

Decision Maker: Development Control Committee

Date: 13 January 2011

Decision Type: Non-Urgent Non-Executive Key

Title: **FORMER BLUE CIRCLE SITE : JOINT USE EDUCATION PAYMENT (JUEP) 106 CONTRIBUTION**

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Chief Officer: Bob McQuillan, Chief Planner

Ward: All wards

1. Reason for report

To seek members view on a proposal put forward by Asprey Homes which offers a guaranteed £200,000 Joint Use Education Payment in place of the potential figure derived from the formula contained within the 106 agreement. The contribution payable under the existing 106 agreement, whilst potentially greater, would be dependant upon the scheme reaching a certain level of viability, which is currently not achieved and could result in no payment being required.

2. **RECOMMENDATION**

Members' views are sought.

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Quality Environment.
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Financial

1. Cost of proposal: N/A No additional cost to the Council potential reduced 106 resources
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Section 106 Deposits
 4. Total current budget for this head: £NIL from this s106 agreement as no monies have been received to date
 5. Source of funding: Section 106
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Staff

1. Number of staff (current and additional): 3
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory requirement. Planning and Compulsory Purchase Act 2004
 2. Call-in: Call-in is not applicable.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Users of local education services
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Ward Councillor Views

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

3. COMMENTARY

Development Viability

1. In 2007 planning permission was granted on appeal for a “Mixed use development comprising erection of new medical centre/ nursing home / affordable housing and open market housing at a density of between 50 -80 dwellings per hectare / children’s playground / consolidation of allotments / bus interchange / associated public open space / access roads and car parking” (03/02319)
2. Since 2007 there has been a major shift in economic circumstances, impacting significantly on the delivery of development on the site. The original outline permission 03/ 02319 was granted permission on appeal on 19th September 2007 on condition that application for approval of the reserved matters be made within three years from the date of this permission.
3. To accord with the permission reserved matters condition there are currently three detailed applications lodged with the Council covering the remaining site in Asprey’s control (and a full application for part of the area identified for a medical centre.) However, the economic situation is such that development taking place on the site to date consists solely of affordable housing and extra care housing.
4. National planning policy, set out in Planning Policy Statement 3 (PPS3) “Housing”¹ (and its accompanying document – Delivering Affordable Housing²) makes clear that local authorities must consider development economics. In December 2008 Turner Morum were appointed by Asprey Homes to undertake a viability study for consideration of the provision of affordable Housing Grant. The viability assessment used the Bespoke Property Group and GVA Grimley Toolkit. The report conclusions were accepted by the Council and an index linking re assessment mechanism was agreed to ensure that should the housing market significantly recover the Council would be able to require Asprey to re-assess the viability position through a simple Index check.
5. The agreement related to the “Non-Seasonally Adjusted House Price Index” (South East) (HHPI) which was 494.5 at the time, giving a predicted a developer profit of 9.53% on GDV, significantly below the industry accepted standard. Turner Morum indicated that for developer profits to reach a “fair and reasonable” level, agreed as 16.9% on GDV the Index would need to reach 562.5. Thus by a simple check of the HHPI it would be possible to roughly assess the viability of the development. Should the HHPI reach this level a further viability assessment would take place to establish the “actual” level of developer profit. Turner Morum advise that the “Non-Seasonally Adjusted House Price Index (South East)” (HHPI) has since been replaced by the “All Homes Non-Seasonally Adjusted House Price Index (South East England)” and the comparable index point to achieve a 16.9% “fair & reasonable” profit would be 599.2, a level not seen since the second quarter of 2008 as indicated in the extract below taken from Lloyds Banking Group website.
6. Asprey Homes advise that the Index at its current level shows the development to be below the agreed acceptable level of developer profit.

