

Reference: 17/01270/DVOB	Site: Aveley Football Club Mill Road Aveley RM15 4SR
Ward: Aveley and Uplands	Proposal: Application for a Deed of Variation / Modification to the s106 legal agreement attached to planning permission ref. 13/01021/OUT (Outline planning application (with all matters reserved except access) for the demolition of existing buildings and redevelopment comprising up to 114 residential dwellings).

Plan Number(s):		
Reference	Name	Received
1475_0010	Red Line Boundary	19 th September 2017

The application is also accompanied by:	
<ul style="list-style-type: none"> Covering letter dated 14th September 2017 Viability Appraisal Remediation Costs 	
Applicant: Aveley Football Club Ltd & Persimmon Homes	Validated: 19 September 2017 Date of expiry: 14 November 2017
Recommendation: That the application to vary to s106 agreement as proposed is refused.	

This application is scheduled for determination by the Council's Planning Committee because it seeks to reduce the level of contributions secured by a legal agreement attached to an application that was previously approved by the Planning Committee.

1.0 DESCRIPTION OF PROPOSAL

1.1 This application is made pursuant to the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 and seeks to modify the s106 planning obligation attached to permission reference 13/01021/OUT. S106a of the Town and Country Planning Act allows for the modification or discharge of planning obligations where both the local planning authority and the developer wish to do so.

- 1.2 Planning permission ref. 13/01021/OUT involves the Aveley F.C site at Mill Road, Aveley and the description of development comprises:

“Outline planning application (with all matters reserved except access) for the demolition of existing buildings and redevelopment comprising up to 114 residential dwellings.”

Planning permission was granted on 17th March 2015 subject to conditions and following the completion of a legal agreement. Full planning permission for the provision of new football facilities at Belhus Park, on the northern side of Aveley bypass was granted on 2nd April 2014 (ref. 13/01022/FUL). Construction works on the new facility are substantially complete and the football club have been playing games at the new facility since the start of the 2017/18 season.

- 1.3 The s106 agreement associated with the outline planning application and dated 17th March 2015 placed obligations upon the then owner (Aveley FC Ltd) as follows:

- i. payment of a Mitigation Contribution of £522,000 (index linked) prior to commencement;
- ii. a review of contributions (“Belhus Park Contribution Review”) following completion of the replacement facility and prior to commencement of the redevelopment of the existing football club site; and
- iii. prior to the occupation of more than 70% of the new dwellings, to undertake a review of viability (“Additional Infrastructure Contribution Review”).

- 1.4 The Mitigation Contribution of £522,000 was not the full amount chargeable under the former Planning Obligations Strategy (£570,000). However, a financial viability review suggested that a figure of £522,000 was all that the development could sustain. However, as final build costs for the replacement football club were, at the time of determination, only estimates due to potential variation in remediation costs, the Belhus Park Contribution Review was intended to review the potential for further contributions based on final build costs. The Additional Infrastructure Contribution Review was a ‘standard’ viability review clause. It is notable that the residential development does not include any affordable housing.

- 1.5 In October 2016 Persimmon Homes Essex applied for a deed of variation (ref. 16/01463/DVOB) to the s106 agreement so that:

- a) an initial phase of residential development at Mill Lane would be permissible so long as this would not jeopardise Aveley FC completing the league season (2016/17) at the Mill Lane ground ahead of Club’s move to Belhus Park;
- b) demolition of the Mill Lane stadium and development on a second phase could be undertaken post Aveley FC completing the 2016/2017 league season at Mill

Lane; and

- c) that there is no residential occupation of the houses built at Mill Lane until the substantial completion of Belhus Park Ground. Thereby retaining a financial incentive to complete the new ground in a timely manner.

There was a resolution to approve this application under delegated powers in April 2017. However, at the time of writing the amended deed has not been completed.

- 1.6 The current application seeks an amendment to the 'Mitigation Contribution' referred to at paragraphs 1.3 and 1.4 above. The applicant's reasons for applying for the modification are described below:

"Persimmon has purchased the Mill Road site at a set price from Aveley Football Club for the development of housing. Schedule 1 of the s106 Agreement related to that site requires a financial contribution of £522,000 to the local authority from the development.

