

## SECTION 106 AGREEMENT – TARN BANK, BRAYSTONES

Lead Officer: Tony Pomfret – Development Services Manager

To consider a request to vary the Section 106 Agreement dated 8 September 2006 relating to the above property by deleting Clause 2 of the Third Schedule to the agreement.

**Recommendation:** That the request be rejected

**Resource Implications:** Nil

### 1.0 RESOURCE IMPLICATIONS

1.1 On 11 January 2006 Members resolved to grant outline planning permission to demolish the large, detached house known as Tarn Bank, Braystones and to construct six new dwellings on the site subject to conditions and subject to the applicant entering into an agreement with the Council under the provisions of Section 106 of the Town and Country Planning Act 1990 requiring that:

- i) the dwellings erected shall only be occupied by members of the local community as defined in the Copeland Local Plan 2001-2016. The definition of locality shall be restricted to the Parishes of Lowside Quarter, St John's Beckermat and St Bridget's Beckermat, and
- ii) the dwellings erected shall only be sold or let within the definition of affordability provided by the Copeland Local Plan 2001-2016.

1.2 A copy of the signed agreement dated 8 September 2006 is attached to this report.

1.3 A copy of the Planning Officer's report to the Planning Panel meeting on 11 January 2006 is also attached. It can be seen that the resolution to finally approve the application followed an earlier resolution that Members were minded to refuse the application and that the Parish Council maintained their strong objection to demolition of Tarn Bank on the grounds that:-

1. this is a substantial house that could be converted into 3 dwellings if extended on one end
2. there is a lack of statement of local need.

1.4 In eventually granting approval subject to a Section 106 agreement Members endorsed the Planning Officer's conclusion that "On balance, this site is considered to represent the most appropriate means of delivering affordable local needs housing in Braystones. The housing development would serve local housing needs at least for the duration of the Copeland Local Plan 2001-2016".

- 1.5 The fact that it took almost 8 months from the Planning Panel's resolution to grant planning permission to the agreement being signed reflected the degree of scrutiny on the part of the applicant's solicitor, particularly in relation to the affordability element of the agreement.
- 1.6 Via his solicitor, the applicant has now formally requested that the agreement be varied by deleting clause 2 of the Third Schedule relating to affordability. A copy of the letter of request dated 19 June 2007 is also attached to this report. I would draw Members' attention in particular to the fifth paragraph under the heading "Planning History" which states that:-
- "Following the Council's resolution to grant planning permission the applicant was happy to sign the Section 106 Agreement. However, since the grant of planning permission the applicant has sought advice from a chartered surveyor and other professionals regarding the development of the site".
- 1.7 It almost beggars belief that such professional advice was not sought during the eight months period when the terms of the agreement were being deliberated by the applicant's solicitor, especially as the affordability clause was central to these deliberations.
- 1.8 The relevant policy (HSG 11) of the adopted Copeland Local Plan 2001-2016 requires that both "local need" and "affordability" requirements must be met. This follows examination of the policy in public, the Inspector's report having recommended no modifications to the policy nor its reasoned justification.
- 1.9 ODPM Circular 05/2005 provides revised guidance to local authorities in England on the use of Section 106 agreements. Section 106 A (1) provides that a planning obligation may not be modified or discharged except by agreement between the authority and the person or persons against whom it is enforceable. Section 106 A (3) provides that anyone against whom a planning obligation is enforceable may, at any time after the "relevant period" expires, apply to the local planning authority for the obligation to be modified or discharged. Section 106 A (4) defines "relevant period" as such period as may be prescribed by the Secretary of State, failing which the period is to be five years from the date the obligation is entered into. The Secretary of State has decided not to prescribe a relevant period. It would not be reasonable to allow an obligation to be reviewed very soon after it had been entered into. This would give no certainty to a local planning authority which had granted planning permission on the understanding that a developer would meet certain requirements. Other affected parties might also be disadvantaged by allowing obligations to be swiftly brought to an end. On the other hand, where over a period of time the overall planning circumstances of an area have altered it may not be reasonable for a landowner to be bound by an obligation indefinitely. Allowing the five year period to stand appropriately reconciles these various considerations. It should be noted that this particular request to vary the Section 106 agreement has been submitted within 12 months of the agreement having been entered into.

- 1.10 In conclusion, I cannot accept the arguments put forward in support of the request which would result in no control whatsoever on the local planning authority's part over the affordability element of the new housing development. This clearly is at variance with Policy HSG 11 of the adopted Copeland Local Plan 2001-2016 and is strongly recommended for rejection accordingly.

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**Background Papers:** Correspondence on planning file 4/05/2219/001