

## **CABINET – 18 MAY 2010**

### **PLANNING OBLIGATION – NON PAYMENT OF CONTRIBUTION**

**Report by the Assistant Chief Executive & Chief Finance Officer and the  
Head of Sustainable Development**

#### **Introduction**

1. This report sets out the circumstances around the non-compliance by a developer of the terms of a S106 planning obligation within Oxford and the proposed action following that non-compliance. The content of this report would normally form part of the financial monitoring report to the Cabinet but given that the next such report is not until June's meeting it is considered appropriate to report separately and urgently because the item is of local community concern and an assurance was given to local residents that the matter would be dealt with at the May meeting.

#### **Background and Key Issues**

2. A planning Obligation (S106 agreement) was entered into in May 2003 in relation to a housing proposal (02/02152/FUL) for 13 dwellings at Latimer Road, Headington, Oxford a development now known as "The Brambles". The S106 secured payment (prior to commencement of the development) to the County Council of £40,000 towards various transport measures. The S106 was entered in to by both the City and County Councils however the only payment was to be to the County Council. The S106 was promptly entered on to the land charges register at the City Council as formal notice to buyers of the property since by virtue of S106 Town and Country Planning Act 1980 S106 obligations are inherited by successor landowners.
3. The applicant and owner under the S106, are obliged to notify both local authorities of any disposal of the site and of commencement of development. In February 2004 Kensington (Headington) Ltd (KHL) became the owner and responsible for the S106 obligations. The planning permission was subsequently implemented however neither the City nor County Council has a record of having received any of the notifications required under the agreement.
4. In August 2009 the County Council became aware, (via a prospective buyer of one of the properties) that the planning permission had been implemented (site had been developed) and thus that the requirement for payment to the County Council the £40,000 plus indexation had been triggered. Because the payment (if made) would have been late an additional late payment fee was levied, in accordance with the terms of the S106 planning obligation. The total due amounts to £54,694.38 plus a late payment fee of £19,972.71.
5. Following non-payment of the invoice, debt recovery proceedings commenced however given that the company (KHL) had ceased trading and its assets were nil it was considered uneconomical (and indeed worthless) to pursue further through the courts. In February 2010 proceedings via the court were withdrawn.

6. Following the non-payment of the debt under the planning obligation the debt would pass to the successors in title of the land i.e. the individual house and flat owners. The County Council could pursue each of the owners at the development. However, it is considered in this case inappropriate to pursue such debt recovery because of the time which has elapsed since the defaults of initial notice of commencement of development and subsequent payment of the contribution and that both were a result of the inaction of parties other than the current individual owners. Applying practice recommended by the Department of Communities and Local Government and the Law Society (as set out in the model form of planning obligation issued by them jointly) individual owners are released from liability under planning obligations and currently the County Council follows this practice but only where payment is triggered by commencement of development.
7. It is therefore recommended that the debt be written off and the amount charged against the provision for bad debts

### **Financial and Staff Implications**

8. Cancellation of the debt would reduce the cumulative funding available to undertake necessary transport measures within Headington. However, other developer contributions within the Headington area have been set aside to be available to deliver works associated with transport needs within the Highfield area of Headington, within which the Brambles development is located.
9. Improved procedures have been put in place to minimise similar occurrences of non-compliance (notifications and non-payment) in respect of S106 planning obligations.

### **RECOMMENDATION**

10. **The Cabinet is RECOMMENDED to:**
  - (a) **write off the debt of £74,667.09 in connection with this planning obligation;**
  - (b) **request confirmation of the write off in the next financial monitoring report to the Cabinet.**

CHRIS COUSINS  
Head of Sustainable Development

SUE SCANE  
Assistant Chief Executive & Chief Finance Officer

Contact officer: Howard Cox, Team Leader Developer Funding  
Tel: (01865) 810436

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