The price received by Aveley Football Club for the Mill Road site is fixed, subject to any saving made in the s106 contribution sum. The costs of developing Belhus Park to provide the new football facility are significantly greater than expected. This is as a result of market forces within the construction industry and the condition of the ground bought from the Council for the new facility.

A revised viability assessment, including a review of the remediation costs, explains:

- The updated viability Assessment (Appendix 2) shows that the project was expected to be viable with a S106 payment of £522,000.*

The second tab demonstrates that, based on the same principles, the project is not viable, with a deficit of £1,064,000 (Appendix 3). This is due to a number of issues including the Club having to pay for the land, via Impulse Leisure, the increased remediation costs, as stated above and the increased construction costs.

- The remediation costs assessment (Appendix 3) shows the original costs were expected to be between £259,000 and £488,000. The figure of £448,000 was used in the original viability assessment.*

The updated remediation costs have been added to the table and based on the same principles as approved by the Council, show an actual cost of £546,000. This gives the figure of £98,000 as the difference quoted in the S106 addendum.

This application does not seek to reduce the S106 payment to a level that makes the scheme fully viable ... To work within commercial realities; the agreed sale price for Mill Road and to allow opening prior to the 2017/18 football season, the developers have taken a number of steps to reduce costs and thereby improve the viability.

They have value engineered the scheme; reduced the specification where possible; utilised the available contingency; and reviewed the originally agreed Finance Costs and the Developer's Profit. Consequently, the Club is seeking a reduction in the level of contributions of £210,480. This made up of two elements, firstly £123,480, which is to cover the increased remediation costs of £98,000 plus 5% Finance Costs and the 20% Development profit. The second is £87,000 which was the working capital in the cash flow, for the Club to pay for the relocation, fit-out, set up and marketing costs. In order to keep the project on programme the Club has had to find other monies which is going to put the Club's operation and business plan under a lot of pressure and will compromise the on-going sustainability of this community facility.

If the above reductions are agreed, then this would reduce the S106 payment to the Council, to be paid by Persimmon Homes in relation to the Mill Road development, to £311,520, while ensuring completion and the ongoing sustainable operation of the new Aveley FC community facilities."

2.0 SITE DESCRIPTION

- 2.1 The former Aveley FC site, known as Mill Field, is located to the east of Mill Road and south of the Aveley bypass (B1335). The site is accessed from Mill Road but does not have a frontage to this road. The site is roughly rectangular in shape with an area of approximately 2.5 hectares. The former club house, stands, seating areas and terraces for spectators have now been removed from the site.
- 2.2 Two-storey semi-detached and terraced dwellings in St. Paul's Close (constructed in the mid-1970's) adjoin the site to the west. Similarly, two-storey dwellings in St. Michael's Close (built in the late 1980's) adjoin the site to the south. To the east of the site is the Aveley village extension residential currently being developed by Persimmon Homes. Two-storey dwellings in this development adjoin the site. To the north of the site on the northern side of the Aveley bypass and the associated road verges are dwellings in Nethan Drive.
- 2.3 Following the acquisition of the site by Persimmon Homes a temporary construction access have been formed at the north-eastern corner of the site onto the bypass. Construction works for the residential redevelopment have commenced.

3.0 RELEVANT HISTORY

Application Reference	Description of Proposal	Decision
13/01021/FUL	Outline planning application (with all matters reserved except access) for the demolition of existing building and redevelopment comprising up to 114 residential dwellings	Approved – subject to legal agreement
15/01438/REM	Application for the approval of reserved matters (appearance, landscaping, layout and scale) following outline approval ref. 13/01021/OUT (demolition of existing buildings and redevelopment comprising up to 114 residential dwellings)	Approved
16/01463/DVOB	Application for a Deed of Variation / Amendment to the s106 legal agreement attached to planning permission ref. 13/01021/OUT (Outline planning application (with all matters reserved except access) for the demolition of existing buildings and redevelopment comprising up to 114 residential dwellings) comprising alteration to paragraph 2.1 to read: "the owner shall following completion of the Belhus Park Development [i.e. the new football stadium] undertake the Belhus Park Contribution Review and submit the review to the Council" and any consequential amendments to the s106 agreement	Pending decision

4.0 CONSULTATIONS AND REPRESENTATIONS

4.1 A site notice publicising the application has been displayed. E-mail correspondence has been received from a local ward councillor requesting that the Council to do everything it can, within procedure, to expedite the planning process.

