

DEVELOPER SECTION (S) 106 DEFERRAL REQUEST (SUMMERSFIELD DEVELOPMENT IN PAPWORTH EVERARD)

To: **Cabinet**

Date: **5 July 2010**

From: **Acting Executive Director, Environment Services**

Electoral division(s): **All**

Forward Plan ref: **2010 /043** *Key Decision:* **Yes**

Purpose: **To consider the request by the developer of the Summersfield Development in Papworth Everard to defer their Section 106 Papworth Bypass Contribution.**

Recommendation: **Cabinet is invited to consider the Section 106 deferral request contained in this report and to agree that this obligation can be paid in instalments.**

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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 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.
- 1.3 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 has been agreed by Cabinet and the recommendations in this paper are based on that process. As per the agreed process, this deferral request is in excess of £250,000, and therefore needs to be considered individually in this report.

2. SECTION 106 DEFERRAL REQUEST

- 2.1 The County Council has previously received a s106 deferral request from David Wilson Homes in relation to their Papworth Bypass contribution for their development at Summersfield, Papworth Everard (planning permission for 359 dwellings).
- 2.2 The Papworth Bypass was built to address the needs of development in the area and to ease traffic congestion through the village. Approximately two thirds of the scheme was funded by the Department for Transport, with the remaining third coming from developer s106 contributions. The road itself has now been completed and opened but there is one final s106 contribution which has not been received.
- 2.3 This outstanding contribution is from the final Quadrant of the Summersfield development which is yet to commence. Commencement of the development would trigger the final s106 Papworth Bypass payment of £810,000 index linked to the time of payment.
- 2.4 As mentioned above, Cabinet previously considered and refused a deferral request for the full £810,000 Papworth Bypass contribution on 8th September 2009. The developer, David Wilson Homes, was seeking deferral of the full amount and was proposing to pay in January 2010. The request was refused on the grounds that the Papworth Bypass has already been completed and the County Council required the contribution as soon as possible as reimbursement for the money it had already spent.

Deferral

- 2.5 Following discussions with the developer, they have made it clear that they still cannot afford to start the final Quadrant of the Summersfield development under the current arrangements of the s106 agreement. They have produced

financial evidence which supports their claim. The evidence, which is accepted by Officers, demonstrates that significant investment will be required to provide internal roads, drainage and sewerage etc. prior to building the first houses and this means the development is currently unviable. Therefore, in order to progress with the development, the developer is seeking to pay the Bypass contribution in instalments to ease cashflow until some houses are built and sold. If the County Council agrees to the instalment profile noted below, then the developer has indicated they will commence development this summer. If it is not agreed, they have indicated that they will not be able to commence development for some time, although no specific date has been given.

- 2.6 The developer is seeking to pay the £810,000 index linked Papworth Bypass contribution in three instalments, as follows:
- £270,000 plus indexation payable on 30th September 2010
 - £270,000 plus indexation payable on 18th March 2011
 - £270,000 plus indexation payable on 29th July 2011
- 2.7 As per the s106 agreement, indexation will be calculated from 1st January 2001 until the date of payment. With indexation applied, the £810,000 has increased by 28% and currently stands at £1,040,431.
- 2.8 Having considered all of the information from the developer, Officers recommend that this deferral request be accepted. This is based on the information regarding viability from the developer and the conclusion that a deferral is likely to hasten the delivery of the development which in turn will see the money that is owed to the County Council returning more quickly than if the upfront contribution is sought. It must be made clear, however, that this recommendation has been arrived at on the basis of an assessment of what the developer will do in each scenario and Cabinet should be aware that there is no guarantee of the developer commencing within a particular timescale whether or not the deferral is granted.
- 2.9 To counter balance this, it is recommended that should Cabinet agree to this deferral, it is made clear to the developer that no further deferral request will be considered if development does not commence as they suggest.
- 2.10 The details of the development and the assessment of the deferral request are contained in Appendix 1.

3. SIGNIFICANT IMPLICATIONS

Financial Issues and Implications

- 3.1 As the contribution is only payable on the commencement of the South West Quadrant, if the development does not commence, then the County Council will not receive its contribution and therefore cannot start to recover the outstanding Bypass contribution (see para 2.3 above). It is therefore considered that it is in the interests of the County Council to work with the developer in order to ease their cash flow issues, which will in turn mean that

development can commence and the Papworth Bypass contribution will be paid in instalments.

- 3.2 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 deferral of payments. This has been considered and it is recommended the deferral can be accepted.
- 3.3 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.

Resources and Performance Implications

- 3.4 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 for this assessment.

Statutory Requirements and Partnership Working

- 3.5 The County Council has statutory responsibilities for the provision of certain services. Any agreement to defer s106 payments must not jeopardise the County Council's ability to deliver services it has statutory responsibilities for. This has been considered.

Climate Change

- 3.6 There are no significant climate change implications.

Access and Inclusion

- 3.7 There are no significant access and inclusion implications.

Engagement and Consultation

- 3.8 Officers within the Growth and Infrastructure Directorate have made the relevant Local County Member, District Member and Parish Council Members aware of this request. 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

APPENDIX 1

Developer	David Wilson Homes
Development	Summersfield, Papworth Everard. Permission for Business Park and Residential Development
S106 Contribution	£810,000 index linked Papworth Bypass Contribution
Contribution Due	Payable on commencement of the South West Quadrant – expected July 2010 if deferral can be agreed
Deferral Request	To pay in 3 equal instalments; 30/9/10, 18/3/11, 29/7/11
Consideration has been given to:	
Which scheme the money is allocated to?	Papworth Bypass
When the scheme is programmed to take place?	The Papworth Bypass has already been completed and was opened in 2007.
What percentage is the S106 requirement to the overall scheme cost?	This payment represents approximately 30% of the total S106 funding that has been applied to the Papworth Bypass.
What relationships are there between funding streams from separate S106 agreements?	None. There are no other S106 agreements in the vicinity which contain contributions towards the Papworth Bypass that have not already been paid (see para 2.2).
Are there any financial costs to County Council if the deferral request is accepted?	Yes. As the Papworth Bypass has been completed, the County Council needs the money in order to recover money that it has already spent.
If a deferment is agreed, should interest be sought?	As the County Council requires this money in order to recover money it has already spent, should a deferment be granted, it is appropriate for the County Council to ensure its costs will be covered. The indexation on the contribution will ensure this is achieved.
Have instalments been considered?	Yes. It is considered that the three equal instalments are an appropriate compromise in order to ensure that the County gets its money and to ensure housing growth continues.
Has the developer provided any financial viability information to support their request?	Yes. The developer has provided financial evidence which suggests a low profit margin for the development and they are therefore not prepared to commence unless the Bypass contribution is dealt with in instalments.
What security is there to the County Council in agreeing to a deferment?	The County Council has not secured bonds for this development. Should the developer default, the County Council has the legal right to pursue individual house owners for the S106 contributions should it choose to.
What social cost is there to the community?	None. A deferment in payment will not impact on the community.
Likely consequences of rejecting the request	Developer cash flow will be restricted and the development is likely to be mothballed.
Officer Recommendation	It is recommended that this deferral request should be accepted.