

Report to District Development Control Committee



**Epping Forest
District Council**

Date of meeting: 6 April 2010

Subject: Section 106 Agreement, Fyfield Hall, Willingale Road, Fyfield

**Officer contact for further information: Nigel Richardson - Ext 4110
Committee Secretary: S Hill Ext 4249**

Recommendation(s):

To refuse the request to return the sum of £100,000 paid to the Council under a Section 106 Agreement relating to development at Fyfield Hall, Fyfield for the following reason:

(i) The obligations in the Section 106 Agreement are appropriate, necessary and related to the development granted under planning permission EPF/2230/05.

Background

1. At 17 April 2007 District Development Control Committee, it was agreed that planning application EPF/2230/05, for the conversion of buildings to 5 residential units and the erection of 6 new dwellings following demolition of existing commercial buildings, be granted planning permission, subject to the applicant entering into an agreement under Section 106 of the Town and Country Planning Act.
2. The agreement was required to provide an affordable housing sum of £70,000, a Fyfield village play facility sum of £10,000 and a Fyfield village hall refurbishment sum of £20,000.
3. This was a development taking place in the Green Belt and very special circumstances were identified by Officers to outweigh the harm that a development of this nature and size would normally have on its open character.
4. Members considered that only part of the very special circumstances had been identified (which were, significant improvement to the setting of a Grade I Listed Fyfield Hall by the removal of inappropriate buildings that were harming its setting; an overall increase in the openness of the site; a significant reduction in traffic movements in the rural area; removal of open storage and parking and the incorporation of a wildflower meadow.). At the earlier Area Plans Sub-Committee, in accordance with Local Plan Policies H6A and I1A, a financial contribution to affordable housing in the district was also considered necessary and discussion took place over provision also towards local community facilities.
5. Before it was referred on to District Development Committee (DDCC), the applicants suggested they would prefer to make some monies available for local community facilities for the use of new residents of the proposed residential scheme

and for local people and suggested the 3-way financial split, which was finally agreed by DDCC and is the requirement of the signed Section 106 Agreement.

Report Detail

6. The Section 106 Agreement was signed by the owners at the time, Mr White and Mrs Webster and they were legally represented at the time leading up to and to their signing of the Agreement on 19 November 2007.

7. The sum of £100,000 was paid to the Council in July 2008.

8. Less than 2 years later, Mr White and Mrs Webster, through Brian Higgs QC, are now demanding the return of this payment, even though they are no longer the owners having sold on the site to the developers, who carried out the planning permission. They submit that the Council had no right to impose the payment of £100,000 which they state was unrelated to the development of the land in question and were therefore not required as a result of it, or necessitated by it.

9. The Council's legal view, is that by requesting the return of the contributions paid to the Council under the terms of the S106 Agreement, they are in effect seeking to modify or discharge the planning obligations secured by this Agreement. Such an obligation can only be modified or discharged by either the agreement of the local authority entitled to enforce the obligations or by way of an application made pursuant to Section 106A (3) of the 1990 Town and Country Planning Act. The earliest date for such an application to be made is at the expiration of 5 years from the date the obligation was given. In this case the earliest date an application could be made will be 20 November 2012.

10. There is however no reason why the Council could not consider the request to deal with the matter by agreement. This Committee's decision can be challenged by way of Judicial Review.

11. Officers have reviewed the terms of the obligations given and Members are advised that officers do not agree with the suggested assessment that the obligations given were unlawful. This is because the proposed development was inappropriate development in the Green Belt which was granted permission on the basis of the existence of very special circumstances weighing in favour of the grant. The financial obligations secured were part of the very special circumstances which the Committee took into account in making the decision. Members considered that it was appropriate that a new residential development should provide an element of affordable housing and whilst accepting that its provision on the development site would not be reasonable required a financial contribution to secure affordable housing elsewhere in the District. A minimal contribution of £70,000 was suggested and considered reasonable. In addition it was considered appropriate that a residential development on Green Belt land should give something back to the community and to that end a financial contribution of £30,000 was also suggested and considered reasonable to provide improvements to the children's play facilities within Fyfield Village and to the Village Hall.

Conclusion

12. Mr White and Mrs Webster were legally represented at the time the

Agreement was entered into and no doubt would have been advised at that time if it was considered the requirements were unlawful. They did not have to enter into the Agreement if they were not satisfied with the planning obligations required by the Council. Their obvious cause of action would have been to refuse to enter into the Agreement and to appeal against the deemed refusal of the planning application to the Secretary of State.

13. After the £100,000 commuted sum was considered necessary by Members, the applicants suggested the division into the three areas and signed the legal agreement which allowed for the issue of the planning permission. Members are therefore urged to agree with Officers that under these circumstances, the Council not refund the £100,000 received in July 2008.