

Decision Report: 30 October 2023

REPORT OF THE INTERIM CORPORATE DIRECTOR, PLACE NEWTON GARDEN VILLAGE AND PRIMARY SCHOOL PLACES

Purpose of the Report

1. To seek approval to vary the Section 106 legal agreement to enable the developer contribution for the provision of an on-site 0.5 FE primary school at Newton Garden Village to be redirected to support expansion of the new Bingham Primary School.

Information

2. Newton Garden Village is a 528 dwelling housing development being constructed on land adjoining the existing residential development at the former RAF Newton base near Bingham. Land was allocated for development by Rushcliffe Borough Council within the Rushcliffe Core Strategy adopted in 2014 and the original outline planning application was granted planning permission was issued in January 2014. The remaining part of the site is used as an industrial estate, offices and storage space and has been removed from the Green Belt along with the housing development land.
3. The outline planning permission for 528 dwellings includes a planning obligation under which the developer should enable provision of a primary school and a local retail centre. Rushcliffe BC (RBC) and the landowner/developers are parties to this planning obligation. The specific terms of the primary school obligation are appended to this report.
4. The Section 106 agreement was intended to fund and deliver a small primary school of 0.5 form entry as justified by the moderate level of housing expected to be developed.
5. Redrow Homes has acquired the residential land and have begun to implement the planning permission. In April 2023 83 dwellings were reported as being occupied. In addition to the new homes, there are already 150 dwellings on the Newton site which were built to serve the original RAF station and a further 165 dwellings owing to a planning application made by David Wilson Homes and granted some years ago.
6. The Section 106 Agreement (as varied) required the developer, prior to commencement, to confirm whether it intends to construct a primary school in accordance with a scheme to be approved by the Borough Council or pay the Primary School Contribution to the Borough Council for the provision of a primary school within the development site. The developer notified RBC in 2021 of its intention to pay the Primary School Contribution (£2,350,000 index linked) and to transfer the Primary School Land to RBC.

7. At that time, the County Council advised that there was no pressing need for a primary school to be delivered and requested that the transfer of the Primary School Land was deferred. It has therefore been safeguarded by the developer and the obligation for it to transfer the land remains to be discharged.
8. To date, 3% of the Primary School Contribution has been paid to the Borough Council. The following instalment (17%) is due once planning permission for a primary school has been granted and the final balance (80%) is due once the provision of the primary school has been contracted. As such, the funding can only be collected from the developer in the event that a new school is commissioned.
9. Under the terms of the planning obligation, the Borough Council can only receive and spend the Primary School Contribution for the purposes of providing a primary school within the site, but there is no obligation within the Section 106 Agreement that requires the Borough Council (or the County Council) to commission a primary school. The decision to commission a new school development is subject to the County Council's own decision-making process in its capacity as the Local Education Authority.

Current Position

10. Several factors have now arisen which affect the ability of the County Council to support and deliver a new small primary school at Newton.

Forecast Capacity in the Bingham Primary Planning Area

11. Projections of future demand for primary school places in the relevant school planning area which take into account expected development at Newton no longer support a new primary school because of the forecast availability of places in local schools.
12. In 2022, pupil planning areas were reviewed and several single school planning areas in rural areas were merged with nearby areas. This happened at the local primary school for Newton which is East Bridgford Primary. This school was taken into the Bingham Planning Area. At present because of the delivery of a new primary school to the north of Bingham, there is a forecast surplus number of available places which will remain for the next five years. Appendix 1 contains the forecasts for Bingham Primary Planning Area.
13. These forecasts include assumptions about additional pupils arising from future housing development at Newton Garden Village. Some housing development will occur in the period beyond five years which will absorb surplus capacity and is anticipated could lead to pupil place deficiency. The new primary school at Bingham has been approved and built with the ability to expand at some point in the future by 0.5 FE and the most appropriate option financially would be to commission an expansion of this school if needed.
14. The Borough Council has also confirmed there are no proposals to expand Newton Garden Village in future and this has been confirmed in the Greater Nottingham Strategic Plan Preferred Approach Consultation January 2023 which makes provision for development to 2038 and cites 500 dwellings to be built at Newton which relates to the existing development. Remaining land is allocated as Green Belt. There is no likelihood of future development creating the case for an additional primary school.
15. There is therefore no significant deficiency which might warrant building an additional new

primary school in the Bingham Primary planning area. Pupil place forecasts suggest that all the pupil demand from Newton Garden Village can be accommodated at primary schools in East Bridgford and Bingham (if this school is expanded).

