

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 0050

Box 1

DIRECTORATE: Development

DATE: 18/08/2016

Contact Name: R Purcell

Tel. No.: 01302 734867 / 734879

Subject Matter:

Issuing of Decision Notice for DN7/Unity Development Planning Application Hatfield/Stainforth Doncaster.

Box 2

DECISION TAKEN: To authorise the Assistant Director Legal and Democratic Services to complete the section 106 agreement on the basis set out in the ODR and to issue the decision notice for the DN7/Unity planning application.

Box 3

REASON FOR THE DECISION:

The Planning Committee determined on 15 December 2015 to grant planning permission subject to additional and amended conditions and allowed the Head of Planning, in consultation with the Director of Finance and Corporate Services, to complete negotiations over the Section 106 Agreement and the conditions with the Applicant and Consultees. It resolved that once the Planning Casework Unit had given the Council authority to issue the decision and the Head of Planning be authorised to issue the Planning Permission.

The Planning Committee report set out that a Viability Assessment for the development proposal showed that all the S106 requirements made of this development are unlikely to be able to be delivered. The report identified that only 4% affordable housing would be offered but further consideration and negotiation has achieved 7.5%. The report identified that there would be no affordable housing within the first 500 homes and this remains the case. Other sums have been apportioned to the other S106 asks as identified in the report.

Following negotiation with the applicant and an assessment of the Viability Assessment by Cushman Wakefield, the Council's appointed Economic Viability Consultants the following obligations have been identified :

- (a) the unity Community Forum Contribution - £70,000
- (b) the Bus Levy - £750,000
- (c) the Education Contribution - £8,500,000;
- (d) the Park and Ride Contribution - £198,000
- (e) the Pedestrian Footbridge Improvement Contribution - £150,000
- (f) the Rail Station Improvement Contribution - £919,000; and
- (g) the Training Centre Contribution - £320,000

The sum of £8.5m has been identified for a school on a site allocated within the development with payments to the council in phases as agreed with the Directors of Finance & Corporate Services and Childrens Services. The first instalment (£2,000,000) is payable after the development of 500 dwellings. Subsequent instalments of £325,000 are payable for every 100 dwellings after the first 500. In total the Council will receive one instalment of £2,000,000 and 20 instalments of £325,000.

A contribution of £3.5m is being made to the construction of the M18 J5 link road which is subject to a separate planning permission and separate funding agreement.

The agreement provides for regular reviews throughout the life time of the 30 year site development by which costs incurred costs incurred and values achieved will be assessed. Allowable costs cover the following costs:

- (a) the costs incurred by the Developer in concluding an agreement with the Council providing for the delivery of the Link Road;
- (b) any cost overruns incurred by the Developer in the delivery of the Link Road;
- (c) any other costs incurred by the Developer over and above the contribution of the Developer set out in the agreement for the delivery of the Link Road

This may increase or reduce S106 contributions and the amount of affordable housing or not achieve returns such that any section 106 obligations are payable depending on market conditions and the costs of the development.

A number of issues have arisen in relation to the future enforceability of the agreement.

There are a number of third party landowners who are parties to the agreement. One of the third parties (a settlement trust) has requested that the liability of the Trustees in respect of the financial obligations in the agreement be limited to the value of the assets for the time being of the Trust. There is a risk that if for any reason the Trustees implemented the permission on their land the Council's ability to recover the contributions from the Trustees would be limited to the value of the assets of the Trust for the time being (note that the Council does not know what the value of the assets are at the present time). The location of the land which is within the commercial area of the development any loss of S106 money will not impact on the money to be obtained for affordable housing or the education contributions although it could affect the training, park and ride, rail station improvements and Community Forum contributions.

In addition, there are a number of areas of land (the non-aligned land) within the red line of the planning application but which is not bound by the obligations within the agreement. The planning permission includes an 'Arsenal' condition which will preclude development on these plots unless the land has first been bound by the S106 requirements.

Box 4**OPTIONS CONSIDERED & REASONS FOR RECOMMENDED OPTION:**

Option One- to accept the obligations as negotiated and issue the planning permission (preferred option)

There have been many areas of consideration during the negotiations and the sums identified for each S106 requirement and mechanisms for payments. The balance of payments in the final 106 reflects the considered views of the Head of Planning, Director of Finance, Director of Childrens Services, the Council's appointed solicitor and the Council's appointed Viability Consultant at Cushman Wakefield.

Option Two- not to accept the obligations and not sign the S106 . This will lead to the scheme not being granted permission, the available loans and grants being unable to be drawn down and the development not commencing.

Box 5**LEGAL IMPLICATIONS:**

Planning obligations should only be sought where they are:

- (a) necessary to make the development acceptable in planning terms
- (b) directly related to the development and
- (c) fairly and reasonably related in scale and kind to the development.

