

Decision Maker: Executive Committee
Development Control Committee

Date: 2nd February 2011
8th February 2011

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

Title: FORMER BLUE CIRCLE SITE : JOINT USE EDUCATION
PAYMENT 106 CONTRIBUTION

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Chief Officer: Bob McQuillan, Chief Planner

Ward: All wards

1. Reason for report

- 1.1 To appraise members of a proposal put forward by Asprey Homes regarding the Blue Circle site. In response to the impact of the economic downturn, Asprey Homes have offered a guaranteed single payment of £200,000 Joint Use Education Payment, irrespective of the viability of the development on occupation of the first market dwelling. This would be in place of potential phased payments, of up to £750,000, provided by the 106 agreement. The contribution payable under the existing 106 agreement, whilst potentially greater, was offered on the basis of the scheme reaching a certain level of viability, which is currently not achieved.
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2. **RECOMMENDATIONS**

Executive:

- 2.1 Members views are sought regarding the proposed payment for consideration by Development Control Committee on 8th February;

Development Control Committee

- 2.2 Members are asked to determine whether the proposal for an upfront payment is acceptable in the light of the information about current market viability and the views of the Executive

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

3.1 Background

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)

- 3.2 The permission is subject to a section 106 agreement. The agreement provided for a bus interchange, landscape restoration, affordable housing, a travel plan, a joint use educational payment, the provision of land for a doctor’s surgery, a linear park and for miscellaneous targeted contributions. The Joint Use Education Payment is calculated by reference to the developable area of the developers land. The agreement contains a provision for the Chief Planner to agree to a variation of the planning obligations.
- 3.3 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.
- 3.4 To accord with the 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).
- 3.5 Since 2007 there has been a major shift in economic circumstances, impacting significantly on the delivery of development on the site. However, the economic situation is such that development taking place on the site to date consists solely of affordable housing and extra care housing. The affordable housing for the site as a whole has been met in full & no more is planned.

Development Viability and the affordable housing provisions

- 3.6 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.
- 3.7 The Council agreed the viability study and a re assessment mechanism 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 The index was 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. Financial viability assessments for other schemes across London & the South East, carried out for developers and their funders, assume a level of gross developer profit of between 20% and 25 %.

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>

- 3.8 The level of the Index at its current level, using the agreed formula, shows the development to be below the agreed industry accepted level of developer profit.

S106 “Joint Use Education Payment”

- 3.9 The legal agreement included a “Joint Use Education Payment” of £1.3m. The section 106 agreement 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.
- 3.10 The Joint Use Education Payment 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 Joint Use Education Payment 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 Joint Use Education Payment to around £750,000.

Educational Issues

- 3.11 The original outline permission for the entire Blue Circle was based on a density range rather than precise number of units but an indicative figure of 788 units was provided. The 788 figure

has already been included with the Council's Housing Trajectory and incorporated, by the GLA, within the current school roll projections, and as such have been taken into consideration in school place planning in advance of monies having been received.

- 3.12 The inclusion of 120 extra care housing units and the reduction in the area of land to be developed (Council land excluded) reduces the number of units producing a child yield to around 655 units. Assessing child yield (using the method set out in the Council's recently adopted Planning Obligations SPD) the revised units suggest a child yield of between 93 - 127 primary school aged children and 66 - 69 secondary school aged children.
- 3.13 Were the development viable, the £750,000 (derived pro rata from the sum required by the existing legal agreement) would assist in meeting the educational pressures created by the development although this contribution has not yet been factored into the education spending plans. This funding would have provided a significant proportion of the capital costs associated with expanding an existing Primary School to meet the demand for additional places in this area.

Asprey's offer

- 3.14 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.
- 3.15 The viability assessment index was agreed for the specific purpose of determining whether Housing Grant would be payable. It is reasonable to accept that the agreed approach should also be used to consider the impact on the development viability of the Joint Use Education Payment.
- 3.16 The original viability assessment for housing purposes did not take account of the Joint Use Education Payment requirement. If a Joint Use Education Payment 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 Joint Use Education Payment would now be reduced (as outlined above) the resulting index would still be somewhere above 600.
- 3.17 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.
- 3.18 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 Joint Use Education Payment would be due by May 2013. Asprey Homes, however, believe that the evidence submitted to the Council demonstrates that the scheme is not viable with the Joint Use Education Payment and that viability is unlikely to be achieved over the timescale during which the payment becomes due. They believe that an independent assessment will show they should be discharged from this obligation. However in view of the costs if an agreement is not reached (including if necessary in taking the matter to appeal to the Secretary of State) and to achieve certainty they are suggesting a single payment of £200,000, on occupation of

the first market dwelling, irrespective of viability, to release them from the requirements of the legal agreement relating to the Joint Use Education Payment

4. FINANCIAL IMPLICATIONS

4.1 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. The Council has agreed the use of the Index as an indicator of viability. Given the difficult economic environment the index may well not sufficiently recover for the Council to argue that viability has returned. Members may wish to consider, on the basis of the historic house price index, whether the agreed level of viability is likely to be achieved within 3 years of the sale of the first market dwelling. If the developer can demonstrate the non viability of the scheme there is a risk that no joint use education contribution may ultimately be payable. To date no monies have been received.

5. LEGAL IMPLICATIONS

5.1 Section 106A of the Town and Country Planning Act 1990 provides that a planning obligation may not be modified or discharged except by agreement with the Council or by an application made after the period of 5 years from the date of the agreement.

5.2 The section 106 agreement does not contain an express provision for the joint use education payment to be reassessed in the event of a reduction in the viability of the development. There are provisions which reflect that the Council can agree to vary the planning obligations contained in the agreement. There are also provisions for any dispute to be referred to a surveyor for determination. However the legal view is that this does not empower Asprey to challenge by a reference to the surveyor the planning obligation it freely entered into.

5.3 It is open, for Asprey to submit a fresh application for planning permission for the development of the land. The section 106, as is usual, was restricted to the development authorised by the permission granted under reference 03.03219. Accordingly it will open on a new application for Asprey to argue both to the Council and on any appeal to the Secretary of state that any new permission should be granted without contributions on the basis of non-viability. If a new application is received the Council would be required to take the viability of the proposal into account when making the assessment of what planning obligations should be sought.

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