

## REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

### The Picture Works, 42 Queens Road

#### **1 SUMMARY**

Application No: 13/00248/VS106A

Application by: BNP Paribas Real Estate on behalf of Joseph Antony Pitt And Benedict Nicholas Moon

Proposal: Variation of Section 106 agreement dated 3 October 2006 to remove requirement to pay £130,000 Financial Contribution.

The application is brought to Committee because it involves a formal request to vary a Section 106 Agreement.

To meet the Council's Performance Targets this application should be determined by 28th March 2013.

#### **2 RECOMMENDATIONS**

That, subject to no contrary observations being received by 25 March 2013, the Section 106 Agreement dated 3 October 2006 between Lace Market Properties, Lloyds Bank Plc and Nottingham City Council be varied to discharge the obligation to pay the Financial Contribution.

#### **3 BACKGROUND**

- 3.1 Planning permission was granted for the Pictureworks development on 12 October 2006, subject of a Section 106 Agreement securing a payment of £130,000. This payment was negotiated in accordance with the requirements of the Council's Open Space Supplementary Planning Guidance and the Meadows Gateway Development Brief, and was payable upon first occupation. The agreement made provision for the contribution to be spent on:
- Environmental improvements within the Meadows area;
  - Provision or improvement of open space in the locality; and
  - A pedestrian light controlled crossing point on Queen's Road.
- 3.2 At the time the original agreement was negotiated (May 2006) it was the subject of an open book financial appraisal, reviewed by external consultants, which demonstrated that the development could not afford to pay a full contribution. The figure of £130,000 was therefore negotiated as the maximum that the development could afford.
- 3.3 The Picture Works development commenced in 2007 and it became clear during the course of construction that the values that were being achieved through the sale

of the apartments were substantially below those anticipated at the time the decision to proceed with the development was taken.

- 3.4 In 2009 the developers (Lace Market Properties) submitted a request for the Section 106 agreement to be modified to remove the requirement to pay the contribution. The development was still under construction at that time, although a number of the units had been sold. This request was supported by a further appraisal which clearly demonstrated that the values being achieved from sales were insufficient to cover the costs of the development at that time.
- 3.5 That request was considered by the Committee in July 2009. Councillors resolved to defer the decision on any variation until after the development was complete, and the values achievable from the sale of the units could be reassessed at that time. A copy of the previous report and minutes is appended to this report.
- 3.6 The property is currently in the hands of the receivers.
- 3.7 The receivers have submitted a new request seeking to remove the requirement to pay the Financial Contribution. The request has been made under Section 106A of the Town and Country Planning Act 1990, which allows for agreements that are over five years old to be modified without the need for all parties to be signatories.

#### **4 CONSULTATIONS AND OBSERVATIONS OF OTHER OFFICERS**

A site notice has been posted. The period for representations expires on 25 March 2013.

#### **5 RELEVANT POLICIES AND GUIDANCE**

- 5.1 The agreement was negotiated having regard to the Meadows Gateway Development Brief, which states that financial contributions will be sought from developments within the area covered by the brief, to contribute towards essential transportation improvements, and to improve public realm and community safety in the wider area.

#### **6 APPRAISAL**

- 6.1 The current application is accompanied by financial information, in commercial confidence, setting out the latest available information on the cost and sale value of the development. This information has been assessed by the Council's Directory of Property and his assessment supports the view that the development cannot support the payment of any contribution (it is significant that the application has been submitted by the receivers).
- 6.2 The previous resolution of the committee allowed for the possibility that market conditions could have improved at the point that the development was complete, allowing for some or all of the contribution to be paid. However, it is clear that the financial situation has not improved to a sufficient degree, and that there is insufficient value in the development to support payment of any contribution.
- 6.3 It is therefore considered that it is appropriate to discharge the requirement to pay the financial contribution.

**7 SUSTAINABILITY / BIODIVERSITY**

None.