5.0 POLICY CONTEXT

5.1 National Planning Guidance

National Planning Policy Framework

The NPPF was published on 27th March 2012. Paragraph 13 of the Framework sets out a presumption in favour of sustainable development. Paragraph 196 of the Framework confirms the tests in s.38 (6) of the Planning and Compulsory Purchase Act 2004 and s.70 of the Town and Country Planning Act 1990 and that the Framework is a material consideration in planning decisions. Paragraph 197 states that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.

The following headings and content of the NPPF are relevant to the consideration of the current proposals:

6. Delivering a wide choice of high quality homes.

Planning Practice Guidance

In March 2014 the Department for Communities and Local Government (DCLG) launched its planning practice guidance web-based resource. This was accompanied by a Written Ministerial Statement which includes a list of the previous planning policy guidance documents cancelled when the NPPF was launched. PPG contains 50 subject areas, with each area containing several subtopics. Those of particular relevance to the determination of this planning application comprise:

- Planning obligations
- Viability

5.2 Local Planning Policy

Thurrock Local Development Framework (2015)

The Council adopted the “Core Strategy and Policies for the Management of Development Plan Document” (as amended) in 2015. The following Core Strategy policies apply to the proposals:

Spatial Policies:

- CSSP1 (Sustainable Housing and Locations);
- CSSP3: Sustainable Infrastructure) and
- OSDP1 (Promotion of Sustainable Growth and Regeneration in Thurrock)

Thematic Policies:

- CSTP1 (Strategic Housing Provision)
- CSTP9 (Well-being: Leisure and Sports)

- CSTP10 (Community Facilities)

Policies for the Management of Development:

- PMD5 (Open Spaces, Outdoor Sports and Recreational Facilities)
- PMD16 (Developer Contributions)

Focused Review of the LDF Core Strategy (2014)

This Review was commenced in late 2012 with the purpose to ensure that the Core Strategy and the process by which it was arrived at are not fundamentally at odds with the NPPF. There are instances where policies and supporting text are recommended for revision to ensure consistency with the NPPF. The Review was submitted to the Planning Inspectorate for independent examination in August 2013. An Examination in Public took place in April 2014. The Inspector concluded that the amendments were sound subject to recommended changes. The Core Strategy and Policies for Management of Development Focused Review: Consistency with National Planning Policy Framework Focused Review was adopted by Council on the 28th February 2015.

Draft Site Specific Allocations and Policies DPD

This Consultation Draft “Issues and Options” DPD was subject to consultation commencing during 2012. The Draft Site Specific Allocations DPD ‘Further Issues and Options’ was the subject of a further round of consultation during 2013. The Planning Inspectorate is advising local authorities not to continue to progress their Site Allocation Plans towards examination whether their previously adopted Core Strategy is no longer in compliance with the NPPF. This is the situation for the Borough.

Thurrock Core Strategy Position Statement and Approval for the Preparation of a New Local Plan for Thurrock

The above report was considered at the February 2014 meeting of the Cabinet. The report highlighted issues arising from growth targets, contextual changes, impacts of recent economic change on the delivery of new housing to meet the Borough’s Housing Needs and ensuring consistency with Government Policy. The report questioned the ability of the Core Strategy Focused Review and the Core Strategy ‘Broad Locations & Strategic Sites’ to ensure that the Core Strategy is up-to-date and consistent with Government Policy and recommended the ‘parking’ of these processes in favour of a more wholesale review. Members resolved that the Council undertake a full review of Core Strategy and prepare a new Local Plan.

Thurrock Local Plan

In February 2014 the Council embarked on the preparation of a new Local Plan for the Borough. Between February and April 2016 the Council consulted formally on an Issues and Options (Stage 1) document and simultaneously undertook a 'Call for Sites' exercise. It is currently anticipated that consultation on an Issues and Options (Stage 2 Spatial Options and Sites) document will be undertaken in 2018.

6.0 ASSESSMENT

6.1 The background to the case is set out above. The extant s106 agreement places obligations on the owner in relation to:

(i) *payment of a mitigation contribution of £522,000 (index linked) on or before commencement –*

this financial contribution was secured pursuant to the Planning Obligations Strategy (POS) operated by the Council at the time when the planning application was determined. The POS set a discounted standard charge of £5,000 per dwelling to be used to mitigate the impacts on social and physical infrastructure from the residential development. In this case, the development of 114 dwellings generated a requirement for a £570,000 contribution. However, at the time when the application was considered, the applicant's viability assessment concluded that a contribution of £522,000 could be sustained. In addition, because of viability considerations, the residential development does not include affordable housing.

