

## **COUNCIL**

**15 APRIL 2010**

### **QUEEN STREET PLANNING OBLIGATIONS**

Portfolio Holder: Councillor Alan Jarrett, Finance

Report from: Robin Cooper, Director of Regeneration, Community and Culture

Author: Dave Harris, Development Manager  
John Finlayson, Medway Waterfront Regeneration Manager

#### **Summary**

This report seeks approval that the Council undertakes, as landowner, to require as a condition of the land transfer that a developer enters into a Section 106 agreement securing the planning obligations agreed with and required by the Local Planning Authority.

#### **1. Budget and Policy Framework**

- 1.1 The disposal of the land is likely to exceed £1 Million, which will be a matter for Council. Therefore, the decision to agree to this undertaking is also a matter for Council.
- 1.2 The proposals are consistent with the Guide to Developer Contributions and the Chatham Centre and Waterfront Development Brief.

#### **2. Background**

- 2.1 The Cabinet, on 3 November 2009, agreed to the submission of a planning application for the redevelopment of the Queen Street car park. The Homes and Community Agency (HCA) have funded the cost of preparing and submitting the application. Under the terms of the funding agreement, achieving a site with planning permission is required by 31 March 2010. There is no requirement as to when the redevelopment of the site must begin.
- 2.2 The Medway Waterfront Renaissance Strategy 2004 sets out the expected development strategy for Chatham centre and the waterfront

over the next 20 years. A major step is to develop key regeneration sites in Chatham.

2.3 The adopted Chatham Centre and Waterfront Development Brief, (August 2008), identifies the Queen Street car park on the Brook as suitable for a residential led mixed-use redevelopment. In December 2009, the Council as landowner submitted an outline planning application for the redevelopment of the site. The application is for 118 residential units. The application was considered by the Planning Committee on 10 March 2010, the full decision of which is set out in appendix 1 to the report, however, with regard to the Section 106 agreement, the following was agreed:

- The Council at its meeting on 15 April agree not to dispose of the site without requiring the purchaser to enter into a Section 106 agreement in respect of the contributions set out below:
  - (i) Primary Care Trust – £55,218.10 – The contribution would go towards the development of the Community Healthy Living Centre in Chatham or other developments in the area.
  - (ii) Metropolitan Park - £29,488.20 – The contribution would go towards the shortfall of metropolitan park facilities in Medway.
  - (iii) Greenspaces - £88,346.10 - The contributions would be towards off site provision and / or maintenance of outdoor playing space.
  - (iv) Waste & Recycling - £10,000 – The contribution would go towards the requirement for waste and recycling as a result of the development.
  - (v) Highways – £64,000 towards future Park & Ride schemes serving Chatham Town Centre and funding towards travel plan monitoring.
  - (vi) A requirement that 25% of the housing units to be provided on the site be provided as affordable housing units in accordance with the relevant provisions of the Council's Guide to Developer Contributions (**Agreed at the Planning Committee on 31 March 2010 – see appendix 2 for full details**).

2.4 The Council's adopted Guide to Developer Contributions sets out Council policy in relation to developer contributions and as such the Queen Street planning application was subject to the requirements of the guide.

2.5 Planning obligations are normally secured in accordance with Section 106 of the Town and Country Planning Act 1990 by agreement between the landowner and the local planning authority. The Council cannot, as landowner, enter into a planning obligation by deed with itself in its capacity as planning authority.

- 2.6 Following the consideration of the planning application by the Planning Committee there needs to be a mechanism for securing the planning obligations. The grant of planning permission was approved by the Planning Committee on 10 March, but subject to the Council agreeing, as landowner, to that it would require as a condition of the land transfer the developer to enter into a Section 106 agreement securing the obligations.

### **3. Options**

- 3.1 The Council may agree to give an undertaking, which would enable a planning approval to be granted. This approach would satisfy the requirements of the HCA funding agreement.
- 3.2 If no undertaking was forthcoming it would not be possible to complete a Section 106 agreement until the Council had disposed of its interest in the land. In these circumstances the Local Planning Authority will not issue the permission. The Planning Committee has made a recommendation to grant and if the Council did not give the undertaking set out in this report then the planning permission would only be issued once a developer is in place who can enter into the Section 106 agreement. There is, however, an ongoing legal obligation on the Local Planning Authority to review any ungranted permissions in the light of any new circumstances arising before the grant and this could leave the Council as landowner with a problem, if, for example, planning policy changes before the permission is actually granted. This could particularly be a problem given that the Council does not intend to sell the site until favourable market conditions return.

### **4. Advice and analysis**

- 4.1 The Developer Contributions Guide, when adopted as a supplementary planning document anticipated that, if all parts of the guide applied, the level of developer contribution would be approximately £10,000 per dwelling. The guide states that negotiations will be based on the guide and only where there are good and valid reasons for departing from the guide will alternatives be considered. An example being where the normal level of contribution is unaffordable and would make a scheme commercially unviable. In addition, Circular 05/2005 on planning obligations sets out 5 tests for the use of S106 agreements:

- The obligation must be relevant to planning
- It must be necessary to make the proposed development acceptable in planning terms
- It must be directly related to the proposed development
- It must be fairly and reasonably related in scale and kind to the proposed development and
- It must be reasonable in all other respects.

