

## OPEN SPACE SCHEMES IN TOTTON – S106 VARIATION

### 1. INTRODUCTION

1.1 On 1 and 8 September 2010 respectively, Cabinet and Planning Development Control Committee (PDC) considered a report which outlined Linden Homes request to vary a S106 Obligation following the grant of planning permission in respect of Southern Gardens, Little Testwood Farm and Testwood Place, Totton. The report is attached at Appendix 1. Cabinet and PDC approved the recommendations.

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1.2 The overriding consideration at that time was to ensure that the Southern Gardens leisure facilities would not be in split ownership, which was the situation under the original S106 Obligation signed at the time of the planning appeal. The Council considered it imperative that the recreational facilities should be under one freehold owner to ensure their long term future. With this principle in mind, the Council in 2010 was prepared to accept a variation to the original S106 Obligation. That requirement of ensuring one freehold owner still holds good today. As far as Little Testwood Farm (LTF) was concerned, the Council in 2010 agreed the possibility of industrial use taking place on part of the site. At that time, it was envisaged that the then existing buildings would be retained to facilitate such use. Subsequently however it became clear that the buildings were not in a sound condition and have since been demolished.

1.3 Since 2010, further developments have occurred which require an update to the position agreed at that time. No variation to the S106 Obligation has yet been completed as negotiations were continuing. This matter is being referred to Cabinet as well as PDC as under the agreement reached in 2010, Cabinet agreed to accept the freehold of certain land. That position has now changed as explained below. PDC in its capacity as local planning authority will make the decision as to whether to accept the revised terms of the new variations which are set out in this report.

### 2. CONTINUING NEGOTIATIONS

2.1 Extensive negotiations have continued since 2010 over how best to secure the long term future use of the leisure facilities offered by Linden Homes as part of the original S106 Obligation at both the Little Testwood Farm (LTF) and Southern Gardens sites for the benefit of local people. Discussions have involved Totton & Eling Town Council who have agreed, subject to PDC's agreement, to take on the freehold of both the Totton & Eling Football Club land (at Little Testwood Farm) and the Southern Gardens Clubhouse (including cricket pitch, tennis courts and car park) rather than the District Council.

2.2 It is considered preferable for the Town Council to take the freehold of these facilities rather than the District Council. The Town Council already has responsibility for other local recreational facilities and are well used to providing facilities of this nature. The Town Council can commit the time and management necessary to maximise the use of these facilities for the local community. There can be confidence through the involvement of the Town Council that their long term future will be secured.

- 2.3 There will be onward leases to Totton & Eling Football Club (in respect of part of Little Testwood Farm) and Belton Leisure (in respect of Southern Gardens), both sites securing excellent football and cricket facilities including other recreational uses for the community.
- # 2.4 The basic terms of the proposed new variation are attached at Appendix 2 (NB – only changes to the 2010 agreed terms are set out in Appendix 2. Other provisions including affordable housing etc. are as set out in the original S106 Obligation and will remain).

### **3. CONCLUSION**

- 3.1 Whilst it has taken a number of years to reach this position, it is considered that the Town Council's involvement in owning the freehold of the 2 areas of land in question gives confidence that their long term future will be safeguarded. The Town Council can also commit the time and management necessary to maximise the facilities for the benefit of local people.

### **4. CRIME & DISORDER IMPLICATIONS**

- 4.1 There are no crime and disorder implications.

### **5. ENVIRONMENTAL IMPLICATIONS**

- 5.1 The substantive aspects of environmental implications have already been considered as part of the planning process.
- 5.2 As far as LTF is concerned, the new proposed variation to the S106 Obligation ensures a clean-up of any contaminated land.

### **6. FINANCIAL IMPLICATIONS**

- 6.1 Linden Homes have offered considerable benefits for the local community in the proposed new terms of the new variation to the S106 Obligation.
- 6.2 No costs have fallen on the District Council as a result of the new way forward.

