

**DEVELOPER SECTION (S) 106 DEFERRAL REQUESTS - LONDON ROAD,  
GODMANCHESTER AND ST IVES GOLF COURSE**

*To:* Cabinet

*Date:* 23 February 2010

*From:* Executive Director: Environment Services

*Electoral division(s):* Godmanchester & Huntingdon East  
St Ives

*Forward Plan ref:* 2010 / 018 *Key decision:* Yes

*Purpose:* To consider the requests by developers for deferral of  
Section 106 contributions.

*Recommendation:* Cabinet is invited to consider the seven Section 106  
deferral requests contained in this report and to approve  
the following recommendations:

1. London Rd (Huntington & Godmanchester Market  
Town Transport Strategy Contribution) – Accept  
with conditions set out in Appendix 1
2. London Rd (Education Contribution) – Accept with  
conditions set out in Appendix 1
3. St Ives Golf Course (Bus Service Contribution) –  
Reject
4. St Ives Golf Course (Education Contribution) –  
Accept in instalments as set out in Appendix 1
5. St Ives Golf Course (Traffic Management  
Contribution) – Reject
6. St Ives Golf Course (Footpath Improvements  
Contribution) – Reject
7. St Ives Golf Course (St Ives Market Town Transport  
Strategy Contribution) - Accept

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## 1. BACKGROUND

- 1.1 A Section 106 Agreement (s106) is a legal agreement that is generally required alongside the grant of a planning permission and is made between the Council and developers. A s106 Agreement is a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms.
- 1.2 Over the last 10 years, developers have signed in excess 500 s106 Agreements with the County Council in which they have agreed to pay financial contributions, mainly in relation to education, libraries and transport.
- 1.3 The schemes which are funded by s106 contributions are linked to the County Council's capital programme and are reflected within the Integrated Plan, as well as other documents such as the Local Transport Plan and service based capital programmes. All County Council s106 contributions are negotiated and secured in line with current adopted planning policy.
- 1.4 As a result of the economic slowdown, the County Council has received a number of requests from developers who are seeking to defer s106 payments that have already been negotiated. A process to deal with such requests was agreed by Cabinet on 7 July 2009 and the recommendations in this paper are based on that process. The process requires that deferral requests in excess of £250,000 are considered individually in a report such as this. Requests under this threshold are outlined in the Integrated Finance and Performance Reports submitted on a regular basis to Cabinet.

## 2. SECTION 106 DEFERRAL REQUESTS

- 2.1 The County Council has received seven s106 deferral requests over £250,000 (or cumulative contributions totalling over £250,000 contained within one s106 agreement). These requests have been made in relation to two separate developments, one at London Rd, Godmancheser, and the other at St Ives Golf Course, Houghton Rd, St Ives. David Wilson Homes is the developer for both developments.

- **London Road, Godmancheser (152 dwellings – development also known as Cromwell Gardens)**
  - Request to defer the Huntingdon and Godmancheser Market Town Transport Strategy (HGMTTS) Contribution
  - Request to defer the Education Contribution
- **St Ives Golf Course, Houghton Rd, St Ives (93 dwellings)**
  - Request to defer the Bus Service Contribution
  - Request to defer Education Contribution
  - Request to defer Traffic Management Contribution
  - Request to defer Footpath Improvements Contribution
  - Request to defer St Ives Market Town Transport Strategy (SIMTTS) Contribution

- 2.2 The details of the developments and the assessment of the deferral requests

are contained in Appendix 1. Based on these assessments, the recommendations for Cabinet to consider on each development are as follows:

### **London Rd, Godmanchester**

- 2.3 It is recommended that the requests to defer the HGMTTS Contribution and Education Contribution be accepted, providing a trigger date is also added to the dwellings trigger. Therefore the County Council would receive the money either on the date trigger or the dwelling trigger, whichever trigger is reached first. This would give the County Council greater certainty as to when the money will be received and would also reduce the risk of the developer purposely slowing down housing completions in order to avoid a trigger. Appendix 1 proposes an appropriate trigger date in line with the developer's current estimates.
- 2.4 There will be no financial cost to the County Council in accepting these deferral requests, nor will there be any negative impacts on the community.

