

**NEASHAM ROAD HOUSING DEVELOPMENT**

**OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT (160 DWELLINGS)  
AT FIELD AT OSGR E429931 N512826, NEASHAM ROAD**

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**SUMMARY REPORT**

**Purpose of the Report**

1. This report seeks approval for variations to the Heads of Terms of the Section 106 Agreement negotiated as part of the above development following a viability assessment undertaken by the applicant, Darlington Farmers Auction Mart (DFAM), and a change in the funding proposals for the scheme.

**Summary**

2. Members will recall that they were minded to grant outline planning permission for the erection of 160 dwellings on a 4.7 hectare site on the western side of Neasham Road, opposite the Darlington Arena, subject to the applicants entering into a Section 106 Agreement in July 2009 (08/01004/OUT). The application was one of two outline applications submitted by DFAM in connection with their proposal to relocate the existing livestock market from its current site at Clifton Road to at site at Humbleton Farm, to the east of the A68 at Burtree.
  3. As both sites were outside the limits to development a business plan was submitted with the applications which demonstrated that the development of the Neasham Road site was required to 'enable' the relocation of the livestock market to Humbleton Farm with the proceeds from the sale of the land at Neasham Road being directed towards the development costs associated with the Humbleton Farm proposal, to be secured via the Section 106 Agreement.
  4. The Section 106 Agreement sought the formation of an escrow account in which the proceeds of the sale of the land would be deposited and directed towards the construction of the auction mart at Humbleton Farm and to limit construction of the residential development at Neasham Road until such time as construction of the livestock market had reached an agreed stage. A number of other obligations to secure affordable housing and financial contributions towards open space provision, an off-site equipped play area, primary school education facilities and various contributions towards off-site highway and public transport improvements to off-set the impact of the development were also sought.
  5. While progress has been made on the Humbleton Farm proposals, the outline planning permission at Neasham Road has not been issued since the Section 106 Agreement has not been signed. The main reason for this has been the significant costs associated with the various obligations to be secured by Section 106 and the impact this has had on the funding required for the relocation and securing a buyer for the site.
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6. DFAM is therefore seeking approval for a cap of £250,000 on contributions to be sought as part of the Section 106 Agreement as part of the wider package of funding to deliver the relocation of the livestock market. A viability assessment has been undertaken and submitted by the applicant to support the reduction in contributions being sought and this has been independently verified, which supports the findings of the viability assessment.
7. Alongside this, DFAM has secured in principle the necessary private-sector funding required for the relocation. To enable DFAM to enter into the Building Contract, it requires a £2m bridging loan facility from the Council, to be repaid following the land receipt being received from the Neasham Road housing site. Cabinet gave approval for the bridging loan, together with approval for the relocation of the Cattle Market facility from Clifton Road to Humbleton Farm in accordance with the provisions of the Darlington Extension and Improvement Act 1972, at its meeting on 8 September 2015. Consideration for the relocation of the Cattle Market will also be given by full Council on 24 September 2015.
8. In view of the proposed bridging loan arrangement approved by Cabinet the escrow account is no longer required and will be substituted by a pre-condition to the Section 106 Agreement requiring the clause which will require the loan agreement to be in place and the phasing clause replaced with a requirement that all pre-commencement planning conditions be discharged and that a material commencement in the form of excavations being made in accordance with the reserved matters approval by the Developer's appointed contractor under the Construction Contract.
9. By way of summary the revised Heads of Terms will be as follows:
  - (a) The developer to have the necessary finance in place to deliver the new livestock market at Humbleton Farm;
  - (b) No development to commence at Neasham Road until all pre-commencement planning conditions have been discharged and a material start made on site;
  - (c) Maximum financial contribution of £250,000 to be secured towards primary school education places, highway and transport contributions.

### **Recommendation**

10. It is recommended that Members approve the variation to the Heads of Terms of the Section 106 Agreement which will facilitate the relocation of the cattle market from Clifton Road to Humbleton Farm.

**Ian Williams**  
**Director of Growth**

### **Background Papers**

No background papers were used in the preparation of this report.