### **7. EQUALITY IMPLICATIONS**

- 7.1 There are no particular implications arising from this report.

### **8. PORTFOLIO HOLDER COMMENTS**

#### **8.1 Health and Leisure Portfolio Holder**

The revised arrangements whereby the local sports clubs are supported and overseen by the Town Council is welcomed.

## **8.2 Finance and Efficiency Portfolio Holder**

The community assets provided by the S106 Agreement will be available for specific and local use which is safeguarded. They do not have a wider value and will not require the cost of District Council management.

## **8.3 Planning and Transportation Portfolio Holder**

This scheme has been very difficult in many ways. It is however good to see a local benefit delivered.

## **9. RECOMMENDATION**

It is recommended that Cabinet:-

- 9.1 Notes the change in position in respect of the proposed new terms of the S106 variation.

It is recommended that PDC:-

- 9.2 Approves the entering into a S106 variation to give effect to the new terms outlined in this report and authorises the Head of Legal and Democratic Services and Executive Director to finalise the terms of the new S106 Agreement.

### **Further Information:**

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### **Background Papers:**

Public Documents

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**CABINET- 1 SEPTEMBER 2010 PORTFOLIOS: FINANCE & EFFICIENCY AND  
LEISURE, CULTURE & YOUTH MATTERS**

**OPEN SPACE SCHEMES IN TOTTON**

**1. PURPOSE**

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- 1.1 The purpose of the paper is to enable Cabinet to determine in principle whether there is a wish to pursue an offer from Linden Homes to agree a variation to the Unilateral Section 106 Obligation arising from the successful Appeal by Linden Homes which affects open space schemes in Totton. The sites concerned are Southern Gardens (Appendix 1) and Little Testwood Farm (Appendix 2). The paper concentrates on these matters for variation in the Unilateral Obligation, it is not a review of that entire document.
- 1.2 Cabinet are being asked for their views as a potential recipient of a new building (ie a clubhouse) and in respect of acquiring other legal interests in land.
- 1.3 As the matter in question is a variation to a Section 106 Obligation, a decision to favour change would also need to be made by Planning Development Control Committee. Arrangements have been made to advise the Committee as to the view of Cabinet. As the decision also involves assets, the Asset Management Group has considered the matter and has made a recommendation, which is presented in Section 3.3.
- 1.4 The Unilateral Obligation was imposed by the Inspector on the Council and the other parties to the Agreement. The Council was opposed to the development and did not welcome the Unilateral Obligation in the form that was imposed. None the less, the Unilateral Obligation will be applied should Cabinet and Planning Development Control Committee not favour the new offer.

**2. BACKGROUND TO THE TWO SITES**

- 2.1 Southern Gardens is a well established sports ground which has hosted cricket and football in the past, both playing to a good standard. The site is now owned by Linden Homes. The part of the site due to be retained in recreational use and is subject of this report, is currently occupied by Totton and Eling Cricket Club and Belton Leisure, which operates the facilities. The latter is a named party in the Unilateral Obligation.
- 2.2 Little Testwood Farm is an entirely new development with all the facilities being constructed on site. The site is owned by Linden Homes and is occupied as a construction site by their contractors whilst the works take place. In due course the intention is that it will host Totton and Eling Football Club (which has been displaced from that part of Southern Gardens that will now become housing) under a lease from the Council. The site will also host AFC Totton which will have the freehold of their part of the site once completed. The site also contains a parcel of land, the freehold of which will pass to the Council.

- 2.3 There is a right of way associated with Little Testwood Farm and this is accounted for in the design of the scheme. There is no known record of either site being considered village green.

### **3. TWO QUESTIONS TO CONSIDER**

- 3.1 At Southern Gardens, the question is whether it is preferable to have

Freehold possession of the whole site  
A revenue stream related to the above

Or a capital receipt for future open space projects.

