

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 brought 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.