

Marlborough park S106 agreement

Planning Committee

Date: 12th January 2016

Author:	Head of Planning, Regulatory Services and Heritage
Wards:	All Wards (and specifically Old Town)
Locality Affected:	All Locality Areas
Parishes Affected:	All Parishes

1. Purpose and Reasons

- 1.1 To seek the approval of Planning Committee to enter into a supplemental legal agreement with the landowners/ developers of the land known as Marlborough Park (Former Wakefield House off Pipers Way) ("the Development Site").
- 1.2 The supplemental legal agreement is necessary in order to agree the details of financial arrangement between the landowners/developers and the Council regarding the overpayment of financial contributions under the section 106 agreement dated 5th September 2006 ("the 2006 agreement"). The overpayment has occurred because the outline planning permission granted in 2006 under reference S/05/1720 has not been fully implemented and a new application is now proposed to be submitted. Should a new planning permission be granted and implemented, the overpayment will need to be paid back by the Council. Also, the new development will be required to pay a CIL charge under the Charging Schedule adopted by the Council this year pursuant to the Community Infrastructure Levy Regulations 2010.
- 1.3 This matter supports the Council's Priority 1: Improve Infrastructure and housing to support a growing low carbon economy.

2. Recommendations

The Committee is recommended to:

- 2.1 Authorise the Director of Law & Democratic Services, in consultation with the Head of Planning, Regulatory Services and Heritage, and the Board Director, Resources, to enter into a supplemental legal agreement with the landowners/developers, in respect of Development Site, as detailed under paragraph 3 of this report.

3. Detail

Planning Background

- 3.1 Planning Permission was granted in outline on 6th September 2006 under ref. S/05/1720 for mixed use development comprising up to 616 residential units on the Development Site, subject to the 2006 agreement. The 2006 agreement has been subject to a deed of variation.

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- 3.2 The owners were obligated by the 2006 agreement to make payment of all the financial contributions associated with the whole development site (to cover all 616 units) by occupation of the first housing unit within the Development Site. All the financial contributions (in the sum of £2,777,114.57) have been paid. However, to date, only one third of the housing units (204) have been built and occupied.
- 3.3 Detailed planning permission under Reserved Matters approval exists for a further 358 units (S/RES/09/1543), and a further Reserved Matters application for a substantial proportion of the remainder of the site (S/RES/09/1575) is pending determination by the Local Planning Authority. The landowners/developers have indicated that it is not their preference to proceed with development in the form as approved and proposed under those applications. They now wish to submit a new application.
- 3.4 The landowners/developers are prevented by planning condition from submitting any further Reserved Matters applications under the 2006 outline consent. This is because the timescale to do so has now expired. In order to develop the remainder of the site differently from the extant approved Reserved Matters permission and the proposed Reserved Matters application, they will need to obtain a replacement planning permission.
- 3.5 To this end, they now wish to submit a fresh planning application for the remaining un-developed part of the Development Site. The implication of submitting another application and obtaining a fresh planning consent is that they have paid s106 financial contributions to the Council associated with properties that will not be built under the existing outline planning consent (414 in number - approximately two-thirds of the original units numbers permitted).
- 3.6 In law, the proportion of the financial contributions which is attributable to these un-built 414 houses is repayable by the Council. However, the landowners/developers realise that any new scheme approved under a fresh planning application would fall under the CIL regime. It would be a CIL liable development and would, in line with the Council's adopted Charging Schedule be charged for the relevant gross internal area of floor space constructed under a new permission. They are therefore seeking, firstly, a confirmation of the amount of s106 contributions repayable to them by the Council, and secondly, whether the Council would prefer to repay the money to them or allocate it to any CIL charge that will fall due to the Council should the Council grant planning consent for their proposed new scheme.

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Proposed Approach

- 3.7 An assessment of the paid contributions has been undertaken in order to work out what the Council is entitled to retain for the purpose of the built scheme and what the Council is not entitled to retain because it can be attributable to the un-built scheme.
- 3.8 A table is set out at **Appendix A** showing this split and the value of the contribution by item the Council is not entitled to retain including interest accrued to date following payment. The total value of the contributions the Council is not lawfully entitled to retain including interest has been calculated at a value of **£1,171,409.90**. This value has been agreed between the parties.
- 3.9 Member are requested to consider the following two options:
- Option 1** - Repayment of the amount repayable to the landowners/developers from when a new planning permission is granted. In this scenario, the Council will impose a restriction in the proposed supplemental legal agreement that the extant Reserved Matters consent shall not be implemented;
- OR
- Option 2** - The Council retains the amount repayable and this is off-set against the future payment of the CIL liability arising from the proposed new development permitted by the Council. In the event of full CIL liability falling below the amount to be repaid, the landowners/developers will make up the balance. Alternatively, in the event that the CIL liability arising from the new development is less than the amount to be repaid, the Council will repay the balance.
- 3.10 The supplemental legal agreement will also vary the 2006 agreement to reflect the contributions which the Council is entitled to keep in relation to the occupied 204 houses. It will set out clearly the updated financial position in relation to all the contributions.
- 3.11 Officers consider that option 2 delivers the best outcome for the Council, as it means the Council will not be required to repay any money to the landowners/developers. This option is therefore recommended to Members.
- 4. Alternative Options**
- 4.1 Not enter into a signed legal document that sets out the agreed position (Memorandum of Understanding) between the parties and rely on non-legal correspondence setting out the Council's position to the owners.
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5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 The total repayment sum of £1,171k includes interest of £87k which will be funded from treasury budgets. Of the principal sum of £1,084k, £222k has already been allocated and spent and therefore this will create a budget pressure if it needs to be repaid in advance of any future receipt.

