

PLANNING DEVELOPMENT CONTROL COMMITTEE

30 July 2009

MORN HILL HOTEL

REPORT OF HEAD OF PLANNING MANAGEMENT AND HEAD OF LEGAL SERVICES

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RECENT REFERENCES:

PDC 733 – Morn Hill Hotel Development – 31 January 2008

PDC 714 – Morn Hill Hotel Development – 13 September 2007

PDC 691 – Morn Hill Hotel Development – 14 June 2007

EXECUTIVE SUMMARY:

Members will recall that the original planning permission for the Morn Hill development included provision for a 120 bedroom hotel. Members agreed to enter into a new Section 106 agreement in January 2008 with a new developer to set new milestones for the construction and completion of the hotel element. The development is well under way at present.

This report updates Members on internal changes which have been undertaken, the legal position with respect to the planning permission as a consequence, and the terms of a proposed undertaking to mitigate the effects of these changes.

RECOMMENDATIONS:

- 1 That Members note and agree that the construction of the additional 21 bedrooms referred to in the report is lawful.
- 2 That the Head of Legal Services be authorised to enter into an agreement under Section 106 of the Town and Country Planning Act 1990 to:-
  - confirm the lawfulness of the development as set out in the report;
  - secure the payment of £20,000 towards the Bikeabout scheme or other schemes aimed at reducing private motor vehicle use;
  - secure the participation of the hotel in the Bikeabout scheme as set out in the report.

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##### DETAIL:

#### 1 Introduction

- 1.1 Planning permission for a redevelopment of the Morn Hill site was granted in June 1999. As well as what became the Intech centre, the redevelopment included a satellite teleport, and a hotel. All the elements other than the hotel have been completed. The permission for the hotel remained live, given the fact that it had been implemented (albeit in part).
- 1.2 Work was purportedly started on site by the previous owner of the site, but then ceased. A planning completion notice was served, and ultimately the land was sold to a new developer.
- 1.3 In January 2008, Members agreed to enter into a fresh Section 106 agreement with the new developer setting out revised milestones for the completion of the hotel. This agreement was signed, and construction commenced. The milestones set out in the agreement have all so far been met, and the building is due for completion within the agreed timetable.
- 1.4 Having taken advice, the developer decided to revise the internal layout and increase the number of bedrooms from 120 to 141, an additional 21 rooms. This report sets out the changes, the planning implications, and a proposal to mitigate any impact which the changes might have.

#### 2 Changes Made to the Development

- 2.1 The planning permission authorises a 120 bedroom hotel. There are no conditions restricting the number of bedrooms which can be constructed or the internal layout.
- 2.2 Members will be aware that obtaining and retaining funding in the current economic situation is difficult. The developer has indicated that the need to increase the number of bedrooms was as a result of the need to secure and retain funding for the development given these difficulties. The developer has confirmed that the necessary funding to complete the development has been obtained, and the development is progressing well.
- 2.3 The design of the building envelope remains essentially the same as the approved building. The 21 additional bedrooms are being constructed within what were originally to be open public areas and other void areas.

- 2.4 It is understood that a representative of the developer will be attending the meeting.

### 3 Legal Implications

- 3.1 As Members will be aware, works or changes of use which constitute “development” under the Town and Country Planning Act 1990 generally require planning permission (either expressly granted following or planning application, or deemed to have been given as permitted development rights).
- 3.2 The 1990 Act defines development, but also provides that certain works fall outside the definition, and therefore such works can be carried out without any planning permission (as they do not constitute development). One such exception is
- “the carrying out of the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building”.*
- 3.3 Where the use of the building changes, resulting in a material change of use, planning permission will be required, but if the use remains the same, works within this definition can be carried out without planning permission.
- 3.4 The planning permission does refer to the construction of a “120 bedroom hotel”. However, the Courts have held that such a description does not operate as a limitation, and therefore the fact that the description refers to 120 bedrooms does not prevent the creation of additional bedrooms by carrying out internal alterations.
- 3.5 Officers have had sight of an opinion from Leading Counsel obtained by the developer which confirms that the additional bedrooms can be constructed without a requirement for further planning permission.
- 3.6 As no development (within the meaning of the 1990 Act) has taken place, it is therefore not possible to take any enforcement action in this case.

### 4 Implications of Changes to the Development

- 4.1 Officers have been in discussions with the developer to consider the consequences of the creation of the additional bedrooms. These discussions have resulted in agreement from the developer to certain measures to mitigate these consequences. As the alterations are internal, the impact of the additional rooms is largely related to the transport aspects of the development.
- 4.2 The development provides sufficient car parking spaces to meet the requirement of a 141 bedroom hotel. Accordingly, no further car parking would be needed.

- 4.3 Officers have explored ways to enhance the sustainability aspects of the development, and the developer has agreed to enter into a Section 106 agreement in respect of the following:-
- a) making a £20,000 financial contribution towards the Council's "Bikeabout" scheme (or any other scheme aimed at reducing the use of private motor vehicles); and
  - b) agreeing to participate in the Bikeabout scheme by operating four bicycles at the Hotel for guests and members of the public.
- 4.4 The Bikeabout scheme is jointly funded by the City Council and WACA. Under the scheme, bicycles are loaned free of charge (subject only to a small annual fee) to the public from the WACA and Tourist Information Offices. The provision of additional funding and a further outlet will enhance the scheme and the sustainability of the hotel development.
- 4.5 As set out above, Officers consider that the installation additional bedrooms are lawful and therefore enforcement action cannot be taken. However, the proposed Section 106 agreement and the measures secured under it (which the Head of Access and Infrastructure supports) will reduce any impact which the additional bedrooms might have on the transport infrastructure in the local area.

## 5 Conclusions

- 5.1 The construction of the hotel will complete the redevelopment of this site, and bring to an end the issues which have arisen in the recent past. The additional bedrooms do not require planning permission, but any additional impact which might ensue will be mitigated by the measures which have been agreed to by the developer.

## OTHER CONSIDERATIONS:

### 6 SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

- 6.1 This report will affect the following elements if the vision for Winchester:-
- Making sure that Winchester District's beautiful countryside, landscape and special features are accessible for everyone and is protected for future generations to enjoy
  - Making sure that Winchester District remains an area which encourages cultural opportunities which everyone can participate in

### 7 RESOURCE IMPLICATIONS:

- 7.1 The financial contribution received will be put towards the costs of running the Bikeabout scheme, and/or other schemes aimed at reducing reliance on the private motor vehicle.

8 RISK MANAGEMENT ISSUES

- 8.1 Entering into a Section 106 agreement will ensure that the financial contribution can be obtained. The 1990 Act provides a series of measures which would allow the Council to recover the contribution in the unlikely event that the payment is not made.

BACKGROUND DOCUMENTS:

None

APPENDICES:

None