- 3.2 At Little Testwood Farm the question is whether it is preferable to:

Receive the site laid out as informal open space and with a restriction as to its future use as public open space

or receive the site with the buildings retained for low rent employment uses and with a clause to share the capital value of any future development.

- 3.3 Asset Management Group considered the two sites questions and their view was:

In respect of Southern Gardens, to support the recommendation to accept the variation to the Unilateral Undertaking, subject to an appropriate rental agreement and safeguards for the Council being in place in respect of the lease arrangements.

In respect of Little Testwood Farm, that Linden Homes should be asked to clear the site before any interest is shown by the Council. It was agreed that a contamination survey would be necessary.

- 3.4 Further information in respect of the two sites is set out in the next section, with the financial aspects in Section 9. Finally, as part of the decision making process, there will be an analysis of risk before final decisions are made.

### **4. ASSESSMENT OF PRINCIPAL MATTERS: SOUTHERN GARDENS**

- 4.1 The Unilateral Obligation has the future tenure of the site split in two - the ground (cricket pitch and tennis courts) being passed freehold to the Council and the building and car park staying with the developer, or another lessee (probably at a commercial rent).
- 4.2 In terms of continuity of recreation at the site this is not helpful, for the Council carries a significant risk in the future because if relations between the Council and developer (or their lessee) break down, the Council would be left with a ground but no means to service it. In that situation, in order to service the recreational use, there would be a need to build a car park and pavilion on the existing ground if it were to continue in use. It is already tight for space and

realistically it could not be done and keep the existing use. The split of tenure would also tie the hands of the incumbent cricket club in terms of future investment because they cannot show security for external funding purposes.

- 4.3 The offer provides the clubhouse building (a substantial building which contains function rooms as well as changing accommodation) in lieu of a capital contribution for new off site public open space and a reduction in the contribution for maintenance (as there wont be the associated new off site spaces to maintain). In terms of land, the land for transfer under the Unilateral Obligation is coloured grey in Appendix 1 and the additional land which would transfer under the offer is marked cross hatched.
- 4.4 In summary, under the new offer, the whole site would transfer freehold at nil cost to the Council. The Council would then lease the site to Totton and Eling Cricket Club for a period of 25 years as a full repairing and insuring lease. Belton Leisure (who are a named party in the current Unilateral Obligation) would have a management agreement with the club to operate the facilities on similar terms.
- 4.5 The recommendation is that this aspect of the offer is a better outcome for the community, principally because it secures the future of the entire Southern Gardens site and its use for outdoor recreation. It also provides a level of investment into public ownership which is unlikely under any other funding route – even in a better financial climate than the one which currently exists. However, the consequential loss of capital funds is at a level where it is possible to conceive alternative partnership funding to achieve open space projects in the future.
- 4.6 It is also the case that the building does have income potential from two sources. Firstly there are telephone masts in the car park which provide a revenue stream. Also, the facility will be operated through the cricket club but with a wider leisure and recreation role, to provide a return on its operational costs and meet community use requirements which would be part of the lease. This will be reflected in the level of rental accruing to the Council.

## **5. ASSESSMENT OF PRINCIPAL MATTERS: LITTLE TESTWOOD FARM**

- 5.1 There are three parcels of land on this site and they are shown in Appendix 2. The land cross hatched is for direct transfer from the developer to AFC Totton with no involvement of the Council. The land coloured grey is for transfer to the Council but with a requirement that it is onward leased to Totton and Eling Football Club at a peppercorn. There is no discretion with these two elements. Lastly, the Unilateral Obligation includes the land hatched black. This is also identified for recreational use, with an indicative layout as informal recreation, which might then be use for a junior pitch. It is this land which requires assessment.
- 5.2 Under the Unilateral Obligation, the land would pass to the Council as Informal Public Open Space. This part of the site and its layout as informal open space was not a requirement of the Council and has been presented as part of the Unilateral Obligation. The planned use for the football clubs referred to above will function without land hatched black. It would require further work and investment to create formal pitches

