

Report of	Meeting	Date
Director of Public Protection, Streetscene and Community	Development Control Committee	16 June 2015

DELEGATION FOR APPLICATIONS TO ADDRESS THE JUDICIAL REVIEW CHALLENGE OUTCOME

PURPOSE OF REPORT

1. To seek authority to amend resolutions for approval made by Development Control Committee which impose a section 106 agreement contrary to the Ministerial Statement of November 2014, in the event a Judicial Review challenge to this statement fails.

RECOMMENDATION(S)

2. That delegated authority is given to the Director of Public Protection, Streetscene and Community, to be exercised in consultation with the Chair of Development Control Committee to allow the removal of a the requirement for a section 106 agreement where such an obligation has been imposed by a resolution made at Development Control Committee contrary to the Ministerial Statement relating to Tariff based contributions for Public Open Space and / or affordable housing.
3. Such delegated authority to be exercised in accordance with a decision made on a Judicial Review application challenging the validity of the Ministerial Statement.

EXECUTIVE SUMMARY OF REPORT

4. There are at least 10 applications where a resolution to approve has been made at a Committee meeting in the past 6 months and a section 106 agreement has been imposed to secure Public Open Space payments. The Government has clarified its position in respect of removing the ability to secure Tariff style contributions to state that the Ministerial Statement is National Policy. A legal challenge has been made to the original Ministerial Statement and decision to remove the ability to impose tariff style contributions and the outcome was due to be handed down before the agenda for this Committee was released but was not. If the outcome of the legal challenge is that the Government's decision to prevent tariff style contributions was legally compliant then in order to be efficient and effective in the handling of applications and issuing decisions at the earliest possible date, authority is sought to allow those applications, already determined and approved to be issued without a section 106 agreement.

Confidential report Please bold as appropriate	Yes	No
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CORPORATE PRIORITIES

5. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	Y
Clean, safe and healthy communities		An ambitious council that does more to meet the needs of residents and the local area	Y

BACKGROUND

6. The Government issued a Ministerial Statement in November, the purported aim was to address alleged significant costs to small scale developments that Tariff style contributions. The Statement directed that such contributions could not be imposed on developments of 10 or less dwellings or where there is a scale of development of less than 1000m². This decision was challenged in the High Court by several Councils on the basis that the issuing of the Ministerial Statement was procedurally flawed, was not supported by evidence, failed to address responses to a consultation exercise and did not address the stated aims of the Minister. The hearing took place on 14 and 15 May 2015 and it was estimated that the outcome would be released in about 4 weeks and that period was due to finish by 5 June.

Assessment

7. The decision on the Judicial Review has not yet been handed down. The absence of this judgement leads to continuing uncertainty for both the public and the planning service who are unable to confidently process some planning applications. This uncertainty in the correct approach to these applications provides opportunity to applicants to appeal.

The Council has a number of planning appeals that have already been made and which take up a significant proportion of officer time and should be avoided where possible. Officers have already negotiated delays for applications until the June Committee in order to await the outcome of the Judicial Review. The proposed delegation enables some certainty on the part of the applicant as it will be clear that their application has been granted. It will also prevent additional delay which may arise if the application were to be brought back to Committee to remove the section 106 agreement obligation.

8. As the applications have already been determined with a resolution to approve subject to a legal agreement being signed then the principle of the development has already been determined. The procedure for handling such applications can provide that Director in consultation with the Chair be authorised to remove the section 106 agreement obligation and issue the decision in the event that the Judicial Review outcome is that the Government's decision to remove Tariff style contributions was lawful.

If the decision were to be lawful then the Council should expedite the issuing of those decisions without delay as any undue delay could result in claims for costs in appeals or greater complaint handling, which would take up significant officer time.

9. In the event that the Judicial Review outcome is that the Government's decision was not lawful then the original decision of the Committee would stand and a section 106 agreement would remain justified.

IMPLICATIONS OF REPORT

10. This report has implications in the following areas and the relevant Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	Y	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE STATUTORY FINANCE OFFICER

11. The key financial risk in making this decision is a risk of Judicial review and the costs of defending the decision whilst the risks appear to be relatively low this could expose the Council to costs of circa £20,000 for which there is currently no budget provision.

COMMENTS OF THE MONITORING OFFICER

12. The proposed delegation allows for the proper disposal of applications whilst protecting the Council's position on Tariff Based payments if the challenge to the Ministerial Statement is upheld

JAMIE CARSON

DIRECTOR OF PUBLIC PROTECTION, STREETSCENE AND COMMUNITY

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Paul Whittingham	5349	8 June 2015	***