

REDDITCH BOROUGH COUNCIL

**PLANNING
COMMITTEE**

29th March 2011

VARIATION OF PLANNING OBLIGATION (SECTION 106 AGREEMENT)

Relevant Portfolio Holder	Cllr Jinny Pearce, Planning, Regeneration, Economic Development & Transport
Relevant Head of Service	Ruth Bamford, Head of Planning & Regeneration
Non-Key Decision	This report contains exempt information as defined in Paragraph(s) of Part I of Schedule 12A to the Local Government Act 1972, as amended

1. SUMMARY OF PROPOSALS

- 1.1 To consider a variation to the Section 106 Agreement (planning obligation) associated with the development of 13 detached houses in order to release the other parties from a requirement that is no longer appropriate and thus should not be perpetuated, relating to the provision of a small area of open space.
- 1.2 This report cross-references to details approved under Planning Application 1997/190 and is therefore business for the Planning Committee. (1997/190 was an application for a residential development of 13 detached dwellings on land off Green Lane, Woodrow, Redditch).

2. RECOMMENDATIONS

The Committee is asked to RESOLVE that:

the variation to the Section 106 Agreement, dated 14th August 1997 and made between 1) Brian Arthur Bennett, 2) Frederick Stanley Bennett, 3) David John Bennett, 4) Wainhomes Midlands Ltd and 5) The Council of the Borough of Redditch regarding the open space obligations therein, be agreed; namely that the requirement for the transfer of land to Redditch Borough Council and the payment of a contribution towards its ongoing maintenance be deleted from the Section 106 Agreement, as it has in practice proven to be unnecessary and not required.

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3. BACKGROUND

- 3.1 As is often the case with residential development, an area of open space was provided within the development site and the planning obligation sought to control its provision and maintenance in the long term by requiring that the ownership of the open space be transferred to the Council, along with a sum of money towards its future maintenance.
- 3.2 The land has been laid out as open space and well maintained by the residents of the development. The land is small, and below the size limit that would normally now be transferred to the Council for ongoing maintenance and therefore the practicalities of maintaining it would not be simple.
- 3.3 The matter has come to light as a result of a recent review of outstanding planning obligations, and their follow up.

4. KEY ISSUES

Transfer of land

- 4.1 There is no perceived need for the Council to take over the ownership and/or maintenance of this land, given its current position and the arrangements that have been in place for a significant period.

Open space provision

- 4.2 The planning obligation that requires that the land be set out and kept available for use as open space would remain, and therefore the current and any future owners would be bound by that clause to provide the space for that purpose.
- 4.3 For these two combined reasons, and the length of time since the development occurred, it is considered reasonable to relieve this requirement from this planning obligation as it can be done without detriment to the spirit of the agreement.

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5. FINANCIAL IMPLICATIONS

- 5.1 The cost to the Council of varying the agreement will need to be borne, but the other party has agreed to bear their own costs. The Council's costs will be met from within existing budgets.
- 5.2 The other financial contributions required as part of the planning obligation have been paid, and either spent or committed.

6. LEGAL IMPLICATIONS

- 6.1 The legislative framework is provided by Section 106 of the Town and Country Planning Act 1990 (as amended).
- 6.2 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 required by local and national planning policies.

7. POLICY IMPLICATIONS

Developers are required to provide necessary infrastructure as part of new developments having regard to standards set out in the Local Plan in force at that time.

8. COUNCIL OBJECTIVES

This does not conflict with any Council objectives.

**9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY
CONSIDERATIONS**

If the Council does not take control of the land, there could be future maintenance issues, however these are not envisaged given the length of time that has already elapsed since the development was implemented.

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10. **CUSTOMER IMPLICATIONS**

None identified.

11. **EQUALITIES AND DIVERSITY IMPLICATIONS**

None identified.

12. **VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET
MANAGEMENT**

None identified.

13. **CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY**

None identified.

14. **HUMAN RESOURCES IMPLICATIONS**

None identified.

15. **GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS**

None identified.

16. **COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF
CRIME AND DISORDER ACT 1998**

None identified.

17. **HEALTH INEQUALITIES IMPLICATIONS**

None identified.

18. **LESSONS LEARNT**

This is considered to be an unusual situation and thus would have been difficult to foresee when the obligation was written. However, general lessons relating to the content and drafting of planning obligations are always being learned and put into practice, along with the review of the practicalities of maintaining such spaces. Current practice would not have resulted in such an obligation.

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19. COMMUNITY AND STAKEHOLDER ENGAGEMENT

None necessary.

20. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	
Chief Executive	
Executive Director (S151 Officer)	
Deputy Chief Executive/Executive Director – Leisure, Environment and Community Services	
Executive Director – Planning & Regeneration, Regulatory and Housing Services	Yes
Director of Policy, Performance and Partnerships	
Head of Service	Yes
Head of Resources	Yes
Head of Legal, Equalities & Democratic Services	Yes
Corporate Procurement Team	

21. WARDS AFFECTED

Greenlands.

22. APPENDICES

None.

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23. BACKGROUND PAPERS

Original Section 106 Agreement associated with the development of land at Green Lane and the planning and legal files.

24. KEY

A **Planning Obligation** is a mechanism for requiring financial and other conditions to be attached to proposed development, and must be in compliance with the statutory planning framework.

They most commonly take the form of a legal agreement, often known as a S106 agreement relating to the relevant legislation, although they can also be Unilateral Undertakings, where a land owner undertakes to do specified actions or make specific payments, without the Council being party to an agreement. These are more commonly used in appeal situations.

AUTHOR OF REPORT

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