



## PLANNING COMMITTEE

29<sup>th</sup> March 2012

Report of Head of Planning and Building Control- Regeneration  
Deed of Variation to S106 Agreement for Bovis Development on site of former  
St.Margaret's Hospital  
Application No 02/2417/OL/E2

### 1.0 **PURPOSE OF REPORT**

To seek Committee authority for a variation of a Section 299A Agreement (equivalent to a Section 106 Agreement) associated with outline permission 02/2417/OL/E2, by releasing the developer from obligations in Clause 10 of the Agreement relating to provision of a building on site to be used for Community facilities (Class D1 use). Instead the developer is offering to make a contribution of £100,000 towards off site improvements to neighbouring community centres.

### 2.0 **RECOMMENDATIONS**

That the request for a Deed of Variation to the S299A Agreement to release the developer from the obligations relating to provision of a community facility on site in lieu of a contribution towards improvements to an existing community facility in the neighbourhood is granted subject to negotiation with the developers for agreement of an appropriate compensatory sum.

### 3.0 **FINANCIAL IMPLICATIONS**

Agreeing the request would give the Council additional funding to improve existing community facilities in the locality.

### 4.0 **POLICY IMPLICATIONS**

Policy DEL1 of the Black Country Core Strategy and Policy GP3 of Walsall Unitary Development Plan states that Planning Obligations will be used, as appropriate, to secure the provision of any on or off-site infrastructure, facilities, services or mitigating measures made necessary by a development. Policy 8.7 encourages enhancement of existing or provision of new facilities for education, health or other community needs. Policy 8.8 states that where residential development necessitates the provision of new or improved social or community infrastructure developers will be required to make financial contributions towards the cost of providing these.

### 5.0 **LEGAL IMPLICATIONS**

No significant implications.

### 6.0 **EQUAL OPPORTUNITY IMPLICATIONS**

Agreeing the request would allow for a contribution to improvements of an existing community facility in the vicinity which would offer wider community benefits.

7.0 **ENVIRONMENTAL IMPACT**

The environmental impact of the development has already been considered in determining outline planning permission 02/2417/OL/E2.

8.0 **WARD(S) AFFECTED**

Pheasey Park Farm.

9.0 **CONSULTEES**

9.1 Asset Management - The developer's offer may not be equivalent to the cost of a new community facility of 2000 square feet. In the absence of any specification it may be nearer £200,000.

9.2 Area partnerships – Have not been involved to date in the developer's proposal but would wish to engage in the future should the opportunity arise to utilise the Area Partnership.

9.3 Leisure & Community Health - the contribution offered in lieu of on-site provision could be redirected to the future replacement, improvement and development of the Borough's leisure centres. In line with the developed Leisure Centres' Strategy and the Council's stated purpose to "maintain and improve the health and well-being of all our residents", facilities could be introduced that can be used by NHS and Public Health and this would meet the agreed clause within the agreement. Any contribution would also assist in attracting additional external funding towards any such scheme.

10.0 **CONTACT OFFICER**

Alison Ives  
Principal Planning Officer 01922 652492

11.0 **BACKGROUND PAPERS**

Outline Planning Application 02/2417/OL/E2.

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 02/2417/OL/E2 for erection of up to a maximum of 445 dwellings on the site of the former St Margaret's Hospital was granted on appeal in 2004. The permission was granted subject to a Section 229A Agreement (equivalent to a Section 106 Agreement) to secure provision of Education, Transport Contributions and Facilities, Highway Works, Affordable Housing, Primary Care and Community Facilities, Landscaped Areas and Public Open Space and works of restoration to the Lodge. Variations to the legal agreement have subsequently been approved in relation to provision of affordable housing including tenure and amount which has been reduced to 18% in total throughout the site.
- 12.2 Clause 10 of the agreement requires that *"prior to the occupation of 350 dwellings on the site pursuant to the planning permission the owner will make available within the site premises of not less than 2000 square feet which will be suitable for use (but not fitted out) for any purpose within class D1 of the Town and Country Planning (Use Classes) Order 1987"*. The clause goes on to explain other terms which apply to deliver this provision. As at March 2012 there were 289 properties built on the site so the trigger for providing the community centre has not yet been reached.
- 12.3 The developers, Bovis Homes request to be released from this clause on the original obligation that requires them to build a community facility on site and are instead offering a contribution of £100,000 towards improvements to neighbouring community centre provision in the vicinity.
- 12.4 The Area Partnership and Head of Leisure and Community Health would welcome the opportunity to be involved in the negotiations to redirect any contribution towards provision of improvements to existing facilities.
- 12.5 Asset Management considers the £100,000 contribution offered may not be equivalent to the cost of the required provision of a 2000 square feet community building. In the circumstances it is recommended that the developers are invited to reconsider their offer to one that is of equivalent value. Any contribution will benefit existing community centres in the vicinity that residents of Nether Hall Park (the Bovis site) will also benefit from. On balance it is recommended that, subject to a revised contribution, the proposal for a Deed of Variation to cover this amendment is acceptable.