**8 FINANCIAL IMPLICATIONS**

The discharge of the Section 106 obligation will reduce anticipated future income to the Council. Although this money would have been assigned to various works, and particularly to future enhancement schemes within the Meadows, it has not been identified for use in a specific project. Any emerging projects will therefore need to be funded from alternative sources, and the scheme will not give rise to any direct financial benefits to the Meadows area. However, it is also considered to be important that the council is flexible in relation to Section 106 obligations, particularly where the development is an important regeneration benefit in its own right.

**9 LEGAL IMPLICATIONS**

A decision under Section 106A of the Town and Country Planning Act 1990 can vary the original agreement without the need for all parties to be signatory to a deed of variation, provided that the revised terms are not more restrictive than those in the original agreement. It should also be noted that there is a right of appeal against a decision to refuse to modify the agreement.

**10 EQUALITY AND DIVERSITY IMPLICATIONS**

None.

**11 RISK MANAGEMENT ISSUES**

None.

**12 STRATEGIC PRIORITIES**

Neighbourhood Nottingham – strengthening community cohesion in neighbourhoods and providing high quality, well designed and sustainable buildings.

**13 CRIME AND DISORDER ACT IMPLICATIONS**

None.

**14 VALUE FOR MONEY**

None.

**15 List of background papers other than published works or those disclosing confidential or exempt information**

1. Application No: 13/00248/VS106A - link to online case file:  
<http://plan4.nottinghamcity.gov.uk/WAM/pas/findCaseFile.do?appNumber=13/00248/VS106A>

**16 Published documents referred to in compiling this report**

Nottingham Local Plan (November 2005)  
Development Control Committee report and minutes, 22 July 2009.

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REPORT OF DIRECTOR OF PLANNING AND TRANSPORT

The Pictureworks, 24-46 Queens Road, Nottingham- Section 106 Agreement

**1 SUMMARY**

Application No: 06/00581/PFUL3 for planning permission

Application by: Lace Market Properties FAO Iain Orme on behalf of LMP Southside Ltd

Proposal: Erection of 7/10 storey building containing 128 self-contained apartments, commercial and leisure to ground floor and associated parking. (Resubmission of planning permission reference 05/02533/PFUL3)

This item is brought to Committee because it involves a request to amend the requirements of the Section 106 Agreement entered into following a previous resolution of this Committee to grant planning permission for the Pictureworks development, subject to that agreement.

**2 RECOMMENDATIONS**

That the Section 106 Agreement dated 3 October 2006 between Lace Market Properties, Lloyds Bank Plc and Nottingham City Council be varied to discharge the obligation to pay the Financial Contribution.

**3 BACKGROUND**

3.1 The original application for the Pictureworks development was considered by the Development Control Committee on 19 July 2006. Planning permission was granted on 12 October 2006, following satisfactory completion of a Section 106 Agreement securing a payment of £130,000. This payment was negotiated in accordance with the requirements of the Council's Open Space Supplementary Planning Guidance and the Meadows Gateway Development Brief, and is payable upon first occupation. The agreement made provision for the contribution to be spent on:

- Environmental improvements within the Meadows area;
- Provision or improvement of open space in the locality; and
- A pedestrian light controlled crossing point on Queen's Road.

3.2 A request has been received from Lace Market Properties seeking to remove this obligation. They advise that the scheme is likely to make a loss and that they can no longer afford to pay the contribution.

#### **4 RELEVANT POLICIES AND GUIDANCE**

The agreement was negotiated having regard to the Meadows Gateway Development Brief, which states that financial contributions will be sought from developments within the area covered by the brief, to contribute towards essential transportation improvements, and to improve public realm and community safety in the wider area.

