10 December 2018.

7.00 PLANNING APPRAISAL

7.01 Background

Planning permission 045999 was granted in August 2009 for the new Morrisons store and implemented this permission in 2010, erecting the superstore and petrol filling station together with other associated works.

7.02 The original planning permission was subject to a Section 106 Legal Agreement. The agreement had a number of obligations including to secure demolition and landscaping of the original public toilets once those within the store were provided; financial contribution towards public art; and to allow the Council a period of 7 years within which to bring forward proposals and develop a library on land at the western edge of the store.

7.03 It is a matter of fact, that no proposals have been brought forward for a library on the land within the 7 year period as prescribed by the S.106 agreement and as such the applicant has submitted an application to vary the original agreement to remove this obligation.

7.04 Main Issues:

The obligation relating to the library was not to provide the library, but rather to ensure the land was available should the Council bring proposals forward.

7.05 The time period that was considered reasonable for this was agreed as being 7 years and the agreement was drafted as such. The time period therefore expired on the 17th August 2016.

7.06 The obligation within the agreement is therefore no longer reasonably necessary and the request to vary the agreement to remove this obligation accords with Policy IMP1.

7.07 Pursuant to S.106A (6) the Local Planning Authority may determine that if the obligation no longer serves a useful purpose, it shall be discharged. In the circumstances, where the 7 year period referred to at Para. 7.03 of the report has expired, it is clear that this obligation no longer serves a useful purpose.

8.00 CONCLUSION

8.01 That Members note the recommendation that the proposed modification is acceptable in policy terms, that the obligation no longer serves a useful purpose, and the recommendation that the Councils position in the forthcoming appeal be such that the modification is not opposed.

8.02 Other Considerations

The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.

8.03 The Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

8.04 The Council has had due regard to its public sector equality duty under the Equality Act 2010.

8.05 The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

LIST OF BACKGROUND DOCUMENTS

Planning Application & Supporting Documents

National & Local Planning Policy

Responses to Consultation

Responses to Publicity

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