

Proposed development: Variation to S106 Agreement pursuant to planning application 10/18/1116 – to:

- amend the payment phasing to allow for the off-site Green Infrastructure contribution to be received in full as part of the first instalment on development commencement;
- specify that the Green Infrastructure commuted sum will contribute towards works to enhance the Witton Park Play Areas; and
- remove the requirement for a contribution towards off-site highway works on Stockclough Lane.

Site address: Land at Brokenstone Road, Blackburn, BB3 0LL

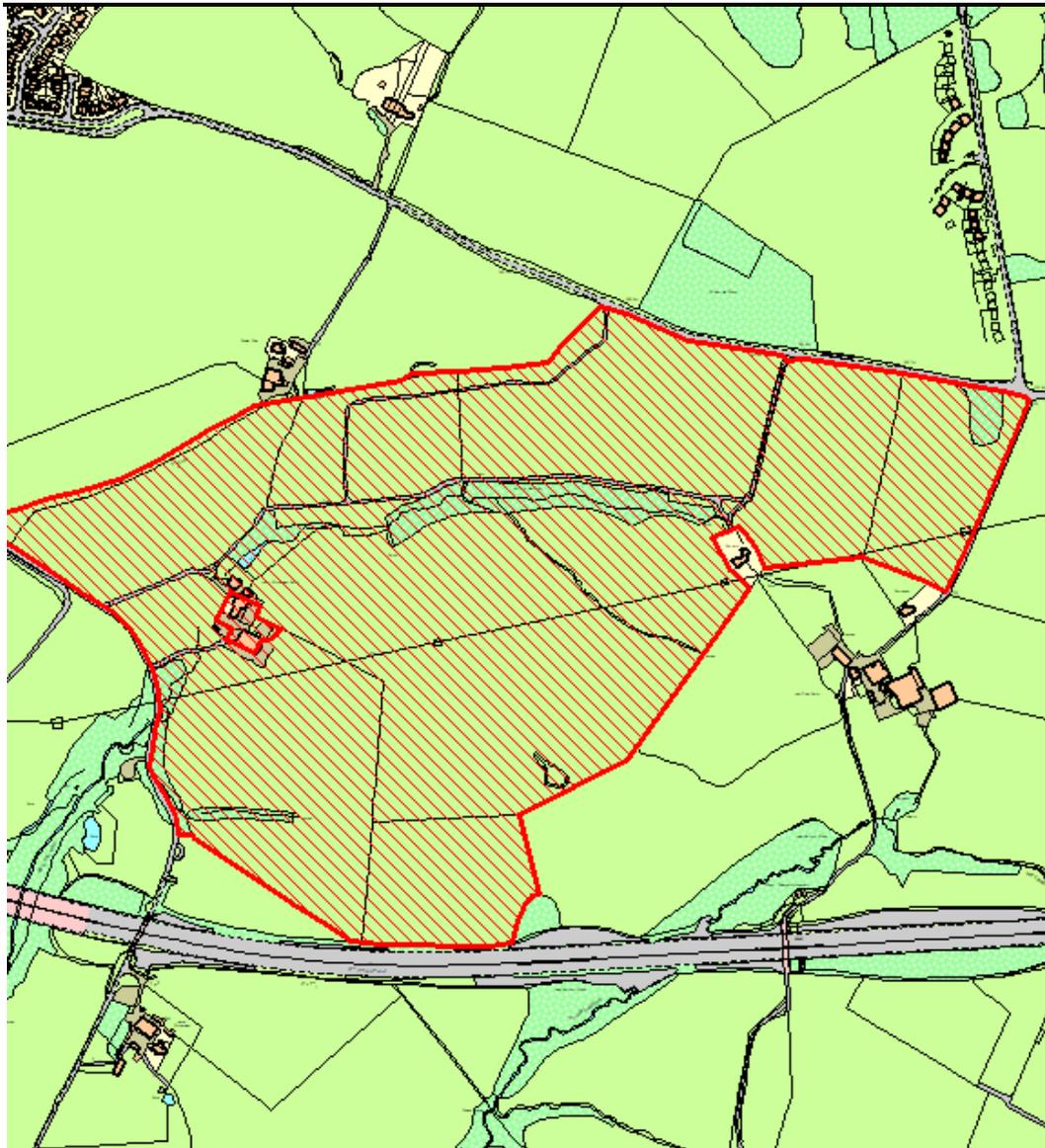
Applicant: Barratt Homes and Taylor Wimpey

