

Ward:	College Ward
Site:	South Hatch Stables Burgh Heath Road Epsom Surrey KT17 4LX
Application for:	Proposed amendments to S106 Agreement, attached to planning permission 18/00308/FUL
Contact Officer:	Ginny Johnson

## 1 Plans and Representations

- 1.1 The Council now holds this information electronically. Please click on the following link to access the plans and representations relating to this application via the Council's website, which is provided by way of background information to the report. Please note that the link is current at the time of publication, and will not be updated.

Link: <https://eplanning.epsom-ewell.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QNHYQEGY0BY00>

## 2 Summary

- 2.1 Planning permission was granted on 22 May 2020, at South Hatch Stables, for the demolition of an existing Racecourse Training Establishment (RTE) and the erection of a new RTE, with enabling residential development, comprising 46 apartments (ref: 18/00308/FUL). A S106 Agreement formed part of the permission, dated 15 May 2020. The formal description of development is as follows:

*“Demolition of the existing Racehorse Training Establishment (RTE) and the erection of a new RTE comprising of a main yard stable complex of 40 boxes, a secondary stable block of 20 boxes, an isolation yard, a trainer and assistant trainers house, stable staff accommodation, horse walkers, muck pits, a therapy barn, trotting ring and outdoor school, a lunge ring, turnout paddocks and a machinery store and storage barn and enabling residential development comprising 46 apartments. Description amended to reflect reduction in 1 apartment (47 to 46)”*

- 2.2 By letter, dated 14 January 2021, the Applicant has made a Formal Request for agreement to vary the S106 Agreement. It sets out that in order for the Landowner and Applicant to deliver on the mutual objective of all parties, constructing and practically completing the RTE facilities in a shortened timeframe, the S106 Agreement must be varied to allow overlapping of the approved phases. The letter sets out that this would ensure the viability of the scheme.
- 2.3 Officers consider that the Applicant has provided sufficient reasoning and justification to amend the approved phasing of the scheme. Formal amendments to the S106 Agreement, by way of a Deed of Variation, would continue to secure the completion of the RTE, with the benefit of a reduced construction period.
- 2.4 Officers are of the view that the obligations sought to be varied still serve a useful purpose, and that purpose would be served equally well if the modifications were made as sought by the Applicant.

- 2.5 Therefore the proposed amendments to the S106 Agreement are favourably considered by Officers, to be captured within a Deed of Variation.

3 Site description

*The Application Site ('Site')*

- 3.1 The Application Site ('Site') comprises an existing Racehorse Training Establishment (RTE), which occupies an area of 1.92 hectares, with a substantial building group, comprising of an existing manager's house, a traditional brick built stable building, wooden stables, a storage barn, tack rooms and sundry outbuildings.
- 3.2 Key existing buildings include a U-shaped two storey stable block, concrete block and timber stables, steel sheet clad storage barns, tack rooms and other outbuildings. The main stable yard accommodation facilitates a manager's office, stable staff accommodation, a mess room and an office. Additionally, a main housing, is also located on this Site.
- 3.3 In terms of its local context, South Hatch Stables is located approximately 2km (1.3 miles) from the centre of Epsom and its railway station, off the B284 Burgh Heath Road. The Site is also accessible to the Epsom Race Course and its common, which are located approximately 0.5km south of the stables. This can be accessed directly from the southern paddock.
- 3.4 To the north of the Site is dense residential development, located on the periphery of Epsom. To the south east of the Site are several residential properties, which either front or are set back from Burgh Heath Road.
- 3.5 The existing Site access is from Burgh Heath Road.
- 3.6 The Site falls within the Green Belt.

4 Proposal

- 4.1 Planning permission was granted on 22 May 2020 at South Hatch Stables for the demolition of an existing Racecourse Training Establishment (RTE) and the erection of a new RTE, with enabling residential development, comprising 46 apartments (ref: 18/00308/FUL). A S106 Agreement formed part of the permission, dated 15 May 2020. The formal description of development is as follows:

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4.2 Accompanying the Planning Permission is a S106 Agreement, dated 15 May 2020. This includes a Phasing Plan (ref: 1810\_80) referred to at Appendix 2. This is also captured within Condition 2 of the Planning Permission. The Phasing Plan sets out the following sequence:

- Phase 1: Earthworks and infrastructure to the whole site, excluding existing stable facilities
- Phase 2; construction of isolation yard, trainer's house, machinery store, stable block, horse walker and muck pit. Horses moved to these facilities
- Phase 3: Demolition of existing stable facilities and earthworks and infrastructure to this area (dashed lines denote buildings to be demolished)
- Phase 4: Construction of residential plots 1-22
- Phase 5; Construction of main yard and trotting ring
- Phase 6; Construction of residential plots 23-39
- Phase 7: Construction of therapy barn, storage barn, gatehouse and racing staff accommodation
- Phase 8: Construction of residential plots 40-47.