(ii) *Belhus Park Contribution Review –*

In summary, this obligation requires that following completion of the replacement football facilities a review of the costs is undertaken to assess whether it is viable for further POS contribution to be made, in view of the £48,000 shortfall referred to in (i) above.

(iii) *Additional Infrastructure Contribution Review –*

This obligation requires that no more than 70% of the dwellings can be occupied before a review of the financial viability of the residential development is undertaken to establish whether further contributions can be made under the POS (to a maximum figure of £48,000 – taking in the contribution at (i)).

6.2 Put simply, the residential development of the Mill Road site (114 dwellings) generates the requirement for a financial mitigation payment under the POS. The development of replacement football facilities on land north of the Aveley bypass is not "commercial" development, as defined by the POS, and would not have required obligations to mitigate its impact. However, because at the time when

both planning applications were being considered the precise costs of providing the football facilities were not known, part (ii) of the obligation provides for a review of the costs of providing the facility to establish whether the POS shortfall in (i) can be 'made-up'. Item (iii) of the agreement is a standard viability review clause for the residential development in order to assess, prior to the completion of the dwellings, whether the viability of the development has changed to a position where the POS shortfall can be made-up. Items (ii) and (iii) are therefore mechanisms to assess whether the POS shortfall of £48,000 can be recovered.

- 6.3 It is notable that the Belhus Park Contribution Review (ii) includes the following wording at Schedule 1 (2.4) of the agreement "*where the Belhus Park Contribution Review Outcome demonstrates that it is viable for the Owner to provide additional financial contribution for infrastructure to the Council in accordance with the Council's Planning Obligations Strategy then the Owner shall pay to the Council the Belhus Park Contribution*" (emphasis added). The s106 agreement does not include a scenario where the mitigation payment is reduced as a result of the costs associated with providing the replacement facility.
- 6.4 In any case the applicant has submitted an updated viability assessment (i.e. a table of development costs dated February 2017) for the replacement football facilities. This enables some comparison between the predicted development costs (November 2013) and final development costs (February 2017). Although the full details of the figures are commercially sensitive and cannot be replicated in full, the salient points from the comparison are:

Belhus Park costs – replacement football facilities

- 6.5 The November 2013 estimate predicted a 'surplus' of c.£522,000 after development costs were subtracted from the income generated from the sale of the Mill Road site with planning permission for residential redevelopment. This figure forms the mitigation contribution pursuant to the POS.
- 6.6 The predicted income to the football club from the sale of the Mill Road site with planning permission for residential redevelopment increased from c.£6.17 million (November 2013) to c.£7.5 million (February 2017) – a difference of £1.33 million.
- 6.7 Costs associated with 'Land Acquisition' at Belhus Park increased significantly from the November 2013 estimate of £50,000 to c.£1.03 million. This increase includes new unspecified costs comprising "Flying Club" and "Agents Fees". At the time when the planning applications were presented to Committee in 2014, the football club's viability model assumed that the Council (as freeholder of the Belhus Park site) and Impulse Leisure (as leaseholder of the Belhus Park site) would relinquish their interests at no cost to the football club. At the time of the Committee the

negotiations with the freeholder and leaseholder were ongoing. However, the football club was eager for the planning applications to be determined before the costs associated with land ownership were settled. It can be concluded that the football club’s assumption that the Belhus Park site could be acquired for nil cost was incorrect.

6.8 ‘Construction Costs’ i.e. the physical works to provide the football facilities increased from an estimated c.£3.9 million (November 2013) to c.£5.2 million. The November 2013 estimate was broken-down into constituent elements (drainage, services, access works, remediation, hardstandings, landscaping, clubhouse, stadia and pitches) totalling c.£3.7 million. The February 2017 figures do not includes a break-down and instead refers to an overall figure of c.£4.8 million. Unspecified costs comprising “fit out, fixtures and fittings”, “site security” and “ecology costs” totalling c.£136,000 are added as new items to the construction costs. It is accepted that the relocation of reptiles is a legitimate “ecology cost”, however the applicant’s ecology survey from 2013 acknowledged the potential of the site to support protected species (reptiles). It is therefore unfortunate that the November 2013 appraisal did not include a heading for ecology works. As the applicant’s February 2017 figures do not include a detailed break-down a direct comparison between projected (2013) and actual (2017) construction costs is not easy. Although the combined single cost of elements of construction are comparable as follows:

