

PLYMOUTH CITY COUNCIL

Subject: Planning Application: 05/1071/OUT – Approval to seek a Section 106 Deed of Variation

Committee: Planning

Date: 5 April 2012

Cabinet Member: Councillor Ted Fry

CMT Member: Director for Place

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Ref: 05/01071/OUT

Key Decision: No

Part: I

Executive Summary:

This report seeks approval to enter into the process of securing a Deed of Variation for the S106 agreement with Redrow in relation to the transport contribution for the Vision development at Devonport.

Under the terms of the original agreement a transport contribution of £449,000 was secured to improve bus stop infrastructure, provide new buses on the route of service 34 and set up or support other public transport measures in the vicinity of the development and to commission an accessibility study for the Devonport area. Following initial discussions to progress the bus service enhancement it became clear, after seeking legal advice, that it was not appropriate to award the funding directly to one bus operator. A competitive procurement process would need to be followed in order to discharge the agreement lawfully.

In 2011 the Council was successful in securing funding for a bus service as part of the Local Sustainable Transport Fund (LSTF) bid www.plymouth.gov.uk/lstf. The synergy of the LSTF and S106 objectives were recognised and hence an alternative service is proposed, using the S106 transport contribution for the Vision Development, that delivers an improved outcome for the local community. The Deed of Variation is in keeping with the original Vision development S106 agreement, aimed at providing a new bus service. However, the proposal offers improved links to employment, healthcare, education and leisure opportunities for the Devonport community.

The proposed changes to the original agreement have been submitted to Redrow who have confirmed their agreement in principle to the variation.

Corporate Plan 2011-2014:

The proposed service, which will be delivered subject to the recommendation in this report being approved, supports all four corporate priorities.

The LSTF was awarded by the Department for Transport (DfT) to Authorities who demonstrated that the scheme proposals would deliver economic growth and reduce carbon emissions. The planned bus service will provide a direct connection from Plymouth neighbourhoods to employment opportunities in the City Centre and along the Eastern Corridor.

The LSTF programme consists of a package of measures aimed at improving facilities for walking, cycling and public transport and encouraging sustainable travel on the east west axis of the City.

The proposed bus service has been developed in consultation with principle employers in the 'bid area' (Devonport to the west and Plympton and Plymstock to the east) to make sure that access to employment on the eastern corridor is enabled through a timetable and route which is integrated with employer requirements. Additionally, the intended route also provides access to a number of leisure, health and education opportunities. Promotion of the route will be encouraged through a personal travel planning programme, delivered over the next 3 years as an integral element of the LSTF scheme.

Finally, the proposal represents added value for communities by combining the LSTF service funding with the S106 funding – enabled through the proposed Deed of Variation. It will deliver an enhanced service in terms of both frequency and area covered, increasing the likelihood that the investment in this service will result in a commercially viable proposition at the end of the contract period thus providing a long term benefit to the community.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

Delivery of the S106 agreement will be achieved through the LSTF Plymouth Connect programme which has Council approval, is funded by PCC and DfT and programmed for delivery between 2011 - 2015. Failure to agree the recommendation has the potential for a negative effect on Council because a proportion of the S106 monies cannot be implemented under the existing agreement and may have to be refunded to the developer.

Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

The LSTF scheme has been developed in accordance with the Equalities Impact Assessment for the third Local Transport Plan www.plymouth.gov.uk/ltp2011-2026/eia

The proposed bus service will improve links from areas of deprivation in the west to employment, healthcare, education and leisure opportunities along the eastern corridor.

Recommendations & Reasons for recommended action:

It is recommended that Planning Committee:

- I To instruct the Assistant Director for Planning Services to undertake a deed of variation which amends the existing S106 Agreement as discussed in this report, to allow the public transport contribution for the development to be integrated with, and be delivered in tandem with, the LSTF programme.

Reason: To avoid a potential legal challenge and provide added value to both the S106 contribution and the LSTF programme.

Alternative options considered and reasons for recommended action:

Delivery of the S106 as per the original agreement. However the advice from Legal Service suggested that it would be unlawful to procure the enhanced services referenced in the agreement without a competitive procurement being followed.

Background papers:

Planning consent 05/01071/OUT and related 106 agreement (ref A165-580) dated 2nd May 2006

Minutes of the Council's Planning Committee of 13th December 2005, when planning consent 05/01071/OUT was granted.

Plymouth's Local Development Framework, Planning Obligations & Affordable Housing Supplementary Planning Document, first review 2010.

New Policy Document for Planning Obligations, Consultation Draft, March 2010 DCLG .

Circular 05/2005 Planning Obligations, ODPM.

