

5e 3/11/2137/SV – Modification of Section 106 agreement in respect of the commercial buildings approved under ref: 3/04/0657/OP by the variation of a £125,000 Highways Contribution at 95-97 London Road, Bishop’s Stortford, CM23 3DU for Tanners Wharf Ltd

Date of Receipt: 20.12.2011

Type: Variation of Section 106 – Major

Parish: BISHOP’S STORTFORD

Ward: BISHOP’S STORTFORD – CENTRAL, SOUTH AND ALL SAINTS

RECOMMENDATION:

That Members confirm that, if they were able to determine the application, they would agree to a variation of the Section 106 agreement as follows:

1. An amended highways contribution of £80,000 towards works contained within the Bishop’s Stortford Transportation Plan (reduced from £125,000 in original agreement) to be paid to the County Council as follows:
 - £10,000 per each floor of the building (four floors) payable prior to occupation of each floor (indexed from date of agreement); and
 - £40,000 paid upon transfer of the freehold provided such transfer occurs within 5 years of completion of the agreement.

1.0 Update on application:

- 1.1 Members may recall that the above planning application was originally reported to the Committee on the 15 August 2012. The application sought consent for the modification of the Section 106 agreement, involving the removal of the financial contribution of £125,000 towards works contained in the Bishop’s Stortford Transportation Plan. A copy of that original report is attached as **Essential Reference Paper ‘A’** to this report.
- 1.2 Members resolved to defer the application at the 15 August 2012 meeting to allow Officers to negotiate with the applicant in respect of a phased payment of the contribution, rather than complete removal of the contribution. However, the applicant chose instead to appeal to the Planning Inspectorate against non-determination of the application and that appeal is currently before the Inspectorate awaiting a decision under the written representation procedure.
- 1.3 Members may also recall that, as a result of the appeal being lodged, a

further report was presented to the Committee on 12 September 2012 asking Members to confirm that, had they been able to make a decision on the application, they would have agreed to the removal of the highways contribution. A copy of that report is also attached as **Essential Reference Paper 'B'**.

- 1.4 At the 12 September 2012 Committee meeting, however, Members confirmed that, if they had been able to determine the application, they would have refused to agree to a variation of the Section 106 agreement to remove the financial contribution for the following reason:
1. The financial contribution towards sustainable transport measures is required to properly mitigate the impact of the additional traffic and activity generated by the development and to encourage the use of sustainable transport modes. The proposal would thereby be contrary to policy IMP1 of the East Herts Local Plan Second Review April 2007 and the aims and objectives of the NPPF.
- 1.4 The Council's case at the current appeal is therefore based on that resolution and, as mentioned above, a decision on the appeal is awaited. It should also be noted that the appellants have submitted an application for an award of costs against the Council on the basis that it has no objective evidence upon which to base its disagreement with the appellants' financial appraisals and the subsequent independent assessment thereof by DVS.
- 1.5 However, Officers have recently been advised by the County Council that it has agreed, in principle, to accept an offer put forward by the applicant whereby the planning obligation for the Highways Contribution be modified as follows:
- £10,000 per each floor of the building (four floors) payable prior to occupation of each floor (indexed from date of agreement); and
 - £40,000 paid upon transfer of the freehold provided such transfer occurs within 5 years of completion of the agreement.
- 1.6 Given that this Council cannot now make a decision on the application, as it is subject to an appeal, Officers seek the Committee's views on the likely decision of the Committee if it had been able to determine the application in this amended form. If Members do confirm their agreement to this revised contribution of £80,000 Officers will advise the applicants and the Planning Inspectorate accordingly and request that the current appeal and associated costs application is withdrawn by the applicant.

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- 1.7 Members are referred to the previous Committee reports attached in respect of the planning considerations relating to this application and, in particular, members' attention is drawn to paragraphs 7.7 to 7.10 of the 15 August 2012 report (**Essential Reference Paper 'A'**) which relates to the professional advice that has been received regarding the viability of the scheme and its ability to provide this financial contribution.
- 1.8 Officers remain of the view that, given this advice, it is unlikely that the Council's current position will be supported at appeal and the amended contribution is considered to provide an acceptable compromise, enabling an appropriate contribution towards highways works to mitigate the impact of the development on the surrounding highway network.
- 1.9 Given the above, it is recommended that Members confirm that, were they able to determine the application, they would agree to a variation of the highways contribution as set out at the head of this report.