

To: Council
Date: 1 October 2018
Report of: Head of Planning, Sustainable Development and Regulatory Services
Title of Report: Barton Park planning permission 13/01383/OUT

Summary and recommendations	
Purpose of report:	To recommend to Council that a modification order be made to amend the time period to submit reserved matters applications on planning permission 13/01383/OUT
Key decision:	No
Executive Board Member:	Councillor Hollingsworth, Board Member for Planning and Transport
Corporate Priority:	None
Policy Framework:	None
Recommendation: That Council resolves to:	
<ol style="list-style-type: none"> 1. Make a modification order under section 97 of the Town and Country Planning Act 1990 in respect of planning permission 13/01383/OUT to enable further applications for reserved matters to be submitted for approval in respect of the development at Barton Park. 2. Delegate to the Development Management Services Manager (soon to be the Acting Head of Planning Services), the taking of any associated action following the making of the modification order. 	

Appendices
None

Introduction and background

1. Outline planning permission (13/01383/OUT) for the Barton Park development was granted by the Council on 18 October 2013. A specific condition setting out the time period for the submission of reserved matters applications for the development was not included in the planning permission that was issued in 2013.
2. Where such a condition is omitted the default position is that under section 92(3) of the Town and Country Planning Act 1990 (“the Act”), a period of 3 years is imposed

by the statute. It is clear from the scale of the development and as evidenced by the approval of the Phasing and Implementation Plan required by condition 5 of the planning permission that the development was expected to be built out over a period of around 8 years and the default period of 3 years does not reflect that expectation.

3. To resolve this issue, the Council needs to amend condition 3 (the condition setting out what the reserved matters are) by including a realistic period for the reserved matters applications to be submitted for approval to enable the development to be completed. This can be achieved by making a modification order under section 97 of the Act and extending the period by which reserved matters applications for the remaining phases (2, 3a, 4a, 4b and the community hub/school) can be submitted to 2023.
4. There is no other method of changing this condition and the only other alternative would be for a further planning application to be submitted. The latter option would be a costly and time consuming exercise for what is effectively a minor administrative technicality and which would delay the build out of the development to the detriment of the delivery of much needed new housing supply in Oxford. A modification of condition 3 would enable the delivery of this important housing development to continue.
5. This modification would not alter the scheme in any way in terms of either the quantum of development or the impact it would have, which have already been considered when the permission was granted.

Other implications

6. The regulations relating to Environmental Impact Assessments will change on 1 October 2018 and after this date a planning permission will not be able to be modified without first being screened to determine whether an Environmental Statement is required. The original planning application was accompanied by an Environmental Statement that was taken into account when the outline permission was granted in 2013. The original planning permission has been implemented including a number of the mitigation measures recommended within the Environmental Statement. It would therefore be necessary to screen whether this order would require the Environmental Statement to be updated to reflect the alteration to the delivery date. The applicant is currently preparing a statement of conformity to confirm the extent to which mitigation measures have been implemented during the course of carrying out the development and whether any changes are necessary to reflect the change to the date of delivery set out within the order. The local planning authority will need to determine that screening application in parallel with this process. An oral update will be given on this aspect at the meeting.
7. If the recommendation is approved, the order can be made as soon as the statement of conformity has been received and provided it is satisfactory and provided also that the unilateral undertaking referred to in paragraph 11 below has been completed. The 28 day notice period can be given soon afterwards with a view to submitting the order to the Secretary of State for confirmation during November.
8. The procedure to be followed once an order has been made is for notice of the making of the order to be served on all owners and occupiers of the land affected together with any others who the Council consider would be affected by the order. The making of the order should also be advertised in the local press and a period of not less than 28 days given for representations to be made to the Secretary of State.

9. If any representations are made, the Secretary of State can decide to hold a hearing or Inquiry. In any event, the order has to be submitted to the Secretary of State for confirmation.

Financial implications

10. If representations are made and a hearing or Inquiry held, the cost of the Council’s involvement in the proceedings will need to be met.
11. Although compensation can be claimed if loss or damage is sustained in consequence of a modification order, as this modification would be for the benefit of the Developer, a claim is unlikely to arise, however a unilateral undertaking could be sought from the Developer and all owners of the site (as opposed to individual house owners) to protect the Council’s position in this respect and to seek an indemnity in respect of any claims that might be made.
12. The cost of making the order and the administrative procedures involved can be subsumed within existing budgets but provision (estimated at £30,000) will need to be made for the cost of any hearing or Inquiry that may be necessary.

Legal issues

13. Although the Council would be required to take the decision to modify the order under section 97 of the Act, the decision of whether or not to confirm the order rests with the Secretary of State.

Level of risk

14. There are several risks associated with undertaking this procedure. These are as follows:-
 - The timescales for the process could extend if representations are made.
 - The Secretary of State may decide not to confirm the order meaning the only other option of a new planning application would need to be pursued.

Equalities impact

15. Consideration has been given to the public sector equality duty imposed by s149 of the Equality Act 2010. Having paid due regard to the need to meet the objectives of that duty the view is taken that the duty will be met by the requirement to serve notice of the making of the order on all those likely to be affected and by the general requirement to advertise the making of the order

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Background Papers:
1. Planning permission 13/01383/OUT