Item	2013 estimate	2017 cost
Infrastructure & drainage	c.£3.7 million	c.£4.8 million
Incoming services		
Site access & off-site highways		
Land remediation		
Car parking & hard pavings		
Clubhouse		
Landscaping		
Pitches		
Stadia		

6.9 Construction costs have therefore increased by c.£.1.1 million. Land remediation costs were originally estimated to be between c.£260,000 and c.£488,000, although the 2013 appraisal assumed the higher estimate. The applicant now confirms that actual remediation costs were c.£546,000.

6.10 It is worth noting that the internal layout and accommodation of the clubhouse building (with an estimated build cost of c.£1.6 million in 2013) has changed since the 2014 permission. The original permission (13/01022/FUL) provided for a single-storey clubhouse of c.1,002 sq.m. gross internal area providing both

'football-related' and 'social-related' accommodation. In summary, the original approval provided home, away and officials' changing rooms and up to 4 further other changing rooms. 'Social' floorspace principally comprised a function room / members bar of c.280 sq.m. floorspace. In 2015 the applicant was granted permission (ref. 15/00238/CV) to vary a number of the original planning conditions, including the internal layout of the clubhouse. This revised consent increased the internal floorspace of the clubhouse through the introduction of a viewing platform, board room etc. within a mezzanine at first floor level. This revision would undoubtedly add to construction costs. However, this revision was at the applicant's volition and not a planning requirement. The 2015 revision also increased the amount of 'social' floorspace within the clubhouse through the reduction in 'other' changing rooms from 4 to 2 and the introduction of a multi-function space and an outside space for a marquee adjacent to the members bar / function room.

- 6.11 Information available on the football club's dedicated 'Parkside' web-site notes that the clubhouse is a venue for functions (weddings, birthdays, corporate events etc.), with accommodation for between 12 and 200 people within 3 rooms ('The Boardroom', 'The Millers Lounge' and 'the Parkside Suite.'). Although it is not unusual for football clubs to hold social events, it is clear that the club have increased the amount of 'social-related' floorspace compared to purely 'football-related' floorspace. The build and fit-out costs of these changes would arguably be higher, although in the longer term the football has more floorspace which has the potential to earn income in addition to hire of the all-weather pitch.
- 6.12 Project costs and application fees associated with the replacement football facilities are broadly similar between the 2013 estimate and the 2017 actual costs. Development finance costs have increased, reflecting the higher construction costs, and the developer's profit has also increased (although the % profit remains unchanged).
- 6.13 In summary, the costs to Aveley FC of delivering replacement and improved football facilities have increased largely as a result of land acquisition costs and increased construction costs. Although the income to the football club generated from the sale of the Mill Road site also increased from the original 2013 assessment. In essence, the applicant is seeking a reduction in the mitigation costs for the residential development at the former football club site on the basis of the increased costs associated with constructing the replacement facility. It is worth emphasising the fact that the new facilities are open and available for hire and that the football club started playing at the new ground at the start of the 2017-18 season.

7.0 CONCLUSION

- 7.1 In drawing conclusions on the current application, it must be remembered that it is the residential development of the Mill Road site that generates the requirement for a mitigation payment. Therefore the s106 agreement is 'attached' to the Mill Road site (13/01021/OUT). At this stage there is no suggestion that the viability of the residential development is in question and it is only the viability of the replacement football facilities which is promoted by the applicant in support of the application. As above, it is the residential development which generates the mitigation payment, not the football facilities. Although the s106 agreement refers to the replacement facilities, this is in the context of reviewing final building costs for the facility to establish whether the POS shortfall can be recovered. There is no provision in the agreement to reduce the mitigation payment as a result of increased costs for the replacement football facilities. The fundamental planning purpose and aim of the s106 agreement is to ensure that the impacts of the residential development on education provision etc. are mitigated. To reduce the mitigation payment because the football club has encountered additional costs serves no planning purpose as the pressure on infrastructure from the residential development remains unchanged. To this end, the Council's published Pupil Place Plan (2017-21) predicts the two primary schools closest to the site (Aveley and Kenningtons) will continue to be over capacity in future years. Consequently, the mitigation contribution will be required to address the new demands on already over-subscribed local primary school provision.
- 7.2 For these reasons it is considered that the already negotiated contribution is demonstrably required. Fundamentally it is the residential development which generates the s106 mitigation payment and to reduce this payment as a result of the costs of providing the replacement football facilities serves no planning purpose. Therefore it is recommended that the application to vary the s106 agreement is refused and the obligation remains unchanged.

