

## DEVELOPMENT MANAGEMENT COMMITTEE – 14 SEPTEMBER 2016

<b>Application Number</b>	3/14/0209/FO
<b>Proposal</b>	Variation of Section 106 Obligation
<b>Location</b>	Asda, Watton Road, Ware
<b>Applicant</b>	Asda
<b>Parish</b>	Ware
<b>Ward</b>	Ware St Marys

<b>Date of Registration of Application</b>	Not applicable
<b>Target Determination Date</b>	14 September 2016
<b>Reason for Committee Report</b>	Section 106 Deed of Variation
<b>Case Officer</b>	Tim Hagyard

### **RECOMMENDATION:**

That the proposed variation of the Section 106 agreement be agreed.

#### **1.0 Summary**

- 1.1 A range of Section 106 Obligations were agreed as part of the planning permission for the recently built Asda store in Ware. These provided mitigation for various impacts, including the retail impact on the existing town centre and also provisions to enhance pedestrian links between the store and the town centre.
- 1.2 A specific provision of the legal agreement was a contribution of £80,000 to enhance the architectural lighting of buildings within Baldock Street. At detailed investigation, however, it became apparent that this provision, via a formal Architectural Lighting Strategy, would be cumbersome and inflexible.
- 1.3 Officers consider that it would provide better value and be more beneficial for the funds to be spent not only on enhanced lighting within the street but also on building enhancements within Baldock Street, together with other enhancements of the route between the store and the town centre. The variation of the legal agreement is supported by the Conservation Officer; does not compromise any third party interests, and would be compliant with the tests for Section 106 obligations.

## **2.0 Site Description**

- 2.1 The Asda Store development has provided a major new addition to the retail offer in Ware. It lies between Park Road and Watton Road just outside the historic town centre and is primarily linked to the town centre by Baldock Street, but also via Buryfields and Priory Street. An enhanced route for pedestrians and cyclists across Buryfields is part of the planning conditions to the development and this work is now being overseen by County Highways who have acted to ensure other highways matters are fully implemented.
- 2.2 Baldock Street is a secondary shopping street containing many listed buildings within Ware Town centre. The Asda store is on Watton Road over 250m from the end of Baldock Street.

## **3.0 Background to Proposal**

- 3.1 The Asda store was opened in May 2015. It was first approved by the Council in July 2011 (3/10/0386/FP) and a variation of the permission was approved last year (3/14/0209/FO). One of the main planning issues at the time of the application related to its siting beyond an “edge of town centre” location, and the need to enhance linkages between the store and the town centre, including the route along Baldock Street.
- 3.2 As part of provisions for this route, the Section 106 agreement included a contribution of £40,000 for enhancement works to listed buildings within Baldock Street, and there has been a steady uptake in these funds by property owners securing valuable repairs and improvements within the street. The funds for an Architectural Lighting Strategy were more substantial, at £80,000, and were seen as a positive measure to enhance the same route.

## **4.0 Key Policy Issues**

- 4.1 These relate to the relevant policies in the National Planning Policy Framework (NPPF) and the adopted East Herts Local Plan 2007:

<b>Key Issue</b>	<b>NPPF</b>	<b>Local Plan policy</b>
Retail impacts on existing Town Centres	Section 2	STC1 and STC6
Section 106 Obligations	Para 203 - 204	IMP1

## **5.0 Emerging District Plan**

5.1 In relation to the key issues identified above, the policies contained in the emerging District Plan do not differ significantly from those contained in the adopted Local Plan and the NPPF as identified above. Given its stage in preparation, little weight can currently be accorded to the emerging Plan.

## **6.0 Summary of Consultee Responses**

6.1 The change proposed to the legal agreement is of a specific and technical nature and intended to bring more value and flexibility in the application of the approved Section 106 funds. The original obligation was approved by Planning and Conservation Officers at the time but was not a specific request of any consultees. The Conservation Officer now supports the variation proposed.

