

DEVELOPMENT SERVICES

REPORT TO CITY CENTRE SOUTH & EAST PLANNING & HIGHWAYS AREA COMMITTEE

25 FEBRUARY 2013

ENFORCEMENT REPORT ON TWO OUTSTANDING DEBTS UNDER SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990

1.0 INTRODUCTION

Members may recall that reports were presented to this Committee on 6 & 20 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 this Committee for a final decision.

This report highlights two such cases. 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, 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 03/00752/FUL

This application was approved on 14 January 2004 and was for the erection of a building for use as a factory (Use Class B2) with offices and associated car parking at Loadhog Limited, Fourth Weir Works, 99 Carbrook Street, Sheffield S9 2JE. The approval included a signed Section 106 legal agreement consisting of the following financial covenant:

“On the 1st day of January 2007 the Owner shall pay the sum of £40,000, to be used by the City Council, as a contribution towards the funding of the creation of a riverside walk on the River Don, between Weedon Street and Hawke Street /Janson Street, on the condition that the monies paid pursuant to this Agreement shall be used only for such purpose, and that any of the said payment as remains unspent by the

Council for such purpose on 1st January 2012 shall forthwith be repaid by the Council to the Owner.”

The wording of this legal agreement is very specific in its requirements and whilst the owner did not meet the terms of the first part of the agreement (i.e. the Council have never received the payment in the first instance) there is also a strict requirement on the Council as to what it can expend the monies on. The reality here is that, without additional monies in the form of additional contributions from developments in close proximity to this site, the £40,000 is not sufficient to construct a section of riverside walkway in the specific location identified, particularly bearing in mind that the section of the River Don that does not yet have a riverside walk in the area identified runs through the middle of the Sheffield Forgemasters site. Even the limited stretch that runs directly outside the Loadhog Unit would require the construction of a cantilevered walkway, which would clearly be significantly more expensive than £40,000.

On this basis it is clear that the Council would not be able to meet its own obligations as defined in the legal agreement and the conclusion is that there is no option but to write off this legal agreement and the debt that goes with it.

3.0 PLANNING APPROVAL 05/04371/FUL

This application was approved on 28th February 2006 and was for the erection of a building to provide 81 flats with basement car parking at the site of Hope Works, 17-39 Mowbray Street, Sheffield. The approval included a signed Section 106 legal agreement which included the following financial covenant:

“The Owner shall pay to the Council (on or before the commencement of development) the sum of £75,030.35 to be used by the Council as contribution towards the further provision and enhancement of the Upper Don Walk within the vicinity of this site.”

This money has never been paid to the Council and the development is complete and occupied. The trigger point for payment clearly 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 original agreement and declaration was signed by a Director of Riverdale Construction Ltd. A subsequent thorough check of the documentation relating to this case and external sources has revealed that Riverdale Construction Ltd did not have a legal interest in this land at the time the agreement was signed. The land was, in fact, owned by Brewery Wharf Limited.

Despite the fact that Riverdale Construction Ltd did not have an interest in the land, the Council is entitled to seek to recover the monies under the Section 106 agreement by virtue of a unilateral obligation.

However, In July 2010 Riverdale Construction Ltd went into Creditors' Voluntary Liquidation. Full enquiries have been carried out by the Council with the Liquidator and it is clear that there is no dividend available to creditors.

Legal advice, supported by opinion from senior Counsel is that there is little prospect of making a successful recovery from the shareholders of Riverdale Construction Ltd or its Directors.

Consideration has also been given as to whether Brewery Wharf Ltd can be pursued for the debt but the firm legal position is that the prospects of making a successful recovery against that company are low.

Based on the evidence available and given the poor prospects of succeeding in pursuing any legal action against either the Shareholders or the Directors, it is recommended that no further enforcement action is taken and that the debt is written off.

4.0 EQUAL OPPORTUNITIES

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

5.0 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 / creation of further stretches of a riverside walkway on the River Don 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 debts in relation to planning applications 03/00752/FUL and 05/04371/FUL and the Director of Finance be advised accordingly.

This page is intentionally left blank