### **St Ives Golf Course, Houghton Rd, St Ives**

- 2.5 It is recommended that the request to defer the Bus Service Contribution should be rejected. This Bus Service Contribution has been purposely sought at an early stage in order to enable the provision of a bus service for the very first residents of the development. In the absence of this contribution, Officers do not anticipate any bus service improvements coming forward under any other means as the bus operators have no social responsibility to serve a new development with very few houses. The bus operator will only run a service to the new development once there is a sufficient number of houses which would make the service commercially viable.
- 2.6 Providing the development roads are of an appropriate standard, the bus service contribution would be used to divert a current local bus service into the new development as soon as possible following the first occupation. Agreeing to the deferral would prevent this from happening, which is likely to have a social cost to early residents of the new development.
- 2.7 It is recommended that the Education Contribution be accepted in instalments (as detailed in Appendix 1). Agreeing to defer this contribution will have no financial implications on the County Council, nor would there be any negative impacts on the community.
- 2.8 It is recommended that the Traffic Management Contribution and Footpath Improvements Contribution should both be rejected.
- 2.9 The Traffic Management Contribution is required at an early stage in order to mitigate the traffic impacts of this development. The money is needed in order to design and construct a traffic management/calming scheme in the areas affected by the development. The provision of a traffic management scheme is necessary and is integral to the planning permission for this development. The improvements to the Public Footpath will be made at the same time the traffic management/calming scheme is implemented. The improvements will complement the traffic management/calming scheme as

they will encourage walking and cycling, which will assist in taking cars off the road.

- 2.10 Finally, it is recommended that the SIMTTS Contribution should be accepted. Agreeing to defer this contribution will have no financial implications on the County Council, nor would there be any negative impacts on the community.

### **3. SIGNIFICANT IMPLICATIONS**

#### Financial Issues and Implications

- 3.1 A significant part of the Council's capital programme is funded through s106 funding. If s106 payments are deferred, there is the potential to have a financial impact on the Council if borrowing has to be undertaken to fill the gap temporarily left by the s106 funding. This has been fully considered when making the recommendations to Cabinet. Any requests which would require the County Council to borrow have been given a negative recommendation.
- 3.2 It is important to note that all s106 contributions are index linked from the date of the s106 agreement (or date negotiations commenced) to the date of payment. Index linking ensures that the County Council is protected against rising construction prices or any other changes, such as bus services becoming more expensive. Any deferrals which are agreed will not affect indexation in any way. If a 12 month deferral were accepted, the contribution would be sought in 12 months time and would be linked to the index figure in 12 months time.
- 3.3 If a deferral is granted, then indexation will continue to be added up until the point of payment. Therefore there is no reasonable basis to charge interest during the deferral period.
- 3.4 If deferral requests are accepted, wherever possible, it is suggested that the developer should be informed by written letter and the original s106 agreement should not be varied. The County Council will honour the written letter. However, if a deferral is granted and the developer fails to meet the terms of deferral in the future, the County Council can turn to the existing s106 agreement and will have the power to enforce a penalty interest clause (usually 4% about the base rate depending on the District) if necessary.

#### Resources and Performance Implications

- 3.5 If schemes funded by s106 payments are delayed, this could have an impact on the Council's performance and particularly the services that it provides to the community. This has been considered in the assessments.

#### Statutory Requirements and Partnership Working

- 3.6 The County Council has statutory responsibilities for the provision of certain services, such as education. Any agreement to defer s106 payments must not jeopardise the County Council's ability to deliver services it has statutory responsibilities for. The assessments have taken this in consideration and appropriate recommendations have been made.

### Climate Change

- 3.7 There are no significant climate change implications.

### Access and Inclusion

- 3.8 There are potential access and inclusion implications should developers seek to defer s106 contributions relating to transport. These implications have been considered.

### Engagement and Consultation

- 3.9 Officers within the Growth and Infrastructure Directorate have made the relevant Local County Member, District Member and Parish Council Members aware of all deferral requests received to date. Officers within Growth and Infrastructure will alert the relevant Members as to the outcome when the final decision is made.

<b>Source Documents</b>	<b>Location</b>
Copies of S106 agreements are held by the New Communities Service	Castle Court A wing 2nd Floor
Original S106 agreements are held by the County Council Records Office	Shire Hall 023