

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 6</b>
<b>DATE OF MEETING:</b>	<b>4<sup>th</sup> JUNE 2019</b>	<b>CATEGORY: Delegated</b>
<b>REPORT FROM:</b>	<b>STRATEGIC DIRECTOR (SERVICE DELIVERY)</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>Chris Nash 01283 595926</b> <b>(<a href="mailto:Chris.Nash@southderbyshire.gov.uk">Chris.Nash@southderbyshire.gov.uk</a>)</b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>AMENDMENT TO SECTION 106 AGREEMENT RELATING TO LAND AT MAIN STREET AND COTON LANE, ROSLISTON</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>LINTON</b>	<b>TERMS OF REFERENCE: DC01</b>

---

## **1.0 Recommendations**

- 1.1 The Committee endorses the proposal to not enforce the planning obligation requiring the payment of a River Mease contribution presently incorporated into the legal agreement under section 106 of the 1990 Act relating to the development of 24 dwellings on land at Main Street and Coton Lane, Rosliston.

## **2.0 Purpose of Report**

- 2.1 The developer of the site has approached the Council seeking that they be discharged from their planning obligation requiring the payment of a River Mease contribution. This approach has been made under Section 106A(1) of the 1990 Act, it being a request to vary the obligation by mutual agreement instead of a formal application under Section 106A(2). This report considers the reasons for the approach and why recommendation above is proposed.

## **3.0 Detail**

- 3.1 Members will recall that the site was granted permission for the construction of 24 dwellings in March 2016 (ref. 9/2015/0723). A variation to that permission was granted in April 2017 (ref. 9/2017/0128) shortly before the reserved matters for the site was also approved. The site lies within the settlement confines for Rosliston as a consequence of the adoption of the Local Plan Part 2 in November 2017.
- 3.2 The associated legal agreement secured financial contributions towards education, healthcare, built facilities and outdoor sports facilities. It also required, amongst other things, the payment of a sum in accordance with the River Mease Developer Contribution Strategy (DCS) to be used towards improving water quality in the River Mease Special Area of Conservation (SAC).
- 3.3 At the time of the application, it was considered that the foul and/or surface water network would discharge within the River Mease catchment. It has since been established that this would not be the case, with the flows travelling out of catchment to Coton.

- 3.4 Planning obligations may only be secured if they meet the tests that they are *“necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind”*. These tests are set out as statutory tests in the Community Infrastructure Levy Regulations 2010 and as policy tests in the National Planning Policy Framework.
- 3.5 The contribution under the River Mease DCS was considered to meet these tests at the time the obligation was secured. However, in light of the findings at 3.3 above it can no longer be argued that the contribution is necessary to make the development acceptable in planning terms. There would be no direct impact either from this development upon the River Mease SAC. Invariably, the obligation therefore serves no useful purpose in planning terms.
- 3.6 Normally, such the approach made by the developer would be resolved by way of a ‘deed of variation’ to the existing legal agreement. However, the agreement was drafted by the applicant’s solicitor at the time and did not follow the standard template adopted by the Council. It is common place for a clause to be inserted into such legal agreements which would ensure that individual property owners did not become liable for the obligations in the event the developer did not fulfil them before transfer of the property/ies. In this instance, this clause is not present in the agreement.
- 3.7 As the site is now occupied, it would be necessary to involve all current property owners in the deed of variation. This would not only be an onerous task, but it attracts the very real risk that individual properties would not ‘sign up’ to this deed of variation, leaving some technically for the obligation and others not. Given the purpose of the obligation, it is also not considered to be prudent use of resources.
- 3.8 It is therefore suggested by both the Council’s and developer’s solicitors that a letter be produced to ‘waive’ the obligation. The status of this would not override that of the legal agreement, but it would provide some comfort to the developer in that the Council would not choose to pursue the breach (non-payment) of the obligation.

#### **4.0 Financial Implications**

- 4.1 The recommendation would obviate the need for an otherwise costly legal process for the Council, developer and individual property owners. Such a process would also have no real benefit given the ‘standing down’ of the obligation to which it relates.

#### **5.0 Employee Implications**

- 6.1 None.

#### **6.0 Corporate Implications**

- 7.1 The contribution towards improving water quality in the River Mease SAC would not be collected, such that improvements could not be made as a result of this sum. However, the impact on the environment would not arise as a consequence of the findings in respect of the way in which the site is actually drained.

#### **8.0 Community Impact**

8.1 **Consultation:** not required under the provisions of section 106A(1).

8.2 **Equality and Diversity Impact:** none.

8.3 **Social Value Impact:** there would be a saving to both the Council and individuals in obviating the need for legal fees in preparing a deed of variation.

8.4 **Environmental Sustainability:** the impact of the development would remain unchanged and thus the proposal will contribute toward the achievement of environmental objectives.

## **9.0 Conclusions**

9.1 The recommendation arises as the result of a 'precautionary approach' at the time of the original application having now been found to be unnecessary. The proposed outcome would achieve an acceptable solution for all concerned and minimize the impact on resources without compromising the protection of the environment.