



PLANNING COMMITTEE

23 August 2012

Report of Head of Planning and Building Control- Regeneration Deed of Variation to S106 Agreement:

1. Land c/o Blue House Farm Entrance, Aldridge Road, Streetly.

STATUS: Members of this Planning Committee on 23rd August resolved to approve that a Deed of Variation be completed to remove the restrictive clause in a previous agreement to allow the sale of land to proceed.

However, since the papers have been received to prepare the deed it has come to light that the original agreement is a Section 52 Agreement under the Town and Country Planning Act 1971 and not a Section 106 Agreement as stated in the report of 23 August. Section 52 was repealed when the Town and Country Planning Act 1990 came into force, and although the section 52 agreement still binds the land no specific legislation exists to vary it. It is proposed that an appropriate way to address the situation is to enter into a new section 106 agreement on the same terms as the section 52 agreement but with the clause restricting the sale of the land removed. The section 52 agreement could then be discharged. Members of this Planning Committee are therefore asked to approve this approach.

REASON FOR URGENCY: The section 52 agreement as currently worded restricts the lease/sale of the land and restricts the land to be used as recreational land in conjunction with the public house.

1.0 **PURPOSE OF REPORT**

To seek Planning Committee's authority for a variation to Section 106 Agreement in association with the following permission:

- BC22309P Land c/o Blue House Farm Entrance, Aldridge Road, Streetly.

- 1.1 The Agreement ensures that the land associated with the public house, to the south of the site is not sold or leased and shall remain as recreational land associated with the public house.
- 1.2 The request is made by Marston's Inns and Taverns to seek removal of the clause tying the land to the public house, in order to allow the land to be sold to Sutton Coldfield West 3rd Streetly Scouts Group.
- 1.3 The proposed variation will allow the regeneration of the derelict tennis courts. The land would be utilised by Sutton Coldfield West 3rd Streetly Scouts Group to provide recreational facilities including two outdoor sports pitches including a cricket / soccer pitch and a basketball pitch.

2.0 **RECOMMENDATIONS**

That the request for the *S106 Agreement* to *replace* the *S52 Agreement* and *remove the clause* tying the tennis courts to the public house is granted to allow the land to be sold to Sutton Coldfield West 3rd Streetly Scouts Group, so that it can be developed for the scout hut and two outdoor sports pitches.

3.0 **FINANCIAL IMPLICATIONS**

Agreeing the request would have no financial implications for the Council.

4.0 **POLICY IMPLICATIONS**

Planning Obligations are primarily negotiated as part of the determination of planning applications in accordance with the National Planning Policy Framework 2012 (NPPF), Community Infrastructure Levy Regulations 2010 (Regulation 122), Policy GP3 of the Unitary Development Plan, Policy DEL1 of the Black Country Core Strategy and adopted Supplementary Planning Documents.

On **planning obligations** the NPPF says:

Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

The NPPF also says that costs imposed on developments should pay careful attention to viability and take account of market conditions.

5.0 **LEGAL IMPLICATIONS**

A Deed of Variation to the existing S106 Agreement would need to be prepared to remove the restrictive clause.

6.0 **EQUAL OPPORTUNITY IMPLICATIONS**

No significant implications.

7.0 **ENVIRONMENTAL IMPACT**

The environmental impact of new development at this site was originally considered in the determination of planning permission 12/0145/OL. The land to the south of the Farmer John's Public House, has previously been used as tennis courts. The tennis courts have not been used for a number of years and are currently in a derelict state. Sutton Coldfield West 3rd Streetly Scouts Group want to purchase the land to regenerate the site to provide a scout hut and two sports pitches for the children of the Hundred Acres Estate opposite. The proposed use would make better use of the currently derelict land.

8.0 **WARD(S) AFFECTED**

Streetly

9.0 **CONSULTEES**

9.1 None

10.0 **CONTACT OFFICER**

Devinder Matharu

Principal Planning Officer 01922 652487

- 11.0 **BACKGROUND PAPERS**
Planning Application BC22309P
Planning Application 12/0145/OL

David Elsworthy
Head of Planning and Building Control.

Planning Committee
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12.0 BACKGROUND AND REPORT DETAIL

- 12.1 Outline planning permission 12/0145/OL was granted by Planning Committee on 24th April 2012 for a new single storey scout hut with two outdoor playing pitches, associated car parking and circulation with new vehicle access to Aldridge Road.
- 12.2 The application was granted on the basis that the tennis courts are currently unused and remain in a derelict state. Sport England had no objection to the proposal as the applicant had demonstrated that there were other tennis facilities in the wider Walsall area. Furthermore, the proposal would aim to regenerate the site and provide two outdoor sports pitches which would be utilised by young people who reside in the Hundred Acres Estate opposite. The provision of the new sports facility was considered to represent very special circumstances.
- 12.3 The proposal was considered to meet a local need for the residents of the Hundred Acres Estate opposite and removal of the restrictive clause in the Section 52 Agreement tying the tennis courts to the public house, would enable the land to be sold and subsequently lead to regeneration of the derelict tennis courts (subject to future reserved matters approval).