“All Homes Non-Seasonally Adjusted House Price Index (South East England)”
(Quarterly Index and %Change)

	SOUTH EAST	
	Index	%
2006 Q2	568.6	6.5
2006 Q3	574.9	7.7
2006 Q4	595.4	8.8
2007 Q1	606.1	11.9
2007 Q2	648.0	14.0
2007 Q3	653.4	13.7
2007 Q4	637.3	7.0
2008 Q1	625.9	3.3
2008 Q2	601.3	-7.2
2008 Q3	573.8	-12.2
2008 Q4	526.8	-17.3
2009 Q1	500.0	-20.1
2009 Q2	519.1	-13.7
2009 Q3	542.9	-5.4
2009 Q4	552.3	4.9
2010 Q1	551.1	10.2
2010 Q2	569.7	9.7
2010 Q3	559.8	3.1

<http://www.lloydsbankinggroup.com/media/excel/2010/HPIQ3/221010RegionalHistoricalHousePriceData.xls>

S106 “Joint Use Education Payment” (JUEP)

7. The Blue Circle appeal was granted subject to a legal agreement which included a “Joint Use Education Payment” (JUEP) of £1.3m. The JUEP figure was divided into Phase 1 and Phase 2. Phase 1 being the land available for development by Asprey Homes, and Phase 2 being developable land in the Council’s ownership. At the time the JUEP formula for the Phase 1 (Asprey Homes) element of the scheme produced a contribution in the region of £1m. As detailed applications came forward the nature of the development changed to incorporate a significant proportion of Extra Care housing, for which it would not be appropriate to seek such a contribution, leading to a reduction in the JUEP to around £750,000.
8. In line with the PPS3 approach to development economics and affordable housing policy, consideration should also be given to the viability implications of planning obligations. The recently adopted Planning Obligations Supplementary Planning Document (Dec 2010) also emphasises the need to consider the viability of development.
9. Whilst the viability assessment index was agreed for the specific purpose of determining whether Housing Grant would be payable, it is a good indication of scheme viability and it would be reasonable to take its findings and agreed approach to consider the impact on the development viability of the “Joint Use Education Payment” (JUEP).
10. The original viability assessment for housing purposes did not take account of the JUEP requirement. If a JUEP of £1.07m had been included the viability of the development would have been further diminished, and Turner Morum advise that the agreed level of viability would not therefore be achieved until the “All Homes Non-Seasonally Adjusted House Price Index (South East England)” reached 608.6, a level not seen since the first quarter of 2008, as is clear in the table above. Whilst the JUEP would now be reduced (as outlined in para 7) the resulting index would still be somewhere above 600.

11. Asprey Homes also highlight a number of additional costs not reflected within the original viability assessment which would further worsen the viability position, namely
 - £270,000 extra build costs for completing the second extra care facility by March 2010-12-16
 - The quantum required to ensure an appropriately sized extra care facility.

Suggested Supplemental Agreement

12. The 106 requires payment of the JUEP over 3 years. 33% is required to be paid before the sale of the first market dwelling, 33% on the first anniversary of the initial payment and the balance being paid on the second anniversary of the initial payment.
13. Asprey Homes have indicated their intention to be marketing the first of the private dwellings by May 2011. Should the timetable for the first market dwelling be met, the full JUEP would be payable by May 2013. At each stage the index could be used to provide a proxy for viability and, should the housing market pick up to the index level agreed, Asprey would be required to undertake a full viability assessment to establish the “actual” level of developer profit. This process could potentially need to be repeated 3 times as the three phased payments become payable.
14. Members may wish to consider, on the basis of the historic house price index data upon which the 1st JUEP payment would become payable, whether the agreed level of viability is likely to be achieved within 3 years of the sale of the first market dwelling. If not then no JUEP would be payable to the Council on grounds of viability.
15. Given the potential cost and uncertainty associated with the viability assessment process Asprey Homes are suggesting a Legal Supplemental Agreement to the current S106 involving a payment of £200,000, irrespective of viability, to release them from the requirements of the legal agreement relating to the JUEP which would be viability assessed.

4. FINANCIAL IMPLICATIONS

The Council needs to consider the advantages of accepting the £200,000 offered upfront, compared with potentially forgoing a larger sum of up to approximately £750,000 should the development achieve the originally anticipated profit within 3 years of the first market sale. If however, the house price index did not recover there would be no education contribution payable, on the basis of the existing section 106 agreement. To date no monies have been received.

5. LEGAL IMPLICATIONS

Possible amendment to the existing 106.

Non-Applicable Sections:	Policy & Personnel
Background Documents: (Access via Contact Officer)	Former Blue Circle Sports Ground Planning Appeal Report to the Secretary of State and Section 106