6.2 Due to the minor nature of the variation proposed, which enhances the flexibility in the use of Section 106 funds, the Deed of Variation is not subject of a formal application or wider consultation. It has been agreed in principle with the applicant and Herts County Council but also requires Members approval.

## **7.0 Ware Town Council Representations**

7.1 Ware Town Council has informally asked if some of the funds could be diverted towards the Tudor Square enhancement works. However, the applicant felt the funds should remain related to the town centre linkage as per the original Section 106 agreement and planning permission to be CIL compliant.

## **8.0 Summary of Other Representations**

8.1 Not applicable

## **9.0 Planning History**

9.1 The following planning history is of relevance to this proposal:

Ref	Proposal	Decision	Date
3/10/0386/FP	Redevelopment for new Asda foodstore (2601 sq.m net), 13 dwellings, retention of children's nursery, Kiln and Maltings	Granted with Section 106	11 July 2011

	access and parking.		
3/14/0209/FO	Variation of condition 19 (retail sales area ) of LPA approval ref 3/10/0386/FP to allow up to 36% non - food (previously 30%) and variation of condition 43	Granted with Section 106	5 Jan 2015

## 10.0 **Consideration of Relevant Issues**

- 10.1 The Section 106 agreement for the Asda store, housing and retained children's nursery, contained a range of obligations. These included provisions for affordable housing; funding of building enhancements and repairs in Baldock Street; funding of the enhancement of Tudor Square; as well as County Council funds for schools, libraries and youth services; funds for sustainable transport and funding for play space provision.
- 10.2 As the store is in an "out of centre" location, obligations were also sought to enhance the linkage of the store with the town centre. The obligation subject of the proposed variation required that the applicants develop an *Architectural Lighting Strategy*, and invited a scheme with expenditure of up to £80,000. However, when the applicant received bids for the work from specialist lighting consultants, it became apparent that managing the process of the work, including applications for listed building and other consents etc., was likely to take a large amount of time and a disproportionate amount of the available funds would be used on consultants fees with limited practical effect on the ground.
- 10.3 In the interim, one of the obligations, for grant funding repairs to building frontages within Baldock Street has proved very popular and on track to exceed the allocated £40,000. Half of the listed properties eligible in Baldock Street have joined the scheme and there are potentially a number more. Of note, repairs to principal historic buildings at No 6 and 27 Baldock Street have been funded. Diverting funds for this purpose potentially provides another more effective way of using the Section 106 funds. Other options could be to enhance street lighting with the agreement of Highways; to enhance the cycleway route to be provided across Buryfields with lighting, or otherwise to use the funds for other public realm improvements linking the town centre and store.
- 10.4 The Town Council enquired about more funds being made available for Tudor Square and Officers raised this with Asda's solicitors, but the

applicant took the view that, in order to be CIL compliant, the obligation should remain restricted to the issue of linkage between the town centre and the store.

- 10.5 The Deed of Variation would remove the reference to an Architectural Lighting Strategy in the Section 106 agreement, but funds could still potentially be used to enhance lighting of listed buildings if approaches were made by owners and the lighting designs were appropriate.
- 10.6 The NPPF sets out the tests for planning obligations and Officers are satisfied that these would continue to be met by the variation of the Section 106 wording.

## **11.0 Conclusion**

- 11.1 The proposed variation is relatively modest, supported by your Officers, including the Conservation Team, as a way of enabling the allocated funds for Baldock Street to be used more effectively and flexibly not just for enhanced lighting but also for further building repairs in Baldock Street or other provisions to enhance the pedestrian routes between the new Asda store and the town centre.
- 11.2 The variation is considered to be fully compliant with the CIL regulations relating to legal agreements and is therefore recommended to Members for approval.

## **Legal Agreement**

- A variation of the obligation dated 26 July 2011, as varied 29 December 2014, to amend the Schedule 8 provisions for an “Architectural Lighting Strategy” for Baldock Street and to allow that the funds be used for the carrying out of improvements to the fabric of buildings on Baldock Street, including repairs to the front facades and roofs of buildings or for providing other public realm enhancements along routes between the Store and Ware Town Centre.