



Report of:	Assistant Director – Place and Client Services	Author	Eleanor Moss
Title:	Variation of s106 agreement O/COL/01/1799		
Wards affected:	Wivenhoe		

1.0 Executive Summary

- 1.1 The site is affected by a Section 106 Agreement. Under this agreement, the Dinghy Park land is to be used as a parking facility for boats and their trailers.

- 1.2 The reason for seeking the Deed of Variation is that Wivenhoe Town Council (WTC) are looking at alternative uses for the Dinghy Park land as it is underused and costs over £2,000 per annum in business rates to WTC with the adjacent car park. WTC are seeking to hold a monthly market during the summer with one Christmas market in December being held on the Dinghy Park to help raise required revenue. The variation to the S106 is to allow markets to be held on the Dinghy Park.

- 1.3 The City Council and Taylor Wimpey are also parties to the existing S106 agreement, and both would need to agree to the proposed variation. WTC has confirmed that Taylor Wimpy has agreed to the proposed variation. The variation has been to Development Team where no issues were raised and therefore does not raise an objection to the variation.

2.0 Decision Required

2.1 Planning Committee is asked to agree the revised S106 agreement with delegation to Officer level to complete the variation of the legal agreement. The S106 agreement would be varied in a similar manner provided below, however wording would be subject to the advice of the Solicitor (which is standard procedure in S106 agreements given these are legal documents) and thus is subject to modification. Delegated authority is requested to process the amended S106 further.

2.2

Clause	Title	Amendments
5.5	Developers Covenants	To include “outdoor markets”, thus amended to:

		<p>“...any purpose other than as a dinghy park for the parking or storage of boats, their trailers and outdoor markets on behalf of Wivenhoe Town Council”</p>
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3.0 Reasons for Decision(s)

- 3.1 Wivenhoe Town Council has submitted an application to vary the existing S106 to allow occasional markets to be held on the Dinghy Park in order to create additional revenue. WTC has confirmed that the Dinghy Park land currently costs over £2,000 per year in business rates. The Dinghy Park has been underused and thus is costing WTC in upkeep.

4.0 Alternative Options

- 4.1 The alternative option is for Members to decline agreement to vary the S106. WTC would have to seek alternative revenue streams.

4.0 Supporting Information

- 4.1 The relevant background to the S106 agreement is as follows:
- 4.2 O/COL/01/1799 - Outline planning permission approved on 5 November 2004 for erection of houses, flats, offices, fisherman's store and W.C. Refurbishment of wet dock, jetty, slipway and waterfront. Reconstruction of St John's Road and Walter Radcliffe Way. Approved 5 November 2004.
- 4.3 The development has been fully commenced with the development now built out. The variation will not grant any other amendments to the S106 agreement.
- 4.4 Section 106A of the Town and Country Planning Act 1990 provides for the modification of planning obligations through a deed of variation. An agreement to modify or discharge a S106 obligation can be made at any time (and can only be entered into by Deed, by virtue of section 106A (2)). Therefore, a s106 agreement can be renegotiated and varied at any time between the parties.
- 4.5 The Town and Country Planning (General Permitted Development) Order 2015 (as amended) permits certain types of development without needing to seek planning permission from the local planning authority. These are known as 'permitted developments'. Schedule 2 of the Order, Part 4: Temporary buildings and uses, permits:

- 4.6 Class B “...use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes referred to in paragraph B.2 (the holding of a market, motor car and motorcycle racing including trials of speed, and practicing for these activities), and the provision on the land of any moveable structure for the purposes of the permitted use.”
- 4.7 Given the above, provided the outdoor market is not more than 14 days in any calendar year, then a change of use application is not required. Should WTC wish to hold a market for more than 14 days per calendar year on the Dinghy Park, then planning permission would be required and any such proposal would be considered on its planning merits.
- 4.8 The variation to the S106 has received 34 letters of objection following the consultation exercise. These are summarised as follows:
- Causes harm to residential amenity
 - Security concerns
 - Would increase rubbish and vermin
 - Would reduce property value
 - WTC has ignored residents
 - Highway safety concerns
 - No toilet facilities
 - No adequate parking
 - The area will become crowded and disruptive
 - Contrary to the original S106 agreement
 - Limited information regarding the markets
 - Lack of customers
 - Harm to the adjacent RAMSAR
 - Contrary to Wivenhoe Neighbourhood Plan
- 4.9 Members will be aware that this is in relation to a variation of a S106 agreement, rather than a change of use planning application. If the signatories of the original 106 are agreeable to the amendment to allow the Dinghy Park to be used as a market, then that would be sufficient. While the concerns of interested parties are appreciated, this is not a change of use application and therefore such material planning considerations (i.e. parking, residential amenity, ecology etc.) are not applicable. If the amendment was agreed by the signatories, WTC would only need to apply for planning permission should the markets exceed 14 days per calendar year. If that does happen, the material planning considerations raised by interested parties could then be taken into consideration through a formal planning application.
- 4.10 The Officer’s advice in this case remains that the Council’s Development Team has considered the variation and no reasons to resist the Deed of Variation have been found. It is reminded that material planning considerations are not relevant to a Deed of Variation and a S106 can be varied at any time, subject to the signatories of the original S106 being

agreeable. Should a planning application be submitted for the outdoor markets, then such material planning considerations can be weighed appropriately.

5.0 Strategic Plan References

5.1 The Council's Strategic Plan includes the objective to deliver infrastructure projects alongside new homes. Effective use of S106 agreements can help deliver affordable housing and infrastructure to support our communities.

6.0 Consultations

6.1 The Deed of Variation application has been subject to public consultation, with a number of interested parties raising objections to the variation. These are summarised at 4.8 and can be viewed in full online.

7.0 Publicity Considerations

7.1 Members are reminded that following publicity of the Deed of Variation, a number of concerns have been raised by interested parties. These are very much appreciated by Officers and many material planning considerations have been raised. Should a planning application be required, these will be taken into consideration. At this stage, the Deed of Variation is to expand the uses of the Dinghy Park allowed within the original S106 agreement. Under certain circumstances planning permission is not required for markets and this application is only before Members in the interests of transparency, given the number of objections.

8.0 Financial Implications

8.1 The City Council will not face financial implications as WTC would be liable for the legal fees in this instance. If Members decide to decline to sign the varied S106 agreement, then WTC would need to find alternative funding sources.

9.0 Health, Wellbeing and Community Safety Implications

9.1 None directly arising from this report. The Council's Environmental Protection Team and Essex County Council Highway Authority have not raised any concerns in relation to holding markets at Dinghy Park.

10.0 Risk Management Implications

10.1 None directly arising from this report.

11.0 Environmental and Sustainability Implications

11.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives. Sustainable Development is the golden thread running through planning.

12.0 Equality, Diversity and Human Rights implications

12.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking on this link: [Equality Impact Assessment June 2017.pdf \(windows.net\)](#)

Appendix 1 – The original S106 agreement