

REPORT TO DEVELOPMENT CONTROL COMMITTEE

REPORT OF: Pat Reid Development Management Service Manager

REPORT NO: PLA 956

DATE: 16 October 2012

TITLE:	S12/1152 – Modification of planning obligation (retention of substation) in relation to Section 106 agreement dated 11 October 2005 attached to planning permission S05/0107.	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	N/A	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	N/A	
CONTACT OFFICER:	Kevin Cartwright	
INITIAL IMPACT ANALYSIS: Equality and Diversity	Carried out and Referred to in paragraph (7) below Not applicable	Full impact assessment Required: Not applicable
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	N/A	

1. RECOMMENDATIONS

That determination of the planning application be delegated to the Development Management Service Manager in consultation with the Chairman and Vice Chairman of the Development Control Committee to amend the agreement.

2. PURPOSE OF THE REPORT

To make members aware of need for a revised legal agreement to permit the retention of the substation on site.

3. DETAILS OF REPORT

On 11th October 2005 outline planning permission was granted for the residential re-development of the Bairds Malt site at Ancaster. The redevelopment of the site was the subject of a Section 106 legal agreement requiring affordable housing, education contribution and open space provision on the site.

This application seeks to vary the s106 agreement to permit the retention of the electricity substation on the open space.

The application site and surroundings

The site is the former Bairds Malt site in Ancaster and is now known as the 'Charlestown' residential development.

The open space is located at the south eastern corner of the site. The substation is sited in the north-western corner of the site opposite the rear garden of 32, Minerva Close.

Para 3.3 of the legal agreement states:

"The owner agrees with the Council not to use or permit to be used the Green Area for a purpose other than as a public open space or play area or for the provision of foul and/or surface water drainage facilities pipes and apparatus which are constructed to an adoptable standard".

This para would be amended to include the siting of the substation as per the submitted location plan.

Supporting Information

The applicants have submitted the following information in support of the proposals:

"The need for the sub station was generated by the necessity to have electric powered heating and cooking as the power supplier was unable to confirm that there was sufficient capacity, therefore a further sub station was required.

The substation was built on site in conjunction with the surrounding housing in 2006. The substation was constructed as permitted development by virtue of the General Permitted Development Order 1995 (as amended) Electricity undertakings Class G section (e) and as such no planning permission was required at the time of construction.

The application is not for planning permission, but to solely regularise the S106.

A further modification of the S106 was undertaken in 2010 in relation to providing play equipment off site rather than on site. This has been agreed and implemented".

Relevant Site History

S05/0107 – Outline planning permission was granted for residential development – 11th October 2005.

S05/1385 – Approval of reserved matters was granted for the construction of 69 dwellings

Deed of Variation in relation to the Section 106 agreement that accompanied outline planning permission S05/0107 was varied on 12th July 2011 to permit the play equipment to be sited off site on the adjacent Ancaster playing field.

Conclusion

The comments of the Community Leisure Officer state that:

“The sub-station is in breach of paragraph 3.3 of the S106 agreement. However, the size and position of the sub-station still allow the area to perform the function on an open space and local area of play”.

The substation has been in position and operational for a number of years, and clearly performs the beneficial function of serving the residential development.

It is accepted that additional works are required to bring the open space up to adoptable standards. However, there is a clear need for the substation, and it is considered that its retention on the site would not prevent the remainder of the site functioning as an open space.

As such it is recommended that the legal agreement be varied to permit the substation to remain in situ.

4. OTHER OPTIONS CONSIDERED

None

5. RESOURCE IMPLICATIONS

No significant impact on resources

6. RISK AND MITIGATION

Risk has been considered as part of this report and any specific high risks are included in the table below:

Category Risk	Action / Controls
2	Legal agreement amended to ensure that the open space is not used for any other uses.

7. ISSUES ARISING FROM IMPACT ANALYSIS

Relevant impact addressed in Section 3.

8. CRIME AND DISORDER IMPLICATIONS

It is considered that the development would not result in any significant adverse crime and disorder implications.

9. COMMENTS OF FINANCIAL SERVICES

There are no specific financial comments to make in respect of this report.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

The electricity substation site is located on an area of land which is described in the completed S106 agreement as “green land”. There is a restriction on the use of the green land that it is to be used for no other purpose other than as a public open space or play area or for the provision of foul and/or surface water drainage facilities pipes and apparatus which are constructed to an adoptable standard. The substation was constructed as permitted development and it is therefore necessary to enter into a deed of variation to exclude the substation site area from being described as part of the “green land”.

11. COMMENTS OF OTHER RELEVANT SERVICES

Community Leisure Officer

The sub-station is in breach of paragraph 3.3 of the section 106 agreement. However, the size and position of the sub-station still allow the area to perform the function on an open space and local area for play.

Therefore from a practical point of view I support the sub-station remaining in its current location.

Environment Health

There are no adverse comments to make concerning this development consequently no objection to the modification of the planning obligation attached to planning permission S05/0107.

12. APPENDICES:

Planning submission can be viewed via the following link:

<http://www.southkesteven.gov.uk/index.aspx?articleid=2230&ApplicationNumber=S12/1152>