#### **5 CONSULTATIONS AND OBSERVATIONS OF OTHER OFFICERS**

**Director of Housing and Regeneration:** Agrees that the Section 106 obligation should be discharged.

#### **6 APPRAISAL**

- 6.1 At the time the original agreement was negotiated (May 2006) it was the subject of an open book financial appraisal, reviewed by external consultants, which demonstrated that the development could not afford to pay a full contribution. The figure of £130,000 was therefore negotiated as the maximum that the development could afford.
- 6.2 The Pictureworks development commenced in 2007 and is due for completion in September this year. It is understood that this is longer than originally programmed, due in part to a restructuring of the development finances. As the scheme has progressed it has become clear that the financial basis upon which the original agreement was negotiated has changed significantly, particularly in relation to the final value of the finished development.
- 6.3 The applicant has supplied information in commercial confidence which appears to support the case that the development cannot now afford to pay the contribution as required by the agreement.
- 6.4 Whilst the agreement would potentially have provided a significant source of funding for environmental works within the Meadows, completion of the Pictureworks development is also of key importance for the regeneration of the Southside, in particular the Station Hub and Meadows Gateway area.
- 6.5 Part of the contribution could potentially have been used to provide a pedestrian light-controlled crossing point on Queen's Road. However, this would form part of wider highway improvements in the area associated with the future station improvements and it is considered that there is potential for this to be provided through other sources of funding. In view of the small amount involved, the absence of a contribution from this scheme is unlikely to threaten the delivery of these works.
- 6.6 Having regard to all the circumstances it is accepted that the requirement to pay the contribution will have an impact on the viability and could prejudice the successful completion of the scheme.

## **7 FINANCIAL IMPLICATIONS**

The discharge of the Section 106 obligation will reduce future income to the Council. Although this money would have been assigned to various works, and particularly to future enhancement schemes within the Meadows, it has not been identified for use in a specific project. Any emerging projects will therefore need to be funded from alternative sources, and the scheme will not give rise to any direct financial benefits to the Meadows area. However, the regeneration benefits of the completion of a significant development within the Southside area are considered to be an important consideration to be weighed against any reduced money for future projects.

## **8 LEGAL IMPLICATIONS**

Execution of a deed is required to discharge the obligation.

## **9 EQUALITY AND DIVERSITY IMPLICATIONS**

None.

## **10 RISK MANAGEMENT ISSUES**

None.

## **11 STRATEGIC PRIORITIES**

Transforming Nottingham's Neighbourhoods: Completion of the Pictureworks development will represent a significant regeneration benefit for the Southside area.

## **12 CRIME AND DISORDER ACT IMPLICATIONS**

None.

## **13 VALUE FOR MONEY**

None.