Sign off:

Fin	Dev F11 120 067	Leg	JAR /143 96	HR		Corp Prop		IT		Strat Proc	
Originating CMF Member Paul Barnard, Assistant Director of Development (Planning Services)											

Briefing Report

1.0 Background

- 1.1 As part of planning application 05/01071/OUT, relating to the land at the Former Stores Enclave, Devonport, Plymouth, a S106 transport contribution of £449,000 was secured. The S106 agreement was between Plymouth City Council and The Urban Regeneration Agency (English Partnerships) and was signed on 2nd May 2006.
- 1.2 The S106 agreement stated that the monies were to be used to provide new bus stop infrastructure including real time passenger information, the enhancement of services on the existing route 34 to include the provision of two new buses and improvements to other public transport measures following the outcome of an accessibility study to be commissioned by the Council.
- 1.3 In 2008 discussions commenced with the developer and Plymouth Citybus, the operator of service 34, regarding the agreement.
- 1.4 Following initial discussions and in preparation for delivering the agreement the City Council sought legal advice regarding the procurement of the additional vehicles. At this point it became apparent that it was not suitable to award the funding direct to the operator of the existing service 34 and that a competitive procurement process should be followed. The related legislation indicates that the value of the S106 agreement is above the threshold - Public Procurement Regulations (2006) and that a full OJEU process would be required. Discharging the agreement without competitive procurement would be unlawful.
- 1.5 Competitive procurement was not commenced in 2008 since at this time the bus services in the vicinity of the development were of a high standard and frequency. It was therefore decided to wait until an opportunity arose to add value to the S106 contribution before progressing the agreement further.

2.0 Current Situation

- 2.1 The Council has been successful in securing DfT funding through the Local Sustainable Transport Fund (LSTF) bid, Plymouth Connect www.plymouth.gov.uk/lstf. The bid seeks to improve connections to employment, healthcare and leisure opportunities throughout the bid area which encompasses Devonport to the west and Plympton and Plymstock to the east. Part of the bid was for the provision of bus services linking the Torpoint Ferry to Langage via the city centre, Cattedown, Coxside and Plymstock. In order to provide a service that can be sustained and is over and above that which could be funded through the bid, it is proposed that the monies received from the LSTF be used in conjunction with the S106 funding from the Vision development to provide a new bus service as detailed in section 2.3.2.
- 2.2 The original wording of the agreement is detailed below.

Transport Contribution	means the sum of £449,000 to be used by the Council for works or measures to provide:- (i) 2 new bus shelters providing “real time” information (ii) A contribution in the total sum of £384,000 towards the enhancement of services on the existing route 34 service to include the provision of two new buses and appropriate
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	<p>set up or support arrangements or such other public transport measures which may be submitted to and agreed with the Council following the outcome of any accessibility study undertaken for the catchment area of Devonport</p> <p>A contribution of £25,000 to an accessibility study for the Devonport area to be commissioned by the Council</p>
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2.3 In order to progress this, a Deed of Variation will need to be sought from the developer, Redrow. A letter has been sent to the developer requesting three changes to the original agreement as indicated in bold below. It is felt that these changes will add the greatest benefit and value for money from the contribution, and have a significant positive impact for the residents of the development and the wider community.

2.3.1 **Original wording:** *2 new bus shelters providing real time information*

Proposed changes: It would not seem necessary to put in new shelters as these are already in existence in the vicinity of the development. The Council would, however, still want to install real time information at [these] locations serving the development as a number of bus links are provided from this location, and real time information would be of the greatest benefit to the development and surrounding community.

2.3.2 **Original wording:** *A contribution in the total sum of £384,000 towards the enhancement of services on the existing route 34 service to include the provision of two new buses and appropriate set up or support arrangements or such other public transport measures which may be submitted to and agreed with the Council following the outcome of any accessibility study undertaken for the catchment area of Devonport.*

Proposed changes: To introduce a new service which will link Devonport with Derriford Hospital, City Centre, Plymstock and Langage. This is very similar to the route of the current 34 which operates between Derriford, Devonport, Stonehouse and the City Centre, but would provide additional links to employment opportunities at Langage Business Park. The Council will be specifying a timetable that offers a half hourly service Monday to Saturday daytime and an hourly evening and Sunday service which is a big improvement on what is currently provided by service 34. The Council would not want to use the monies to provide new vehicles but could certainly specify the vehicle age within the tender. This would mean that all the monies would be used as revenue support. It is felt that an improved service through more regular buses and better links to key employment sites would serve the development's residents and surrounding community in their best interests.

2.3.3 **Original wording:** *A contribution of £25,000 to an accessibility study for the Devonport area to be commissioned by the Council*

Proposed changes: Commissioning an accessibility study would not provide a significant increase to information that the council currently holds, the monies would be better used to improve services for the local community in improving the quality of service offered. Consideration of accessibility issues regarding bus travel to key facilities and services from Devonport will be appraised through the tender evaluation process.

2.4 A response has been received from Redrow confirming their agreement in principle, subject to any costs associated with the changes being met by the Council. These costs will be funded through the LSTF scheme. The Council also intends to carry out further consultation with the key employers on the route to ensure that every opportunity is taken to ensure that bus times are convenient for employees who wish to use the bus for commuting purposes.

3.0 Recommendation

3.1 It is recommended that Planning Committee:

To instruct the Assistant Director for Planning Services to undertake a deed of variation which amends the existing I06 Agreement as discussed in this report, to allow the public transport contribution for the development to be integrated with, and be delivered in tandem with, the LSTF programme.

Reason: To avoid a potential legal challenge and provide added value to both the S106 contribution and the LSTF programme.