

**NATIONAL INSTITUTE OF AGRICULTURAL BOTANY FRONTAGE SITE (NIAB)
DEVELOPER S106 DEFERRAL REQUESTS**

To: **Cabinet**

Date: **29 September 2009**

From: **Executive Director, Environment Services**

Electoral division(s): **Castle**

Forward Plan ref: **2009/050** *Key Decision:* **Yes**

Purpose: **To consider the request from a developer for the deferral of S106 contributions.**

Recommendation: **Cabinet is invited to consider the five S106 deferral requests contained in this report and to approve the following recommendations:**

- 1) NIAB Frontage (Transport: Cycle crossing Contribution) - Accept**
- 2) NIAB Frontage (Transport: Real Time Information Contribution) – Accept subject to instalments**
- 3) NIAB Frontage (Education: Pre-school) - Accept subject to instalments**
- 4) NIAB Frontage (Transport: Bus Infrastructure) – Accept subject to instalments**
- 5) NIAB Frontage (Transport (Cycleway)) - Reject**

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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 of 500 S106 Agreements with the County Council in which they have agreed to pay financial contributions, mainly in relation to education, libraries and transport. In total, £48.3m has been received in the 10 years, with a further £27.3m to be collected when development payment triggers are reached.
- 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 Section 106 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. That process requires that deferral requests in excess of £250,000 are considered individually in a report such as this. Others are outlined in The Integrated Finance and Performance Report.

2. SECTION 106 DEFERRAL REQUESTS

- 2.1 The County Council has received five s106 deferral requests over £250,000. These requests have been made in relation to the NIAB Frontage development site for 187 dwellings, as follows:
 - Request to defer the Cycle crossing Contribution
 - Request to defer Bus Real Time Information Contribution
 - Request to defer the Pre-school Education Contribution
 - Request to defer the Bus Infrastructure Contribution
 - Request to defer the Cycle-route safeguarding
- 2.2 The details of the developments and the assessment of the deferral requests are contained in Appendix 1. A summary of the recommendations is as follows.
- 2.3 **It is recommended that the request to defer the cycle crossing point contribution be accepted.** There is an existing crossing point close to the site that early residents can use and the implementation of a new crossing point would be linked to the neighbouring development of the NIAB1 (1,593 dwellings) site. There will be no financial cost to the County Council in accepting this deferral request, nor will there be any adverse impacts on the community as existing crossing facilities exist near-by.

- 2.4 **It is recommended that the request to defer the bus real time information be partially accepted.** 10% of the Contribution is required, albeit later than the extant S106 requires, but earlier than the developer has requested, to assist with funding the deferred Bus Infrastructure Contribution (if the deferral is accepted). The remaining part of the Contribution can be deferred as it is not required at that point in time. There will be no financial cost to the County Council with this approach.
- 2.5 **It is recommended that the request to defer the education contribution for pre-school provision should be partially accepted.** Part of the Contribution will be required to fund provision to meet the early needs of the development. It is recommended that the developer be offered instalments to stagger payments in line with need. There is no financial cost to the Council with this approach which would ensure funding is sufficient to meet the emerging communities needs.
- 2.6 **It is recommended that the request to defer the bus infrastructure contribution should be partially accepted.** There is existing bus infrastructure within 100m of the site that will serve the first residents, however, this Contribution is still required earlier than the deferral request in order to incentivise the public transport offer to the development. There is no financial cost to the Council with this approach.
- 2.7 **It is recommended that the request to defer safeguarding of the 4.2m cycleway is rejected** as this is a strip of land that needs to be demarcated on site, so nothing is built on it and should be protected.

3. SIGNIFICANT IMPLICATIONS

Financial Issues and Implications

- 3.1 A significant part of the Council's capital programme is delivered 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 deferments 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.

Source Documents	Location
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