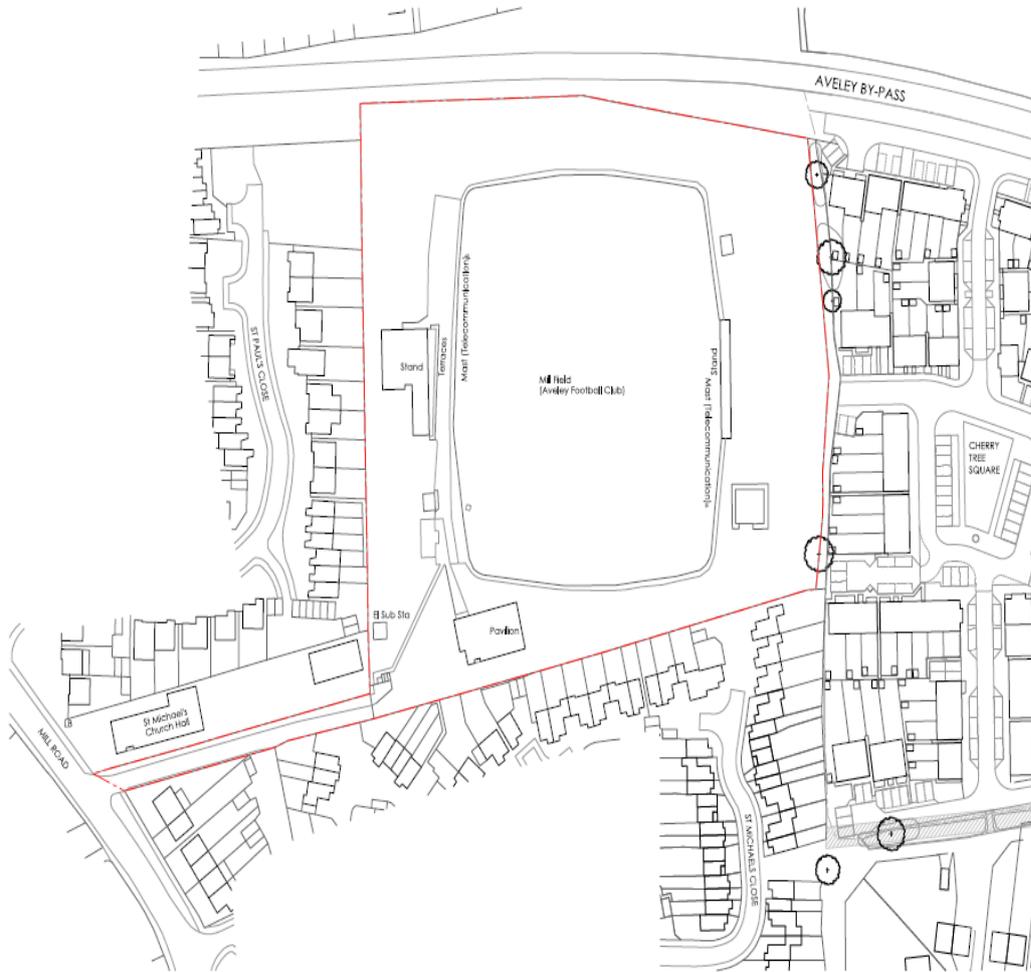
8.0 RECOMMENDATION

- 8.1 That the application to vary to s106 agreement as proposed is refused.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

www.thurrock.gov.uk/planning



NOTES
 Do not scale from this drawing. All information is to be checked on site for accuracy and Report any discrepancies and omissions to RMA Architects.



1: 24/01/18 (Revised)
 Rev. Site: Designer

1475_0010
 Red Line Boundary
 1:1250 @ A3

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 URBAN DESIGN

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