Ward: Livesey With Pleasington

Councillor Derek Hardman

Councillor Mark Russell

Councillor Paul Marrow



1.0 SUMMARY OF RECOMMENDATION

- 1.1 It is recommended that Members **agree** to the variation of the existing Section 106 Agreement.

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 This application is before Members as it relates to amendments to the Section 106 Agreement (s106) attached to planning permission 10/18/1116, which was previously considered and approved at the June 2019 meeting of the Planning & Highways Committee. Members will recall the application was deferred at the October meeting, to allow the application to be publicised by site notice and press notice seeking any representations to be submitted prior to the determination of the application.
- 2.2 Planning permission 10/18/1116 related to a hybrid application seeking full permission for the remediation of the site, alongside an outline planning permission (with all matters reserved except access) for redevelopment of the site for up to 450 residential units, along with associated new access, landscaping, parking and associated works.
- 2.3 The approval was subject to a s106 dated 5th July 2019, that secured commuted sum payments totalling £3,606,000 for the following matters;
- (a) £350,000 as a contribution towards Green Infrastructure. This will be spent on Green Infrastructure / Public Open Space and associated community facilities within the West Blackburn area/rural areas.
 - (b) £750,000 as a contribution towards the provision of affordable housing in the borough.
 - (c) £26,000 as a contribution towards road safety improvements on Stockclough Lane.
 - (d) £2,480,000 as a contribution towards additional primary school places in West Blackburn.
- 2.3 The agreement allows for phased payments over 6 years, starting at commencement of the development (detailed in section 3.2 of this report). The current proposal is to amend the payment phasing to allow for the entire Green Infrastructure contribution to be received as part of the first instalment on commencement, to fund works to enhance and improve the play areas within Witton Park. In addition, the revisions include the removal of the £26,000 off-site highways contribution towards road safety improvements along Stockclough Lane, as this route is no longer proposed to be used as a vehicular access point. Therefore the Stockclough Lane contribution cannot be sought because it is not necessary to make the development acceptable in planning terms, as required by the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

3.0 RATIONALE

3.1 Site and Surroundings

- 3.1.1 The application site covers an area of approximately 46 hectares and is effectively divided into two by Stockclough Brook and a linear belt of woodland known as Potters Plantation (circa 1.4 hectares) that runs from the eastern boundary close to the property of Yew Tree, west towards Lower Whitehalgh Farm. The woodland and watercourse clearly defines the northern and southern sections of the site. The northern section of the site is open land south of Brokenstone Road and measures approximately 16.4 hectares where the development will take place. The southern section of the site is also open grassland with the M65 motorway defining the southern boundary and is approximately 28.2 hectares.
- 3.1.2 The site is irregular in shape and undulates. It slopes generally from the high point in the north eastern corner, adjacent to Brokenstone Road, to the westernmost point of the site, which is circa 55m lower. The site is generally open countryside with distant views to the south and south west towards the West Pennines. The site is bounded by the M65 transport corridor on the southern edge.
- 3.1.3 Several properties are located on the site periphery. Most notably these include Fowler Fold to the north, Potters Farm to the east and Lower Whitehalgh Farm to the west. The farm buildings of Whitehalgh Farm remain on the south western boundary of the site, some of which are now occupied by Acorns Day Nursery. Potters Farm lies just outside the site boundary on the easternmost side of the site. An overhead power line traverses the southern section of the site in an east to west direction.

