

AGENDA ITEM NO. 18	
PLANNING COMMITTEE	
DATE	5 February 2014
TITLE	F/YR13/0911/PLANO- 85 South Brink and Wisbech Stadium, Cromwell Road, Wisbech - Modification of Planning Obligation attached to planning permission F/YR11/0184/F

1. PURPOSE/SUMMARY

The purpose of this report is to consider the applicant’s request for a deed of variation to the existing Section 106 Agreement attached to planning permission reference F/YR11/0184/F

2. KEY ISSUES

To consider any risks to the Authority arising from the request

RECOMMENDATION

It is recommended that the Deed of Variation be accepted namely:

i) The removal item 2 of the twelfth schedule of the agreement which makes reference to the timing linkages between the retail foodstore and cinema opening

Wards Affected	Medworth Wisbech South
Forward Plan Reference No. (if applicable)	
Portfolio Holder(s)	
Report Originator	Alison Callaby, Planning Performance Manager
Contact Officer(s)	Alison Callaby, Planning Performance Manager
Background Paper(s)	Planning Files

This proposal is before the Planning Committee due to the Original Section 106 Agreement being agreed at Planning Committee previously

This is a request for a Deed of Variation

1. DESCRIPTION

The applicant has formally requested that a Deed of Variation be completed with regard to the following matter arising from the original Section 106 Agreement dated 10th August 2011

Taken from the twelfth schedule, point 2

The foodstore forming part of the development shall not be opened nor trading commenced therefrom until the cinema to be constructed pursuant to the development has been constructed and is operational.

It is requested that this element be deleted as the nature of the development requires the foodstore to be open in advance of the cinema.

2. HISTORY

Of relevance to this proposal is:

F/YR13/0464/F

Variation of condition 1 of planning permission F/YR13/0224/NONMAT (Non-material amendment: imposition of a condition listing approved plans relating to planning permission F/YR11/0184/F (Erection of a food store (A1), 8no screen cinema (D2), 3no restaurant units (A3), petrol filling station and car wash with ancillary car parking, access, servicing and landscaping and associated works) in relation to minor material amendments as per stated in agents letter of the 2 July 2013

Pending Issue (attached S106) Minor Material amendments agreed as acceptable (delegated)

F/YR13/3042/CON

Details reserved by conditions 2, 4, 5, 9, 11, 12 and 17 of planning permission F/YR11/0184/F (Erection of a food store (A1), 8no screen cinema (D2), 3no restaurant units (A3), petrol filling station and car wash with ancillary car parking, access, servicing and landscaping and associated works)

Conditions discharged 6th January 2014 (Delegated)

F/YR13/0224/NONMAT Non-material amendment: imposition of a condition listing approved plans relating to planning permission F/YR11/0184/F (Erection of a food store (A1), 8no screen cinema (D2), 3no restaurant units (A3), petrol filling station and car wash with ancillary car parking, access, servicing and landscaping and associated works)

Approved 29th April 2013 (Delegated)

F/YR11/0184/F - Erection of a food store (A1), 8no screen cinema (D2), 3no restaurant units (A3), petrol filling station and car wash with ancillary car parking, access, servicing and landscaping and associated works

Granted 10th August 2011(Committee)

3. CURRENT SITUATION

Development on the wider site is substantially complete in terms of the main structures, although the car park works and fitting out are still to take place. It was also noted during a site meeting on the 18th January 2014 that the cinema and restaurant shell are complete and that the Cinema Operator has taken possession of the keys to the premises to enable them to commence their specialist fitting out of the premises. It was apparent from an internal visual inspection that the timber formers which will support the tiered seating had been installed in two of the auditoriums and that some work had commenced in respect of the overhead gantries, projector openings were also evident.

The motivation behind the application is clearly expressed in the letter which accompanies the submission. This outlines that the requirement for rephrasing of the scheme reflects the significant pressure (including legal obligations) which Tesco is under to open its new foodstore as quickly as possible, compared to longer timescales to which the committed cinema operator is working to.

In summary:

- the store needs to commence trading before the end of its financial year, (28th February 2014) to enable them to recover its significant financial investment.
- Practical completion is linked to the third party retailers contracts who are committed to taking units; failure to achieve practical completion would result in retailers being able to walk away without penalty..
- The Light Cinema's(TLC) fit out times are (circa 20 weeks) compared to the much shorter Tesco fit out due to the complex internal requirements – sound attenuation, quality of fit out and multi-level configuration

- TLC's opening also needs to coincide with a peak holiday season, which in turn corresponds with the release dates for major blockbuster movies. As such they wish to open just prior to Easter 2014
- TLC also consider that their trade would be detrimentally affected should they open before the foodstore given the unusual shopping patterns associated with the first few weeks of trading, especially given the shared servicing arrangements on the site.

