

WYRE FOREST DISTRICT COUNCIL

PLANNING (DEVELOPMENT CONTROL) COMMITTEE
6th SEPTEMBER 2005

**Amendment to Section 106 Agreement relating to provision and maintenance of
Public Open Space and Play Area within residential development at former
Kidderminster College Site, Hoo Road, Kidderminster**

OPEN	
RESPONSIBLE OFFICER:	Head of Planning, Health & Environment
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APPENDICES:	Landscape Management Plan (Available in Group Rooms)

1. PURPOSE OF REPORT

- 1.1 To advise Members of a request for a variation to the Section 106 agreement which seeks to secure the transfer of an area of Public Open Space and a play area to the Council as part of the redevelopment of the former Kidderminster College Site on Hoo Road, Kidderminster.

2. RECOMMENDATION

- 2.1 **That Members give delegated authority to the Head of Legal and Democratic Services in consultation with the Head of Planning, Health and Environment and Head of Cultural, Leisure and Commercial Services to vary Clauses 3.7 - 3.8 of the Section 106 agreement dated 9th October 2001 relating to the transfer of the open space and play area at the former Kidderminster College site.**

3. BACKGROUND

- 3.1 Outline planning permission was granted to Prowting Homes in October 2001 for the erection of 162 dwellings on the former Kidderminster College site, subject to a Section 106 agreement (WF 1051/00). In addition to the provision of affordable housing, there was also a requirement through the Section 106 agreement to provide an area of open space and an equipped play area and then pay a financial contribution towards its future maintenance by the Council. Part of the site has been developed by Westbury Homes and they have been in lengthy discussions with Officers about potential problems with the maintenance of the criblock wall, which is adjacent to the open space and play area.
- 3.2 Clause 3.7 of the Section 106 agreement requires that prior to the occupation of the 120th dwelling, the developer must, to the reasonable satisfaction of the Head of Cultural, Leisure and Commercial Services:
- a) provide grassed and landscaped areas of public open space for use by the public in the position edged green on Drawing No 525/01C

- b) provide and equip a play area of approximately 25 metres by 16 metres (400 square metres) in the location edged orange
 - c) Following the provision of the open space and play area, to maintain them for a period of 12 months and after completion of that period transfer the open space and play area to the Council for future maintenance upon payment of a commuted sum.
- 3.3 A report was taken to the Planning (Development Control) Committee in December 2003 advising Members of the developer's request to amend the first threshold for the provision of affordable housing and to establish a Management Company to maintain the criblock wall and adjoining public open space and play area. At that meeting delegated authority was given to the Head of Planning, Health and Environment, in consultation with the Head of Legal and Democratic Services and the Head of Cultural, Leisure and Commercial Services, to agree the details of revised clauses dealing with the affordable housing and public open space. The Section 106 agreement has since been amended with respect to the affordable housing and negotiations have continued with respect to the Management Company.

4. KEY ISSUES

- 4.1 The Westburys part of the site is complete and the dwellings occupied. Due to the siting of the criblock wall adjacent to the areas of public open space and play area, there has been concern from Officers over potential liability claims against the Council in the event of failure of the criblock wall. As such Officers have been in lengthy discussions with the developer to see if they are willing to take on the responsibility of the maintenance and ownership of these areas. Officers have also been in discussions about the specification of the landscaping details to ensure that it meets the Council's standards which apply to public open space across the District. A revised Landscape Management Plan has now been received which shows an acceptable level of landscaping and details of future management. The developers have also agreed that they will be responsible for the maintenance and ownership of the land.
- 4.2 The purpose of this report is therefore to seek an amendment to the Section 106 agreement to enable the public open space and play area to be retained by the developer and that the landscaping and maintenance of these areas be carried out by a Management Company in accordance with the Landscape Management Plan received on 5th August 2005.
- 4.3 Due to the landscaping which has already taken place on site, the developers also seek to amend the siting and configuration of the play area. As the revised plans show the overall size of the play area to be unchanged, the proposed amendment is considered acceptable to Officers. Clauses within section 3.7 of the Section 106 agreement will also need amending to reflect the revised drawing numbers.

5. FINANCIAL IMPLICATIONS

- 5.1 The Council will no longer be receiving the commuted sum towards the maintenance of the public open space and play area, however with the proposed changes to the Section 106 agreement, the Management Company will be responsible for its maintenance. There will be no additional costs to the Council.

6. LEGAL AND POLICY IMPLICATIONS

- 6.1 Clause 3.9 of the Section 106 agreement is not proposed to be amended and this will ensure that the open space and play area is not used for any purpose other than as open space and a play area and that the land is not sold or disposed of.
- 6.2 As advised at the Planning (Development Control) Meeting in December 2003, the Cultural Services Manager and Parks Manager were agreeable to the principle of the public open space being privately maintained. The main issue was that they had to be satisfied that the detailed arrangements reflect the level of management and maintenance that the Council would have provided. The Landscape Management Plan submitted by the developer has been amended to ensure that the details are considered acceptable.

7. CONCLUSION

- 7.1 It is recommended that this be accepted as the best course of action for the Council. The Management Company will have more specialist resources available to enable it to monitor and address any problems that may arise with the cribblock wall whilst the Council retain some control through the Landscape Management Plan

8. CONSULTEES

Head of Legal and Democratic Services
Head of Cultural, Leisure and Commercial Services

9. BACKGROUND PAPERS

Planning (Development Control) Committee 9th December 2003 (Agenda Item 11)