Legal and Human Rights Implications

- 5.2 Legal and human rights implications have been taken into account in preparing this report. The relevant legal issues are dealt with in the body of this report.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 The future requirements pertaining to the necessary amendments to the s106 to address this matter will be undertaken by means of separate instructions to accompany the grant of any replacement permission to develop the area of land within the Wakefield House application site that currently remains undeveloped. This would be managed under formal instructions under the delegated authority of the Head of Planning, Regulatory Services, Heritage and Libraries.

Diversity Impact Assessment

- 5.4 It has been determined that will no adverse impact in respect of Diversity in respect of the matters pertaining to the content of this report. The process is informed by a requirement to comply with a legal position.

Risk Management

- 5.5 Securing the approach to management of this matter under a signed legal document would result in reduced risk to the Council.

6. Consultees

- 6.1 The Board Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.
- 6.2 The Head of Conveying, Environment and Contracts, The Cabinet Member for Planning, Cabinet Member for Finance, the Ward Councillors for Old Town and current elected Councillors that would have represented the Ward at the time have also been informed about the report.

7. Background Papers

- 7.1 S/05/1720 Land at Wakefield House Decision Notice

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7.2 S/RES/07/2331 Reserved Matter Approval Notice for Phase 1 (Area1 204 units)

7.3 S106 legal agreement in respect of Wakefield House Pipers Way dated 5th September 2006 (as varied).

8. Appendices

8.1 **Appendix 1:** Breakdown of S106 contributions from s106 deed of obligation associated with S/05/1720 that the Council is not entitled to retain.

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Appendix 1:

Breakdown of S106 contributions from s106 deed of obligation dated 5th September 2015 (as varied) associated with S/05/1720 Wakefield House, Pipers Way that the Council is not entitled to retain.

Contribution	Amount Received	Date Received	Can 100% be retained in the event of a new permission?	Value attributable the 204 units built proportion of the 616 that can be retained or where 100% is to be retained £	Value of the share the Council is not entitled to retain (associated with the 412 units not built of the 616) £	Value of interest (£)	Repayable Sum (principle plus interest)(£)
Administration Fee	£129,297.08	13/12/2007	Yes	£129,297.08	£0.00	-	
First Bus Service Sum	£191,618.26	13/12/2007	Yes	£191,618.26	£0.00	-	
Second Bus Service Sum	£216,235.89	05/01/2011	Yes	£216,235.89	£0.00	-	
First Community Sum	£171,965.11	13/12/2007	No	£56,949.48	£115,015.63	£14,850.88	£129,866.51
Second Community Sum	£194,057.45	05/01/2011	No	£64,265.78	£129,791.67	£4,690.53	£134,482.20
Culture Sum	£32,579.00	15/10/2010	No	£10,789.15	£21,789.85	£1,113.41	£22,903.26
First Education Sum	£235,837.86	13/12/2007	No	£78,102.15	£157,735.71	£20,366.92	£178,102.63
Second Education Sum	£261,574.14	05/01/2011	No	£86,625.20	£174,948.94	£6,762.66	£181,711.60

Further information on the subject of this report can be obtained from Sarah Screen, 01793 466397, sscreen@swindon.gov.uk.

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Appendix 1 Cont'd:

Breakdown of S106 contributions from s106 deed of obligation dated 5th September 2015 (as varied) associated with S/05/1720 Wakefield House, Pipers Way that the Council is not entitled to retain.

Contribution	Amount Received	Date Received	Can 100% be retained in the event of a new permission?	Value attributable the 204 units built proportion of the 616 that can be retained or where 100% is to be retained £	Value of the share the Council is not entitled to retain (associated with the 412 units not built of the 616) £	Value of interest (£)	Repayable Sum (principle plus interest) (£)
Highways	£105,479.68	13/12/2007	Yes	£105,479.68	£0.00	-	
LEAP Sum	£88,224.24	05/01/2011	No (not if developer is going to manage the facility through a Management Company)	£0.00	£88,224.24	£,3,410.31	£91,634.55
NEAP Sum	£164,336.94	05/01/2011	Yes	£164,336.94	£0.00	-	
Public Art	£142,485.37	13/12/2007	No	£47,186.71	£95,298.66	£12,305.01	£107,603.67
First Public Realm Sum	£196,531.55	13/12/2007	No	£65,085.12	£131,446.43	£16,972.43	£148,418.86
Second Public Realm Sum	£227,727.04	05/01/2011	No	£75,416.10	£152,310.94	£5,887.59	£158,198.53
Services Sum	£26,613.65	05/01/2011	No	£8,813.61	£17,800.04	£688.06	£18,488.10
Sports Pitches Sum	£392,551.31	05/01/2011	Yes	£392,551.31	£0.00	-	
TOTAL	£2,777,114.57		-	£1,692,752.47	£1,084,362.10	£87,047.80	£1,171,409.90

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