4.3 This Formal Request seeks to make amendments to "Schedule 1 Part 3 – Residential Development" of the S106 Agreement. The amendments sought to the wording of the phasing mechanism are detailed below. (New words in bold, omissions ~~aaa~~):

To construct the Development in accordance with the following:

1.1. not to commence construction of the Dwellings comprising Phase 4 unless the small stable block in Phase 2 has been practically completed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority ~~and until the works comprising Phases 1, 2 and 3 having been Practically Completed;~~

1.2. to construct and practically complete the small stable block in Phase 2 prior to the ~~the works comprising Phases 1, 2 and 3 prior to the commencement of construction of any part of the dwellings comprising Phase 4;~~

1.3. ~~not to commence construction~~ no part of the Dwellings comprising Phase 6 4 shall be first occupied unless and until the works comprising Phases 1, 2 and 3 5 having been Practically Completed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority

1.4. to construct and practically complete the works comprising Phases 1, 2, 3 and 5 3 prior to the first occupation of any part ~~commencement of construction~~ of the Dwellings comprising Phase 6 4;

1.5. not to commence construction work in respect of Phase 6 of the Dwellings ~~comprising Phase 8~~ unless the works comprising Phases 1, 2, and 3, 5 and 7 having been practically completed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority ~~and;~~

1.6. to construct and practically complete the works comprising Phases 1, 2 and 3, 5 and 7 prior to the commencement of construction work in respect of Phase 6; of the Dwellings comprising Phase 8.

1.7 not to commence any construction work in respect of Phase 6 unless and until the main yard in Phase 5 has reached first floor level in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority;

1.8 to construct and reach first floor level of the main yard in Phase 5 prior to the commencement of construction work in respect of Phase 6;

1.9 no part of the Dwellings comprising Phase 6 shall be first occupied unless and until the works comprising Phases 1, 2, 3, and 5 having been practically completed; and

1.10 to construct and practically complete the works comprising Phases 1, 2, 3 and 5 prior to the first occupation of any part of the Dwellings comprising Phase 6.

1.11 not to commence any construction work in respect of Phase 8 unless the works comprising Phases 1, 2, 3 and 5 having been practically completed;

1.12 to construct and practically complete the works comprising Phases 1, 2, 3 and 5 prior to the commencement of construction work in respect of Phase 8;

1.13 not to commence any construction work in respect of Phase 8 unless and until the stable staff accommodation in Phase 7 have reached first floor level in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority;

1.14 to construct and reach first floor level of the stable staff accommodation in Phase 7 prior to the commencement of any construction work in respect of Phase 8;

1.15 no part of the Dwellings comprising Phase 8 shall be first occupied unless and until the works comprising Phases 1, 2, 3, 5 and 7 having been practically completed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority; and

1.16 to construct and practically complete the works comprising Phases 1, 2, 3, 5 and 7 prior to the first occupation of any part of the Dwellings comprising Phase 8.

4.4 For the avoidance of doubt, the S106 Agreement defines the words "practical completion". This means "completion in relation to any part of the Development or an individual Dwelling in all material respects and the issue of a certificate of practical completion by the Owner's architect or engineer as the case may be and the expression "Practically Completed" shall be construed accordingly.

4.5 The proposed wording of "practical completion" as part of the amendments sought are therefore in conformity with the S106 Agreement.

5 Comments from third parties

5.1 Consultation or notification is not statutorily required for an application to amend an approved S106 Agreement. However, in the public interest, the Formal Request was advertised by means of letters of notification to 101 neighbouring properties. To date, 37 letters of objection have been received, including from College Ward Residents Association, summarised below:

- The proposed amendments prioritises residential development, over the RTE provision element. The development was permitted as the racing industry was a prime beneficiary to Epsom and the Planning Permission included scheduling to ensure that was delivered
- Words “practically complete” is vague, no certainty of RTE delivery
- Inappropriate Green Belt development
- Noise and disturbance as a result of construction, including transport and ecology/biodiversity impacts
- Affordable housing element (stable staff accommodation) pushed back
- Issue whether the development would be left incomplete.