Minimum Size for new Primary Schools

16. The planning obligation for school provision at Newton only provides sufficient funding to contribute to delivery of a 0.5 form of entry primary school, as justified by the limited size of the development. Since the original planning permission and planning obligation was signed, the DfE has advised that primary schools of less than 1 form of entry are no longer supported owing to the difficulty in providing the full national curriculum. Indeed, the DfE “Free Schools – pre-opening guide” (updated to September 2023) now says *“to provide a sustainable, broad and balanced curriculum, there is a presumption that primary provision should have a minimum of 2 forms of entry of 30 pupils.”* Before signing a funding agreement with an Academy Trust to open a free school, the Secretary of State needs to be satisfied that:

- there is a suitable site for the school that provides good value for money;
- the school will provide a good standard of education, with a viable and sustainable number of pupils from its first day of operation.

17. It is often the case that primary schools associated with new development will in fact open at a smaller size (1 form of entry) but be designed to grow larger, as is the case at Bingham Primary. The situation at Newton Garden Village is that the demand from the development (and S106 funding) was only ever sufficient to warrant and fund a 0.5 form entry school and there is no prospect of future expansion given the availability of places across the planning area and unlikelihood of further development at Newton. As such any proposal for a 0.5 form entry school is unlikely to attract a sponsoring Academy Trust.

Conclusion

18. Education and planning officers consider that there is no longer any case for provision of a new 0.5 form entry primary school at Newton Garden Village based on the limited size of the proposed school and the forecasts of space in nearby schools. A foot/cycle bridge is planned to be constructed over the A46 at a future point (required as part of the S106 Agreement) which will improve the connectivity between Newton and the Romans Quarter of Bingham where Bingham Primary School is located. It is recommended to the Cabinet member that the approach to meeting future primary needs in the planning area should be through the planned expansion of the new Bingham Primary School.

19. The Borough Council and promoter should therefore be advised that the County Council will not require land or contributions to enable a small primary school to be provided at Newton Garden Village, but instead seek a variation to the planning obligation to enable contributions to be re-directed to supporting the expansion of Bingham Primary School to accommodate pupil growth in the Bingham Primary Planning Area.

20. Councillor Tracey Taylor, Cabinet member for Children and Families has been consulted on this matter and agrees with the approach being recommended.

21. Councillor Neil Clarke MBE who represents Bingham West Electoral Division in which the Newton Garden Village site is located has also been briefed on this proposal. Councillor Clarke remains of the view that a 0.5 form entry primary school should be built to support

the development of the Newton Garden Village in accordance with the wishes of Rushcliffe BC when granting planning permission for the development.

Other Options Considered

22. The County Council could suspend deciding on this matter until some future date, but local community representatives have made requests at the Newton Community Partnership Board for the County Council to decide one way or another. As described above, officers have explored if there might be additional development at Newton which might support a larger school in future, but this is very unlikely since remaining land is in the Green Belt and RBC have no such plans to allocate further land for development through the emerging Greater Nottingham Strategic Plan.

Reasons for Recommendation

23. The Council is obliged to review all planning obligations to determine if there is still a need for the education infrastructure for which land and funding has been provided in legacy planning agreements. It is sometimes the case that there is no longer the case for the infrastructure concerned or there is a case to re-direct available funding elsewhere and the County Council then informs the local planning authority.

24. In this case:

- a) there is no case now and in the future for an additional primary school because there are sufficient places forecast to be available in schools across the Bingham primary planning area with expansion of the new Bingham primary school (which already has planning permission for expansion) the preferred option if needed to accommodate longer term demand.
- b) 0.5 FE primary schools are not supported by the Department for Education and therefore unlikely to attract a sponsoring Academy Trust;
- c) there is therefore a strong case for the existing primary school funding to be re-directed towards funding expansion of Bingham primary school when needed.

Statutory and Policy Implications

25. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

26. A variation will be sought to the planning obligation to enable developer contributions to be allocated to supporting the cost of expansion of Bingham Primary when required. This will require agreement of Rushcliffe BC and Redrow Homes, the developer.

Implications for Sustainability and the Environment

27. There is an opportunity within the planning permission at Newton Garden Village to ensure provision of local facilities – in this instance a primary school – to enable residents of Newton to travel to facilities using active travel methods without need to use private vehicles. If it is no longer viable to deliver a small primary school on site, then this report advocates that funding is directed to expansion of the existing primary school at Bingham. Access to the primary school at Bingham from Newton could still be achieved in the future by active travel methods once the bridge over the A46 is provided in accordance with the S106 Agreement.