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## MAIN REPORT

### Information and Analysis

11. The relocation of the livestock market from its existing site at Clifton Road to a modern, purpose built facility at Humbleton Farm has been a long held ambition of DFAM for a number of years.
  12. Since the original outline planning applications were considered in 2009, reserved matters approval for the livestock market building, associated access and parking arrangements has been granted in May 2013 (13/00110/RM1). The scale of the building has been much reduced in line with DFAM's funding position. An application to discharge all pre-commencement conditions (13/00110/CONA) has also been submitted and is currently being considered by Officers.
  13. Little progress has however been made in respect of the Neasham Road housing site since 2009 given DFAMs difficulty in securing a housing developer for the site and in view of the significant costs associated with the various obligations to be secured by the Section 106 Agreement.
  14. At the start of the year, DFAM appointed a new company to lead on project management. Over the past 6 months, the company has been working to procure a building contractor for the new facility and to raise the necessary private-sector finance for the project. Significant progress has been made as follows:
    - (a) A contractor has been procured and value engineering undertaken in respect of the Humbleton Farm development;
    - (b) Further discussions with house builders have taken place in respect of Neasham Road and terms have been agreed;
    - (c) DFAM has refinanced, including moving to an alternative bank and has identified a contribution towards the scheme from its reserves.
  15. The delivery of the scheme is dependent upon the capital receipt from the sale of the land at Neasham Road as 'enabling development' together with a funding package secured by DFAM comprising a combination of private-sector borrowing and drawing on money from its own reserves. The various obligations to be secured by the original Section 106 Agreement amount to a figure in excess of £900,000 which would render the relocation scheme unviable by significantly reducing the capital receipt received for the Neasham Road site and therefore resulting in a shortfall in funding for the project. This is set out in detail in the viability assessment.
  16. In order to close the funding gap to ensure the delivery of the project the viability assessment assumes a maximum contribution of £250,000 towards the various planning obligations. The viability assessment has been independently verified by a Chartered Surveyor appointed by the Council who supports the reduction in financial contributions to be secured by Section 106 Agreement to £250,000 in the interest of enabling the relocation of the livestock market from Clifton Road to Humbleton Farm.
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17. In accepting the principle of a reduction in the amount of contributions to be secured by Section 106, the contributions would be split 75% towards primary education places (£187,500) and 25% towards highways improvements (£62,500) which in this case would be directed towards improved cycleway/footpath improvements and travel planning, which are considered to be the most critical areas in this instance given the number of dwellings proposed (160 dwellings) and the location of the site outside of the limits to development with limited access to public transport.
18. The viability assessment assumes no contribution towards affordable housing, however in an unsustainable location such as this, the site is not considered to be an appropriate location for affordable housing.
19. The escrow account and phasing arrangements set out in the original heads of terms were required to ensure that proceeds from the sale of the land at Neasham Road were directed towards the construction of the new livestock market at Humbleton Farm and that the housing development at Neasham Road did not start in advance of the livestock market to ensure delivery of the new mart.
20. In view of the bridging loan arrangement agreed by Cabinet on 8<sup>th</sup> September, whereby the Council will lend DFAM £2m to meet a cash flow issue arising from the conditionality of the Neasham Road sale agreement, to be secured against the Neasham Road site and repayable once the receipt for Neasham Road is received the escrow account clause is no longer required. This will be secured by a loan agreement drawn up by the Council to be entered into firstly with DFAM (First Legal Charge) and then any subsequent purchaser of the land (Parent Company Guarantee) however reference will be made within the revised Section 106 Agreement to DFAM having the necessary finance in place.
21. The Section 106 Agreement will also require that no development shall commencement at Neasham Road until all pre-commencement planning conditions are discharged and that a material commencement by the start of excavations for the livestock market in accordance with the planning consent for the site by the DFAM's appointed construction contractor under the Construction Contract. This clause will replace the previous clause requiring development at Humbleton Farm to reach an agreed stage before the commencement of any development at Neasham Road.
22. By way of summary the revised Heads of Terms will be as follows:
  - (a) The developer to have the necessary finance in place to deliver the new livestock market at Humbleton Farm;
  - (b) No development to commence at Neasham Road until all pre-commencement planning conditions have been discharged and a material start made on site;
  - (c) Maximum financial contribution of £250,000 to be secured towards primary school education places, highway and transport contributions.
23. Since Members were minded to grant planning permission in July 2009 there have been a number of significant changes in planning policy. At a national level, the National Planning Policy Framework (NPPF) was introduced in March 2012 and the North East of England Plan - Regional Spatial Strategy to 2021 was abolished in April 2013. At a local level, the Darlington Core Strategy Development Plan Document was adopted in March 2011 replacing a number of policies within the Borough of Darlington Local Plan 1997.

24. At the heart of the NPPF is a presumption in favour of sustainable development with applications for housing development considered in this context. Saved Local Plan Policy E2 (Development Limits) and Core Strategy Policies CS1 (Darlington's Sub Regional Role and Locational Strategy) and CS10 (New Housing Development) refer to the limits to development and set out an overall locational strategy for the development plan, in the form of a sequential approach, focussing growth on the main urban area and identify strategic locations to meet most of the overall development needs of the Borough. Land outside development is at the bottom of the list of locations where this type and scale of development should take place.
25. While the site is located outside of development limits and would therefore be unlikely to comply with the requirements of the NPPF and Core Strategy Policies, when Members were minded to grant planning permission for the development of the site in June 2009 they set aside planning policies on the basis that the site was 'enabling' development to facilitate the relocation of the livestock market from Clifton Road to Humbleton Farm. While planning policy has changed since July 2009, the decision that Members were minded to approve planning permission was taken contrary to national and local planning policy. Should Members be agreeable to the changes in the heads of terms of the Section 106 Agreement set out in this report this would be on the basis that national and local planning policy would be set aside once more.
26. Any impacts arising from the development would be addressed by those conditions attached to the original permission which it would be proposed to attach once more.