

DEVELOPER S106 DEFERRAL REQUEST - SECTION 106 PAPWORTH BYPASS CONTRIBUTION.

To: **Cabinet**

Date: **7 September 2010**

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

Electoral division(s): **Papworth and Swavesey**

Forward Plan ref: **2010/049** *Key Decision:* **Yes**

Purpose: **To consider the request by the developer of the Summersfield Development in Papworth Everard for a further deferral of their Section 106 Papworth Bypass Contribution.**

Recommendation: **Cabinet is invited to:**

- i) **Consider the Section 106 deferral request and to agree that this obligation can be paid in instalments as requested by the developer as follows:**
 - **£270,000 plus indexation payable on 31st January 2011**
 - **£270,000 plus indexation payable on 18th March 2011**
 - **£270,000 plus indexation payable on 29th July 2011**
- ii) **Delegate to the lead Member for Growth, Infrastructure and Strategic Planning in consultation with the Acting Executive Director for Environment Services and Corporate Director for Finance Property and Performance, the authority to agree any further reasonable changes to the instalment dates.**

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1. BACKGROUND

- 1.1 On 5th July 2010, County Cabinet agreed the following instalment plan for the final Papworth Bypass contribution:
- £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
- 1.2 The final Papworth Bypass contribution is £810,000 plus indexation and is due upon commencement of the final Quadrant of the Summersfield development.
- 1.3 The development is currently unviable due to significant investment being required to provide infrastructure such as internal roads, drainage and sewerage etc. prior to building the first houses. Cabinet was informed that the developer (David Wilson Homes) was unable to commence development unless an instalment plan could be agreed.
- 1.4 The developer indicated that if Cabinet was to agree to the above instalment plan, then they would commence development this summer, however, Cabinet was made aware that there was no certainty of this happening.

2. SECTION 106 DEFERRAL REQUEST

- 2.1 The developer was informed of Cabinet's decision to grant a deferral of the s106 contributions in a letter dated 19th July 2010. After initially acknowledging and accepting the decision, the developer sent a letter to the County Council on 3rd August 2010 seeking a further amendment to the instalment plan.

Instalment Plan Proposed Amendment

- 2.2 The developer is proposing amendments to the physical layout of a number of house types at the site. These modified designs need to be approved by South Cambridgeshire District Council Development Control Committee and the decision from the District Council is not expected until the end of October. Therefore, the developer is not in a position to commence this summer and is unwilling to progress until they have all necessary planning permissions in place, which is unlikely to be before the end of October. As a result, the first of the instalment payment dates cannot be met as payment only becomes due on commencement of development.
- 2.3 The developer is therefore seeking to amend the first date in the instalment plan. The instalment plan proposal is now:
- £270,000 plus indexation payable on 31st January 2011
 - £270,000 plus indexation payable on 18th March 2011
 - £270,000 plus indexation payable on 29th July 2011
- 2.4 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.

- 2.5 Having considered all of the information from the developer, Officers recommend that this further deferral request should be accepted. This is based on the information regarding viability from the developer considered in the Cabinet report of 5th July 2010 and particularly the fact that payment can only be sought from the developer when development has commenced and that will not be by the time the first instalment of the originally agreed plan is due. It should be noted that under the revised developer's proposals, the second and third payment dates have not changed.
- 2.6 Cabinet should be aware that there is no guarantee of the developer commencing development in late October. If the District Council refuse to accept the house design modifications, then further delays are possible. In this situation, it is likely that the developer will seek a further deferral and Cabinet are therefore asked to delegate to the lead Member for Growth Infrastructure and Strategic Planning in consultation with the Acting Executive Director for Environment Services and Corporate Director for Finance Property and Performance, the authority to agree any further reasonable changes to the instalment dates.
- 2.7 The details of the development and the assessment of the deferral request are contained in Appendix 1. The local members have been made aware of this proposed change to the instalment plan.

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. 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 Oct 2010 if deferral can be agreed
Deferral Request	To pay in 3 equal instalments; 31/1/11, 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.
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 is 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 chose 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.