

## DECISION UNDER DELEGATED POWERS

### Officer Requesting Decision

Senior Planning Officer

### Officer Making the Decision

Head of Planning & Regeneration Services

### Recommendation

That a Deed of Variation is completed to the existing s106 Agreement for the development at Mountsorrel Day Centre, Marsh Road, Mountsorrel, Leicestershire LE12 7JP (application reference P/12/1042/2 granted 31/10/12 refers to allow for:

1. A variation to the trigger points for the payment of contributions to the Council towards children's Recreation and Youth and Adult Recreation;
2. A variation to the trigger points for the payment of contributions to the County Council towards Primary and Secondary Education and Libraries;
3. Not to commence the development or allow or permit any development until the Landowner has submitted the Public Art Scheme to the Council

### Reason

At the request of the developer, the new clause provides that the Council's contributions are to be paid in four instalments of 25%, upon the completion of the sale of the 1st, 4th, 8th and 12th dwelling, whereas the original clause required the full contribution to be made before 50% occupation of the dwellings and to ensure the requirement for Public Art is retained

### Authority for Decision

The decision on the planning application is made in accordance with the Scheme of Delegation on the determination of planning applications in Part 2a Section 8.2 of the Council's Constitution - Delegation to the Head of Planning and Regeneration.

- ) Item 1 of this section of the Council Constitution grants delegated authority to determine all planning applications.

*None of criteria i) – vi) were triggered by the submission, which would have required the application to be presented to Plans Committee.*

The S106 was subsequently completed in accordance with the details as set out in the Officers 'Ward Referral' Report.

- ) Item 21 of the relevant section of the Council Constitution grants delegated authority to negotiate the heads of terms of section 106 agreements.

## **Decision and Date**



26 June 2018

## **Background**

The Section 106 Agreement to which this Deed of Variation relates was completed under planning permission P/12/1042/2. The Agreement set out contributions towards library services, off site open space and education. It also included an undertaking to provide a public art feature on the site.

## **Relevant Planning History**

This is set out in the planning history and the officer's report. The site was granted outline planning permission for up to 14 dwellings on 31 October 2012 (Planning permission P/12/1042/2 refers). Reserved matters were approved on 30th January 2014 (ref,no. P/13/2164/2).

## **Policy Considerations**

### Development Plan

Policy CS24 of the Charnwood Local Plan 2011 to 2028 Core Strategy - Delivering Infrastructure – sets out that infrastructure should be delivered having regard to the economic viability and circumstances.

## **Consultations**

Planning Liaison Officer (play and open space) – no objections, but recommends a clause requiring no time limit on spending the payments, OR to ensure any unspent contribution is repaid within 5 years from the final payment. Whilst the former is not considered reasonable, an additional paragraph has been agreed and inserted in respect of the latter:

*“Subject to the provisions of paragraphs 2.1 and 4.1 and of Schedule 2, the Council covenants with the Landowner that it will pay to the party which made payment of the financial Contribution following receipt of a written request from the party concerned such amount of any financial Contribution made to the Borough Council under this Deed which has not been expended in accordance with the provisions of this Deed together with any interest accrued thereon within 5 years of the date of payment of the financial Contribution in question or, in the case of financial Contributions paid in stages or instalments, within 5 years of the date of payment of the final instalment of the financial Contribution in question.”*

County Council – Continues to benefit from the contributions originally sought relating to libraries and education, but subject to a similar variation to the payment ‘triggers’.. The County Council is a Party to the Agreement.

### **Issue for consideration**

Insofar as the Borough Council is concerned, the variation essentially relates only to the triggers for the contributions towards Children’s and Youth and Adult recreation. The original clause required the full contribution to be made before 50% occupation of the dwellings. The new clause provides that the council’s contributions are to be paid in four instalments of 25%. The instalments are to be paid upon completion of the sale of the 1st, 4th, 8th and 12th Dwelling. This is considered to be acceptable and, together with the requirement for Public Art being retained, the proposed changes to the S106 Agreement would be considered to be in accordance with the aims and objectives of Policy CS24 of the Core Strategy.

### **Financial Implications**

None

### **Risk Management**

<b>Risk Identified</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Risk Management Actions Planned</b>
Delivery of contributions related to children’s Recreation and Youth and Adult Recreation, primary and secondary education and libraries and provision of public art.	unlikely	moderate	Planning Liaison Officers and Planning Officers are engaged and have agreed the variation would not affect the delivery of the appropriate recreation facilities having regard to the needs created by the development.

### **Background Papers:**

All contained on planning file P/12/1042/2