

Supplementary Committee Agenda



**Epping Forest
District Council**

District Development Control Committee Tuesday, 1st December, 2009

Place: Council Chamber, Civic Offices, High Street, Epping

Time: 7.30 pm

Democratic Services: Simon Hill, The Office of the Chief Executive
Tel: 01992 564249 Email: shill@eppingforestdc.gov.uk

7.A ANY OTHER BUSINESS – Variation on S106 Agreement regarding Grange Farm, Chigwell (Pages 3 - 8)

To consider the attached report (and previous minute from July 2009 meeting of District Development Control Committee.

This page is intentionally left blank

Report to District Development Control Committee



**Epping Forest
District Council**

Date of meeting: 1 December 2009

Subject: Deed of Variation in respect of the S106 Agreement dated 20 December 2006 relating to the residential development at Grange Farm High Road Chigwell. Request for authority for variation omitted from original decision.

Officer contact for further information: Nigel Richardson Ext 4110

Committee Secretary: S Hill Ext 4249

Recommendation:

That the Committee resolves:

That the Transportation Contribution paid under the S106 Agreement dated 20 December 2006 be returned to the developer subject to the completion of a Deed of Variation requiring that the Transport Contribution Sum (index linked) is repaid to the County Council on the completion of the 20th dwelling.

Report Detail:

1. The District Development Control Committee (DDCC) considered the issue of relaxing the terms of the S106 Agreement at its meetings of the 9 June 2009 and 6 July 2009. At the latter meeting a number of variations were agreed as per the schedule attached at Appendix 1.

2. Members will note that the revised dates for payment in the end column of Appendix 1 relating to the Transport Contribution Sum and the Secondary Contribution (Education) conflict. The developer's original proposal was that the Transportation Contribution should be used to satisfy both these contributions, resulting in a loss of £89,952.00 to Essex County Council (ECC). The Developer on revising the proposals for the later meeting agreed to make both payments with deferral of the Education payment until the 29th Unit.

3. At the DDCC meeting of 9 June 2009 officers reported that '*Essex County Council Planning and Transportation consider that the Transport Contribution Sum was appropriate for the development and that the change in circumstances necessitated by the funder of the development should not alleviate the need for highway mitigation. However, they would be willing to return the Transport Contribution Sum for a temporary period and not require payment (index linked) until the completion of the 20th dwelling if this were to assist with cash flow.*' DDCC did not agree any variations at this meeting but requested a report back with supporting financial information.

4. A report was duly bought back to DDCC on the 9th July 2009 to which the Developer provided supporting information and set out revised proposals for deferring payments rather than the cancellation of certain payments. Unfortunately as part of the revised proposals the Developer did not include their acceptance of ECC's

offer in respect of the Transportation Contribution although the supporting information included the assumption that this payment would be returned with a later repayment date.

5. The discrepancy in the schedule was not picked up by officers or the developer at the time of the DDCC meeting and regrettably the lack of authority in respect of the variation to this one contribution has come to light with the paperwork being reviewed to ensure all is in order before the Deed of Variation can be approved for sealing by the Council. Accordingly, this request is not for any additional variation not previously considered by members but to remedy an oversight. The Deed is not yet in its final form as there have been issues between the other parties to the document but it is understood that they have been resolved and that the Deed should be ready for completion soon but in any event before the next scheduled meeting of DDCC, hence the need to bring this matter to this meeting as an urgent item.

6. As a brief update officers understand that despite the S106 Agreement having not been formally varied, the Developer has met the deadline for guaranteeing the grant for the pavilion by commencing construction of the same and that the Developer has started to firm up plans for the release of the first four units to the market.

Conclusion:

7. In order for the Deed of Variation to proceed in the manner intended by the Council and the Developer a committee authority agreeing to the refund and subsequent repayment of the Transportation Contribution is required otherwise this item will not be able to be included in the Deed of Variation.

10. SECTION 106 AGREEMENT - GRANGE FARM, HIGH ROAD, CHIGWELL - REQUEST FOR VARIATIONS

The Committee gave further consideration to proposals made to the Council by the developer of the Grange Farm Core site which had been deferred by the Committee at its last meeting on 9 June 2009 in order to allow for the provision of additional information and seek observations from the Director of Finance & ICT.

The Committee noted that since 2002 there had been outline planning permission to redevelop the core area of the former holiday and camping centre at the above site for residential development in this Green Belt location. On 20 December 2006 after protracted negotiations a S106 Agreement had been completed and a renewed planning permission EPF/2190/05 granted subject to a number of conditions.

Under the Agreement, the rehabilitation works and the sports field works were to be carried out by the Developer and the Sports Pavilion and Interpretation Centre are to be constructed by Grange Farm Centre Trust (GFCT) before it was then leased to Chigwell Parish Council to manage and maintain.

