

## BOROUGH OF KETTERING

<b>Committee</b>	<b>Full Planning Committee - 17/12/2013</b>	<b>Item No: 5.1</b>
<b>Report Originator</b>	<b>Louise Jelley &amp; Adrian Arnold</b>	<b>Application No: DEED/0559/0702</b>
<b>Wards Affected</b>	<b>Burton Latimer</b>	
<b>Location</b>	<b>Higham Road (land at), Burton Latimer</b>	
<b>Proposal</b>	<b>Deed of Variation of Section 106 Agreement: KET/2007/0559 (248 No. units, new access arrangements, associated open space and drainage works)</b>	
<b>Applicant</b>	<b>Mr Guy Caswell, David Wilson Homes (South Midlands)</b>	

### **1. PURPOSE OF REPORT**

- To describe the above proposals
- To identify and report on the issues arising from it
- To state a recommendation on the application

### **2. RECOMMENDATION**

THE DEVELOPMENT CONTROL MANAGER RECOMMENDS the modifications to the Deed of Variation as set out in the report be agreed by Members and is linked to the previous deed and original S106 and the necessary planning permission as required.

## **Officers Report**

### **3.0 Information**

#### **Relevant Planning History**

KET/2007/0559 – Outline application for 248 residential units, new access arrangements, associated open space and drainage works – ALLOWED ON APPEAL.

KET/2011/0030 – Reserve Matters for residential development for 248 units, access, open space and drainage. Approved 22 June 2011, committee 21 June 2011.

KET/2007/0559 – Deed/0559/0701 – Deed of Variation for altering the timing of payments and a reduction in the healthcare contribution, Approved on 19<sup>th</sup> Aug 2011, committee 20<sup>th</sup> July 2010

#### **Proposal**

This is a formal request for a further “deed of variation” which seeks the agreement of the local planning authority to modify the planning obligation attached to the outline planning permission KET/2007/0559. Under Section 106a of the Town and Country Planning Act 1990, a planning obligation may be modified or discharged by agreement at any time. This course does, however, require the consent of all persons against whom the obligation is enforceable, which is Kettering Borough Council and Northamptonshire County Council and BDW Trading Ltd (comprising David Wilson Homes, and Barratt Homes) who now own the site.

### **4.0 Consultation and Customer Impact**

#### **Highway Authority**

The county council has been in detailed discussions with David Wilson Homes and has spoken with the parish council in order to get to an acceptable solution of this difficult situation. From these discussions it has been indicated that the County supports the proposed financial alterations as set out in the proposed case. Further detail comments may be reported at committee.

### **5.0 Planning Policy**

Not applicable in this case.

### **6.0 Financial/Resource Implications**

Set out below.

## **7.0 Planning Considerations**

The proposed variations to the Planning Obligation include:

1. A reduction in some of the payments of the contributions (shown in more detail below) and an alteration to the type of works that the contributions will be spent on now.
2. This “Deed” to link to other deed and the original s106 and PP

### **Reasons why the modification is being sought**

The purpose of seeking this agreement is to help ease the developer’s viability to the site and that a number of the provisions would not comply with the now appropriate legal test under Community Infrastructure Levy Regulation 122 and circular 05/05 advice.

### **The Context to the situation.**

The original S106 contributions sought were considerable amounts of money of which many were front loaded and would have had a detrimental impact upon the viability and deliverability of the development scheme. These were addressed to some degree in the last deed of variation, which committee supported to approve. It is noted that the housing market remains in a critical state, although the signs are promising the two matters of viability and the legal tests need addressing.

It is considered to be in the interests of both the developer in terms of cash flow, viability and the money being spent on reasonable items relating to the development and the local planning authority in respect of its housing trajectory figures for the five year land supply.

The original S106 Planning Obligation includes contributions towards a number of matters including Healthcare provision was £649,542 and was reduced to £120,756 as it could not comply with the legal tests and could not be justified. All the other matters (Fire service, Libraries, Affordable housing, Travel Plan, Highways (HIST), Allotments and monitoring fee) stay the same as was set out. And under this deed all those matters do not change other than Travel Plan and Highways.

The total contributions sought for the original planning obligation was: **£ 2, 246,357.00** in addition to the education contributions

The total contributions that the first deed reduced the sum to was: **£ 1,760,723.00** in addition to the education contributions.

