

REPORT TO	ON
Planning Committee	7 February 2019



TITLE	REPORT OF
Variation of Section 106 Agreement for Outline Planning Permission 07/2014/0184/ORM Land Off Croston Road – Between Moss Lane and Rear of 394 Croston Road	Director of Planning and Property

Is this report confidential?	No
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### 1. PURPOSE OF THE REPORT

- 1.1 To seek approval from Members for the variation of a Section 106 Agreement which would result in the Council relinquishing an option to acquire land within the site in question for a leisure/community use in exchange for a financial contribution towards the provision of health and wellbeing infrastructure an alternative site.

### 2. RECOMMENDATIONS

- 2.1 That Members approve the proposed variation to the Section 106 Agreement relating to Planning Permission 07/2014/0184/ORM to secure a financial contribution in lieu of the provision of land.

### 3. CORPORATE PRIORITIES

The report relates to the following corporate priorities:

Excellence and Financial Sustainability	✓
Health and Wellbeing	✓
Place	✓

Projects relating to People in the Corporate Plan:

People	
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### 4. BACKGROUND TO THE REPORT

- 4.1 Policy C3 in the South Ribble Local Plan allocates land between Heatherleigh and Moss Lane in Farington Moss, to the west of Croston Road, for residential development with

scope for community and leisure facilities if required by the Council. Given reference 'W' attributed to the site on the Polices Map the site is commonly known as 'Site W'.

- 4.2 Following the endorsement of Masterplans in March and October 2013, and the granting of outline planning consent on the southern section of 'Site W' between Heatherleigh and Bannister Lane in April 2013, a planning application was submitted on the northern section of the site by Homes England as landowner (then the Homes and Community Agency). This application, ref. 07/2014/0184/ORM ("the application"), relates to land between the rear of 394 Croston Road and Moss Lane and sought permission for up to 400 dwellings in outline with only the matter of 'Access' applied for. This application also identified a section of the site, circa 2.47 acres, to be set aside for a potential future community/leisure facility as required by Policy C3 of the Local Plan (see Appendix 1).
- 4.3 On the 28<sup>th</sup> May 2014 the application went before the Planning Committee for determination with the Committee endorsing the Officer recommendation that *'the Members be minded to approve the application and that the decision be delegated to the Planning Manager in consultation with the Chair and Vice-Chair of the Planning Committee upon the successful completion of a Section 106 Agreement to secure on-site public open space, a financial contribution towards localised highway improvement works, community and leisure uses and details of number, type and tenure of on-site affordable housing'*. After a lengthy period of negotiating, the Section 106 Agreement was signed on the 11<sup>th</sup> March 2016 with the decision notice granting outline planning consent issued on the same day.
- 4.4 With regard to the land within the site to be set aside for a potential future community/leisure facility the Section 106 Agreement requires the following:
- i) The owner (Homes England) use reasonable endeavours to agree the precise area of land to be designated for leisure/community use with the Council before the 25<sup>th</sup> February 2019
  - ii) The owner shall make an offer in writing to the Council to enter into agreement to transfer the freehold interest in the leisure/community land to the Council by the 11<sup>th</sup> March 2019; and
  - iii) The leisure/community land to be transferred from the landowner at leisure/community use value and for that offer to be open for a period of 6 months for the Council to accept
- 4.5 Should the Council not accept the offer referred to in para. 5.4 iii) the Section 106 Agreement would have no further obligations to transfer or seek to transfer the leisure/community land to the Council or any other body or person.
- 4.6 Following the new plan the approach to health and wellbeing in the Borough is now focused on the campus model. It is therefore considered that the land at Croston Road is now not required to meet its original purpose. Given the clauses contained within the Section 106 Agreement, the landowner could offer the land to the Council, for this offer not to be taken, and then have no further obligations relating to the land. Homes England, however, have a longstanding relationship working with the Council for the delivery of strategic sites, and are a key partner in City Deal, and have therefore agreed to compensate the Council for not taking up this option to acquire the potential leisure/community land set aside within 'Site W'.
- 4.7 Resolution of potential leisure/community land set aside within 'Site W' will allow Homes England to invite tenders from house builders to develop the site (subject to Reserved Matters approval) in a more comprehensive manner without the land set aside for the leisure and community use.

