

PLANNING DEVELOPMENT CONTROL COMMITTEE

27 MAY 2004

MORN HILL SECTION 106 AGREEMENT

REPORT OF CITY SECRETARY AND SOLICITOR

Contact Officer: HOWARD BONE Tel No: 01962 848552

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report sets out details of a request to vary the Section 106 Agreement dated 4 June 1999 which was entered into prior to planning permission for the NTL development at Morn Hill, Winchester. The Development comprised a satellite teleport and two subterranean buildings, education building for INTECH, a 120 bedroom hotel and associated works. The teleport and subterranean buildings have been partly completed, the INTECH building is operational, but the hotel has not yet been built.

The Section 106 agreement provides that each element of the development must be started in a substantial way within five years (i.e. before 4 June 2004). A prospective developer for the hotel element has approached the Council seeking a variation in the terms of the Section 106 agreement to extend the period for commencing the hotel development, and this report sets out details of the approach, and the justification behind the request.

A separate report deals with an application under Section 73 of the 1990 Act to vary the conditions attached to the existing planning permission. This report sets out the request to vary the Section 106 agreement, and the justification for the request.

RECOMMENDATIONS:

- 1 That the City Secretary and Solicitor be authorised to agree a variation of the Section 106 Agreement dated 4 June 1999 for land at Morn Hill, Alresford Road, Winchester, by extending the implementation period for the hotel element by one year to 4 June 2005.

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#### DETAIL:

##### 1 Introduction

- 1.1 Planning permission was granted on 4 June 1999 for the redevelopment of the former Morn Hill scrap yard, Winchester. The development, which was approved, included a satellite teleport and subterranean buildings, an educational building for INTECH, and a 120 bedroom hotel.
- 1.2 In conjunction with the planning application, a Section 106 agreement was entered into. This dealt with various aspects of the development, including implementation (Clause 5). The agreement required all elements of the development to be substantially commenced within five years.
- 1.3 The hotel element of the development has not yet commenced. However, a prospective developer has approached the Council with proposals to carry out the hotel development, including a request to amend the Section 106 agreement by extending the time for implementation.
- 1.4 This report sets out details of the proposal and recommends that the agreement is amended to extend the period for implementing the hotel element by one year.

##### 2 Details of Section 106 Agreement

- 2.1 The agreement (also dated 4 June 1999) deals with various aspects of the development. Clause 5 of the agreement deals with implementation.
- 2.2 All planning permissions include conditions requiring the development to be begun within a specified time (normally five years from the grant of permission). Section 56 of the Town and Country Planning Act 1990 provides a mechanism for determining whether development has been begun, and therefore whether the planning permission has been implemented. Normally, once implemented, a planning permission will continue to have effect, even if only part of the development is commenced. Although there is a time limit for the implementing of a planning permission, there is not normally any time limit for the implementation of remaining phases, or the completion of the whole development.
- 2.3 In this case, however, the Section 106 agreement expressly treats each phase of the development (teleport including subterranean buildings, INTECH, hotel) as distinct entities, and the effect of the agreement is that in order to be lawful, each element must be commenced within five years (i.e. before 4 June 2004). In addition, under the terms of the agreement, a phase will only be deemed to have been "commenced" under the agreement if substantial works (i.e. laying of foundations, etc) are carried out before the deadline.

- 2.4 The other phases have been completed or substantially completed, but no work has been done on the hotel element. This means unless a substantial start on the hotel element is made before 4 June (i.e. something more than excavating foundation trenches, etc), the agreement would (unless varied) mean that the hotel could never be built, and that part of the site would have to be returned to open countryside (under the terms of the agreement)
- 2.5 The 1990 Act does allow for formal amendment of certain agreements (including this one) which are more than five years old. This procedure entails an application to the local planning authority, and there is a right of appeal to the Secretary of State if the application is refused. In this case, an appeal could only be lodged after 4 June 2004.

### 3 Proposed Amendment to Agreement and Justification

- 3.1 The site owners have marketed the site, and have submitted a marketing summary setting out the work, which has been carried out to find a suitable developer for the hotel element.
- 3.2 Marketing by the current agents commenced in December 2001. Sales brochures have been mailed to potential hotel developers and operators, a total of 166 in all. Three national advertisements have been placed, and a further 56 brochures distributed as a result.
- 3.3 Detailed information was sent to four serious developers. Four offers were received in the first half of 2002, from various potential developers, but these were either for different forms of development, or for a type of hotel which would not be acceptable. Officers have consistently indicated that the development should be of a high quality, and in the light of this, negotiations on the proposals received were not pursued.
- 3.4 Further remarketing then took place in March 2003, when 200 revised brochures were mailed to potential developers, and further national advertisements were placed. Two offers were received as a result, one of which was withdrawn following discussions. The remaining offer is that submitted by the prospective developer who has submitted the Section 73 application and asked for the Section 106 agreement to be varied.
- 3.5 It is understood that the prospective developer intends to construct the hotel with the same external appearance. However, it is likely that an application to reduce the number of bedrooms and facilities might be submitted in the future. This would be dealt with as a separate application if and when it was received.
- 3.6 The request to vary the Section 106 agreement seeks to extend the time for implementation of the hotel phase of the development, by a period of one year. If approved, this would mean that the hotel element would have to be substantially commenced by 4 June 2005.

### 4 Consideration of Request

- 4.1 The Section 106 agreement was drafted in order to ensure that this site was properly developed in a controlled way. It provided that where any elements were not developed within five years, that part of the site would have to be returned to open countryside.

- 4.2 Whilst the request to vary the agreement has only been recently received, it is apparent that a considerable marketing exercise has been carried out, but the Council's desire to see a high quality hotel development on the site have meant that until now, it has not been possible to find a suitable developer for this element.
- 4.3 Officers are satisfied that the applicant is committed to developing the hotel element in a way which would be acceptable. An extension of the period for starting on site by one year would not prejudice the objectives of the Council when consent was originally granted, and would retain control over the site's development.
- 5 Conclusion
- 5.1 It is therefore concluded that the request to vary the Section 106 agreement can be agreed to.

OTHER CONSIDERATIONS:

6 CORPORATE STRATEGY (RELEVANCE TO):

- 6.1 Looking after the natural and built environment is a key objective.

7 RESOURCE IMPLICATIONS:

- 7.1 The applicant would be expected to pay the legal costs in amending the Section 106 agreement.

BACKGROUND DOCUMENTS:

Letter from Lester Aldridge dated 6 April 2004

APPENDICES:

None