The position now being sort for a number of matters The legal tests required under CIL Regs 122 and circular 05/05 are as follows clearly states that a planning obligation must be:

- Relevant to planning
- Necessary to the make the proposed development acceptable in planning terms
- Directly related to the proposed development
- Fairly and reasonably related in scale and kind to the proposed development and
- Reasonable in all other aspects

### **The Proposed matters to be varied.**

These are set out below;

#### Travel Plan (Travel Centre) Contribution (seventh schedule)

Originally the total contribution sum of £154,486.00 was sought. £54,486.00 of this amount has already been paid as per the requirements of clause 1.1.1 (including indexation the actual amount paid was £58,886.00).

The remaining amount due under the original (then varied) S106 was £100,000.00. It is sort to vary the S106 amount to the total of **£94,870.00**, which requires a remaining sum of **£40,384.00** to be paid. This includes the activities required to effect the modal shift requirements on site, as set out by Northamptonshire County Council Highways.

#### HIST(Highways) Pooled Contribution (ninth schedule)

As set out under the original S106 Agreement, dated 6 April 2008 (then varied), the purpose of the HIST contribution was to provide for:

- Highway improvement works
- Inter urban and town centre public transport services
- Enhancement of pedestrian and cycle linkages
- A road safety study and implementation of schemes
- Intelligent transport solutions

A total contribution was required amounting to £898,504.00. The remit of required works and the financial contribution attributable to these works has subsequently been reviewed through discussions with the County Council Highways department and has been split as follows:

### **Public Transport**

1. In order to facilitate the procurement of an enhanced public transport network serving Burton Latimer and beyond, a contribution is required (proportionate to the development site) to establish this service for a period of 5 years.

Proportionately, the sum due is agreed at **£181,352.83**. The Deed of Variation should therefore include 2 payment installments as follows:

- 50% to be payable prior to the occupation of 100 dwellings
- 50% to be payable as the 2<sup>nd</sup> and final installment prior to the occupation of the 148<sup>th</sup> dwelling.

2. Two bus stops and shelters are required to be installed at Higham Road directly adjacent to the development site. A sum of **£44,000.00** should be included within the Deed of Variation for these works.

A total contribution sum agreed to be included within the Deed of Variation is therefore **£225,352.83**.

### **Walking and Cycling**

1. This requires **£40,080.00** for a combined footway / cycle track to be installed on the opposite side of Higham Road from the development site.
2. This also requires a pro-rata contribution of **£44,431.44** towards cycle improvement works at Kettering Road (between Station Road and Altendiez Way).

A total contribution sum agreed to be included within the Deed of Variation is therefore **£84,511.44**, payable within 28 days of completion of the second Deed of Variation.

### **Highways Contribution**

A review of junctions off-site was undertaken and agreement has been reached as to which are over capacity as a direct impact of the development site. To mitigate such impact, a contribution to be included within the Deed of Variation has been agreed at **£150,000.00**.

The Deed of Variation should therefore include 2 payment installments as follows:

- 50% to be payable prior to the occupation of 100 dwellings
- 50% to be payable as the 2<sup>nd</sup> and final installment prior to the occupation of the 148<sup>th</sup> dwelling.

### **Summary**

Therefore in summary the total sum is as follows;

Travel Plan Contribution	£40,384.00
Public Transport Contribution	£3225,352.83
Walking and cycling Contribution	£384,511.44
Highways Contribution	£150,000.00
TOTAL	£500,248.27

Therefore bearing in mind the original HIST cost in the original s106 was £1.053m this reduction in overall terms including the travel plan element is roughly half that. This is a considerable drop in financial terms. However the specific nature of where the sums are now targeted in that they are more local, appropriate and reasonable would now comply with the legal tests, but still addresses the likely impacts brought about by the development.

The "Deed" will link back to the original S106 and the planning permission so that the obligations and the first deed of variation are binding and linked together and that any conditions are not undermined or affected in their ability to be enforced.

### **Conclusion**

The Deed of Variation is considered to be both a reasonable financial solution for the Developers and a means for allowing the development to progress more effectively and efficiently during a difficult time for the housing market in terms of recession and recovery. The proposal is therefore recommended to Members for agreement.

#### **Background Papers**

Title of Document:

Date:

Contact Officer:

#### **Previous Reports/Minutes**

Ref:

Date:

Louise Jelley, Development Officer on 01536 534316