## **5. PROPOSALS**

- 5.1 Given the above it is therefore proposed to vary the Section 106 Agreement associated with outline planning consent 07/2014/0184/ORM. The variation will remove the obligation for a section of the site to be set aside for a potential future community/leisure facility subject to an agreed financial sum, by way of compensation, being transferred to the Council to be spent on the provision of health and wellbeing infrastructure within the borough within an agreed timeframe.
- 5.2 In order to establish fair and representative value for the potential leisure/community land within the site the Council has sought the advice of a Registered Valuer (Sanderson Weatherall). The advice received is that the methodology for establishing the financial sum to be transferred to the Council, to be spent on 'off-site' leisure provision to compensate for the Council not activating the option to acquire the site for community/leisure uses, would be 50% of the uplift in value of the site as a result of the change from community/leisure use to a residential use. The other 50% of the uplift would be retained by Homes England to act as an incentive to pay a financial contribution to the Council rather than sticking to the terms of the obligation within the Section 106 Agreement as currently drafted.
- 5.3 On the above basis, the agreed uplift in value has been established and a 50/50 share to South Ribble Borough Council would equate to £295,000.
- 5.4 Considering the above, it is the view of Officers, and our advisors Sanderson Wetherall that this is a great deal for the Council. Members are therefore recommended to approve the variation of a Section 106 Agreement remove the obligation for a section of the site to be set aside for a potential future community/leisure facility subject to an agreed financial sum (£295,000), by way of compensation, being transferred to the Council to be spent on the provision of health and wellbeing infrastructure within the borough within an agreed timeframe.
- 5.5 A draft of the wording of the proposed varied Section 106 Agreement shall be prepared prior to the Planning Committee meeting.

## **6. CONSULTATION CARRIED OUT AND OUTCOME OF CONSULTATION**

- 6.1 None – there is no statutory requirement to undertake consultations on deed of variations to Section 106 Agreements.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 The securing of £295,000 represents good value there is no provision in the existing Section 106 to insist that Homes England does this. The £295,000 would provide an important contribution to the health and wellbeing programme identified in the corporate plan which will reduce the requirement for the Council to use its own reserves or borrow for that programme.

## **8. LEGAL IMPLICATIONS**

- 8.1 Section 106 agreements are used to ensure that developments provide for the growing needs of the population of the Borough. The original Section 106 was negotiated with Homes England to ensure the Council had an area of land to meet community and leisure needs. It is now appropriate to vary this Section 106 to ensure that the Council still gains a contribution towards health and wellbeing. Variations to section 106 agreements (to reflect changed circumstances) are not unusual. What is proposed here is within the scope of the legislation in question.

## **9. COMMENTS OF THE STATUTORY FINANCE OFFICER**

- 9.1 Health and Wellbeing is a corporate priority of the council and a Campus programme has been developed for South Ribble which considers future growth of the population, the health of the

existing population and the ageing council leisure asset stock. The financial contribution would be used as funding towards this programme.

The Council will come forward with a future report on the amounts of S106 currently held and the projects to which they are or can be assigned to. This sum will enhance the future programme of works planned to deliver Health, Leisure and Wellbeing objectives along with other community infrastructure.

**10. COMMENTS OF THE MONITORING OFFICER**

10.1 It is appropriate to proceed as suggested and there are no legal concerns (please see Legal Implications).

**11. OTHER IMPLICATIONS:**

▶ <b>HR &amp; Organisational Development</b>	None
▶ <b>ICT / Technology</b>	None
▶ <b>Property &amp; Asset Management</b>	None
▶ <b>Risk</b>	None
▶ <b>Equality &amp; Diversity</b>	None

**12. BACKGROUND DOCUMENTS (or There are no background papers to this report)**

There are no background papers to this report

**13. APPENDICES (or There are no appendices to this report)**

Appendix 1 – Site Plan taken from Design and Access Statement

Jonathan Noad  
 Director of Planning and Property

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Appendix 1

