

PLANNING DEVELOPMENT CONTROL COMMITTEE

5-October 2005

LAND AT 80/81 HIGH STREET – SCHEME OF DELEGATION FOR S106 AGREEMENTS

REPORT OF CITY SECRETARY AND SOLICITOR

Contact Officer: Howard Bone Tel No: 01962 848552

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report seeks authorisation for the release of an obligation to provide car parking under a legal agreement in respect of development at High Street/Staple Gardens, Winchester.

It also recommends that the Scheme of Delegation be amended to extend officers' delegated powers in respect of legal agreements. It is proposed that authority to enter into legal agreements is given, where such agreements could overcome one or more of the Committee's reasons for refusing an application which has gone to appeal.

RECOMMENDATIONS:

- 1 That the City Secretary and Solicitor be authorised to enter into a deed of release in respect of the obligations contained in an agreement dated 3 April 1986 between the Council (1) Winchester Land plc (2) and Allied Dunbar and Co plc (3) concerning land at 80/81 High Street and relating to the offering for sale of 8 car parking spaces.

TO COUNCIL

- 2 That Part 3 Section 6 of the Constitution (Scheme of Delegation to Officers), paragraph 9, be amended to read as follows:-
 9. Decisions on a) the entering into of section 106 agreements b) the revised form of a planning permission; required as a matter of urgency in connection with a pending hearing of an appeal, in consultation with the Chairman or Vice-Chairman of the Planning Development Control Committee and local Member(s).

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DETAIL:

1 Introduction

- 1.1 This report deals with two issues concerning legal agreements. The first (80/81 High Street) concerns a request to release an obligation to offer to provide = car parking spaces as part of an approved development and offer to sell these to the City Council. It is considered that the obligation to sell the spaces no longer serves a useful purpose, and should be released.
- 1.2 The second issue concerns the situation where the Committee has refused to grant planning permission for a proposed development, and the applicant has appealed to the Secretary of State. In many cases, the reasons for refusal include matters which would normally be resolved by entering into a legal agreement (e.g. public open space, affordable housing, etc), although there may be other reasons such as those relating to policy which will be pursued at the appeal. This report proposes the amendment of the Scheme of Delegation to enable this to take place without the need for further committee authority.

2 80/81 High Street

- 2.1 By an agreement pursuant to section 52 of the Town and Country Planning Act and dated 3rd April 1986, Winchester Land Plc, the then landowner, was required to offer for sale to the Council 8 car parking spaces for use by the public at 80/81 High Street, Winchester, together with a right of way limited to the use of those spaces. The spaces are shown hatched black on the plan included as the Appendix to this report.
- 2.2 The development was duly completed albeit no offer of sale of the parking spaces was or has been made by the Owner as required by the Agreement. The Owner has approached the Council requesting that the Council enter into a Deed of Release in respect of the Agreement.
- 2.3 The Director of Development, Head of Estates and the Car Parks Manager have been consulted and have concluded that there is no merit in purchasing the 8 parking spaces. It is considered that the spaces would be both difficult to manage and expensive.
- 2.4 It is therefore recommended that a Deed of Release is completed. Under the terms of the deed, the landowner would no longer be required to offer the parking spaces for sale to the Council.

3 S106 Delegation

- 3.1 When the Committee refuse applications, and an appeal is lodged, matters such as open space and affordable housing are often resolvable by dealing with these aspects in a planning obligation. It is good practice to seek to resolve such issues, as there is clearly no point in producing evidence at an inquiry when the appellant is willing to satisfactorily deal with an issue such as public open space.
- 3.2 Applicants may provide unilateral undertakings to deal with these issues (usually following discussions with officers over the drafting), but sometimes a bilateral agreement with the Council is required (e.g. when land is to be transferred to the Council). Currently, the Scheme of Delegation does not authorise the entering into of such agreements, and as where application was refused by the Committee, there is no committee authority either.
- 3.3 In order to deal with these situations, it is proposed to amend the Scheme of Delegation section of the Constitution. This already gives officers the power to determine the revised form of a planning permission in connection with a planning appeal, in consultation with the Chairman/Vice-Chairman and local members. It is considered that the same mechanism can be used to authorise the entering into of planning agreements to resolve reasons for refusal where this is appropriate.
- 3.4 The proposed amendment is set out in the recommendation, with the changes shown underlined.

OTHER CONSIDERATIONS:

4 CORPORATE STRATEGY (RELEVANCE TO):

- 4.1 This report relates to the key service areas of Green Agenda and Economic Prosperity.

5 RESOURCE IMPLICATIONS:

- 5.1 The proposed deed will require limited officer time which can be included within existing available resources.

BACKGROUND DOCUMENTS:

Letter from Solicitors requesting deed of release

APPENDICES:

Plan showing car parking spaces hatched black.