

Report of the Director of Urban Environment

Development Control Committee – 18th February 2013

Planning Application P08/0890 - Erection of New Dwelling and Two Storey Rear Extension to No.21 Spring Street, Lye

Purpose of Report

- 1 To seek Development Control Committee's agreement for the Council not to enter into a Deed of Revocation in respect of the Section 106 Agreement associated with the above planning permission, and to pursue the outstanding Section 106 financial contributions.

Background

The Application

- 2 Consent was granted for a two storey extension to the rear of no.21 Spring Street and for the erection of an attached new house on 16th October 2008, subject to a Grampian condition which prohibited the commencement of development until an arrangement for the provision of off-site public open space and play area improvements, library and public realm improvements, and a transport infrastructure contribution had been submitted to and approved in writing by the local planning authority. The overall contribution totalled £2,127,74.
- 3 A Section 106 Agreement was entered into and signed by the applicant in January 2009. The Agreement required the above monies to be paid prior to the commencement of development.
4. As a result of monitoring carried out by Officers in relation to the payment of Section 106 monies, in early 2011 it was noted that development had commenced without compliance with the terms of the Agreement. Building Control records show that the development was completed on 11th May 2011. Officers wrote to the applicant requesting the payment of the outstanding monies. No response was received to this request.
5. An invoice for the outstanding monies was subsequently raised in April 2012, following which the applicant contacted the Council requesting that the payment be waived on the grounds of the change in the Council's policy relating to the threshold for the provision of planning obligations (from 1 to 5 dwellings in September 2011). The applicant subsequently submitted a draft Deed of Revocation to the Council for agreement.

The Proposal

6. The applicant has requested a Deed of Revocation with the Council to revoke the Planning Obligation referred to in paragraph 2 above. The effect of this is that the obligations (totalling £2,127.74) would be null and void and not enforceable.

Assessment

7. The application was approved in accordance with the requirements of the planning policy at that time, which required the provision of planning obligations for single dwellings. Having signed the Section 106 Agreement the applicant then implemented and completed the development under this previous policy and prior to the adoption of the revised Planning Obligations SPD in September 2011, which raised the threshold for seeking obligations on residential developments from 1 dwelling to 5 dwellings. No viability argument has been made by the applicant and the viability of the scheme is demonstrated by the fact that the development has been implemented and completed.
8. For the reasons set out above it is not considered appropriate to enter into a Deed of Revocation as there is no justification for the Council to retrospectively agree to waive obligations on permissions which were implemented under a previous policy regime. As such the obligations should continue to be sought.

Finance

9. If Committee were minded to agree to the Deed of Revocation then there would be a financial loss of £2,127.24 to the Council in relation to planning obligations infrastructure.
10. The costs of monitoring and enforcing this matter will be met from existing budgets.

Law

10. Section 106 of the Town and Country Planning Act 1990 confers powers on local planning authorities to enter into and amend legal agreements with applicants.

Equality Impact

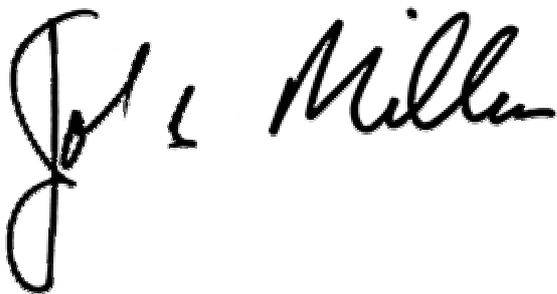
11. The proposal takes into account the Councils Equality and Diversity policy.

Other issues

12. The proposed Deed of Revocation is purely a legal matter and would have no impact on other material planning matters such as design, neighbour amenity or access, but it would lead to a loss of improvement to infrastructure if approved.

Recommendation

10. That, for the reasons set out in paragraph 7 above, a Deed of Revocation to the Section 106 Agreement is not entered into.

A handwritten signature in black ink, appearing to read 'J. B. Millar'. The signature is written in a cursive style with a large initial 'J'.

J. B. MILLAR

DIRECTOR OF THE URBAN ENVIRONMENT

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List of Background Papers

Appendix 1 – Planning Application P08/0890

Appendix 2 – Location Plan

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Background Papers: Planning Application P08/0890