

Wolverhampton City Council**OPEN DECISION ITEM****Planning Committee**

Date 31 January 2012

Originating Service Group(s) **Education & Enterprise**Contact Officer(s)/
Telephone Number(s) **Stephen Alexander/Alan Murphy**
EXT 5610 EXT 5631Title **Variation of Agreement under Section 106 of the Town and Country**
Planning Act 1990 relating to residential development at Bilston Town
Bowling Club, Villiers Avenue, Bilston.

RECOMMENDATION

That the Deed of Variation to the 106 Agreement dated 19 May 2009 between (1) Wolverhampton City Council (2) Andrew Inskip (3) Violet Moseley (4) Donald Gibbons (5) Stanley Bamford (the First Second Third and Fourth Owners) and (6) Marstons Plc (the Mortgagee) in respect of Planning consent ref; 08/00911/FUL for residential development comprising five bungalows and the provision of a new practice bowling green on land at Bilston Town Bowling Club, Villiers Avenue, Wolverhampton, be made as set out in section 2.6 of this report.

1. PURPOSE

- 1.1 To inform and make a recommendation to the Committee in respect of a request for a Deed of Variation in respect of the Section 106 Agreement dated 19 May 2009 between (1) Wolverhampton City Council (2) Andrew Inskip (3) Violet Moseley (4) Donald Gibbons (5) Stanley Bamford (the First Second Third and Fourth Owners) and (6) Marstons Plc (the Mortgagee) in respect of Planning consent ref; 08/00911/FUL for residential development comprising five bungalows and the provision of a new practice bowling green on land at Bilston Town Bowling Club, Villiers Avenue, Wolverhampton

2. BACKGROUND

- 2.1 On 4 November 2008 the Committee resolved to grant planning permission ref 08/00911/FULL for the erection of five bungalows and the provision of a new practice bowling green on the site of the old practice bowling green at Bilston Bowling Club, Villiers Avenue, Bilston.
- 2.2 This was subject to a the applicant (the Bilston Bowling Club) entering into a 106 Agreement 'to ensure that all the club's income from the sale or development of the residential development land is reinvested into the club facilities in accordance with a specification and time-table to be agreed with the Council before development commences' and subject to conditions.
- 2.3 The section106 agreement was completed on 19 May 2009 and the planning consent issued on 22 May 2009.
- 2.4 The detailed terms of the agreement states (among other things) that the last bungalow shall not be occupied 'unless and until the refurbishment works [on the club house] have been completed to the satisfaction of the Council.'
- 2.5 Since the consent has been issued the Club has been trying to secure a developer. They now have one on board but they, the developer, have been advised that the requirement for the last bungalow not to be occupied until the refurbishment works on the clubhouse have been completed is too restrictive. This is on the basis of:
- (1) Preventing the developer from fully developing and selling all the dwellings until the S106 has been complied with;
 - (2) The developers do not have control over the bowling club works and cannot be sure that they will ever be able to comply and satisfy the S106 terms thus they may never fully implement the development;
 - (3) The developer could take a contractual obligation from the club but breach of that contract would still not ensure completion of the development;
 - (4) If the developers act as contractors to do the club refurbishment works the club could terminate the contact making it impossible to comply with the S106;
 - (5) If the club trustees change the position may not be so amicable;
 - (6) Even if the developer agrees a funder may not;
 - (7) Plot purchasers will want certainty that the S106 will be complied with, which the developers cannot give

2.6 Having regard to the above and with a view to achieving the much needed refurbishment of the bowling club, funded by the proceeds of sale of the development land, and the completion of the bungalows, it is proposed that the S106 Agreement is varied as follows:

1. Refurbishment Works” will remain as meaning (1) the refurbishment or rebuilding of the club building (2) the provision of the practice bowling green and (3) the refurbishment of the car park within the Application Site; and

“Refurbishment Scheme” shall mean a scheme detailing (1) the Proposed Financial Proceeds from the sale of the land (2) that the value of the contract to be let for the Refurbishment Works is to equal the Proposed Financial Proceeds (3) the tendering process, specification and costings for each part of the Refurbishment Works and (4) the timetable for the completion of the Refurbishment Works;

2. The refurbishment Scheme is to be submitted to the Council for agreement prior to the transfer of the Development Land.

3. The Development cannot commence until the Development Land has been transferred to the Developer simultaneously with a Contract being let for the execution of the Refurbishment Works with evidence of these to be submitted to the Council for approval;

4. Following completion of the Refurbishment Works evidence of all expenditure and evidence of the operational use of the practice bowling green, shall be submitted to the Council, together with notice inviting the Council to inspect the Refurbishment Works;

5. The Council will then inspect the Refurbishment Works and confirm in writing that such works have been completed satisfactorily and set new targets for further improvements to the Bowling Club if there remain any funds not spent.

3.0 Appraisal and Conclusion

3.1 This variation of Deed will not affect the fundamentals of the Agreement and planning consent. It will ensure that all the funds raised are used on the refurbishment works the details and timing of which will remain in the control of the Council under the agreement. It will however, allow the Developer to control when he commences the works on the bungalows and allow occupation of all five bungalows, but only so long as a contract has been let for the refurbishment of the Bowling Club. It is understood that the same developer/builder is to develop the site and carry out the refurbishment works.

4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications for the Council's budgets from this report.

5. LEGAL IMPLICATIONS

5.1 In accordance with S106A of the Town and Country Planning Act 1990 a planning obligation may not be modified except by agreement between the authority by whom the obligation is enforceable and the person or persons against whom the obligation is enforceable. Accordingly the proposed amendments to the existing S106 Agreement, need to be regularised by a Deed of Variation.
(Legal Implications Ref: KR/13012012/K)

6. EQUALITIES IMPLICATIONS

6.1 There are no equalities implications from this report

7. ENVIRONMENTAL IMPLICATIONS

7.1 The environment implications in respect of the development the subject of this report were taken into account when the original planning application was granted.

8. SCHEDULE OF BACKGROUND PAPERS

8.1 Report to planning committee dated 4 November 2008 in respect of planning application 08/00911/FULL.

8.2 Section 106 Agreement associated with planning consent 08/00911 signed and dated 19 May 2009.