The threshold for payment of the maintenance sums, Sports Pavilion and Interpretation Centre contributions, which were to be passed to GFCT and then to Chigwell Parish Council (CPC), as well as the contamination land assessments and affordable housing was that half was payable prior to implementation of the houses and the remainder prior to occupation of the 20th house. The Education and Transportation contributions were both required in their entirety prior to implementation.

Work has commenced on the clearing of the core area, ready to begin the residential development. The developer had written to the Director of Corporate Support Services seeking variations to the Agreement aimed at cost reductions because their funders were withholding funding of the development until the budget was reduced in view of the changed financial environment. They outline that over time, costs for open space and parkland works and roundabout access works had risen significantly over estimate and the economic downturn had resulted in the development being placed in jeopardy.

Following the last meeting, the developer had made further representations to the Council regarding payments to be made under the section 106 Agreement which instead of seeking not to pay elements of the Agreements sums, rather sought to the revised rephrasing of the payments to later in the development phase. Additionally, contributions to the sports pavilion, interpretation centre and community projects were proposed to be held by the developer and drawn down during the construction of the community facilities.

The Committee received representations from an objector, the GFCT and the developer.

It was the view of the Committee that there was a significant threat to the scheme, including the desired community elements, in the current economic environment. Additionally grant money promised to the scheme would also be lost if the scheme was further delayed or stopped. Officers had suggested proposals that protected the payments to the Council for the Sports Pavilion and Interpretation Centre Building Sum and the balance of the Community Project Sum as part of any deed of variation and members suggested that the deed be made personal to the current developer and contain dispute arbitration clauses. The Committee were of the view that, given

the proposed protections the Council should enter into the variation envisaged and resolved accordingly.

Resolved:

(1) That, the variation of the Section 106 Agreement in respect of Planning Permission EPF/2190/05 for Grange Farm, Chigwell be agreed subject to:

(i) The Deed of Variation being made personal to Byrne Estates (Chigwell) Limited;

(ii) A further review of the scheduling of section 106 payments after the sale of the 10th housing unit together with suitable arbitration clauses within the Deed of Variation to be agreed between the parties;

(iii) Byrne Estates (Chigwell) Limited agreeing that prior to the occupation of the first unit, if construction on the Sports Pavilion and Interpretation Centre had not commenced that Byrne Estates (Chigwell) Limited would pay the Sports Pavilion and Interpretation Centre Building Sum and the balance of the Community Project Sum (£230,000.00) at that time and if the contributions had not been fully defrayed by the 29th housing unit (assuming construction had started) Byrne Estates (Chigwell) Limited would pay the balance to the Council.

Based upon the following revised schedule of variations:

Section 106 Contribution item	Original Payment Date Under S106	Agreed Payment Date	Revision to Or Cancellation
Access way Commuted Sum (For future maintenance)	50% pre commencement 50% on 20 th Unit		On the sale or occupation (whichever is sooner) of the 20 th housing unit
Signage	Appointed Date (12 months from date of approval of last reserved matter or 6mths from date of commencement)		No Change
Affordable Housing Sum	50% pre commencement 50% on 20 th Unit		On the sale or occupation (whichever is sooner) of the 29 th housing unit
Community Project Sum	50% pre commencement 50% on 20 th Unit		Contribution to held by developer and to be drawn down by developer during construction of pavilion subject to £20,000 direct contribution requested by Chigwell Parish Council (subject to (1)(iii) above)
Transport Contribution	Prior to		Payment to be used for

Sum	commencement. Sum already paid to ECC	Education Contribution and balance for Transport.
Contaminated Land Sum	50% pre commencement 50% on 20 th Unit	No payment to the Council
Open Space Commuted Sum (For future maintenance)	50% pre commencement 50% on 20 th Unit	On the sale or occupation (whichever is sooner) of the 20 th housing unit
Plant Defect Sum (For future maintenance)	50% pre commencement 50% on 20 th Unit	On the sale or occupation (whichever is sooner) of the 20 th housing unit
Secondary Contribution (Education)	Prior to Commencement	On the sale or occupation (whichever is sooner) of the 29 th housing unit
Sports Pavilion and Interpretation Centre Building Sum	Prior to Commencement	Contribution to held by developer and drawn down by developer during construction of pavilion (subject to (1)(iii) above)
Sports Pavilion and Interpretation Centre Committed Sum (For future maintenance)	100% on 20 th Unit	No change

(2) That the Service Director for Corporate Support Services be authorised to prepare and complete the necessary Deed of Variation in accordance with the committee's decision above, subject to such deed requiring the original terms regarding payments and timing of contributions to be reinstated if the 29th housing unit has not been completed by 30 June 2012.

This page is intentionally left blank