

PLANNING DEVELOPMENT CONTROL COMMITTEE

13 September 2007

MORN HILL - HOTEL DEVELOPMENT

REPORT OF HEAD OF LEGAL SERVICES

Contact Officer: HOWARD BONE Tel No: 01962 848552

RECENT REFERENCES:

PDC 691 – Morn Hill Hotel Development – 14 June 2007

PDC 629 – Morn Hill Hotel Development – 16 November 2006

PDC 626 – Morn Hill Hotel Development – 25 May 2006

EXECUTIVE SUMMARY:

This report gives a further update to Members concerning the hotel development at Morn Hill following the last consideration of the matter in June 2007 (report PDC 691 refers).

Members will recall that the land was sold by NTL to a local hotel developer. Since the last report to Members, the developer's bank has appointed a "LPA Receiver" to recover mortgage monies advanced by the bank.

This report is being brought to Members to allow an opportunity to consider the site in the light of these recent developments.

The exempt Appendix to this report gives detailed legal advice on the current position and options for Members.

RECOMMENDATION:

1. That Members consider the proposal from the LPA Receiver taking into account the advice in the Exempt Appendix;

2. That if the proposal from the LPA Receiver is acceptable, the Head of Legal Services (in consultation with the Chairman, Portfolio Holder for Planning and Transport, the Ward Member and Head of Planning Control) be authorised to agree the terms of, and enter into, a new Section 106 agreement for the development of the hotel element of the Morn Hill Development to include:-

- A covenant not to use the land other than as a hotel;
- A covenant to build the hotel within three years of the date of the agreement;
- The withdrawal of the completion notice on the site upon the new agreement being entered into.

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1 Introduction

- 1.1 Members will be aware from previous reports (PDC 691 - 14 June 2007, PDC 629 – 16 November 2006, and PDC 626 – 25 May 2006) of the background to the development at Morn Hill, Winchester. In summary, the original Section 106 agreement of 4 June 1999 required “Implementation” (defined in the agreement as a substantial start on the building work, preliminary operations such as.... excavation for foundations.... being disregarded) of the hotel element before a specified date. This requirement is a higher standard than that defined for implementation under the 1990 Act.
- 1.2 The hotel site was sold by the original developers, NTL, to a specialist hotel developer. This developer arranged for part of the foundations of the approved hotel building to be laid before the specified date, although these comprised only about 15% of the total foundations. No other works have taken place, either before or since.
- 1.3 Legal advice was taken, and it was decided to serve a completion notice in respect of the development, as well as other measures (details of which are given in the Exempt Appendix). The completion notice allowed 18 months for the construction work to be completed, on the basis of the programme submitted by the hotel developer. The notice is currently with the Government Office for the South East (GOSE), having been submitted to the Secretary of State for confirmation. No objections were received in response to the service of the notice, although a late objection has been submitted by the LPA Receiver (see below). At its meeting of 14 June 2007, Members resolved to instruct officers to report back to a future meeting with options to resolve the situation (as it then was).
- 1.4 Since the June 2007 meeting, officers have received notification of the appointment of a LPA Receiver by a bank who advanced money on the site. This report sets out the discussions which have been had with the LPA Receiver, and seeks Members instructions in the light of the latest situation.

2 Appointment of LPA Receiver

- 2.1 Under the Law of Property Act 1925, a lender who has a fixed charge on property (i.e. a mortgage) has limited statutory powers to appoint a receiver (“an LPA Receiver”) to receive the income of the property, and insure the property. Commonly, the mortgage deed will extend these powers to allow the LPA Receiver appointed by the lender to sell the property on the lender’s behalf.
- 2.2 Mr. Stephen Skinner has been appointed by the developer’s bank to act as LPA Receiver (with the power to sell the property), to recover money advanced by the bank on the land. Officers have met with him to discuss the history of the site and the current position, and his plans to dispose of the site.

- 2.3 Mr. Skinner intends to dispose of the site to a suitable purchaser, and is concerned that the current planning position (including the complexities over the Section 106 agreement and the outstanding completion notice) may have an adverse impact on the likely market for the site.
- 2.4 Mr. Skinner has submitted a late objection to GOSE in respect of the completion notice, and a holding response to this has been submitted on behalf of the Council. It has been agreed that the Secretary of State's decision (as to whether or not the completion notice should be confirmed) should be deferred pending the Committee's consideration of the current position.

3 Proposal from LPA Receiver

- 3.1 Mr. Skinner intends to dispose of the site on behalf of the Bank to a suitable operator/developer. The need to properly market the site (to comply with the legal duties on the LPA Receiver) means that identifying a suitable operator/developer may take up to four months.
- 3.2 Once an operator has been identified and contracts have been exchanged, Mr. Skinner envisages a period of three years being needed for the building to be completed. This includes provision for time for such an operator/developer to negotiate with the City Council on variations to the existing planning permission, following by preparation of detailed contract drawings and tender for the building work, as well as the actual time for construction itself. His timetable includes up to nine months for an incoming developer to seek variations or amendments to the existing consent, six months for drawings to be produced and building contracts to be let, with a construction period of 18 months.
- 3.3 If this proposal is acceptable to Members, it is envisaged that the wording for a new Section 106 agreement would be agreed before the site is marketed, and the agreement would then be entered into by the new incoming developer, at the time of exchange of contracts for the purchase of the site. This would set out a requirement for the hotel development to be completed within three years from the date of the agreement, and at the same time the completion notice would be withdrawn by the Council, as the new 106 agreement would replace the requirements of the completion notice.
- 3.4 Mr. Skinner will be attending the meeting to take part in public participation, and will be able to answer Members' questions (subject to any confidentiality issues which may arise) on his proposal.

4 Legal Implications.

- 4.1 Detailed legal advice on the implications of these latest developments is set out in the Exempt Appendix.
- 4.2 If Members are in favour in principle of the concept of a hotel development in this location, acceptance of the proposal from the LPA Receiver would allow an unequivocal time limit on the carrying out of the development to be imposed, albeit that it would allow a further period of three years for this to be done.

OTHER CONSIDERATIONS:

5 CORPORATE STRATEGY (RELEVANCE TO):

5.1 This report relates to the High Quality Environment aspects of the Corporate Strategy.

6 RESOURCE IMPLICATIONS:

Confirmation of the completion notice can be accommodated within existing budgets. If court proceedings are pursued, financial and officer time resources would be required, which may be recoverable if the Council were to be successful. If the Council failed in such proceedings, it would have to meet its own costs, and those of the developer, which could be significant.

BACKGROUND DOCUMENTS:

APPENDICES:

EXEMPT Appendix – Further legal advice