



**REGULATORY  
SERVICES  
COMMITTEE**

**4 October 2011**

**Subject Heading:**

Land between Viking Way and Upminster Road South, Rainham (P1070.11)

Deed of variation to alter the obligations in a section 52 Agreement (planning agreement) under the Town and Country Planning Act 1971 relating to the provision of public car parking spaces in a separate car park for use by the general public and substituting a planning obligation under Section 106 of the Town and Country Planning Act 1990 to require alternative parking reserved for use by the general public.

**CMT Lead:**

Ian Burns

**Report Author and contact details:**

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**Policy context:**

Section 106A Town and Country Planning Act and Local Development Framework

**Financial summary:**

None

**The subject matter of this report deals with the following Council Objectives**

Clean, safe and green borough	[ ]
Excellence in education and learning	[ ]
Opportunities for all through economic, social and cultural activity	[X]
Value and enhance the life of every individual	[ ]
High customer satisfaction and a stable council tax	[ ]

**SUMMARY**

The Council and the owners of the Tesco Store at Rainham agree to vary the terms of the section 52 agreement made pursuant to planning reference P0060.88. The original planning agreement was entered into prior to the granting of planning permission for the original Tesco Rainham store. That agreement, amongst other things, required the Applicant to provide 52 car parking spaces for use by the general public and to maintain access and exit to and from the car park to facilitate public use. As part of the construction of the new road (Planning Reference P1070.11) linking Viking Way and Upminster Road South highways works to enable the introduction of a one-way system through Rainham Village the existing car park used by the public is being realigned and constructed. Therefore a deed of variation is required under Section 106A of the Town and Country Planning Act 1990 (as amended) to amend the original planning agreement to require the Applicant by planning obligation under Section 106 of the Town and Country Planning Act 1990 to reserve 32 car parking spaces, to be provided pursuant to planning permission (P1070.11) for general public use and maintain appropriate access and egress in substitution for the existing public car park.

Staff are of the view that a Deed of Variation and obligation under Section 106 are acceptable, and it is recommended that the Assistant Chief Executive of Legal and Democratic Services be given authority to enter into the necessary agreement.

**RECOMMENDATIONS**

That the Assistant Chief Executive of Legal and Democratic Services be authorised to:

1. Enter into a Deed of Variation pursuant to section 106A of the Town and Country Planning Act 1990 ("the 1990 Act") to amend the obligations of a section 52 Agreement entered into by the Applicant (Tesco Stores Limited) and the Council on 11<sup>th</sup> January 1989, deleting clause 3(c) of the said Section 52 Agreement and substituting an obligation under Section 106 of the 1990 Act requiring the Applicant to reserve the car park to be constructed pursuant to planning permission reference P1070.11 (Drawing Reference JC9059A0/VW/PH/001, attached) comprising 32 car parking

spaces for general public use and to maintain appropriate access and exit for the public to facilitate public use of the car park; and

2. Save for consequential amendments to the Section 52 Agreement dated 11<sup>th</sup> January 1989 all other covenants and recitals of that agreement remain unchanged.

## REPORT DETAIL

On 25 August 2011, the Council's Regulatory Services Committee granted planning permission under planning reference P1070.11 for the construction of a new road linking Viking Way and Upminster Road South to enable the introduction of a one-way system through Rainham Village in association with alteration to access arrangements to the Tesco store together with reconfiguring the store car park and providing separately 32 car parking spaces for the public. The proposed car parking will be separate from the Tesco customer car park and will have its own access and exit.

The original planning permission for the Tesco Rainham store was granted under planning reference P0600.88. That planning permission was subject to a Section 52 Agreement (forerunner to a Section 106 agreement) dated 11<sup>th</sup> January 1989 which amongst other things required the Applicant (Tesco Stores Limited) under clause 3(c) of the agreement from the date of transfer of the Property to the Applicant:-

*"if the intended arrangement having been brought into operation proves, in the Applicant's opinion, not to be workable and the Applicant, in its discretion, decides to discriminate in favour of the Applicant's customers (by whatever means, direct or indirect) then the Applicant shall not implement any such discrimination unless it shall have first reserved and designated not less than 52 car parking spaces within the car park, but divided and separated from the remainder of the car park, for use by the general public as aforesaid without any discrimination and provide an appropriate access and exit for this public car park area for the general public as aforesaid without any discrimination all such matters having been first approved by the Council....."*

In essence clause 3(c) of the original agreement requires the Applicant to reserve 52 car parking spaces for general public use in a separate car park, from the customer car park, with appropriate access and egress should the applicant implement any discrimination in favour of customer use and against general use of the "customer" car park, (such discrimination being entirely at the Applicant's discretion).

The current planning obligation in clause 3(c) of the Section 52 Agreement requires 52 car parking spaces to be reserved for use by the general public. Currently the existing car park which has 54 spaces is underused and staff are of the view that a reduction in the number of spaces will not be harmful. Further as a result of highway works being taken forward separately from the approved scheme to construct the new link road (planning reference P1070.11) 14 additional parking

bays are to be provided along Upminster Road South which will mitigate against the loss of parking.

## CONCLUSION

The existing planning obligation under the previous planning act requires variation under Section 106A of the 1990 Act to delete clause 3 (c) and a further planning obligation under Section 106 of the 1990 Act is required in order to ensure that 32 car parking spaces are reserved for general public use in a separate public car park with appropriate separate access and egress points to be constructed pursuant to the planning consent granted under planning reference P1070.11 (to construct amongst other things a new road linking Viking Way and Upminster Road South).

## IMPLICATIONS AND RISKS

**Financial implications and risks:** None

**Legal implications and risks:** Legal Resources will be required for the drafting of the Deed of Variation and the new section 106 agreement.

**Human Resources implications and risks:** None

**Equalities implications and risks:** The Council's planning policies are implemented with regard to Equalities and Diversity

## BACKGROUND PAPERS

Regulatory Services Committee Agenda dated 25<sup>th</sup> August 2011  
Regulatory Services Committee Agenda dated 16<sup>th</sup> December 2010  
Section 52 Agreement with Tesco Stores Limited dated 11<sup>th</sup> January 1989