- 5.3. The Core Strategy standard for formal public open space is not met in Totton and it is also known that Totton and Eling Football Club would prefer to have additional land so that some of their youth football can be based there. This aspiration could follow in the future with external funding. However, in the meantime, this site would be challenging to manage and whilst there would be some maintenance contributions to draw on for an initial period, there is no budget provision for the longer term. Experience elsewhere points to this being a costly site to maintain, given its location and the nature of the site.
- 5.4 Outside of open space as a use, the variation to the 106 agreement does allow for an alternative approach. There is a known need for employment land in Totton and given the location of this site, there would be merit in its future use for that purpose. To facilitate this, the revised 106 Agreement would provide for the land to be cleared and the buildings retained. These could then be made available at a low rent, in order to provide employment opportunities and also to secure the management of the site for the Council. In addition the Agreement would include for the land to be taken without cost to the Council but that, should there be a development which released value accrued in future, this would be shared with Linden Homes.
- 5.5 With either after use, the most significant question which arises is the condition of the land. It is a requirement of the Linden Homes that they clear the site and undertake a contamination survey at their expense. Asset Management Group was of the view that confirmation that the site is clean of contamination should take place in order for any land transfer to take place.

## **6. ENVIRONMENTAL IMPLICATIONS**

- 6.1 The substantive aspects of environmental implications have been accounted for in the Planning process. The consideration of the new offer over the Unilateral Agreement does provide benefits in securing the setting and function of the Southern Gardens site. If the Council were to take up the additional land at Little Testwood Farm, it is likely that there would be an environmental improvement in effective use and management.

## **7. CRIME AND DISORDER IMPLICATIONS**

- 7.1 Again the substantive matters have been accounted for. Bringing into use the additional land will be beneficial.

## **8. EQUALITY AND DIVERSITY IMPLICATIONS**

- 8.1 There are no particular implications arising from this report

## **9. FINANCIAL IMPLICATIONS**

- 9.1 These are set out in Appendix 3 in respect of the current Unilateral Obligation and the revised Section 106 Agreement.

- 9.2 In addition, there are elements where the developer will be required to fund outstanding items:
- a). In either arrangement a site contamination survey at Little Testwood Farm will be undertaken.
  - b). Should the revised Agreement progress: the legal costs of preparing the new Section 106 Agreement and related transfers/leases of land.
  - c). Should the revised Agreement progress: should there be Stamp Duty Land Tax implications this cost will be met.

## **10. PORTFOLIO HOLDER COMMENTS**

- 10.1 The Plan concerns a number of Portfolio Holders, however the Portfolio Holder for Leisure Culture and Youth Matters is the lead for the purpose and application of the Unilateral Section 106 Obligation funding and is supportive of the new offer, particularly in regard to the ability to secure a major facility for the town of Totton, which was such a concern for local people from the outset of these proposals. The Portfolio Holder for Employment Health and Well Being supports the need for low rental employment premises in Totton as being a particular requirement of local business

## **11. RECOMMENDATIONS**

It is recommended that Cabinet:

- 11.1 Advise the Planning Development Control Committee that it supports the acceptance of a new Section 106 Agreement to secure the benefits as outlined in the report.
- 11.2 Subject to the Planning Development Control Committee concurring with the decision of Cabinet :-

