

PLANNING COMMITTEE – 15 DECEMBER 2004

Report of the Chief Solicitor

Miscellaneous Item – Section 106 (S.106) Agreement Hancock's Brewery, Wiveliscombe - Application No. 49/2004/013

Background

At its meeting on the 29 September 2004, the Committee considered an application for the partial demolition, partial new build, conversion and restoration of the former Hancock's Brewery at Wiveliscombe to 14 residential units.

The Committee resolved to grant permission subject to the applicant entering into a S.106 agreement to provide "an agreed sum of money for affordable housing and an agreed sum towards the provision of off site recreational facilities".

In fact the agreement that had been negotiated in relation to the affordable housing was not for a fixed sum contribution but provided that 30% of any profit from the scheme in excess of £300,000 over a two year period should be paid over as a contribution to affordable housing. The levels of profit to be permitted without the making of a contribution were to be increased pro rata if the scheme took in excess of two years to complete, with a maximum payment of £172,000.

A S.106 agreement reflecting these requirements was drafted but two queries were raised by solicitors acting for the applicant.

Firstly, the basis for requiring the payment was said to be unlawful in that the Circular Guidance 1/97 states: "Planning obligations should never be used as a means of securing for the local community a share in the profits of development". There is therefore some doubt over the lawfulness of trying to secure a contribution in the way envisaged.

Secondly, and of more practical importance, the solicitors raised the issue of the viability of the scheme if a contribution towards affordable housing is to be required. Whilst the agreement between the applicant and the Council related to a contribution when profits reached a level of £300,000, a Costings Report commissioned by the Council in December 2003 indicates that the level of profit based on prices at that time would be £172,000.

Whilst potential sale prices may have risen in the intervening period, it can be expected that building costs may also have risen. The costs also do not take into account the requirement for the off site recreational contribution which will amount to £28,700 thereby reducing the profit level figure to below £150,000 based on the 2003 figures.

The applicant has therefore requested that the matter be referred back to the Committee with a request that the requirement for affordable housing be waived on the basis that the provision of affordable housing would make the scheme unviable. The applicant is still prepared to meet the contribution to off site recreational provision.

Whilst the provision of affordable housing is a corporate priority, there is some doubt that the way in which the proposed contribution has been negotiated is lawful. In addition, it appears that on the basis of the 2003 figures to require a contribution to affordable housing in this case would make the scheme unviable.

The Hancock's Brewery is a significant building within the townscape of Wiveliscombe which would be retained and enhanced by this proposal. The need to provide affordable housing therefore needs to be balanced against the contribution that the proposal will make in terms of ensuring a long term use for this important building.

The Housing Officer remains of the view that the contribution as originally negotiated should still be required as the agreement reached was a pragmatic approach to an unusual set of circumstances. However, he would be prepared to consider the provision of affordable housing either by the contribution of units on site or by the payment of a negotiated commuted sum.

No up to date costings indicating the current viability of the proposal are available.

RECOMMENDATION

It is therefore RECOMMENDED that the Committee advises the applicant that in the absence of an up to date viability study, a contribution to affordable housing will still be required but that this may be by way of the contribution of units on site or the payment of an agreed commuted sum.

Chief Solicitor

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