

Meeting:	Development Control Committee
Date:	7 th September 2005
Subject:	Brockley Hill, Stanmore: Variation to the Section 106 agreement dated 29 th June 2000
Responsible Officer:	Director of Legal Services
Contact Officer:	Abiodun Kolawole
Portfolio Holder:	Planning, Development and Housing
Key Decision:	No
Status:	Part 1

Section 1: Summary

The purpose of this report is to request authority to enter into a deed of variation of the S 106 Agreement dated 29th June 2000 (the Original Agreement) in respect of Brockley Hill. The effect of the variation is to amend paragraph 13.4.1 of the Draft Transfer attached to the Original Agreement which deals with access into the public open space as follows (amendment in bold):

“ following its construction a right of way (in common with the Transferor and all other persons with the like right) with or without vehicles at all times over the private road (“the Road”) to be constructed across the Retained Land leading from Brockley Hill to the Property at the points marked “A - B” on the Plan for the purpose of access to and egress from the Property **SAVE THAT public vehicular access to the Property will not be available until the end of 2006.**”

Decision Required

Recommendation (for decision by the Development Control Committee)

That authority is given to enter into the deed of variation as outlined in this report

Reason for report

The public open space is to be transferred to the Council at the end of September 2005. However, public vehicular access will not be available until the end of 2006.

Benefits

Not applicable.

Cost of Proposals

The Council's legal costs will be recovered from the developer.

Risks

None

Implications if recommendations rejected

Members of the public will be exposed to construction traffic.

Section 2: Report

2.1 Brief History

On 15th March 2000, the Development Control Committee granted outline planning permission for redevelopment of 4.86 hectares to provide 96 detached houses and 2.34 hectares of public open space (POS) subject to completion of a section 106 legal agreement dealing with, amongst other things, handing over of the POS to the Council. The section 106 Agreement (the Original Agreement) was completed on 29th June 2000.

By a Deed of Variation dated 20th July 2004, a new paragraph was inserted into the draft transfer annexed to the Original Agreement giving the Council and members of the public a right of way (with or without vehicles) over the private road to be constructed on the land for the purpose of access to and egress from the POS. The POS is to be handed over to the Council at the end of September 2005.

The location of the last phase of the development (phase 4A) is shown on the plan annexed to this report at Appendix A. It will be seen that the public vehicular access into the POS goes through the phase. The developer points out that while the phase is under construction, there will potentially be constant use of heavy plant which could endanger the general public if they were using the access at the same time (see letter from Laing Homes dated 25 August 2005 at Appendix B).

In order to protect the public, on health and safety grounds, the developer has requested that the Original Agreement be varied to allow provision of the public vehicular access at the end of 2006 when construction works would have been completed. Vehicular access for the Council to carry out maintenance works while phase 4A is under construction will be available on service of reasonable notice.

Pedestrian access into the POS will be available from Brockley Hill from the end of September 2005 when the POS is handed over to the Council (see Appendix C).

Authority is now sought to amend the Original Agreement accordingly.

2.2 Options considered

None.

2.3 Consultation

Not applicable.

2.4 Financial Implications

None

2.5 Legal Implications

As contained in the report.

2.6 Equalities Impact

None.

Section 3: Supporting Information/Background Documents

3.1. Original DCC reports of 15th March 2000 and 18th May 2004.

Letter from Laing Homes dated 25th August 2005.

Appendices A, B and C.