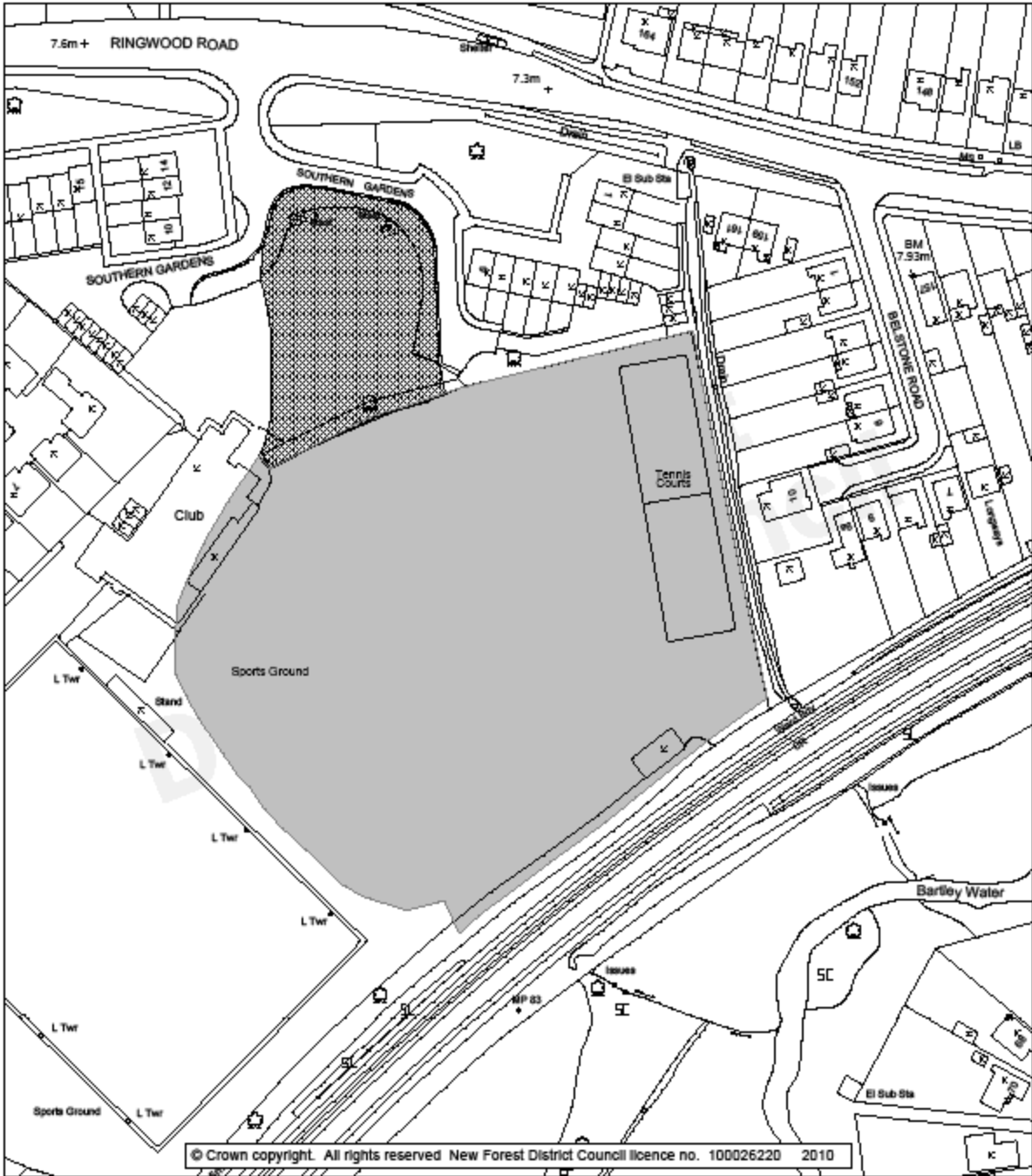
Grant authority to the Executive Directors in consultation with the Portfolio Holder for Finance and Efficiency and the Portfolio Holder for Leisure Culture and Youth Matters ("the relevant Portfolio Holders"), the Head of Legal and Democratic Services; Head of Property Services and Head of Communities and Employment to:



- (a) Enter into all necessary legal documentation to include a new Section 106 Agreement and associated land transfers and leases to give effect to the proposals in sections 4 & 5 within the financial parameters set out in the report (with the legal costs associated with all such documentation being met by Linden Homes), subject to the Council being satisfied that the land hatched black on Appendix 2 will be transferred to the Council free of all contamination and subject to any revised terms being agreed by the relevant Portfolio Holders and the Executive Directors.

