

PLANNING DEVELOPMENT CONTROL COMMITTEE

15 December 2011

HILLIER GARDEN CENTRE, ROMSEY ROAD, WINCHESTER – VARIATION OF SECTION 106 AGREEMENT

REPORT OF HEAD OF PLANNING MANAGEMENT

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PREVIOUS REFERENCES:

PDC834 - 09/01686/FUL - Installation of a 15m street-works pole upon a 19cm concrete plinth, supporting 3 antennas and 2 no. 600m dish with equipment cabinet at ground level and ancillary development (RESUBMISSION) (RETROSPECTIVE) – Resolution to grant permission – 10 December 2009

EXECUTIVE SUMMARY:

The Planning Development Control Committee resolved to grant retrospective planning permission on 10 December 2009 for the installation of a telecommunications mast at Hillier Garden Centre, Romsey Road, Winchester, subject to the requirement that the applicant enter into a section 106 agreement securing replacement planting in the event that the trees around the mast should die or become seriously defective during a period of two years after the installation of the mast.

The process for putting in place the section 106 agreement in question was not subsequently completed, with the result that over two years have now elapsed since the installation of the mast and the resolution to grant retrospective planning permission.

The Council's Arboricultural officer has recently assessed the trees, and is satisfied that none are dying or seriously defective. Therefore, it is considered that the section 106 is no-longer necessary (as per the requirements of Circular 05/2005).

**RECOMMENDATION:**

That the Head of Planning Management be authorised to issue consent (ref:09/01686/FUL) without the need for a section 106 agreement covering replacement planting within 2 years of the installation of the mast and associated equipment.

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### HILLIER GARDEN CENTRE – REMOVAL OF REQUIREMENT FOR SECTION 106 AGREEMENT

#### REPORT OF HEAD OF PLANNING MANAGEMENT

##### DETAIL:

##### 1 Introduction

- 1.1 On the 10 December 2011 The Planning Development Control Committee Resolved to grant retrospective planning permission for the installation of a 15m street works pole upon a 19cm concrete plinth, supporting 3 antennas and 2 no. 600m dish with equipment cabinet at ground level and ancillary development at Hillier Garden Centre, Romsey Road, Winchester. The resolution to grant was made subject to the applicant entering into a section 106 agreement with the Council in order to secure either the replacement of the trees that have died or those that are dying due to the digging process to install the concrete plinth.

##### 2 Section 106 Agreement Provisions

- 2.1 The Section 106 has never been completed and only exists in draft form. The draft Section 106 agreement including the following provisions:

*'The First Landowners, the Second Landowner and Lessee covenant to secure the replacement of trees within 10m of the mast if they die or become seriously defective as a result of the erection of the mast and associated equipment.*

*The Council's Arboricultural Officer will confirm within 2 years from 14 August 2009 whether or not the trees are dead or seriously defective.*

*If replacement trees are required in compliance with paragraph 1.1 above, for the avoidance of doubt, these trees must be of the same species and be well established when planted.*

*In the event that First Landowners, the Second Landowners and/or Lessee is unable to provide replacement of the trees, then the First Landowners covenant that they shall remove the mast and associated structures from the Site within 6 months of being notified by the Council.'*

### 3 Background to Request to Vary Section 106 Agreement

- 3.1 As will already be apparent from the above description, the section 106 was designed to secure replacement planting in the event that the trees screening the mast died or became seriously defective within 2 years.
- 3.2 However, this two year time limit has now elapsed, and the Council's Arboricultural Officer is satisfied that none of the trees are dead, dying or seriously defective.

### 4 Planning Considerations

- 4.1 In the light of the events subsequent to the resolution to grant in 2009 it is considered that the section 106 requirement in respect of the application in question no-longer complies with the requirements set out in Circular 05/2005, which requires that a planning obligation must be:

*(i) relevant to planning;*

*(ii) necessary to make the proposed development acceptable in planning terms;*

*(iii) directly related to the proposed development;*

*(iv) fairly and reasonably related in scale and kind to the proposed development; and*

*(v) reasonable in all other respects.*

- 4.2 More specifically, as has been referred to above, the section 106 agreement/planning obligation is no longer considered necessary.

### 5 Recommendation

- 5.1 In the light of the above, it is recommended that the Head of Planning Management be authorised to issue consent (ref:09/01686/FUL) without the requirement to enter into a section 106 agreement covering replacement planting within 2 years of the installation of the mast and associated equipment.

### OTHER CONSIDERATIONS:

#### 6 SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS

- 6.1 The proposal contributes to the High Quality Environment outcome of the Sustainable Community Strategy.

#### 7 RESOURCE IMPLICATIONS

There are no financial implications for the City Council.

8 RISK MANAGEMENT ISSUES

There are no risk management issues for the City Council.

BACKGROUND DOCUMENTS:

PDC834 – Committee Schedule of Planning Applications (09/01686/FUL) -10  
December 2009.

APPENDICES:

None