

## **OFFICER DECISION UNDER URGENCY POWERS**

### **REPORT TO DIRECTOR OF ENVIRONMENT**

The purpose of this report is to ask the Director of Environment to make a decision under the urgency powers set out in paragraph 3.6 of Part 3 of the Council's Constitution that the Council as local planning authority will not require payment of monitoring fees to be included in planning obligations entered into under section 106 of the Town and Country Planning Act 1990 in relation to the following developments.

Site Address/Reference	Committee Date	Status
Ashley Hotel, 74-76 Chesterton Road 14/1111/FUL	01-Oct-14	Undetermined
Travis Perkins, Devonshire Road 11/1295/FUL	04-Sep-13	Undetermined
Gresham Road, University Health Centre 14/1211/FUL	03-Dec-14	Undetermined
Land r/o 268 Queen Edith's Way 14/1382/FUL	04-Feb-15	Refused/s106 not completed
Aparthotel, Former Milton Road School site 14/0052/FUL	04-Jun-14	At appeal

#### **Reason why an urgent decision is required**

An urgent decision is required to enable the section 106 in relation to the proposed aparthotel on the Former Milton Road School site to be completed. This is necessary to clarify the Council's position regarding reason for refusal 3 in advance of the Informal Hearing on 21 April 2015.

An urgent decision is required to enable the section 106 in relation to the proposed development at land rear of 268 Queen Edith's Way to be completed. This is necessary to clarify the Council's position regarding reason for refusal 4 in the event of an appeal.

An urgent decision is required to enable the section 106s in relation to the Ashley Hotel, the Travis Perkins site and the University Health Centre site to be completed. This is necessary to avoid a delay in issuing the Decision Notices in each case.

#### **Background**

Under section 106 of the Town and Country Planning Act 1990 any person interested in land in the area of a local planning authority can enter into a planning obligation:

- (a) Restricting the development or use of the land in question in any specified way

- (b) Requiring specified operations or activities to be carried out in, on, under, or over the land;
- (c) Requiring the land to be used in any specified way; or
- (d) Requiring a sum or sums to be paid to the authority ...on a specified date or periodically

Regulation 122 of the Community Infrastructure Regulations 2010 (the CIL Regulations) states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is –

- (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

The Council's Planning Obligation Strategy 2010 requires that all new developments contribute to the costs of monitoring the implementation of planning obligations. From April 2014 the Council has required monitoring fees at 5% of the total value of the financial contributions up to a maximum of £50,000.

On 3<sup>rd</sup> February 2015 judgment was given in the High Court case of *Oxfordshire County Council v Secretary of State for Communities and Local Government and others* [2015] EWHC 186 (Admin) The case concerned an appeal against a Planning Inspector's decision that the payment of a monitoring/administration fee was not necessary to make the development under consideration acceptable in planning terms. That is, that the requirement for payment of a monitoring/administration fee did not meet the tests set out in the CIL Regulations.

The Court held that it was part of the local authority's functions as a local planning authority to administer, monitor and enforce planning obligations in section 106 agreements. Although the planning obligations in the Oxfordshire case related to non-planning functions such as education and libraries, the local authority was exercising its planning functions when addressing the impact of the proposed development on the need for public services in the local community. The Inspector had been entitled to conclude that the costs of administration and monitoring would be included in the local authority's resources and budget for the discharge of its functions under section 106. The authority was seeking a fee based on its standard table of fees rather than any individualised assessment of special costs liable to be incurred for the particular development. The Inspector had been entitled to conclude that a contribution towards administration and monitoring costs was not "necessary" to make the development acceptable in planning terms.

In the case of each of the above applications the Council has sought planning obligations to pay monitoring fees based on the Council's standard calculation of fees as set out in the Planning Obligation Strategy and not on an individualised assessment of special costs liable to be incurred for those particular developments.

The effect of the judgment in the Oxfordshire case is that the Council is unable to pursue the monitoring fee obligations as these do not meet the tests set out in the CIL Regulations.

The City Development Manager has informed the Planning Committee of the effect of the judgment and amendments were made to reports that were presented to the Committee on 4 March 2015 via the Amendment Sheet to remove reference to contributions towards monitoring costs.

### The Applications

Three cases involve applications which have yet to be determined because the s106 Agreement has not been completed. In each of these cases Planning Committee resolved to grant the application subject to completion of a section 106 agreement. Authority is needed to remove the requirement to pay monitoring contributions so that the Agreements can be completed and planning permission issued.

The fourth case involves an application which has been refused but where the applicant wishes to complete the related s106 Agreement.

In the fifth case the application was refused and the decision is currently at appeal. In order to complete the s106 Agreement and resolve one of the reasons for refusal authority is needed to remove the requirement to pay monitoring costs from the draft Agreement.

The following table sets out the details of the five applications:

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Both City Council and County Council monitoring costs are affected by the Oxfordshire judgement.

### Consultations

I have consulted the Chair, Vice Chair and Spokes of Planning Committee by email.

Councillors Dryden, Hipkin and Smart support the action.

I have not had a reply from Councillor Blencowe.

Decision to be made

The decision is to be taken under Urgency powers and will be reported back to Planning Committee on 1 April 2015