

OFFICER DECISION RECORD

For staff restructures, please also complete an RA1 form to update the HR Portal. This is attached at Annex 2.

Decision Ref. No:

RE17 0071

Box 1

DIRECTORATE: Development

DATE: 30.03.2017

Contact Name: Nicola Elliott

Tel. No.: 734860

Subject Matter:

The completion of an agreement under Section 106 of the Town and Country Planning Act 1990 relating to the potential development of land at Westminster Drive, Dunsville

Box 2

DECISION TAKEN: To approve the completion of an agreement under Section 106 of the Town and Country Planning Act 1990 in accordance with the draft attached hereto in relation to an appeal to the Secretary of State following a decision by the Council as Local Planning Authority to refuse the planning application.

Box 3

REASON FOR THE DECISION:

On the 8th of March 2016 the Council's Planning Committee refused an application for outline planning permission for the erection of 97 dwellings on approximately 3.37ha of land off Westminster Drive, Dunsville. The decision notice was issued on the 18th of March 2016. The application was recommended for approval by officers and this recommendation was overturned. Had the application been approved, the Planning Committee would have authorised officers to enter into an agreement under Section 106 of the Town and Country Planning Act 1990 linked to the Development thereby securing a number of community benefits including affordable housing, public open space, education and transport and infrastructure.

The applicant has subsequently appealed the decision of the Council's Planning Committee and a public inquiry is currently being held by an Inspector appointed by the Secretary of State who will decide on the appeal in the forthcoming months. The community benefits to be derived by means of Section 106 of the 1990 Act are still required, however, the decision of Planning Committee resulted in no authority for existing officers to complete a suitable agreement. Whilst not supporting the appeal, it is still in the Council's interest to complete a suitable agreement thereby accruing the community benefits, in the event that the Secretary of State is minded to approve the application by means of Appeal.

Community benefits can be offered unilaterally by a developer, however, the Council would not necessarily have similar input to what is on offer nor would it necessarily have the necessary means to control how the community benefits are delivered should

the appeal be allowed.

It is to the Council's advantage therefore, to enter into an agreement whereby the necessary safeguards can be protected.

The following contributions are to be provided under the s106:

- 26% on site affordable housing;
- Public Open Space and subsequent maintenance;
- Financial contributions towards the West Moor Link Road (£89,162);
- Returnable Travel Bond (£10,189.85);
- Financial contributions towards education (£255,003);
- Financial contribution for bus stop improvements;
- Financial contribution towards future delivery of the DN7 (Unity) Project (£150,000).

Box 4

OPTIONS CONSIDERED & REASONS FOR RECOMMENDED OPTION:

1. Not to enter into a Section 106 Agreement. This could result in the community benefits being derived being somewhat less than could be achieved by means of a negotiated agreement. The ability to enforce the provisions afterwards may also be diluted if the developers are permitted to put forward their own terms unilaterally.
2. Complete a Section 106 Agreement. The advantages are that the Council can negotiate its own terms of the provision of community benefits, and ensure that there are adequate enforcement provisions included.

Box 5

LEGAL IMPLICATIONS:

Section 106 obligations should only be sought when they meet the following tests:

- 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

The obligations within the draft agreement meet the Council's policy tests and the CIL regulations as set out above. The developer could chose to make these obligations by way of an unilateral obligation in which instance the Council would have limited ability to influence the terms of the obligations including those relating to future enforcement .

Name: Karen Winnard Signature: _____ Date: 8th May 2017
Signature of Assistant Director of Legal and Democratic Services (or representative)

Box 6

FINANCIAL IMPLICATIONS:

The value, both cash and in kind, of the community benefits to be put forward under the proposed S106 agreement are shown above in Box 3 "Reason for the Decision". They are of sufficient size to merit appropriate safeguards to be in place to ensure that they are secured should the development go ahead. Conclusion of the S106 agreement will make it more likely that those benefits are realised to that value and in the manner and form that the Council feels best suits the requirements of the community.

