



# REGULATORY SERVICES COMMITTEE

# REPORT

17 November 2011

**Subject Heading:**

Proposed variation of Section 106 agreement in connection with planning permission P0406.08: Harrow Lodge, Hyland Way, Hornchurch

Erection of 44 detached, semi detached and terrace houses and associated access

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**Policy context:**

Local Development Framework  
London Plan, Planning Policy  
Statements/Guidance Notes

**Financial summary:**

None

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

|   |                                     |
|---|-------------------------------------|
| Ensuring a clean, safe and green borough  | <input checked="" type="checkbox"/> |
| Championing education and learning for all                                      | <input type="checkbox"/>            |
| Providing economic, social and cultural activity in thriving towns and villages | <input checked="" type="checkbox"/> |
| Value and enhance the life of our residents                                     | <input checked="" type="checkbox"/> |
| Delivering high customer satisfaction and a stable council tax                  | <input checked="" type="checkbox"/> |

## SUMMARY

This report relates to planning permission for residential development of 44 units on the site of the former Harrow Lodge depot in Hyland Way, Hornchurch. Planning permission for the development was granted in 2008 (under planning reference P0406.08) and has been implemented. The planning permission is subject to a S106 agreement which, together with affordable housing provision and an education contribution, required a contribution of £25,000 towards improvements to Hylands Park.

A request has been made by the Council's Parks Service to vary the legal agreement under Section 106A of the Town and Country Planning Act 1990 to enable the £25,000 contribution to be spent on repair of the tennis courts in Hylands Park rather than the improvements to the park specifically identified in the existing S106 Agreement.

## RECOMMENDATIONS

It is recommended that the variation of the Section 106 agreement dated 6 June 2008 to enable the financial contribution to the improvement of Hylands Park to be spent in the manner set out below by the Deed of Variation under Section 106A of the Town and Country Planning Act (as amended) be approved:

The contribution of £25,000 and any accrued interest (referred to in the Section 106 Agreement dated 6 June 2008 as the Hylands Park contribution) to be used by the Council for the purposes of works, including repairs and resurfacing, to the tennis courts within Hylands Park.

Save for the variation set out above and necessary consequential amendments the Section 106 agreement dated 6 June 2008 and all recitals, terms, covenants and obligations in the said Section 106 agreement dated 6 June 2008 will remain unchanged.

The planning obligations recommended in this report have been subject to the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the obligations are considered to have satisfied the following criteria:-

- (a) Necessary to make the development acceptable in planning terms;
- (b) Directly related to the development; and
- (c) Fairly and reasonably related in scale and kind to the development

## REPORT DETAIL

1. The site to which this proposal refers is the site of the former Harrow Lodge depot, in Hyland Way, Hornchurch. Planning permission was granted in 2008 (under planning permission reference P0406.08) for residential development on the site comprising 44 residential units. This was subject to a number of planning conditions, as well as a Section 106 agreement signed and dated 6 June 2008. The development has been implemented and the units on the site are occupied.
2. The legal agreement included a requirement for affordable housing and an education contribution in relation to the development. Additionally, the legal agreement required the payment of a financial contribution of £25,000 to be spent in Hylands Park. The specific requirement of the Section 106 agreement was to pay:

The sum of £25,000 to be used by the Council for the provision of improved signage, additional park furniture and enhanced planting (including trees) within Hylands Park in the vicinity of the proposed development such sum increasing in line with the Index.
3. The Council's Parks Service have now requested a variation of the legal agreement to allow the contribution to Hylands Park to be spent on the repair and resurfacing of the existing tennis courts rather than for the purposes initially specified in the legal agreement.
4. The Parks Service have advised that, when the Section 106 was initially signed, Hylands Park was in a poor condition and there was a desire to bring the park up to Green Flag standard, hence the requirement for new signage, park furniture and planting. Since then, the Council has made significant investment into Hylands Park, improving the planting, signage and furniture and also the play equipment, path surface and the provision of new training facilities. External funding from other bodies has also been used and has enabled the provision of an outdoor gym and a multi-use games area.
5. The £25,000 set out in the legal agreement is therefore no longer required for the purposes originally specified. However, the condition of the tennis courts has deteriorated significantly and the parks contribution would provide the necessary funds to enable the required surface repairs to be undertaken. The Parks Service have discussed this with the developer involved with planning permission P0406.08, who has confirmed they have no objection to alternative use of the parks contribution within Hylands Park.

6. Staff consider that the proposed alternative use of the £25,000 Hyland Park contribution would be reasonable in view of the fact that the improvements originally envisaged have already taken place in the park. It is further considered that the use of the contribution towards improving the tennis courts in Hylands Park would still be consistent with the reasons for requiring the contribution and would meet the tests of necessity, being directly related to the development and fairly and reasonably related in scale and kind to the development. The proposal would also comply with the objectives of Policy CP7, which aims to improve opportunities for creative play and physical activity in parks and open spaces and Policy DC18 to retain and enhance all public open space. It would also comply with Policy 3.19 of the London Plan. The proposal complies with Policy DC72 of the LDF relating to planning contributions.

## 7. **Conclusion**

7.1 Staff consider that the proposed variation of the S106 agreement to enable the use of the £25,000 Hylands Park contribution with any accrued interest to be used for works to the tennis courts rather than for the purposes originally specified in the legal agreement is acceptable and accords with Policies CP7, DC18 and DC72 of the LDF and Policy 3.19 of the London Plan. It is therefore recommended that variation of the legal agreement in respect of the use of the Hylands Park contribution is approved, subject to all other elements of the legal agreement remaining as per the original agreement signed and dated 6 June 2008.

## **IMPLICATIONS AND RISKS**

### **Financial implications and risks:**

The proposal will provide funding for works to public open space owned and managed by the Council.

### **Legal implications and risks:**

Legal resources will be required for the variation of the legal agreement

### **Human Resources implications and risks:**

None.

### **Equalities implications and risks:**

The Council's planning policies are implemented with regard to Equalities and Diversity. The proposal will improve the range of facilities available to the Borough's residents within Hylands Park and complies with the Council's aim of providing cultural facilities for all.

## **BACKGROUND PAPERS**