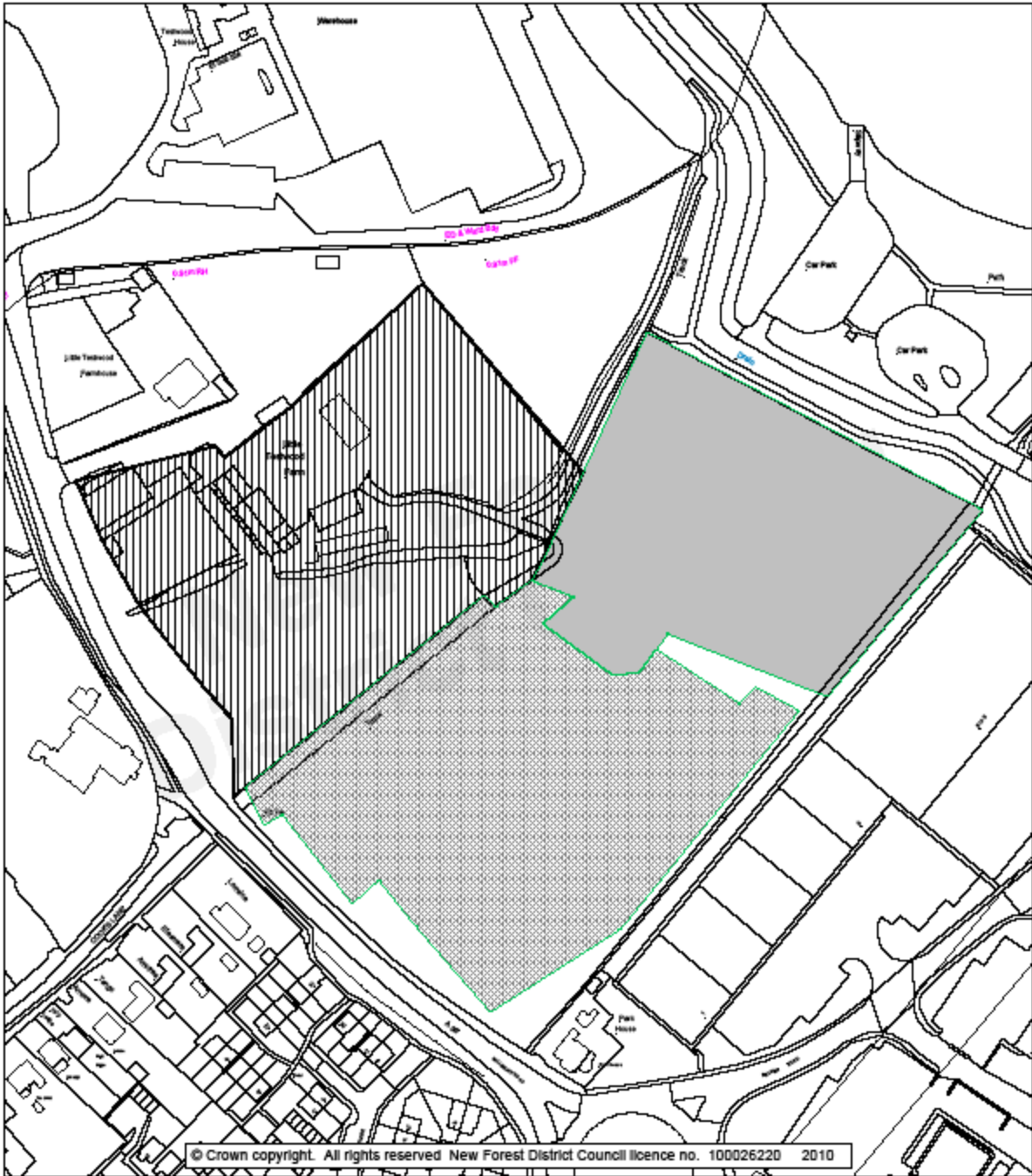



- (b) Enter into all other necessary contracts to ensure the sites at Southern Gardens and Little Testwood Farm are brought into effective use.

