

## **PLANNING COMMITTEE – 30 MARCH 2005**

### **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 towards 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 affordable housing 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. The Council had commissioned a report in December 2003 on the basis of which the contribution referred to above had been negotiated. The solicitors were advised that before the matter could be considered further, that report would need to be updated.

This has now been done and a copy of this document, together with the original report and a calculation of the net profit from the scheme based on the updated figures, has been circulated as confidential appendices to this report – see agenda item no. 26. A net profit of 18% would be the usual threshold at which a full affordable housing contribution would be expected.

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.

### **RECOMMENDATION**

It is therefore RECOMMENDED that the resolution of the Committee of the 29 September 2004 be varied such that planning permission 49/2004/013 be granted subject to the applicants entering into a S106 Agreement to secure a contribution to off site recreational provision only.

Chief Solicitor

Contact officer:- Judith Jackson 01823 356409 or  
[j.jackson@tauntondeane.gov.uk](mailto:j.jackson@tauntondeane.gov.uk)