The cost of planning officers in formulating the agreement will be met from existing planning budgets as part of normal service activity, whilst the legal costs associated with it are usually covered by a contribution from the developer subject to inclusion of the appropriate clause in the s106 agreement.

Name: Dave Rosser Signature: _____ Date: 9th May 2017 Signature of Assistant Director of Finance & Performance (or representative)

Box 7

HUMAN RESOURCE IMPLICATIONS:

There are no HR implications specific to this decision.

Name: Angela Cotton Signature: _____ Date: 08/05/2017 Signature of Assistant Director of Human Resources and Communications (or representative)

Box 8

PROCUREMENT IMPLICATIONS:

There are no direct procurement implications associated with the entering in to a 106 agreement.

Name: S Duffield Signature: Date: 08/05/17
Signature of Assistant Director of Finance & Performance
(or representative)

Box 9

ICT IMPLICATIONS:

There are no technology implications.

Name: Julie Grant Signature: Date: 9th May 2017
Signature of Assistant Director of Customer Services and ICT
(or representative)

Box 10

ASSET IMPLICATIONS:

There are no implications arising from the recommendations of this report that impact on the use of DMBC assets.

Name: David Stimpson, Property Manager
Signature: Date: 10 May 2017
Property Manager – on behalf of Assistant Director of Trading Services and Assets

Box 11

RISK IMPLICATIONS:

To be completed by the report author

1. To not enter into a s106 legal agreement could result in the community benefits being derived being somewhat less than could be achieved by means of a negotiated agreement.
2. The ability to enforce the provisions afterwards may also be diluted if the developers are permitted to put forward their own terms unilaterally.

(Explain the impact of not taking this decision and in the case of capital schemes, any risks associated with the delivery of the project)

Box 12

EQUALITY IMPLICATIONS:

To be completed by the report author

There are no direct equality implications as a result of this decision.

Name: Nicola Elliott **Signature:** _____ **Date:** _____
(Report author)

**Box 13
CONSULTATION**

Officers

(In addition to Finance, Legal and Human Resource implications and Procurement implications where necessary, please list below any other teams consulted on this decision, together with their comments)

Members

Under the Scheme of delegation, officers are responsible for day to day operational matters as well as implementing decisions that have been taken by Council, Cabinet, Committee or individual Cabinet members. Further consultation with Members is not ordinarily required. However, where an ODR relates to a matter which has significant policy, service or operational implications or is known to be politically sensitive, the officer shall first consult with the appropriate Cabinet Member before exercising the delegated powers. In appropriate cases, officers will also need to consult with the Chair of Council, Committee Chairs or the Chair of an Overview and Scrutiny Panel as required. Officers shall also ensure that local Members are kept informed of matters affecting their Wards.

Please list any comments from Members below:

**Box 14
INFORMATION NOT FOR PUBLICATION:**

It is in the public interest to be aware of this decision record under the freedom of information Act 2000, therefore this decision will be published in full redacting only signatures.

Name: Jenna Rumley Signature: JRumley Date: 12/05/2017
Signature of FOI Lead Officer for service area where ODR originates

Box 15

Signed: Scott Cardwell Date: 12.05.2017
Director/Assistant Director

Signed: _____ Date: _____
Additional Signature of Chief Financial Officer or nominated representative for Capital decisions (if required)

Signed: _____ Date: _____
Signature of Mayor or relevant Cabinet Member consulted on the above decision (if required).

- This decision can be implemented immediately unless it relates to a Capital Scheme that requires the approval of Cabinet. All Cabinet decisions are subject to call in.
- A record of this decision should be kept by the relevant Director's PA for accountability and published on the Council's website.
- A copy of this decision should be sent to the originating Directorate's FOI Lead Officer to consider 'information not for publication' prior to being published on the Council's website.
- A PDF copy of the signed decision record should be e-mailed to the LA Democratic Services mailbox