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 <b>New Forest</b> DISTRICT COUNCIL www.newforest.gov.uk tel: 023 8028 5000	Title <p style="text-align: center;">Southern Gardens Totton</p>		
	Date 03/06/10	Appendix 1	
	NOT TO SCALE - FOR IDENTIFICATION ONLY		



 <b>New Forest</b> DISTRICT COUNCIL www.newforest.gov.uk tel: 023 8028 5000	Title <span style="float: right;">↑ N</span> Little Testwood Farm	
	Date 03/06/10	Appendix 2
	NOT TO SCALE - FOR IDENTIFICATION ONLY	

### APPENDIX 3

	Unilateral Obligation	Revised 106 Agreement
Southern Gardens: pitch	Freehold tenure to the Council of the cricket pitch and tennis courts at the Southern Gardens site.	Freehold tenure to the Council of the cricket pitch and tennis courts at the Southern Gardens site.
Southern Gardens: facilities	Not included	Freehold tenure to the Council of the clubhouse, car park and mobile phone mast sites (construction value in excess of £850,000) at the Southern Gardens site with onward lease to the cricket club (subject to a 25 year management agreement with Belton Leisure, reflecting their role as a party to the Unilateral Obligation).
Southern Gardens: facilities use	Not included	Tenure will allow the Council to secure the range of community use historically available at this site.
Southern Gardens: rental	No consequential rental income	Consequential rental income in the order of £15 - £20,000 per annum
Little Testwood Farm: land	Freehold tenure to the Council of the football pitch and informal open space at Little Testwood Farm (subject to the lease of the football pitch and facilities to Totton and Eling Football Club)	Freehold tenure to the Council of the football pitch and informal open space at Little Testwood Farm (subject to the lease of the football pitch and facilities to Totton and Eling Football Club)
Little Testwood Farm: future use	Future use clause for public open space	Future use clause to allow for shared development value
Little Testwood Farm: rental	No consequential rental income. Cost of maintenance as informal open space.	Consequential rental income to cover operating costs of the site
Financial contribution	A financial contribution towards future provision of off site open space: £209,000	No financial contribution towards future provision of off site open space
Financial contribution	A financial contribution towards maintenance of public open space: £275,000	A financial contribution towards maintenance of public open space: £120,000, as there is no provision for future open space (above point) and therefore less maintenance.

The obligations in the Unilateral Obligation stand, should it be decided to stay with current arrangements.

**REVISED TERMS OF SECTION 106 VARIATION FROM 2010 TERMS**

**Little Testwood Farm**

- Linden to make secure the area of land that is potentially contaminated pending applying for planning permission for industrial use
- Contamination to be dealt with as part of any re-development proposal
- Half share of any uplift arising out of re-development to go for direct benefit of community of Totton
- If re-development takes place, Linden to provide financial contribution for equivalent area of open space.
- If no re-development, Linden to lay out land as open space following clean up and pass to NFDC
- Totton and Eling Football pitch land – freehold to be transferred to Totton and Eling Town Council who will onward lease it to football club

**Southern Gardens**

- Linden to transfer freehold of all the Southern Gardens leisure facilities (including phone masts) to Town Council who will onward lease them to Belton Leisure

**Financial Contributions**

- If re-development of LTF, Linden to pay to Council £60,000 for open space in locality
- Linden to pay £50,000 to Town Council for maintaining 2 play areas at Southern Gardens and Testwood Place
- Linden to pay £70,000 to NFDC for open space purposes in locality
- Linden to pay £50,000 to NFDC, half of which will go to the Town Council
- Linden to pay legal fees for the new Section 106 Variation
- Half share of any uplift arising out of redevelopment of LTF to go for direct benefit of the community of Totton (as above) and held by this Council