3.2 Proposed Development

- 3.2.1 The extant approval 10/18/1116 secures S106 monies of £350,000 towards the provision of Green Infrastructure / Public Open Space and associated community facilities within the West Blackburn area.
- 3.2.2 The current deed of variation application seeks to revise the payment phasing to allow for the whole Green Infrastructure contribution to be received as part of the first instalment (on development commencement) to fund works to the play areas in Witton Park, which will provide enhancements to the facilities, therefore allowing for increased use due to the additional residents arising from the development. In addition, the £26,000 off-site highways contribution which was agreed at outline planning stage is to be removed for the reasons stated in paragraph 2.3 above. The amended phases for the payment instalments are set out in the following tables:

Original Phasing of Payments – Extract from Schedule 2 of the S106:

SCHEDULE 2: SCHEDULE OF COMMUTED SUM PAYMENTS

	Column 1 Commencement	Column 2 Year 1	Column 3 Year 2	Column 4 Year 3	Column 4 Year 4	Column 5 Year 5	Total
Education Provision Commutated Sum	£ 75,000	£ 451,000	£ 501,000	£ 501,000	£ 501,000	£ 451,000	£ 2,480,000
Affordable Housing Commutated Sum	£ 450,000	£ 100,000	£ 50,000	£ 50,000	£ 50,000	£ 50,000	£ 750,000
Green Infrastructure Commutated Sum	£ 50,000	£ 50,000	£ 50,000	£ 50,000	£ 50,000	£ 100,000	£ 350,000
Road Safety Commutated Sum	£ 26,000						£ 26,000
Total	£ 601,000	£ 601,000	£ 601,000	£ 601,000	£ 601,000	£ 601,000	£ 3,606,000

Proposed Revised Phasing of Payments:

	Commencement	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Education	101,000	425,000	501,000	501,000	501,000	451,000	2,480,000
Affordable Housing	150,000	150,000	100,000	100,000	100,000	150,000	750,000
Green Infrastructure	350,000						350,000
Road Safety							
Total	601,000	575,000	601,000	601,000	601,000	601,000	3,580,000

3.3 Development Plan

3.3.1 The Development Plan comprises the Core Strategy and adopted Local Plan Part 2 – Site Allocations and Development Management Policies. In determining the current proposal, the following are considered to be the most relevant policies:

3.3.2 Core Strategy

- CS8 - Affordable Housing Requirements
- CS19 – Green Infrastructure
- CS21 – Mitigation of Impacts/Planning Gain

3.3.3 Local Plan Part 2

- Policy 7 – Sustainable and Viable Development
- Policy 12 – Developer Contributions
- Policy 38 - Green Infrastructure

3.4 Other Material Planning Considerations

3.4.1 Community Infrastructure Levy Regulations 2010 (as amended)

The regulations set out the statutory tests for when planning obligations can be applied.

3.4.2 National Planning Policy Framework (NPPF) – 2021:

The National Planning Policy Framework (Framework) is a material consideration in planning decisions. The Framework sets out a presumption in favour of sustainable development, which is the “golden thread” running through both plan-making and decision-taking.

3.5 Assessment

3.5.1 The Council’s Environment Department has identified that the large adventure play area for older children known as “The Wits”, and the play area for younger children, situated in Witton County Park (refer to image 1) are in need of upgrades in anticipation of the increased usage resulting from the new development.



Image 1: Google image of play areas within Witton Park.



Image 2: Adventure play area – The Wits.

3.5.2 If the funds are not received in one early instalment, on the commencement of development, the play areas will not be upgraded until many of the homes have been constructed. The early instalment will enable upgrades to the play areas in 2023/24, for the enjoyment of new and existing residents in West Blackburn.

3.5.3 The play areas identified within Witton Country Park fall within the boundary of West Blackburn associated with the original S106 – refer to Image 3, and therefore the proposed spend is in accordance with the terms of the original agreement.

