



# Planning Committee

Astwood Bank &amp; Feckenham Ward

21 April 2009

## ADOPTION OF OPEN SPACE - VARIATION OF SECTION 106 AGREEMENT

(Report of the Head of Planning & Building Control)

### 1. Summary of Proposals

A variation to the Section 106 Agreement associated with the adoption of open space at Avenue Road, Astwood Bank is required in order to define the areas of land to be transferred to the Council.

Officers consider that it is in everyone's interest that the areas of open space are transferred to the Council. Adoption will ensure the proper maintenance of such areas in future years and the relevant commuted sums will be payable to the Council upon adoption to cover these costs.

This report cross-references to details approved under Planning Application 98/472 and is therefore business for the Planning Committee. (98/472 was an application for the erection of 12 dwellings and associated road works including the formation of new site access on land off Avenue Road, Astwood Bank)

### 2. Recommendations

The Committee is asked to **RESOLVE** that

- 1) **the variation to the Section 106 Agreement, dated 20 October 1999 and made between 1)The Council of the Borough of Redditch and 2) JS Bloor Tamworth Limited regarding the areas of land to be adopted, as detailed in the plan to be displayed at the meeting, be agreed; and**
- 2) **authority be delegated to the Head of Legal, Democratic and Property Services to agree any other minor variations that may be deemed necessary prior to formal adoption of the land in question.**

### 3. Financial, Legal, Policy, Risk and Sustainability Implications

#### Financial

- 3.1 'Committed sums' (see Glossary at end of report) for future maintenance of the areas of open space were agreed at the time

planning permission was granted for development at Astwood Bank. In the main, these sums are payable upon formal adoption of the open space.

- 3.2 The costs to the other party to the agreement of varying the Section 106 Agreement may need to be borne by the Council. These costs will be met from existing budgets.

### Legal

- 3.3 The legislative framework is provided by Section 106 of the Town and Country Planning Act 1990 (as amended).
- 3.4 Planning obligations, also known as Section 106 Agreements, are typically negotiated between local authorities and developers in the context of granting planning consent. (Sometimes they can take the form of unilateral undertakings made by developers.) They provide a means to ensure that a proposed development contributes to the creation of sustainable communities, particularly by securing contributions towards the provision of necessary infrastructure and facilities (including open space) required by local and national planning policies.

### Policy

- 3.5 Developers are required to provide areas of open space within new housing developments having regard to standards set out in the Local Plan in force at that time. It has been Council policy to adopt such areas subject to them being brought up to an adoptable standard and subject to payment of an appropriate commuted sum toward their ongoing maintenance.

### Risk

- 3.6 If agreement cannot be reached regarding the areas to be adopted, it is likely that areas of open space will not be adopted, causing future maintenance problems, and commuted sums may not be received. Officers will normally negotiate an acceptable solution in such situations, with reference to the relevant planning and legal framework.

### Sustainability / Environmental

- 3.7 No Sustainability / Environmental / Climate Change implications have been identified.

## **Report**

### **4. Background**

- 4.1 Since planning permission was granted for the development of land at Avenue Road there have been minor changes to the broad areas of open space identified in the Section 106 Agreement. The areas of open space have now been laid out and are ready for adoption.
- 4.2 The planning application to which this planning obligation relates is 98/472 which was an application for 12 dwellings, access etc on land at Avenue Road, Astwood Bank, now known as Badger Brook Lane. The houses have been completed and occupied, and the open space laid out ready to be transferred to the Council for ongoing maintenance, along with a commuted sum for the purpose.

### **5. Key Issues**

- 5.1 The original outline planning permission for development at Avenue Road involved a Section 106 Agreement which identified specific areas of open space. In addition, the agreement required the payment of commuted sums to the Council upon transfer of the open space.
- 5.2 Due to the change to the boundary of the open space, albeit relatively minor, Committee approval is sought to vary this element of the S106 agreement. Scale plans showing the areas concerned will be available: Plan 1 shows the land included in the original planning obligation to be transferred and plan 2 shows the land now proposed to be transferred, and thus substituted in the variation to the original agreement.

### **6. Other Implications**

No Community Safety, Human Resources, or Social Inclusion implications have been identified so far.

### **7. Lessons Learnt**

Planning obligations drafted now no longer include specific plans defining the open space areas, but refer to areas that are to be agreed between the parties, in order to prevent this issue arising again.

**8. Consultation**

There has been no consultation other than with relevant Borough Council Officers.

**9. Background Papers**

Original Section 106 Agreement associated with the development of land at Avenue Road.

Previously published Committee reports and minutes, including a similar one relating to a development in Brockhill which was reported to the October 2007 meeting of the Planning Committee.

**10. Author of Report**

The author of this report is Ailith Rutt (Development Control Manager), who can be contacted on extension 3374 (email:-ailith.rutt@redditchbc.gov.uk) for more information.

**11. Appendices**

**Site Plan (see additional papers)**

**12. Glossary of Terms**

'Committed Sum' - Sum agreed to be provided within a planning obligation. The obligation will detail the amount, what it is for, how it should be spent, when and whether there is a limited period for its use, i.e. impose conditions on it.