

## Decision under Delegated Powers

### Officer Requesting Decision

Group Leader Development Management

### Officer Making the Decision

Head of Strategic Support

### Recommendation

That a Deed of Variation (Section 106 Linking Agreement) be agreed to the Principal Agreement dated 24<sup>th</sup> June 2008 in relation to planning application P/07/2655/2 for a residential development at land relating to the former White Hart Public House, Melton Road, Thurmaston.

### Reason

The Deed of Variation seeks to vary an existing Section 106 Agreement in relation to:

- Amendments to the wording of Clauses 5.1.7(a) and 5.1.7(d). These amendments are sought by the Affordable Housing Provider (Paragon Asra Housing Limited) to address an inadequate mortgagee exclusion clause which is not acceptable to the mortgagee.

### Authority for Decision

A variation of a Section 106 Agreement can be made under the delegated authority of the Head of Strategic Support. This is subject to the agreement of the Head of Planning and taking into consideration the views of the Chair and Vice Chair of the Plans Committee and Ward Members who have been consulted.

### Decision and Date

## Background

Full Planning permission (reference P/07/2655/2) was granted for a residential development of 19 dwellings at land relating to the former White Hart Public House, Melton Road, Thurmaston on 14<sup>th</sup> December 2007. This was subject to a Section 106 Agreement (Principal Agreement) dated 24<sup>th</sup> June 2008 relating to a variety of contributions towards the provision of education, libraries, civic amenity and affordable housing.

This Deed of Variation relates to following amendments to the Section 106 Agreement (Principal Agreement):

- The deletion of the existing Clause 5.1.7(a) and its replacement with a new paragraph to reflect amended wording to this clause.

The existing Clause (5.1.7(a)) states:

*“5.1.7 The obligations contained in this Clause 5.1 shall not be binding upon:*

*(a) Any mortgagee or charge of a Registered Social Landlord exercising any of its powers of sale by or pursuant to its mortgage; or”*

The proposed Clause 5.1.7(a) states:

*“5.1.7 The obligations contained in this Clause 5.1 shall not be binding upon:*

*(a) any mortgagee or chargee **(or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver; or”***

N.B. The proposed changes to the wording between the existing and proposed Clause 5.1.7(a) are highlighted in bold, above.

- The deletion of the existing Clause 5.1.7(d) and its replacement with a new paragraph to reflect amended wording to this clause.

The existing Clause (5.1.7(d)) states:

*“5.1.7 The obligations contained in this Clause 5.1 shall not be binding upon:*

...  
*(d) Any successor in title from the persons in categories (a) (b) or (c) above.*

The proposed Clause 5.1.7(d) states:

*“5.1.7 The obligations contained in this Clause 5.1 shall not be binding upon:*

...  
*(d) Any successor in title from the persons in categories (b) or (c) above”.*

This amendment is sought to address concerns raised by the Affordable Housing Provider, Paragon Asra Housing Limited, in order to address an inadequate mortgagee exclusion clause which is not acceptable to the mortgagee.

The agreed level of affordable housing contribution, at 100%, to be secured on-site, will still be delivered.

**Comments from HR**

None.

**Financial Implications**

None.

**Risk Management**

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
Applicant doesn't comply with the S106 Agreement	Very low	Low	Very Low (1 - 2)	Routine monitoring of the S106 Agreement.

Key Decision: No

*Does the report contain exempt information?* No

Background Papers:

P/07/2655/2 – planning file and officer recommendation, and Principal S106 Agreement.