RECOMMENDATION

- 1) That it be confirmed to Rushcliffe Borough Council, Newton Parish Council and Redrow Homes (the developer) that the County Council wishes to vary the planning obligation for primary education arising from the development at Newton Garden Village. This is to enable developer contributions to be collected and allocated when required to support expansion of the 1FE Bingham Primary School which may be necessary in order to meet the long-term demand for school places created by the development.

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Constitutional Comments (JL 19/10/2023)

28. The contents of this report fall within the remit of the Cabinet Member for Economic Development and Asset Management in accordance with the terms of reference set out in the Constitution of Nottinghamshire County Council

Financial Comments (GB 05/10/2023)

29. There are no financial implications arising directly from this report. It should be noted that a variation to the planning obligation is being sought to enable developer contributions to be allocated to support the future expansion of Bingham Primary when required.

Background Papers and Published Documents

- None

Electoral Division(s) and Member(s) Affected

- Bingham West Cllr Neil Clarke MBE

APPENDIX 1

BINGHAM PRIMARY PLANNING AREA PUPIL FORECASTS to 2026/7

2042	Bingham Primary	RUSHCLIFFE	Bingham	30	0	210	2022-23	10	7	2	3	4	4	3	33	+177
2042	Bingham Primary	RUSHCLIFFE	Bingham	30	0	210	2023-24	10	10	7	2	3	4	4	40	+170
2042	Bingham Primary	RUSHCLIFFE	Bingham	30	0	210	2024-25	10	10	10	7	2	3	4	46	+164
2042	Bingham Primary	RUSHCLIFFE	Bingham	30	0	210	2025-26	10	10	10	10	7	2	3	52	+158
2042	Bingham Primary	RUSHCLIFFE	Bingham	30	0	210	2026-27	10	10	10	10	10	7	2	59	+151
2693	Carnarvon Primary School	RUSHCLIFFE	Bingham	70	0	490	2022-23	60	67	63	67	71	74	74	476	+14
2693	Carnarvon Primary School	RUSHCLIFFE	Bingham	70	0	490	2023-24	65	62	69	63	69	74	76	478	+12
2693	Carnarvon Primary School	RUSHCLIFFE	Bingham	70	0	490	2024-25	61	65	62	67	64	71	75	465	+25
2693	Carnarvon Primary School	RUSHCLIFFE	Bingham	70	0	490	2025-26	62	61	65	62	68	66	72	456	+34
2693	Carnarvon Primary School	RUSHCLIFFE	Bingham	70	0	490	2026-27	63	62	61	63	62	70	66	447	+43
3550	Gunthorpe C of E Primary School	NEWARK	Bingham	15	0	105	2022-23	14	11	13	10	14	13	15	90	+15
3550	Gunthorpe C of E Primary School	NEWARK	Bingham	15	0	105	2023-24	14	14	12	13	12	13	12	90	+15
3550	Gunthorpe C of E Primary School	NEWARK	Bingham	15	0	105	2024-25	13	14	14	12	15	11	12	91	+14
3550	Gunthorpe C of E Primary School	NEWARK	Bingham	15	0	105	2025-26	13	13	15	14	14	14	10	93	+12
3550	Gunthorpe C of E Primary School	NEWARK	Bingham	15	0	105	2026-27	13	13	14	15	14	13	13	95	+10
2692	Robert Miles Infant School	RUSHCLIFFE	Bingham	60	0	180	2022-23	48	47	54	0	0	0	0	149	+31
2692	Robert Miles Infant School	RUSHCLIFFE	Bingham	60	0	180	2023-24	57	52	53	0	0	0	0	162	+18
2692	Robert Miles Infant School	RUSHCLIFFE	Bingham	60	0	180	2024-25	58	61	55	0	0	0	0	174	+6
2692	Robert Miles Infant School	RUSHCLIFFE	Bingham	60	0	180	2025-26	63	62	67	0	0	0	0	192	-12
2692	Robert Miles Infant School	RUSHCLIFFE	Bingham	60	0	180	2026-27	69	67	69	0	0	0	0	205	-25
2865	Robert Miles Junior School	RUSHCLIFFE	Bingham	0	60	240	2022-23	0	0	0	63	69	69	67	268	-28
2865	Robert Miles Junior School	RUSHCLIFFE	Bingham	0	60	240	2023-24	0	0	0	58	67	74	72	271	-31
2865	Robert Miles Junior School	RUSHCLIFFE	Bingham	0	60	240	2024-25	0	0	0	68	64	70	78	280	-40
2865	Robert Miles Junior School	RUSHCLIFFE	Bingham	0	60	240	2025-26	0	0	0	68	74	69	74	285	-45
2865	Robert Miles Junior School	RUSHCLIFFE	Bingham	0	60	240	2026-27	0	0	0	73	74	80	74	301	-61
3089	St Peter's C of E Academy, East Bridgford	RUSHCLIFFE	Bingham	42	0	294	2022-23	37	39	33	42	29	34	38	252	+42
3089	St Peter's C of E Academy, East Bridgford	RUSHCLIFFE	Bingham	42	0	294	2023-24	36	39	42	38	44	31	35	265	+29
3089	St Peter's C of E Academy, East Bridgford	RUSHCLIFFE	Bingham	42	0	294	2024-25	36	38	41	48	41	47	33	284	+10
3089	St Peter's C of E Academy, East Bridgford	RUSHCLIFFE	Bingham	42	0	294	2025-26	40	40	44	45	51	44	49	313	-19
3089	St Peter's C of E Academy, East Bridgford	RUSHCLIFFE	Bingham	42	0	294	2026-27	43	43	45	50	47	54	46	328	-34
	Planning area summary	Rushcliffe	Bingham	217	60	1519	2022-23	169	171	165	185	187	194	197	1268	+251
	Planning area summary	Rushcliffe	Bingham	217	60	1519	2023-24	182	177	183	174	195	196	199	1306	+213
	Planning area summary	Rushcliffe	Bingham	217	60	1519	2024-25	178	188	182	202	186	202	202	1340	+179
	Planning area summary	Rushcliffe	Bingham	217	60	1519	2025-26	188	186	201	199	214	195	208	1391	+128
	Planning area summary	Rushcliffe	Bingham	217	60	1519	2026-27	198	195	199	211	207	224	201	1435	+84

