



Report to: Planning Committee, 21st February 2019

Report of: Deputy Director – Governance

Subject: VARIATION OF S106 AGREEMENT RELATING TO PLANNING APPLICATION P89C0570 - LAND FORMING PART OF WYEVALE GARDEN CENTRE DROITWICH ROAD

1. Recommendation

1.1 The Deputy Director – Governance recommends that the Planning Committee approves the variation of the Section 106 Agreement dated 7th June 1991.

2. Background

- 2.1 Planning application P89C0570 was granted outline planning permission for the erection of an extension to the existing covered sales space and open sided sales area structure together with garden centre sales area and car park extensions and landscaping at Wyevale Garden Centre, subject to the completion of an agreement under Section 106 of the Town and Country Planning Act 1990. The S106 Agreement was completed and the permission issued on 7th June 1991.
- 2.2 The majority of the site the subject of the S106 Agreement is situated on the west side of Droitwich Road but also includes a piece of land on the east side of Droitwich Road, which land is shown edged red on the plan annexed to this report (“the Red Land”).
- 2.3 The Red Land is not used by the applicant in connection with its business and is occupied by an agricultural tenant who farms the land.
- 2.4 The S106 Agreement places several restrictions/provisions on the Site and the matters that affect the Red Land are as follows:-
- a restriction preventing the site or any part being used for the purpose of a retail food shop or store.
 - a restriction preventing the applicant from selling leasing or otherwise disposing of or parting with possession of any part of the site separately from the remainder of the site. However, this does not prevent the applicant from granting a lease or licence of the Red Land for grazing mowing or agricultural purposes.

- a statement that the provisions of the S106 Agreement shall cease to apply to the Red Land in the event that the Council grant planning permission for development of the Red Land and in consequence of the grant by the Council of such planning permission the Council issues a certificate that it is satisfied that the provisions of the S106 Agreement shall cease to apply to the Red Land.

3. Procedure

3.1 There are two routes available to vary a Section 106 Agreement:

1. negotiate an agreeable variation between the parties, or;
2. submit variation via Section 106 A of the Town and Country Planning Act 1990

3.2 If a negotiated arrangement cannot be secured, it will be necessary to make a formal application for the modification of the Section 106 Agreement, and thereafter to appeal to the Secretary of State against any refusal. The procedures for formal application and appeal are set out under Sections 106 A and B Town and Country Planning Act 1990.

4. Proposals

4.1 The applicant does not utilise the Red Land as part of his business and has requested a Deed of Variation to the Section 106 Agreement to allow the applicant to sell the Red Land separately from the remainder of the site.

5. Comments of the Deputy Director – Governance

- 5.1 This application will not alter the permitted use of the Red Land or vary the restriction preventing the land or any part being used for the purpose of a retail food shop or store.
- 5.2 The Red Land is not utilised as part of the larger garden centre site on the opposite side of Droitwich Road and the variation to the S106 Agreement to allow this land to be sold separately from the remainder of the site will allow for flexibility in the future use of the Red Land subject to the submission and approval of a planning application for development of the land accordingly.

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Background Papers: Appendix 1 -plan