The letter also highlights that the phasing request is neither a reflection on viability, nor the commitment of the parties, but simply a practical request to meet the separate requirements of the foodstore and cinema operators.

4. ASSESSMENT

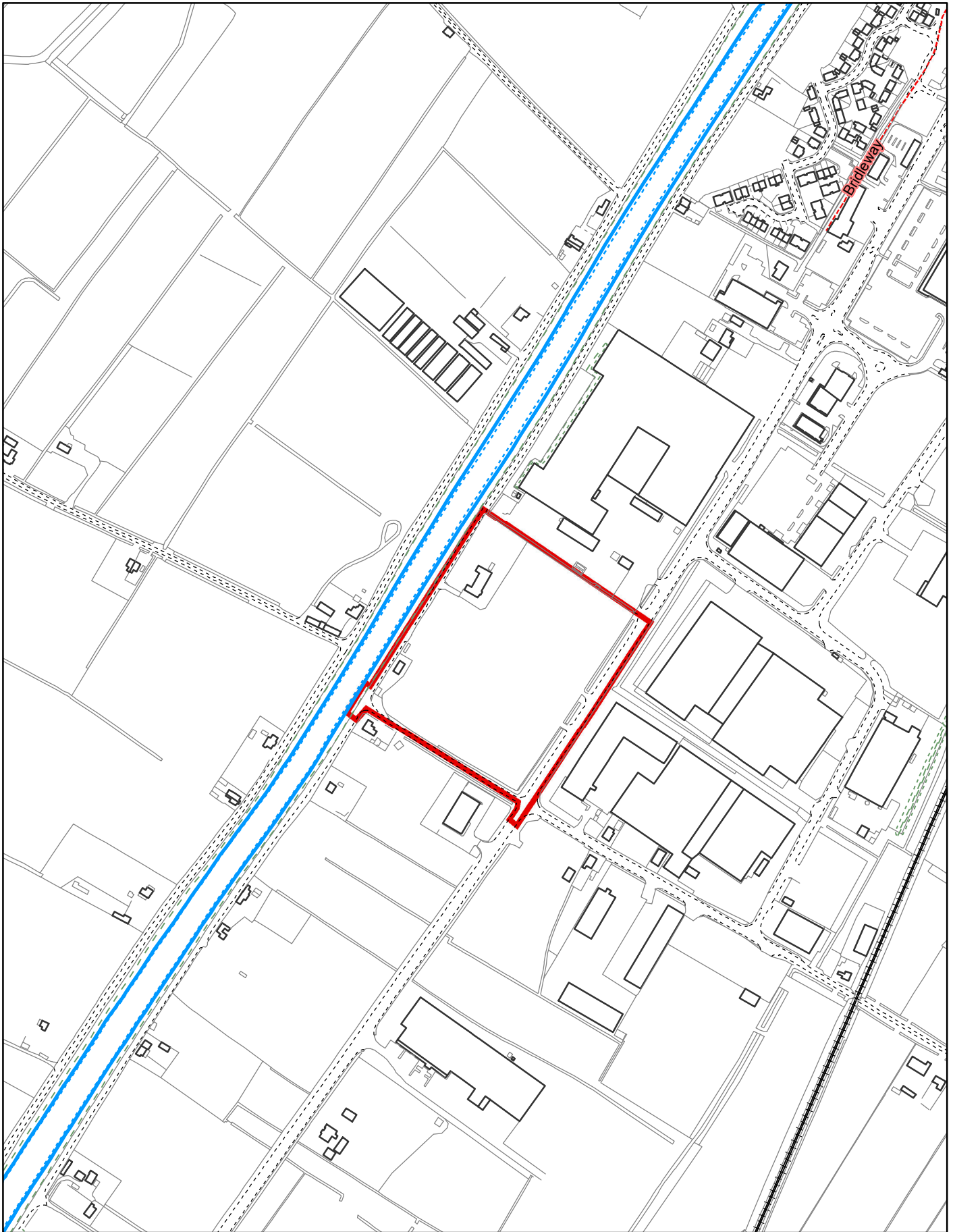
Officers are satisfied that in light of the considerable progress on site, which has been witnessed first-hand, there is a clear commitment for the cinema scheme to be operational. Furthermore they note the justification put forward by Tesco's agents which highlights that 'the Council need have no concerns that the comprehensive nature of development will be affected by this request....It would clearly not be economic for Tesco to have constructed the cinema to this stage, had it not been completely confident that a cinema would open on the site.'

Members will be able to view internal images of the cinema fit out at the Committee meeting to evidence the on-site situation as at 18th January 2014.

5. RECOMMENDATION

It is recommended that the Deed of Variation be accepted for the following:

- i) Removal of item 2 from the Twelfth Schedule of the Planning Obligation attached to application F/YR11/0184/O and dated 10/08/2011, which makes reference to the commencement of trading from the foodstore being linked to the cinema being constructed and operational.**



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