

11 MARCH 2014

ENFORCEMENT REPORT ON AN OUTSTANDING DEBT UNDER SECTION 106
OF THE TOWN & COUNTRY PLANNING ACT 1990

1.0 INTRODUCTION

Members may recall that reports were presented to the previous Area Committees in December 2010 explaining what measures were being put in place to try and recover contributions secured through the signing of Section 106 legal agreements, but where the developer had gone into liquidation, or there were other complications in the agreement, that had resulted in the monies being unpaid beyond the trigger point of the agreement. The reports highlighted the fact that, where all avenues available to the Council to recover the outstanding contributions have been exhausted, the debt may have to be written off, but that these individual cases would be reported back to Committee for a final decision.

This report highlights such a case. Members are advised that a complete review of Section 106 procedures has now taken place and revised processes have been adopted in an attempt to prevent cases such as this arising in the future. This includes a requirement for land ownership to be proven at the time of signing (up to a level accepted by the civil court), a full quarterly review of every outstanding development that is subject to a legal agreement and the regular involvement of Legal Services in case reviews.

2.0 PLANNING APPROVAL 05/04212/FUL

This application was approved on 28 February 2006 and was for the erection of an industrial unit and office at Land off New Street, Holbrook, Sheffield. The approval included a signed Section 106 legal agreement consisting of the following financial covenant:

“The Owners shall pay to the Council (on or before the commencement of any development within the meaning of Clause 2.2) the sum of £1,000 and £1,000 for the following 2 years to be paid on the anniversary of development commencing to be used by the Council in such a manner as it may determine towards the future maintenance/improvement of the Willow Carr Woodland adjoining the Short Brook.”

This money (£3,000 in total) has never been paid to the Council and the development is complete and occupied. The trigger points for payment passed some years ago and investigations and discussions have been ongoing with the Council’s debt recovery team and Legal Services about this

case. The current owners of the site have been pursued for the monies but have not cleared the debt.

Having reviewed the case it is evident that the original agreement is flawed because the 'Owners' are not fully described in the First Schedule. They are referred to as 'Hillside' but there is no such company registered with Companies House. Furthermore, the application form and ownership certificate identified 'Hillside Construction' as the applicant. There is no company registered with this name either. Whilst there are companies that have the name 'Hillside' within their title they are all registered as limited companies. Unfortunately, whilst it is highly likely that one of these companies was involved in the original application and agreement, the documentation was incorrectly completed at the time and there is no legal basis upon which to pursue a claim against any of them.

Land Registry Documentation indicates that the building is currently owned by 'Hillside Developments Northern Ltd' and was registered by them on 21 February 2007, a considerable time after the planning permission and signing of the legal agreement, so they were not party to it.

Based on the evidence available, the advice obtained from Legal Services and the fact that the debt is limited to £3,000, it is recommended that no further enforcement action is taken and that the debt is written off as there are no other options for recovering the monies due.

Members should note that we do not enter into any agreements that are below £2,000 because the administrative burden is too great. This also suggests that pursuing this particular debt would not be cost effective.

3.0 EQUAL OPPORTUNITIES

There are no equal opportunities implications arising from the recommendations contained in this report.

4.0 FINANCIAL IMPLICATIONS

The financial implications are described above. The result of being unable to pursue payment of these outstanding debts is that the enhancements to / improvement of the Willow Carr Woodland adjoining the Short Brook will not be possible. There are no core funding implications to the Council.

6.0 RECOMMENDATIONS

That Members endorse the 'writing off' of the outstanding Section 106 debt (amounting to £3,000) in relation to planning application 05/04212/FUL and the Director of Finance be advised accordingly.