



## **Allocation of secondary school Section 106 agreement funding from the Fellow Lands Way development**

### **SUMMARY**

- 1.1 At the time of negotiation, the Section 106 agreement (dated 19<sup>th</sup> December 2014), for the 190 dwelling development currently being built out at Fellow Lands Way required a contribution towards secondary education due to the normal area school (Chellaston Academy) being full. This contribution is £730,956 (including indexation) and has been paid in full by the Developer. The site has since been removed from Chellaston Academy's normal area by the school and the site is now in the normal area of Noel-Baker Academy which does have capacity. This therefore means the Section 106 contribution is no longer required for the original purpose and in this circumstance would normally need to be paid back to the Developer with interest.
- 1.2 The proposed development at Snelsmoor Grange (up to 800 dwellings) requires the delivery of a primary school which will serve that and the Fellow Lands Way development. Across the two developments, up to 990 dwellings are proposed which, based on the Council's per pupil multiplier, would generate around 277 primary pupils. Due to the volume of housing growth proposed, a new primary school is required to serve the developments. As well as the school, there is a significant level of other infrastructure required up front which has an impact on the development finances and could impact on the developer's ability to provide other planning obligations during the development.
- 1.3 The developers of the Fellow Lands Way site have proposed that rather than return the money to them, as it cannot be used for the intended purpose, that it can be used by the Council to help forward fund the delivery of the primary school that will serve the Snelsmoor Grange development. A formal application will need to be made by the developers under Section 106a of the Town and Country Planning Act 1990 to vary the agreement. This report is seeking approval in principle to the proposed changes.

### **RECOMMENDATION**

- 2.1 To approve in principle the proposal for the secondary education contribution secured from the Fellow Lands Way development pursuant to the planning agreement referred to in paragraph 1.1 above to be used towards the provision of a new primary school to serve the Fellow Lands Way and the proposed Snelsmoor Grange developments.
- 2.2 To authorise the Director of Strategic Partnerships, Planning and Streetpride to determine any application made pursuant to Section 106a of the Town and County Planning Act 1990 to modify or vary the planning agreement referred to in paragraph 1.1 above and to agree and complete any variation agreement as necessary to give effect to that determination.

## REASONS FOR RECOMMENDATION

- 3.1 To assist in enabling the delivery of the primary school at the Snelsmoor Grange site.

## SUPPORTING INFORMATION

- 4.1 The purpose of this report is to gain authorisation for the Fellow Lands Way secondary school contribution of £730,956 (including indexation) to instead be spent on the development of the Snelsmoor Grange primary school. The remainder of this report sets out the reasons and background for this request.
- 4.2 A full application for 190 dwellings on land at Fellow Lands Way, Derby (DER/01/13/00082) was determined by Planning Control committee on 7<sup>th</sup> November 2013. The Section 106 agreement was completed on 19<sup>th</sup> December 2014. The agreement secured contributions towards both primary and secondary education reasonably capable of serving the site due to the lack of available school places in the normal area. At the time the application was determined, the site was in the normal area of Chellaston Infant and Junior Schools and Chellaston Academy: - these schools were full at the time and continue to be full.
- 4.3 As Chellaston Academy is not a local authority run school, the Council does not have control over its admissions policy. From September 2015, the school resolved to remove the Fellow Lands Way site from its normal area. The site is now within the normal area of Noel-Baker Academy. The site continues to remain in the normal area of Chellaston Infant and Junior Schools.
- 4.4 Noel-Baker Academy currently has sufficient surplus capacity to accommodate the 38 estimated secondary school pupils from the Fellow Lands Way development without the need for expansion. In these circumstances the secondary education contribution from the site would normally have to be returned to the developer (with accrued interest applied) as it would no longer be required. The Council and the Developer have however been discussing alternative options for using this money as outlined below.
- 4.5 The Fellow Lands Way site is one part of the Boulton Moor strategic housing site allocation set out in Policy AC23 of the City of Derby Local Plan Part 1: Core Strategy. The second part of the site is covered by the as yet undetermined Snelsmoor Grange application for 800 dwellings and associated infrastructure (DER/04/13/00351). It is intended that a Primary school will be provided on the Snelsmoor Grange site to serve the whole of the allocation. This school will be primarily funded through the Snelsmoor Grange scheme but with the addition of primary school contributions from the Fellow Lands Way site. In addition there is significant highway and drainage infrastructure which needs to be provided early on in the construction of the site. It should be noted that the developer associated with the Snelsmoor Grange site is the same as for Fellow Lands Way.

- 4.6 The cost of delivering the primary school is estimated to be around £4.8 million (based on Q3 2016 figures) and other than the figure quoted in paragraph 4.1 above will be funded through the Snelsmoor Grange development. The final figure will be agreed during the process of determining that application. Although this site has not to date been the subject of an independent viability assessment, the significant cost of infrastructure works to facilitate the development and the contribution to the Primary School in advance of the development making any significant progress and receipts being generated from the development will put a significant financial burden on the development. This could potentially impact on the ability of the developer to deliver the site within the timescales envisaged and other planning obligations on the site.
- 4.7 In order to reduce the up-front financial burden, the developer has agreed in principle to allow the Council to spend the Fellow Lands Way secondary school contribution on the delivery of the primary school at Snelsmoor Grange. If Members are minded to agree to this proposal, the developer will need to apply for a Deed of Variation to the Fellow Lands Way Section 106 agreement under Section 106a of the Town and Country Planning Act.
- 4.8 It is estimated that during the course of the Snelsmoor Grange development, due the size of the site there could be a requirement for a secondary school contribution toward Noel-Baker Academy. This will ensure future secondary education pupil places can be secured if necessary.

#### **OTHER OPTIONS CONSIDERED**

- 5.1 The Council could chose not to spend the money on the primary school at the Snelsmoor Grange site and return it to the developer with interest.

**This report has been approved by the following officers:**

<b>Legal officer</b> <b>Financial officer</b> <b>Human Resources officer</b> <b>Estates/Property officer</b> <b>Service Director(s)</b> <b>Other(s)</b>	Stephen Teasdale           Rosie Watson, Hayley Millward
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<b>For more information contact:</b> <b>Background papers:</b> <b>List of appendices:</b>	Rachel Reid 01332 642112    rachel.reid@derby.gov.uk None Appendix 1 – Implications
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## IMPLICATIONS

### **Financial and Value for Money**

- 1.1 If Members chose not to agree with the recommendation in this report, the Council will be required to return the money to the developer with interest.

### **Legal**

- 2.1 The recommendation in this report will require the variation of a Section 106 agreement under Section 106a of the Town and Country Planning Act 1990

### **Personnel**

- 3.1 None identified

### **IT**

- 4.1 None identified

### **Equalities Impact**

- 5.1 None identified

### **Health and Safety**

- 6.1 None identified

### **Environmental Sustainability**

- 7.1 None identified

### **Property and Asset Management**

- 8.1 The allocation of the Section 106 contribution will assist in enabling the delivery of the Snelsmoor Grange primary school. Whilst this will not be a local authority controlled school (being an academy), it will be designed and is expected to be built by the Council's Property and Asset Management team.

### **Risk Management and Safeguarding**

- 9.1 None identified

### **Corporate objectives and priorities for change**

- 10.1 Improving housing, supporting job creation and regenerating our the city
- 10.2 Raising achievement and skills