

West Wiltshire District Council

Planning Committee

1st June 2006

Request to discharge a section 106 agreement dated 6th February, 2004 in respect of facilities at the district centre at Paxcroft Mead, Trowbridge

Officer – David Hubbard, Development Control Manager

Purpose

To consider a request from Marshgate Developments Limited to discharge a section 106 agreement in respect of facilities at the district centre at Paxcroft Mead.

Background

Two section 106 are involved in this case. Parts of both agreements relate to facilities at the district centre. The earlier agreement is dated 8th August, 1995 and the latter which varies certain clauses of the first agreement is dated 6th February, 2004.

The variations in the later agreement which are relevant to this request provided for:-

- ❖ A site for a medical centre with an option for a pharmacy on a site previously identified for a public house (Site A on the attached Plan).
- ❖ Retail development of the previously identified medical centre site (Site B on the attached plan).

In 2004 Marshgate considered that there was no commercial interest in developing the public house site (reserved matters had been approved for a public house in 2000 as part of the development of the district centre) but there was commercial interest in the additional retail units adjacent to existing shops at site B

The original agreement provided that if within 10 years from the occupation of the first dwelling on the development, no doctor or dentist shall be found willing to practise from such surgery the said site may be put to such other use as may be agreed with the council. A clause in the latter agreement deleted this requirement.

During 2004 and 2005 three planning applications were received for the construction of a public house on site A. All three applications were refused planning permission. The subsequent appeals against all three refusals were allowed. Marshgate have followed up these decisions by requesting that the section 106 agreements be modified

At the time the planning applications were considered the council took the view that the planning applications and an alteration to the section 106 agreement need not be considered at the same time. However, in the event of planning permission being granted it was accepted that it would need to be demonstrated that obligations in the section 106 agreement had been modified or discharged before the implementation of any of the planning permissions for a public house could proceed. The Inspector makes the same comment in his decision letter.

In addition to the three planning permissions for a public house on this site granted recently on appeal, reserved matters for a public house on this site were approved in 2000 as part of proposals for other development at the village centre. That approval remains extant as other parts of the development approved at that time have been implemented and is not revoked by the second agreement. However as with the recent permissions that approval can not be implemented until the obligations in the section 106 agreement have been met of the council agrees to vary or discharge the agreement.

Key considerations

❖ The first occupation of the first houses at Paxcroft Mead

The first houses at Paxcroft Mead were first occupied in early 1998. This means that there is just under two years left of the 10 years for a doctor or dentist to come forward to practise from a medical centre on the site.

❖ Removal of the requirement allowing ten years for a doctor or dentist to come forward to practise from a medical centre on the site

Clause 5.4 of the agreement dated 6th February, 2004 deleted this requirement.

❖ The Primary Care Trust confirming they do not wish to construct a medical centre at this site

Letters dated 24, November 2003 and 21st April 2005 from the West Wiltshire Primary Care Trust confirm that they have no funding, intention or interest in constructing a medical centre at this site. Prior to the second of these letters the Primary Care Trust did reconsider the site. However, in conjunction with their potential developer concluded that the site was unsuitable as it was too small.

❖ Appropriateness of a public house on this site

The council have considered that a public house would be appropriate within the district centre since the mid 1990s. The planning merits of a public house on this site have been tested through the planning process and have been found to be acceptable albeit after a planning appeal. In light of the appeal decision, the council has no alternative but to accept this as 'such other use as may be agreed with the council'.

❖ Availability of alternative site for a medical centre at the District Centre

Site B – the original proposed location for a medical centre in the 1995 agreement - is currently being developed with retail units with flats at first floor level in accordance with the amended agreement and subsequent planning permission. No alternative site for a

medical centre remains available within the district centre of on land controlled by Marshgate.

❖ **Comments by the appeal inspector**

In her decision letter, the appeal inspector notes that a public house has been identified as a suitable use for the district centre in the past. A public house would 'differ in nature and function from the existing licensed family club in the community centre thus adding to the range of facilities available and to the centre's vitality.' She accepts that a medical centre would be beneficial but points to the lack of substantive evidence to demonstrate a need for the surgery. She points out that no proposal for a surgery has come forward in 10 years since planning permission was granted for Paxcroft Mead was put in place and to the written confirmation on two recent occasions that the primary care trust is not interested in this site.

Given the facts set out above and the recent appeal decision, it is considered that the committee should agree to modify the agreement dated 8th August, 1995 and allow the development of the public house. It would be unreasonable to come to any other conclusion at this time

Sec.106A of the Planning and Compensation Act 1991 provides that if an obligation "no longer serves a useful purpose" it should be discharged. An obligation should be modified "if it would serve that purpose equally well" with modification. There is a right to appeal (similar to a planning appeal) against the local authority's refusal to discharge or modify an agreement which comes into play five years after the appeal was executed.

Risk management Implications

The report addresses the Marshgate's right of appeal in this case and assesses the likely outcome of any appeal.

Finance and performance implications

In the event of the committee not accepting the recommendation the council could be faced with the costs of defending an appeal (albeit not until 2009) or legal challenge against the decision and the risk of any costs being incurred by the other party being awarded against the council

Legal and human rights implications

Sec.106A of the Planning and Compensation Act 1991 provides that if an obligation "no longer serves a useful purpose" it should be discharged. An obligation should be modified "if it would serve that purpose equally well" with modification.

There is a right to appeal (similar to a planning application appeal) against the local authority's refusal to discharge or modify an agreement which comes into play five years after the appeal was executed. This now applies in respect of the 1995 agreement.

Recommendation

That the committee agrees to discharge the Section 106 Agreement dated 6th February, 2004.

Background papers

Section 106 Agreement Dated 08.08.1995

Section 106 Agreement Dated 06.02.2004

Planning Applications-

88/01650/OUT

00/00533/REM

04/02221/FUL

05/00194/FUL

05/01709/FUL