

AGENDA ITEM NO.16

PLANNING COMMITTEE

Date **30 MAY 2012**

Title **DEED OF VARIATION IN RESPECT OF F/YR01/0245/F – ERECTION OF IMPLEMENT STORE, WORKSHOP AND CHEMICAL STORE TOGETHER WITH FORMATION OF HARD SURFACED COMPOUND FOR OPEN STORAGE OF AGRICULTURAL PLANT AND EQUIPMENT – LAND NORTH OF A BARTLETT AND SONS, HUNTINGDON ROAD, CHATTERIS**

1. PURPOSE

The purpose of this report is to request authority from Members to progress a deed of variation in respect of the Section 106 Agreement which forms part of Planning Permission F/YR01/0245/F.

2. SUMMARY

Authority is sought to progress a deed of variation to the original S106 Agreement attached to planning permission F/YR01/0245/F which will have the effect of discharging the highways requirements under the original obligation; whilst safeguarding against the development being continued at some stage without the original restrictions imposed being complied with.

3. RECOMMENDATION

It is, therefore, recommended that members give authority to Officers to progress the Deed of Variation to the Section 106 Agreement

Forward Plan Reference No. (if applicable)	Not applicable
Portfolio Holder(s)	Not applicable
Report Originator	Alison Callaby, Planning Performance Manager
Contact Officer(s)	Alison Callaby, Planning Performance Manager
Background Paper(s)	F/YR01/0245/F

1. BACKGROUND

- 1.1 On 4 August 2003 Alan Bartlett & Sons entered into a Section 106 Agreement with both the County Council and Fenland District Council, pursuant to Planning Permission F/YR01/0245/F, in respect of the relocation of their existing repair shops and store on premises in London Road, Chatteris to a proposed new store and workshop premises on land situated in First Furlong Drove to the North of the A141 Huntingdon Road, opposite the Company's main Chatteris site. Linked with this permission was the agreement to carry out certain highway works at the junction of First Furlong Drove with the A141.
- 1.2 An approach has been made to the Local Planning Authority by the applicants representative as they required confirmation that all the relevant provisions under the initial Section 106 Agreement have either been complied with or are no longer applicable and that there is no subsisting liability by the Company under the Agreement terms.

In essence, the Agreement called for three items of work namely:-

1. Access upgrading
2. Anti skid surfacing
3. Plant crossing signs.

- 1.3 It was identified in the initial communication that, subsequent to the permission, the company's security requirements changed. As such although they vacated their London Road repair shops pursuant to the Agreement, they chose to relocate their repair and storage services within the curtilage of their main site on the south side of the A141. Although it was acknowledged that the anti skid surface had been installed, they asserted that implementation of the permission to change the use of the land, the subject of the Agreement to the north of the A141, had not occurred and that the site, the subject of the consent, had continued to remain in arable land use.
- 1.4 The point which has now arisen is that because the agreement had been implemented in part, e.g. by vacating the London Road site and by laying the anti-skid surfacing, the terms of the Agreement can still be regarded as being live so far as liability to the company is concerned. However, since the site was never used for its permitted use, but remained in arable farm use, there would appear to the applicants to be no requirement for items 1 & 3 of the above works to be undertaken. Accordingly it was requested that the Agreement be signed off.
- 1.5 This matter was discussed by Legal, Planning and Transport Officers from both Authorities with particular regard given to the application file, which suggested that implementation of the consent may have occurred. In light of this potential implementation it was agreed that to simply waive the highways works requirements would risk the development being continued at some stage without the restriction imposed.
- 1.6 In order to safeguard the position of all parties it was proposed that a Deed of Variation to the S106 Agreement between the Applicant/Landowner, District and County Councils under which the Applicant/Landowner covenanted not to further implement the consent and not to seek compensation from the District Council in the event they took steps to revoke the permission.

- 1.7 Such action would enable the County Council to discharge the highways requirements under the original obligation and refund the outstanding balance of the security deposit paid in respect of the Highway Works less the costs incurred by both the District and County Council in dealing with this matter.

2. ASSESSMENT

- 2.1 As noted above the original file indicates some uncertainty with regard to whether the initial permission remains extant, as such it is necessary to protect the position of both Councils and ensure that the works do not proceed without the highway enhancements indicated as forming part of the approval.
- 2.2 The Applicants agents have indicated that they are in agreement to entering into such a Deed of Variation and to meet all related costs in the preparation of this Deed.
- 2.3 Authority is, therefore, sought to proceed on the above basis.