APPENDIX 2

Newton Garden Village Section 106 Agreement – Education

The deed was completed on 20 January 2014 and varied on 20 September 2018

Relevant Definitions

Primary School means the primary school as may be approved under the terms of Planning Condition 12 of the Planning Permission

Primary School Contribution means the sum of £2,350,000 for the provision of new or improved primary school facilities and/or support and/or services and/or subsidy of primary facilities on the Site subject to Indexation in accordance with the Public Sector Buildings Index from the date of this Deed to the date payment is made

Primary School Land means the land on the Site as shown edged and hatched orange on Plan 2 or such other equivalent land area as may be agreed in writing between the parties

Education Provider means a provider of primary school education which shall include (but not be limited to) academies and free schools

The Site means the land shown outlined red on Plan 1 for the purposes of identification only

The First Schedule - Part 4 (as varied)

Covenants given by the Owner to the Council:

1. To Confirm in writing to the Council prior to the commencement of Development whether it will:
 - a) Construct the Primary School in accordance with details approved under Planning Condition 12; or
 - b) Pay the Primary School Contribution in accordance with paragraph 3 below.and will carry out the Development in accordance with that confirmation.
2. Where the Owner intends to construct the Primary School it shall provide the Primary School prior to occupation of the 60th Dwelling and transfer the Primary School Land to the County Council (or with the agreement of the County Council and the Council an Education Provider) at nil value prior to Occupation of the 60th Dwelling.
3. Where the Owner does not construct the Primary School the Owner covenants:
 - a) i) To pay 3% of the Primary School Contribution to the Council prior to Commencement of Development of the first Dwelling
ii) To pay 17% of the Primary School Contribution within 60 days of the grant of detailed planning permission for the Primary School either by reserved matters approval pursuant to the Planning Permission or some other full planning permission
iii) To pay 80% of the Primary School Contribution within 14 days of the Owner having been provided with evidence of letting of a binding contract to build the Primary School
 - b) i) Not to Commence Development of the first Dwelling until 3% of the Primary School Contribution has been paid to the Council; and
ii) Not to continue the Development beyond the date the Primary School Contribution is due in accordance with Paragraph 3 a) (ii) and (iii) above until such payment has been made
 - c) To transfer the Primary School Land to the Council at nil value prior to the Commencement of Development; and

- d) Not to Commence Development until the Primary School Land has been transferred to the Council at nil value