6 Consultations

6.1 None required

7 Relevant planning history

Application number	Decision date	Application detail	Decision
18/00308/FUL	22.05.2020	Demolition of the existing Racehorse Training Establishment (RTE) and the erection of a new RTE comprising of a main yard stable complex of 40 boxes, a secondary stable block of 20 boxes, an isolation yard, a trainer and assistant trainers house, stable staff accommodation, horse walkers, muck pits, a therapy barn, trotting ring and outdoor school, a lunge ring, turnout paddocks and a machinery store and storage barn and enabling residential development comprising 46 apartments. [Description amended to reflect reduction in 1 apartment (47 to 46)]	GRANTED
20/01571/S106A		Proposed amendments to S106 Agreement, attached to planning permission 18/00308/FUL	Withdrawn 25.01.2021

8 Planning Policy

National Policy Planning Framework (NPPF) 2019

Chapter 2 Para 8 Achieving sustainable development

Chapter 5 Para 62, 64, 67 Delivering a sufficient supply of homes

Chapter 13: Para 143-146 Protecting Green Belt Land

Core Strategy 2007

Policy CS2 Green Belt

Policy CS3 Biodiversity

Policy CS5 Built Environment

Policy CS16 Highways

Development Management Policies Document 2015

Policy DM3 Replacement and extensions of Buildings in the Green Belt

Policy DM21 Meeting Local Housing Needs

Policy DM 26 Equestrian-Related Development in the Green Belt

9 Planning considerations

Green Belt

- 9.1 Paragraphs 143 to 147 of the NPPF set out the Government's policies relating to development proposals in the Green Belt. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
- 9.2 Paragraph 144 of the NPPF advises that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Very Special Circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- 9.3 Policy CS2 of Core Strategy protects the Green Belt, so that it shall serve its key functions, its existing general extent be maintained and within its boundaries, strict control continue to be exercised over inappropriate development as defined by Government policy.
- 9.4 The supporting text to Policy CS2 recognises the Green Belt designation and its significance in the Borough. Paragraph 3.3.3 notes the long association Epsom has had with the horse racing industry and that the Green Belt is home to the nationally important Epsom racecourse, as well as to facilities for the local racehorse training industry.
- 9.5 Policy DM26 of the Development Management Policies Document refers specifically to equestrian related development in the Green Belt. It says that where such development constitutes inappropriate development applicants will be expected to demonstrate very special circumstances which clearly outweigh the harm to the Green Belt.
- 9.6 A letter accompanies this Formal Request, dated 14.01.2021. It sets out the Applicant seeks to amend the S106 Agreement. The amendments (provided below) would ensure the viability of the project and allow the Landowner and Applicant the ability to deliver on the mutual objective of all parties, by constructing and practically completing the RTE facilities in a shortened timeframe.
- 9.7 The letter sets out that the proposed amendments would still enforce the Phasing Plan, but allow for overlapping of various phases, to ensure a shortened overall construction period. Certain critical milestones have been identified for the RTE phases, prior to commencement of construction of the residential development, but allowing the residential development to commence prior to the practical completion of the whole of the associated RTE phase.
- 9.8 The letter sets out that the residential units cannot be occupied prior to the whole of the associated RTE phase reaching practical completion. A main building in each RTE phase was identified that needs to achieve a certain milestone of construction prior to the associated residential phase commencing. These buildings are:
- The small stable block in Phase 2;
  - The main yard in Phase 5; and
  - The stable staff accommodation in Phase 7.

9.9 The letter summarises the proposed amendments, as follows:

- The small stable block in Phase 2 needs to be practically completed (which will allow Jim Boyle Racing to temporary relocate to this stable block) prior to any construction commencing on Phase 4 (the first 24 residential units)
- All of Phase 2 needs to be practically completed prior to occupation of any units consisting Phase 4
- The Main Yard in Phase 5 needs to reach first floor level prior to works commencing on Phase 6 (the second 18 residential units)
- All of Phase 4 need to be practically completed prior to occupation of any units consisting Phase 6
- The Stable Staff Accommodation needs to reach first floor level prior to works commencing on Phase 8 (the last 4 residential units); and
- All of Phase 7 need to be practically completed prior to occupation of any units consisting Phase 8.