## **14 List of background papers other than published works or those disclosing confidential or exempt information**

1. Application No: 06/00581/PFUL3
2. Development Control Committee agenda and minutes, 19 July 2006.

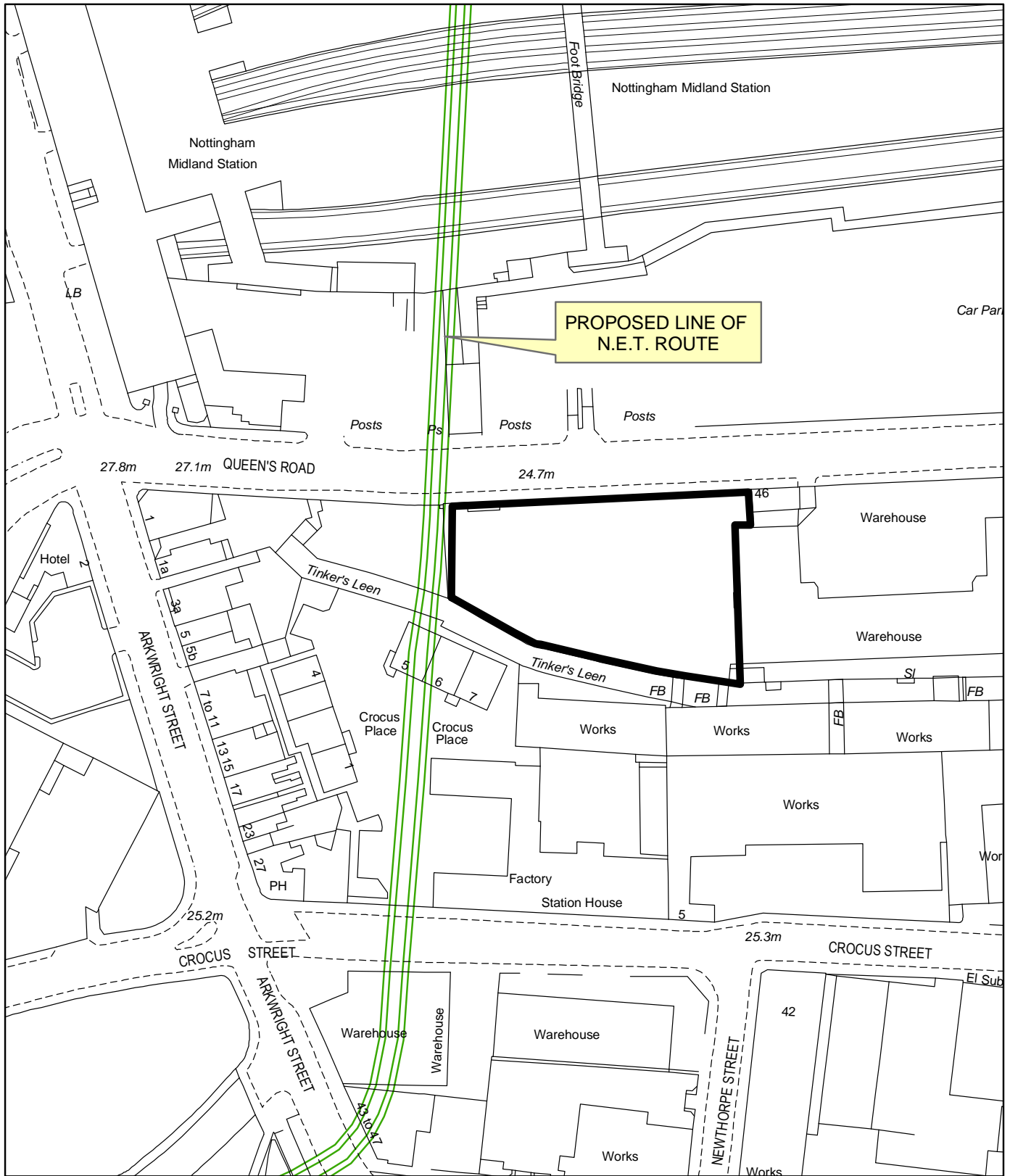
## **15 Published documents referred to in compiling this report**

Meadows Gateway Development Brief, March 2005

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**Title: The Pictureworks, 24 - 46 Queen's Road.**