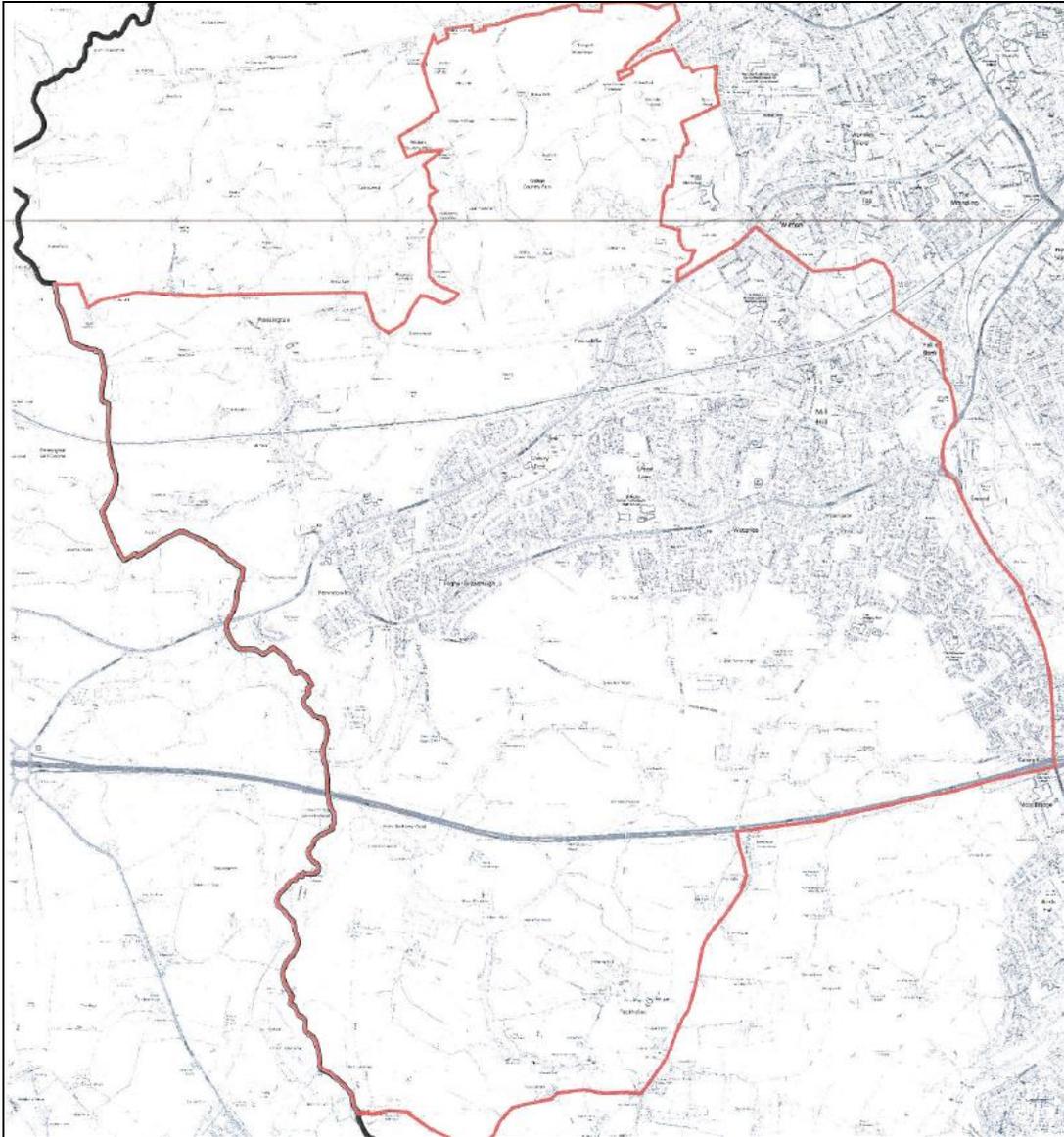


Image 3: Plan 2 – Identifies the extent of the boundary referred to as “West Blackburn” in the S106 Agreement.

3.5.4 Members are advised that the proposed variation still provides for the future needs of the development and its occupants, as well as strengthening provision for the established community. Accordingly the proposed change remains consistent with the requirements of *Policy 40: Green Infrastructure* of the Local Plan Part 2.

3.5.5 Members are advised that the final Deed of Variation (DoV) cannot be signed by all parties until the summer of 2023. However, it has been confirmed in writing that all parties are fully supportive of the DoV application.

