

**PLANNING COMMITTEE: 27 November 2012**

**DIRECTORATE: Regeneration, Enterprise and Planning**

**HEAD OF PLANNING: Susan Bridge**

**REPORT TITLE: Proposed variation to S106 Legal Agreement  
06/0013/OUTWNN associated with British  
Timken Site, Duston, Northampton**

---

## **1. RECOMMENDATION**

1.1 That the Committee agree to the variation of the Section 106 agreement as set out in this report.

## **2. BACKGROUND**

2.1 David Wilson Homes and Bellway Homes are currently developing the former British Timken site. The scheme predominantly consists of phased residential development, which is now nearing its conclusion in terms of being built out. There is also a defined Employment Area located within the site, which has yet to come forward for development.

2.2 This development was approved in outline form by WNDL on 19 April 2007 (06/0013/OUTWNN) following completion of a section 106 agreement dated 19 April 2007.

2.3 Under the terms of the Section 106 Agreement (Clause 2.3 of Schedule 1) the developers (David Wilson Homes and Bellway Homes) have a legal obligation to carry out development only in accordance with the approved Reserved Matters for the Residential Land, approved Masterplan, the Residential Design Codes and approved Residential Energy and Sustainability Strategy unless otherwise agreed in writing with the Council.

2.4 The agreed Residential Energy and Sustainability Strategy (actually named Sustainability and Energy Strategy) includes a series of targets. Target 2B (within Action Area 2: Conserve and enhance the natural environment) requires at least 4no. dwellings across the site to be developed with green roofs with the intention of improving the biodiversity of the development.

### **3 CURRENT SITUATION**

- 3.1 The developers originally intended that 4no. bespoke properties with green roofs would be located upon a prominent position within Phase 3 of the development. This a position adjacent to a notable road junction was negotiated by the Local Planning Authority so as to make a strong statement that the scheme is achieving high sustainability credentials.
- 3.2 It has however become apparent to the developers that the upper-floor position and angled design of the approved roof designs would lead to difficulties in terms of implementing and subsequently maintaining the green roofs. This would lead to prohibitively high insurance quotes against the roofs, a situation which is not in the interests of creating commercially viable units for general sale and would place a considerable burden on individual homeowners. It should be noted that, in general terms, green roofs can be better suited to development when delivered at-scale, perhaps as part of commercial schemes. In this instance viability issues have emanated from liabilities being apportioned to future individual property owners.
- 3.3 Officers accept that practical difficulties that result from this obligation and, with the developer, have investigated alternative means by which biodiversity might be enhance / mitigated in lieu of the green roofs. This process has led to a joint in principle agreement between the developers and officers for the developers to make a £70,000 payment (plus reasonable legal costs) for environmental provision in the West of the Borough in exchange for the omission of the requirement to provide the green roofs. The figure is based upon a sum of £17,500 to offset each of the 4no. green roofs secured by the Sustainability and Energy Strategy and is to be split equally between the 2no. housing developers. The omission of the green roofs would not carry any associated design implications - amendments are not being proposed to the approved floor plans and elevations of the affected units.
- 3.4 Officers are content that the negotiated figure represents a fair and reasonable obligation to offset the loss of the green roofs. The money would be used in the interests of conserving and enhancing the natural environment in accordance with the requirements of the Sustainability and Energy Strategy. At this point it is anticipated that the monies would be used to support the on-going maintenance works at the Storton's Pits nature reserve located to the south of Edger Mobbs Way; this has the support of the developers.
- 3.5 It should also be noted that all other targets contained within the Sustainability and Energy Strategy shall remain unaffected, which includes a commitment to achieving the EcoHomes Very Good rating (superseded by Code Level 3 of the Code for Sustainable Homes) for new homes across the site.

### **4 PROPOSED VARIATION**

- 4.1 The Deed of Variation proposed shall focus upon Clause 2.3 of Schedule 1 (General Obligations) of the extant S106 agreement. As currently worded, this requires development to be carried out only in

accordance with the approved Sustainability and Energy Strategy. The agreement would be varied to omit the requirement for 4no. green roofs (contained within the Sustainability and Energy Strategy), to be offset by an obligation for the developers to make a payment of £70,000 for environmental provision in the West of the Borough.

## **5 CONCLUSION**

- 5.1 It is considered that the proposed contribution would reasonably offset the planned omission of green roofs, which would be unduly difficult to deliver and sustain in a residential context. Members are therefore requested to agree the variation of the S106 agreement.

## **6 LEGAL IMPLICATIONS**

- 6.1 As set out in the report.

## **7. SUMMARY AND LINKS TO CORPORATE PLAN**

- 7.1 In reaching the attached recommendations regard has been given to securing the objectives, visions and priorities outlined in the Corporate Plan together with those of associated Frameworks and Strategies.