Key

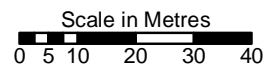
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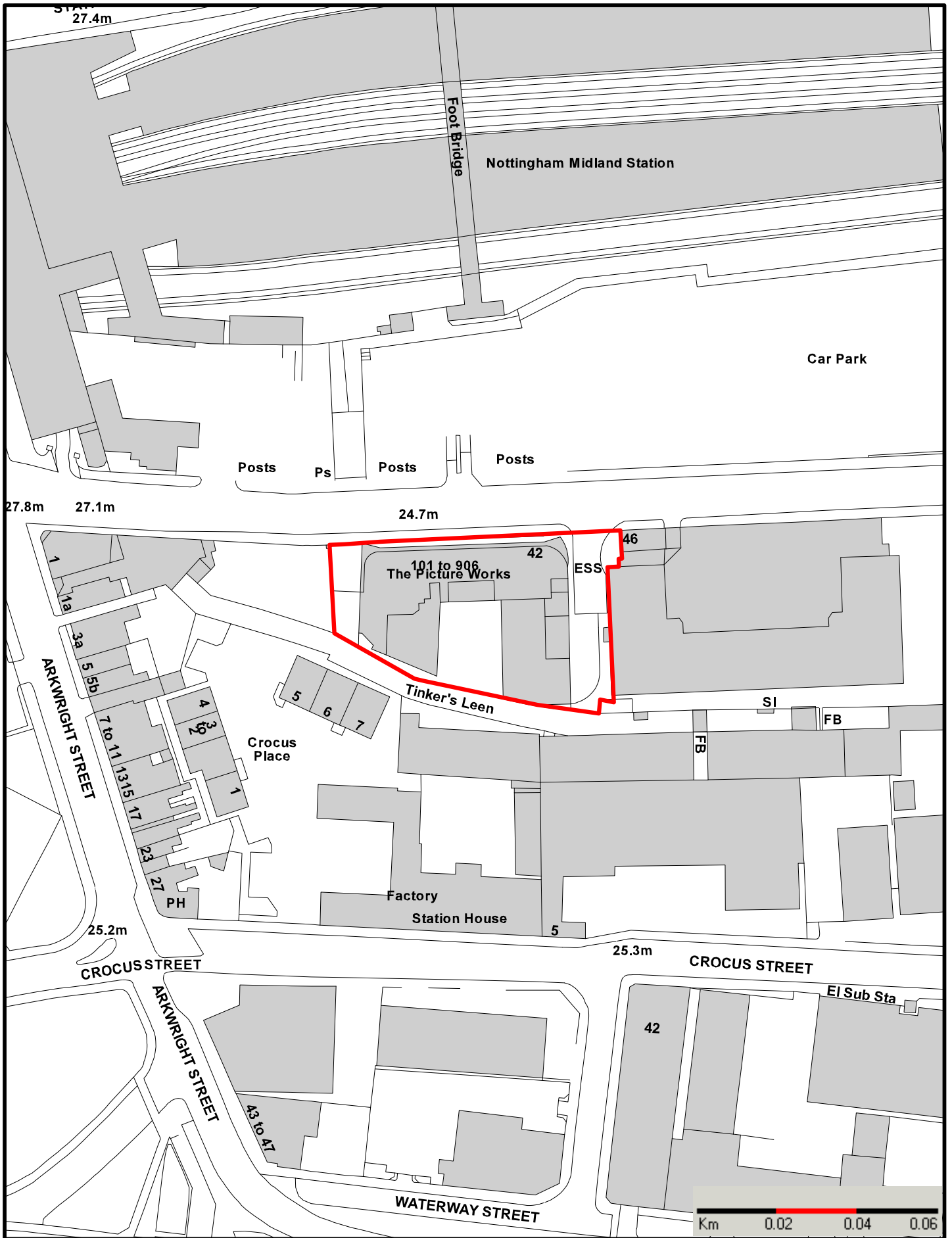


**47 THE PICTUREWORKS, 24-26 QUEENS ROAD, THE MEADOWS – SECTION 106 AGREEMENT**

Consideration was given to a report of the Director of Planning and Transport, copies of which had been circulated, requesting to amend the Section 106 agreement of application 06/00581/PFUL3 which had previously been agreed at the meeting of the Committee on 3 October 2006.

Councillor Benson proposed that the decision as to whether to discharge the obligation to pay the financial contribution required by the Section 106 agreement, dated 3 October 2006, mentioned in the report, or to reduce the amount required to be paid, be deferred until the completion of the development and that the decision be delegated to the Director of Planning and Transport, which was voted on and agreed.

**RESOLVED the decision as to whether to discharge the obligation to pay the financial contribution required by the Section 106 agreement, dated 3 October 2006, mentioned in the report, or to reduce the amount required to be paid, be deferred until the completion of the development and that the decision be delegated to the Director of Planning and Transport.**



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