



# Walsall Council

## DEVELOPMENT CONTROL COMMITTEE

Date : 6<sup>th</sup> January, 2009

### Report Of Head Of Planning And Building Control

#### Variation to financial contributions on application 07/0084/FL/W7 – Residential Development, Willenhall Tube and Forging, Bentley Lane, Walsall

##### 1.0 **PURPOSE OF REPORT**

To agree a variation to the Section 106 Agreement relating to application 07/0084/FL/W7, approved 18<sup>th</sup> April, 2007, changing the date when payment of the financial contributions for open space and education are made.

##### 2.0 **RECOMMENDATIONS**

That the Assistant Director - Legal and Constitutional Services in consultation with the Head of Planning and Building Control, be authorised to amend the Section 106, to defer payments of the contributions to before the first occupation of the last dwelling on the site

##### 3.0 **FINANCIAL IMPLICATIONS**

The developer will meet all the council's reasonable legal costs to enable a Deed of Variation to the Section 106 agreement.

##### 4.0 **POLICY IMPLICATIONS**

The open space and education contributions from the developer were secured in line with UDP Policy H4 and the current Supplementary Planning Documents for open space and education.

##### 5.0 **LEGAL IMPLICATIONS**

This report requires the council's Legal Services and the developer's solicitors to produce and agree a Deed of Variation on the Section 106.

##### 6.0 **EQUAL OPPORTUNITY IMPLICATIONS**

The financial contributions will be used in the surrounding wider area to increase open space facilities and improve educational opportunities within both primary and secondary sectors.

7.0 **ENVIRONMENTAL IMPACT**

None

8.0 **WARD(S) AFFECTED**

Birchills Leamore

9.0 **CONSULTEES**

Greenspaces

Walsall Children's Services (Serco)

10.0 **CONTACT OFFICER**

Andrew Thompson

Principal Planning Officer

01922 652403

11.0 **BACKGROUND PAPERS**

Walsall Unitary Development Plan 2005

Supplementary Planning Document for Open Space - April 2006

Supplementary Planning Document for Education - February 2007

David Elsworthy

Head of Planning and Building Control

## Development Control Committee - 6<sup>th</sup> January, 2009

### 12.0 BACKGROUND AND REPORT DETAIL

- 12.1 Planning permission was given in April 2007 (07/0084/FL/W7) for residential development (44 dwellings) of the former Willenhall Tube and Forging site on Bentley Lane, Walsall (location plan attached). Work is well underway. In the committee report (3<sup>rd</sup> April 2007) Section 106 Agreement contributions for education, open space and affordable housing were identified. This report only concerns the open space and education financial contributions component of the section 106 agreement that was subsequently signed.
- 12.2 The Section 106 Agreement requires the developer to contribute £103,244.20 toward education and £102,346.00 toward open space, payable on or before the occupation of the 22<sup>nd</sup> dwelling.
- 12.3 Due to the downturn in the housing market and current economic climate, the developers are requesting that the requirement to pay the full amount on or before the occupation of the 22<sup>nd</sup> dwelling be removed and replaced with a requirement to pay the full amount before the first occupation of the last dwelling on site. The developer argues that cash flow is critical in order to ensure that the business survives and it is for this reason particularly that the deferral is being requested.
- 12.4 The request is therefore to defer the payment only, not to reduce the payments.

Greenspace Services have highlighted that the implications of the payment proposal would result in delays in delivering improvements to Walsall's parks and green spaces and possibly one of the Council's premier sites. However, they are willing to agree to the deferral request, in recognition of the difficult trading conditions currently faced by developers. A staged payment plan would not be beneficial as it is unlikely to allow for the comprehensive delivery of improvements that is sought.

Walsall Children's Services (Serco) – have expressed concern that the developer may not be able to pay at a later date especially if property prices continue to fall. However, non-payment after the agreed trigger date would constitute a breach of contract (that is, of the S106 agreement) and the Council could enforce this through the courts if need be.

In general, officers seek payments on commencement so that a start can be made on spending the contribution as soon as possible. In this case, the existing agreement allows payment on or before the occupation of the 22<sup>nd</sup> dwelling. If the current slowdown in the housing market persists then there may be a delay in this trigger being reached.

On balance, and in view of the challenges of the current economic climate, Officers have concluded that to refuse the request to defer payment could compromise the delivery of the development. Therefore it is recommended that the request for variation be allowed.

- 12.5 This report requests authority for a variation to the Section 106 agreement to allow for the deferral of payment of financial contributions to be paid in full before the first occupation of the last unoccupied dwelling on site, in line with the developer's proposal.