4.0 RECOMMENDATION

- 4.1 **APPROVE** – variation of the s106 Agreement pursuant to planning application 10/18/1116.

5.0 PLANNING HISTORY

- 5.1 10/18/1116 – Hybrid planning application seeking full planning permission for remediation and means of access, along with outline planning permission (with all matters reserved except access) for redevelopment of the site to include over 28ha of open space, paddocks and landscaping and up to 450 residential units (use class C3), along with any ancillary parking, amenity, and all other associated public, semi public and private realm, soft/hard landscaping, infrastructure and highway works, access and a new internal road network connecting with the existing road network – approved 5th July 2019.
- 5.2 10/21/1083 - Approval of reserved matters for the appearance, landscaping, layout and scale of 450 residential units, pursuant to planning application 10/18/1116 'redevelopment of the site to include over 28ha of open space, paddocks and landscaping and up to 450 residential units (use class C3), along with any ancillary parking, amenity, and all other associated public, semi public and private realm, soft/hard landscaping, infrastructure and highway works, access and a new internal road network connecting with the existing road network' – approved 20th January 2022.

5.0 CONSULTATIONS

- 5.1 Livesey Parish Council:- no comments received at the time the report was completed.
- 5.2 A press notice was published in the local newspaper on the 21st October, and site notices were posted. No representations have been received at the time the report was completed.
- 5.3 Ward Councillors: Councillor Mark Russell has submitted an objection on the 6th November 2022. The objection is as follows:

I object to removal of the Highways commuted sum of £26,000. Stockclough Lane will still be utilised for pedestrian and emergency access to the site, so the £26,000 should still be spent on road safety there as envisaged. However, if it is no longer required for Stockclough Lane then given ongoing issues with highways infrastructure in the immediate surrounds of the development any variation should seek to utilise it for other relevant purposes. For example, the top of Gib Lane requires widening as it is too narrow for large vehicles to pass each other without mounting the pavement.

Also, in the interests of connectivity and walkable neighbourhoods, a footpath is required connecting the top of Gib Lane to Heys Lane. This is particularly desirable as residents

returning home from the Black Bull pub currently have to walk along the increasingly busy road, endangering their safety.

Whatever its ultimate usage, if improvements to Stockclough Lane are not required then the £26,000 should not be removed but put to use on Highways improvements to the surrounding network. Greater contributions towards highways improvements in the area should have been secured in the first place.

I also object to the entirety of the Green Infrastructure commuted sum being spent on the renewal of play equipment at Witton Park. There are no play areas within easy walking distance of the Pleasington Lakes development and none intended to be provided as part of the development. There are also none provided on any of the nearby developments off Gib Lane. A portion of the Green Infrastructure commuted sums should be used to provide a new play area in the locality of the new developments in the Gib Lane area. For example, the open space in the middle of the Kingswood development would be an ideal location for a small play area while still leaving a significant sum available to be spent at Witton Park.

The application states that if the sums are not received on commencement then Witton Park play area will remain in a state of disrepair and be largely unusable. Maintenance and repair of play equipment should be catered for in the Council's revenue budgets and not reliant upon future S106 receipts. The play areas at Witton Park should be repaired regardless of where these Green Infrastructure contributions are spent. It would be more appropriate to spend at least a portion of these sums upon the provision of new play areas that service new housing developments in the area.

Cllr Mark Russell
19 Feniscliffe Drive
Blackburn
BB2 2UF"

Response:

With regards to the highways commuted sum payments, Members are advised that the payments are being provided by the developer to cover all the works deemed necessary for the development via the submitted Transport Assessment. Now that vehicular access is not going to be created off Stockclough Lane, the £26,000 cannot be sought. With regards to the Green Infrastructure contribution, Members are advised that Witton Park is a destination play area within the West Blackburn Area as identified in the S106 Agreement. It would not be possible or reasonable for the Council to require a play area to be created on third party private land i.e. the Village Green within the Kingswood site as suggested by Councillor Russell, without third party agreement.

6.0 CONTACT OFFICER: Gavin Prescott, Planning Manager

7.0 DATE PREPARED: 7th November 2022