

15 OCTOBER 2013

ENFORCEMENT REPORT ON AN OUTSTANDING DEBT UNDER SECTION 106
OF THE TOWN & COUNTRY PLANNING ACT 1990

1.0 INTRODUCTION

Members may recall that reports were presented to the previous Area Committees in December 2010 explaining what measures were being put in place to try and recover contributions secured through the signing of Section 106 legal agreements, but where the developer had gone into liquidation, or there were other complications in the agreement, that had resulted in the monies being unpaid beyond the trigger point of the agreement. The reports highlighted the fact that, where all avenues available to the Council to recover the outstanding contributions have been exhausted, the debt may have to be written off, but that these individual cases would be reported back to Committee for a final decision.

This report highlights such a case. Members are advised that a complete review of Section 106 procedures has now taken place and revised processes have been adopted in an attempt to prevent cases such as this arising in the future. This includes a requirement for land ownership to be proven at the time of signing (up to a level accepted by the civil court), a full quarterly review of every outstanding development that is subject to a legal agreement and the regular involvement of Legal Services in case reviews.

2.0 PLANNING APPROVAL 04/00270/FUL

This application was approved on 8 June 2004 and was for the erection of a mixed use development comprising 63 apartments and ground floor office units (Class B1) with basement car parking at Cornish Square, Penistone Road, Cornish Street and Green Lane, Sheffield S6 3AP. The approval included a signed Section 106 legal agreement consisting of the following financial covenant:

“Upon the commencement of the development authorised by this Agreement the Owner shall pay to the Council the sum of £39,109.00 to be used towards the provision of further sections of the Upper Don Walk to the north of the site.”

This money has never been paid to the Council and the development is complete and occupied. The trigger point for payment clearly passed some years ago and investigations and discussions have been ongoing with the Council's debt recovery team and Legal Services about this case.

The original agreement and declaration was entered into by a company called Foldernumber Limited. A subsequent thorough check of the documentation relating to this case has revealed that Foldernumber Limited did not have a legal interest in this land at the time the agreement was signed.

Despite the fact that Foldernumber Limited did not have an interest in the land, the Council is entitled to seek to recover the monies from them under the Section 106 agreement by virtue of it also being a contractual obligation between Foldernumber Limited and the Council.

However, In July 2009 Foldernumber Limited was dissolved so the money due under the Section 106 is irrecoverable from them as they no longer legally exist, and it is a contract rather than a planning obligation as the obligation was specific to Foldernumber Limited.

Consideration has been given as to whether the Council can recover the monies against their successors in title but because Foldernumber Limited had entered into a contractual rather than a planning obligation (because they did not have a legal interest in the land at the time the agreement was signed), this is not legally possible.

Based on the evidence available and the advice obtained from Legal Services, it is recommended that no further enforcement action is taken and that the debt is written off as there are no other options for recovering the monies due.

3.0 EQUAL OPPORTUNITIES

There are no equal opportunities implications arising from the recommendations contained in this report.

4.0 FINANCIAL IMPLICATIONS

The financial implications are described above. The result of being unable to pursue payment of these outstanding debts is that the enhancements to / creation of further stretches of a riverside walkway on the Upper Don will not be possible. There are no core funding implications to the Council.

6.0 RECOMMENDATIONS

That Members endorse the 'writing off' of the outstanding Section 106 debt in relation to planning application 04/00270/FUL and the Director of Finance be advised accordingly.