

Decision Maker: Plans Sub Committee No. 2

Date: 02.08.2012

Decision Type: Non-Urgent Non-Executive Non-Key

Title: APPLICATION TO HIGH COURT FOR INJUNCTION ORDER TO ENFORCE SECTION 106 LEGAL AGREEMENT RELATING TO FORMER HAYES COUNTRY CLUB, WEST COMMON ROAD, BROMLEY BR2 7BY

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Chief Officer: Bob McQuillan

Ward: Hayes and Coney Hall

1. Reason for report

- 1.1 Direct Build Services Ltd (DBS) have failed to satisfy the requirement of the Section 106 legal agreement attached to planning permission ref. 05/02596 to lease the cricket facility adjacent to Burton Pynsent House (the block of flats built on the site) to a suitable organisation for a term of 25 years.
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2. **RECOMMENDATION(S)**

- 2.1. Members authorise an application to the High Court for an injunction order to enforce the requirement of the Section 106 legal agreement.

Corporate Policy

1. Policy Status: Not Applicable:
 2. BBB Priority: Not Applicable:
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Financial

1. Cost of proposal: Not Applicable:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre:
 4. Total current budget for this head: £
 5. Source of funding:
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Staff

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: None:
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 Planning permission was granted to DBS in November 2005 for demolition of existing buildings at Hayes Country Club and erection of two/three storey block comprising 10 two/three bedroom flats with 20 basement and 5 surface level car parking spaces, 2 single storey pavilion buildings (for bowls and cricket) with 26 car parking spaces and cycle parking, tennis court, formation of croquet lawn and alteration of existing access from West Common Road (ref. 05/02596).
- 3.2 Clause 5.2 of the Section 106 legal agreement attached to the planning permission reads:
- ‘That the applicant shall lay out a cricket ground and construct a pavilion on the land edged green on the plan and shall grant to a suitable organisation for a term of 25 years a Lease of the land edged green such Lease to be a business tenancy within the provisions of the Landlord and Tenant Act 1954 Part II with the security of tenure provisions provided by that act not being excluded.
- a. Construction of the block of flats was completed in April 2008. The cricket ground has been laid and construction of the pavilion was completed in September 2010.
- b. DBS have previously advised that a business lease as required by the legal agreement is inappropriate for the type of use envisaged for the cricket ground and that they have been unable to attract a cricket club willing or able to meet the requirements of a 25 year business lease. Local clubs have sought subsidies for operating the ground and an intensity of use greater than could reasonably be accommodated. DBS have stated that they could not support an intensification of use that might cause disturbance through noise, car parking, littering and disruption of visual amenity for the flat owners
- 3.5 An application to vary the terms of the Section 106 agreement was submitted in June 2011. It was proposed that the cricket ground and pavilion be used on 8 days each year during the cricket season as an alternative to a business lease. The applicants were advised that the application was to be recommended for refusal and it was subsequently withdrawn.
- 3.6 There may be an acceptable alternative to the business lease required by the Section 106 legal agreement. However, in the absence of a suitable alternative proposal and given the length of time that has elapsed since the requirement of the legal agreement was triggered it is considered appropriate to seek compliance with the Section 106 through an injunction.
- 3.7 Members are recommended to approve an injunction order to enforce the terms of the S106 legal agreement.

4. POLICY IMPLICATIONS

N/A

5. FINANCIAL IMPLICATIONS

N/A

6. LEGAL IMPLICATIONS

Covered in report

7. PERSONNEL IMPLICATIONS

N/A

Non-Applicable Sections:	Financial, policy and Personnel implications
Background Documents: (Access via Contact Officer)	Details of planning conditions file containing exempt information as defined by Schedule 12a of the Local Government (Access to Information) Act 1985 are not available for public inspection.