At the time of the planning committee report it was not possible to identify the precise terms of the obligations which would be required. Following negotiation and the assessment of the viability appraisals the agreement as drafted now details those obligations . It is appropriate if the scheme is a large one, and particularly if it is phased, to take a long term view on viability and re-appraise at fixed points during the life of the scheme; and in particular to ensure that there are clear triggers, review dates and parameters for the levels of affordable housing and other obligations.

There is no basis upon which landowners , who have not as yet completed agreements with the developer, can be compelled to join in the agreement to enable the planning permission to be released. As is usual in the case of larger developments where all the land is not under the control of the developer , the agreement is subject to requirements regarding deeds of adherence in respect of the non-aligned land and as noted above subject to planning conditions precluding development until the land has been bound by the section 106 agreement.

The ODR sets out the position in relation to the Trust land and that it is considered unlikely that the development would be implemented in isolation on this plot of land. As such and for the reasons set out above it is considered that the risk in accepting this amendment is minimal

Name: _Karen Winnard _ Signature: _____ Date: _____11.4.17
Signature of Assistant Director of Legal and Democratic Services (or representative)

Box 6**FINANCIAL IMPLICATIONS**

The value of S106 contributions identified in the report is £10.9m plus 7.5% affordable housing.

The S106 agreement will be subject to periodic review in order to evaluate fluctuations in the available pot of monies and the changing demands of the community arising from the development and, as such, will have mechanisms in place for reporting on any changes. There are major risks associated with the developer costs that would be eligible for inclusion in the reviews. Any unforeseen costs of the development impact on the viability assessment and potentially reduce the S106 contributions. Equally any increased income or reduced costs could increase the S106 contribution. If there are insufficient S106 funds arising to meet the needs of the community then there is potential for call on Council resources to provide for those needs (note that the developer has already been given dispensation in respect of affordable housing from the policy ask of 26% down to 7.5%). For example, the current assessment does not include Network Rail's demands for a share in the gain from the development created by the link road crossing the railway line. The sum initially put forward by Network Rail is c. £8.00m; however, from the Council's experience with similar settlements Project Officers suggest that this could be reduced to c. £1.5m through negotiation. The S106 agreement provides for a commuted sum of c. £0.9m for nearby rail station improvements, which could be removed from the agreement if the gain share payment to Network Rail exceeds this sum. Provided that the gain share payment is of similar value then the impact on S106 monies is low. However, any greater sum may start to limit contributions towards other items in the agreement. A further £1.5m is identified for smaller items, such as bus levy, park & ride, pedestrian footbridge and training centre provision, with the main contribution being £8.50m for education (provision of new school/school places for the housing development). Therefore, any gain share payment in excess of £2.4m may start to impact on the education contribution.

As referred to above, a contribution of £3.5m is being made to the construction of the M18 J5 link road. This is subject to a separate funding agreement that is still under negotiation. The link road also requires £11.2m SCRIF funding; draw down of this money is conditional on there being a signed S106 agreement.

Name: Dave Rosser **Signature:** D Rosser **Date:** 12th April 2017
Signature of Assistant Director of Finance & Performance
(or representative)

Box 7**HUMAN RESOURCE IMPLICATIONS:**

There are no HR implications to this ODR.

Name: David Knapp **Signature:** D Knapp **Date:** 12/04/2017
Signature of Assistant Director of Human Resources and Communications (or
representative)

Box 8**PROCUREMENT IMPLICATIONS:**

There are no direct procurement implications associated with the ODR

Name: Shaun Ferron **Signature:** S A Ferron **Date:** 12.04.17

Signature of Assistant Director of Finance & Performance
(or representative)

Box 9**ICT IMPLICATIONS:**

There are no ICT implications.

Name: Julie Grant **Signature:** J Grant **Date:** 12th April 2017

Signature of Assistant Director of Customer Services and ICT
(or representative)

Box 10**ASSET IMPLICATIONS:**

DMBC owns some land within the planning application site area. The Council as land owner is not a signatory of the S106.

Name: Gillian Fairbrother (Assets Manager, Project Co-ordinator) **Signature:** By email **Date:** 12th April, 2017

Signature of Assistant Director of Trading Services and Assets
(or representative)

Box 11**RISK IMPLICATIONS:**

There is the risk that some landowners will default on the obligations of the S106. Additionally unforeseen costs to the development and fluctuating markets could lead to reduced S106 contributions.

Box 12**EQUALITY IMPLICATIONS:**

None

Name: Richard Purcell **Signature:** _____ **Date:** 12 April 2017

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

Box 14

INFORMATION NOT FOR PUBLICATION:

It is in the public's 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: Jacqui Marshall Signature: Jacqui Marshall Date: 12/4/17
Signature of FOI Lead Officer for service area where ODR originates

Box 15

Signed: S Wiles

Date: 20 April 2017

Director/Assistant Director

Signed: _____ **Date:** _____

Additional Signature of Chief Financial Officer or nominated representative for Capital decisions.

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