1.0 INTRODUCTION

1.1 This is a request under the Section 106A of the Town & Country Planning Act 1990 to vary the Section 106 agreement which relates to the outline planning permission which was allowed on appeal in 2007. Under the terms of Section 106A a planning obligation may be modified by agreement between the persons against which it is enforceable, or alternatively by means a formal Section 106A application, for which a right of appeal exists if it is refused. In this case the applicants have opted for the former option.

2.0 THE PROPOSAL

2.1 The development site consists of land to the east of Muston Road in Filey, located opposite Filey Secondary School. Outline and Reserved Matters planning approval has been granted for 300 dwellings and public open space and the development is under construction.

2.2 The existing S106 agreement contains obligations to secure provision of affordable housing and commuted payments, which would become liable in due course when development has reached specified stages. These figures are as follows:

i. £274,800 towards Filey Junior School
ii. £34,350 towards Filey Infant & Nursery School
iii. £15,520 towards a multi-use games area
iv. £50,000 towards Filey Surgery
2.3 As originally submitted the request sought to amend the payments as follows:

i. £13,596 towards Filey Junior School
ii. £13,596 towards Filey Infant & Nursery School
iii. £8,439 towards a multi-use games area
iv. £50,000 towards Filey Surgery (unchanged)

2.4 More recent correspondence has confirmed that the applicant is actually seeking to amend the figures to:

i. The sum towards Filey Junior School (£274,800) to be deleted in its entirety
ii. £27,192 towards Filey Infant & Nursery School (reduction of £7,158)
iii. £15,520 towards a multi-use games area – figure now unchanged
iv. £50,000 towards Filey Surgery (unchanged)

2.5 Although it is not a material planning consideration, members may wish to note that the sale of the part of the site currently owned by the Borough Council to the applicants cannot proceed until the variation of the Section 106 agreement has been completed.

3.0 CONSULTATIONS AND COMMENTS

3.1 Filey Town Council – Comments awaited.

3.2 North Yorkshire County Council (Education) - Comments awaited

3.3 Publicity – Since this is not a formal planning application, there are no specific publicity requirements. Amended information has been received since the request was first received and the above two consultees have been asked to provide comments prior to 11 July 2013.

3.4 Cllr M. Cockerill - The sale of the SBC portion of the land was agreed and approved early in 2012 with the total purchase price being paid in 3 equal instalments on 31 March 2012, 2013 and 2014. To date no payment has been received by SBC, the applicants use the reason that this is directly linked to the Section 106 Agreement. If the variation to the S106 is approved, the timescale for the payment of the purchase price must not be extended. I would suggest that, if the variation is approved, that a condition is included stating that full payment of the SBC land purchase price must be made within a short period, possibly 3 months and that failure to make this full payment will revoke any agreed variation to the S106 Agreement.

4.0 RELEVANT SITE HISTORY

4.1 2006 – Outline application for residential development, open space and means of access - refused (06/01134/OL)

4.2 2007 – Outline application for residential development, open space and means of access – refused, but subsequently allowed at appeal subject to
conditions and Section 106 agreement with all matters reserved except access. (07/00547/OL)

4.3 2010/11 – Reserved Matters application for 300 dwellings, including children’s play areas and fitness trail - approved with conditions. (10/01893/RM)

5.0 PLANNING POLICY

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 54A of The Town and Country Planning Act 1990 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. Attention is drawn to the following Planning Policy Guidance which is considered to be particularly relevant to the consideration of this decision:-

Scarborough Borough Local Plan (saved policies)

Policy C7 – Developer Contributions

National Planning Policy Framework

Paragraphs 203-206 – Planning conditions and obligations

5.2 The Education Payments Supplementary Planning Document (SPD) is also relevant.

6.0 ASSESSMENT

6.1 In determining this application the Local Planning Authority can only consider the proposed modification of the S106 agreement as put forward by the applicant. It can therefore only agree or reject the proposal and not unilaterally alter the terms of the agreement. Whilst the transfer of Borough Council land awaits a decision on the Section 106, the Committee does not have powers to affect the conditions of sale.

6.2 At the time of considering the reserved matters application in 2010/2011 the reduction in education payments was mooted, but no formal request was received at that stage. It has resurfaced now in part due to the proposed land transfer from the Borough Council and also the first S106 payments would become liable on occupation of 100 dwellings on the site.

6.3 The most detailed planning guidance of relevance is contained within the Education Payments SPD. This sets out thresholds for minimum number of dwellings above which payments towards education infrastructure (e.g. classrooms) may be required, as well as formulae to calculate the sum. The Borough Council relies on the County Council Education Authority to assess the level of contribution. Paragraph 4.10 of the SPD states that contributions are only required where a local need is identified. This is consistent with the 3 (and in particular the first) of the legal tests which apply to all S106 obligations, namely they shall be:
• necessary to make the development acceptable in planning terms;
• directly related to the development; and
• fairly and reasonably related in scale and kind to the development.

6.4 The judgement that the needs to be made is whether the payments are still necessary within the context of the capacity of local school infrastructure and if so whether the sums are fair and reasonable, taking account of the SPD. When the sums were calculated in 2007 this took into account of the schools’ capacity to accommodate the predicted additional number of pupils generated by the development. During the intervening period it is understood that school rolls have fallen, which is the basis for the £274,800 towards the Junior School being proposed for deletion from the s106 agreement and the proposed reduction towards the Infant/Nursery School from £34,350 to £27,192.

6.5 The formal comments of NYCC Education are awaited, although officers have seen correspondence dated May 2013 that informally accepted in principle the case for proposed reduction in payments. There will need to be a verbal update to Committee on this, as well as comments received from Filey Town Council. If the principle of the modification of the agreement is agreed by Committee, there are also a number of technical legal points which will need to be clarified before the Deed of Variation could be issued.

7.0 CONCLUSION

7.1 As originally submitted the proposed modifications to the Section 106 agreement did not correspond to the supporting documents. This has been clarified by subsequent correspondence. On the basis that NYCC Education are satisfied with the reduced payments it follows that the Local Planning Authority should agree to the modification of the s106 agreement. However, there will be a verbal update on this by officers at the Committee meeting.

8.0 RECOMMENDATION

8.1 That the proposed modification of the Section 106 Agreement be agreed, subject to the comments Of North Yorkshire County Council (Education).

Planning Manager

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT HUGH SMITH ON 01723 383642 e-mail hugh.smith@scarborough.gov.uk