- 4.2 The starting point for developer requests is the contribution guide, but then each request must be justified in relation to the tests set out in the circular.
- 4.3 The extent and scope of the planning obligations subject to the undertaking have been agreed between planning officers and officers representing the Council as applicant, and approved by the Planning Committee. The obligations that have been negotiated in light of the Developer Contributions Guide and the tests set out in the circular are as follows:
- £10,000 towards waste and recycling demands generated by the development
  - £29,488.20 towards the Metropolitan park, which will benefit future occupiers of the development
  - £64,000 towards highways namely park and ride and travel plan, to improve the sustainability of the development
  - £88,346.10 towards greenspaces and in particular equipped play and informal play facilities in the immediate area, which will be used and benefit occupiers of the development
  - £55,218.10 for the PCT to assist in the provision of the health care needs to serve future occupiers.
- 4.4 The total contribution being sought is £247,052.90 which equates to £2,093.67 per unit. This accords with the decision at the Planning Committee on 10 March 2010 subject to the additional decision made by the Planning Committee on 31 March as set out at paragraph 2.3 (vi) above.
- 4.5 In addition, it should be noted that the current economic climate means the viability of the scheme is marginal. In the current economic climate with depressed values the scheme is unlikely to provide sufficient return to enable the development to proceed in the short term. It is anticipated nevertheless there will be market recovery during the timescale for the regeneration of Chatham, but even so there will be a need for careful mitigation of costs to enable the development to proceed even in a recovering market. Affordable housing will be provided in line with Council policy.

## **5. Risk Management**

- 5.1 To date costs of preparing the planning application have been covered by HCA funding. The Council's investment is the land and in officer time and member commitment. The sale of the site will not take place until favourable market conditions return. The developer will cover the cost of subsequent reserved matter applications.

## **6. Consultation and Programme**

- 6.1 A public consultation exercise has been undertaken, together with a presentation to Members. Public consultation has also been undertaken as part of the planning application process.

## **7. Director's comments**

- 7.1 Agreeing the above will leave the Council in a very good position to dispose of the site with a valid planning consent when market conditions improve.

## **8. Financial and legal implications**

- 8.1 The costs of preparing the planning application and conducting a programme of public engagement have been met from the approved budget.
- 8.2 The regeneration of the Queen Street site cannot go ahead without a planning permission in place. The obligations which the Council as local planning authority will require as a condition of the grant of the planning permission is a matter for the Planning Committee, which has resolved as set out above.

## **9. Recommendation**

- 9.1 The Cabinet recommends to Council that the Council undertake, as landowner, to require as a condition of the land transfer that a developer enter into a Section 106 agreement securing the planning obligations, as set out in paragraph 2.3 of the report.

### **Lead officer contact**

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### **Background papers**

Guide to Developer Contributions, Supplementary Planning Document adopted April 2008

Chatham Centre and Waterfront Development Brief, Supplementary Planning Document adopted August 2008

Queen Street planning application ref MC/09/2626

Medway Waterfront Renaissance Strategy 2004

Circular 05/05: Planning Obligations



**Planning Committee – 10 March 2010 – Minutes Extract**

**(B) MC/09/2626 - Land bounded by The Brook, Queen Street, Slicketts Hill and Cross Street, Chatham**

**Discussion:**

It was suggested that if the Committee was minded to approve this application, a new condition 29 be approved, details of which were set out on the supplementary agenda advice sheet.

In addition, it was suggested that any approval of this application be subject to the Council agreeing not to dispose of the site without requiring the purchaser to enter into a Section 106 agreement in respect of the contributions set out on page 128 of the report.

**Decision:**

Approved subject to:

- (d) Conditions 1 – 28 as set out in the report for the reasons stated in the report;
- (e) A new condition 29 as follows:
  - 29. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before any part of the development is occupied or in accordance with a timescale agreed in writing with the Local Planning Authority and shall thereafter be retained. Development shall be carried out in accordance with the approved details.

Reason: To ensure that the appearance of the development is satisfactory and without prejudice to conditions of visual amenity in the locality, in accordance with Policy BNE1 of the Medway Local Plan 2003.

- (c) The reserved matters application being submitted to this Committee for determination.
- (d) The Council at its meeting on 15 April agreeing not to dispose of the site without requiring the purchaser to enter into a Section 106 agreement in respect of the contributions set out below:
  - (i) Primary Care Trust – £55,218.10 – The contribution would go towards the development of the Community Healthy Living Centre in Chatham or other developments in the area.
  - (ii) Metropolitan Park - £29,488.20 – The contribution would go towards the shortfall of metropolitan park facilities in Medway.

- (iii) Greenspaces - £88,346.10 - The contributions would be towards off site provision and / or maintenance of outdoor playing space.
- (iv) Waste & Recycling - £10,000 – The contribution would go towards the requirement for waste and recycling as a result of the development.
- (v) Highways – £64,000 towards future Park & Ride schemes serving Chatham Town Centre and funding towards travel plan monitoring.



**Planning Committee – 31 March 2010 – Minutes Extract**

**696 URGENT ITEM - MC/09/2626 - LAND BOUNDED BY THE BROOK, QUEEN STREET, SLICKETTS HILL AND CROSS STREET, CHATHAM**

**Discussion:**

The Committee received an urgent report requesting approval of an additional head of term for the Section 106 agreement relating to planning application MC/09/2626 (Land bounded by The Brook, Queen Street, Slicketts Hill and Cross Street, Chatham) approved on 10 March 2010 (Minute 650(B) refers)

This report had been accepted by the Chairman as urgent for consideration at this meeting on the basis that it was necessary to consider this matter prior to issue of the planning permission and on the basis that a report on the imposition of the Section 106 terms was due to be considered by Full Council on 15 April 2010.

**Decision:**

The following additional term of the required Section 106 agreement for planning application MC/09/2626 be approved and included in the report to Full Council on 15 April 2010:

(vi) A requirement that 25% of the housing units to be provided on the site be provided as affordable housing units in accordance with the relevant provisions of the Council's Guide to Developer Contributions.