*Officer Assessment*

9.10 The request is made under S106A of the *Town and Country Planning Act 1990* – “Modification and discharge of planning obligations: The section states at sub-section 6:

*6) Where an application has been made the authority may determine—*

*(a) that the planning obligation shall continue to have effect without modification;*

*(b) if the obligation no longer serves a useful purpose, that it shall be discharged; or*

*(c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.*

9.11 In this case, paragraph 106A(6)(c) applies. The Council must consider whether:

- i. the obligation sought to be varied continues to serve a useful purpose;  
and
- ii. it would serve that purpose equally well if the modification sought was made.

9.12 These questions are matters for the discretion of the local planning authority, acting reasonably.



- 9.13 On 17 September 2019, Planning Committee considered application ref: 18/00308/FUL and supported the Officer's recommendation to grant Planning Permission, subject to the referral of the application to the Secretary of State (the proposal was a departure from the Development Plan). The Minutes of the Committee meeting set out that:

*Members were presented with an update report, which they considered. They agreed to accept the recommended changes to the conditions and also to the draft heads of terms to the proposed Section 106 Agreement, which added the following additional requirements:*

- A mechanism to review the viability of the development if Phase 4 of the residential scheme has not reached slab level within two years of consent being granted*
- A "claw back" clause to ensure that the Council is paid the equivalent value of the cost of the affordable housing provision, due at the time planning was granted on the residential scheme (i.e. 40% Affordable Housing), if the applicant/owner sold the stables in part or as a whole, within a 15 year period from completion of the enabling residential development.*

*The officer presentation also included an amendment to withdraw permitted development rights. The Members accepted the officer's recommendation to approve the application based on the very special circumstances test having been met as set out in the report.*

- 9.14 The Secretary of State confirmed in writing on 18 March 2020 that this application should be considered and determined by the Local Planning Authority. As such, Planning Permission was granted, with an accompanying S106 Agreement.
- 9.15 The Applicant's letter, dated 14 January 2021, formally requesting the modifications sets out that in order for the Landowner and Applicant to deliver on the mutual objective of all parties, constructing and practically completing the RTE facilities in a shortened timeframe, the agreed phasing of the scheme needs amending. The letter sets out that this would ensure the viability of the scheme.
- 9.16 Concerns have been raised by nearby residents regarding this Formal Request. There is concern that should this Formal Request be allowed, the altered phasing of the approved scheme would bring forward the delivery of the housing, ahead of the RTE.
- 9.17 In considering this Formal Request, Officers recognise that the phasing obligation is currently structured so that the RTE would be practically completed ahead of the residential development. This was considered to necessary and proportionate in planning terms, so to ensure the delivery of this significant facility. It is considered that this obligation still serves a useful purpose.
- 9.18 The proposed amended phasing would enforce the agreed phasing plan, but allow for overlapping of various phases, which the Applicant explains would shorten the overall construction period. Officers do consider that a shortened construction period, allowing development to be brought forward at a quicker pace, is reasonable.

- 9.19 The revised phasing plan would still ensure that the residential units couldn't be occupied before the whole of the associated RTE phase reached practical completion. Therefore, the useful purpose of the phasing obligation would continue to be served equally as well if the amended phasing is substituted, and the RTE facility would still be delivered prior to occupation of the residential units.
- 9.20 Officers consider that the Applicant has provided sufficient reasoning and justification to amend the approved phasing of the scheme and set out the implications of doing so. Formal amendments to the S106 Agreement, by way of a Deed of Variation, would continue to secure the completion of the RTE, with the benefit of a reduced construction period.
- 9.21 The amendments sought to the approved phasing plan are not considered to materially change the mechanism of securing the delivery of the RTE and is therefore in accordance with the objectives of National and Local Planning Policy.

## 10 Conclusion

- 10.1 The purpose of the phasing obligation is to secure the delivery of the RTE prior to occupation of the residential units, and this purpose continues to be useful in planning terms.
- 10.2 Officers consider that the amended phasing would enable a quicker construction period, allowing development to be brought forward at a quicker pace, but still ensuring practical completion of the RTE phase, before the residential units could be occupied.
- 10.3 Therefore, the planning purpose of the obligation would continue to be served equally well by the proposed modifications, and would continue to be compliant with all relevant planning policy.
- 10.4 The proposed amendments to the S106 Agreement are favourably considered by Officers, to be captured within a Deed of Variation.

## 11 Recommendation

- 11.1 Amendments to the S106 Agreement, dated 15 May 2020, attached to Planning Permission 19/00308/FUL, be made as set out in this report