

Report to:	Planning Committee
Item number	4
Relevant Officer:	Gary Johnston, Head of Development Management
Date of Meeting	9 th June 2014

PLANNING/ENFORCEMENT APPEALS DETERMINED/LODGED

1.0 Purpose of the report:

1.1 The Committee is requested to note the planning and enforcement appeals, lodged and determined

2.0 Recommendation(s):

2.1 To note the report.

3.0 Reasons for recommendation(s):

3.1 The Committee is provided with details of the planning and enforcement appeals, lodged and determined for its information.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

None.

4.0 Council Priority:

4.1 Not applicable.

5.0 Planning/Enforcement Appeals Determined

5.1 Land at Runnell Farm, Marton Moss, Blackpool FY4 5HS

Appeal by Kensington Developments against the failure of Blackpool Council to determine whether the Section 106 agreement should be modified in relation to affordable housing
Appeal allowed

In April 2013 the Growth and Infrastructure Act was introduced and one of the clauses allows developers to challenge the affordable housing requirements set out in Section 106 Agreements where it can be shown that the requirement is impeding the commencement of development on viability grounds. The Council has 28 days to make a decision whether to modify the Section 106 Agreement or not. In this case the Council requested more time to consider Kensington's application. Kensington was not prepared to give the Council more time and hence chose to take the matter to appeal.

The Planning Obligation (section 106 Agreement) was signed in April 2012 at the time of the Runnell Farm planning appeal. The Council adopted a pragmatic approach to the preparation of the Planning Obligation and as such it agreed to the phased payments of the sums of money towards affordable housing, education, transportation/highways and public open space. The total sums are as follows -

- affordable housing - £1,619,550
- education - £333,000
- transportation/highways - £100,000
- public open space - £30,000

The phasing of the payments would be as follows -

- affordable housing - three payments each of £539,850 (prior to the occupation of the 31st, 56th and 71st dwellings).
- education - three payments each of £111,000 (prior to the occupation of the 31st, 56th and 71st dwellings).
- transportation/highways - five payments each of £20,000 over a four year period.
- public open space - three payments each of £10,000 (prior to the occupation of the 31st, 56th and 71st dwellings).

This has been changed by the Inspector's decision - the overall sum is £350,000 and this is to be paid as follows -

Prior to the occupation of the 31st residential unit -£117,000

Prior to the occupation of the 56th residential unit - £117,000

Prior to the occupation of the 71st residential unit - £116,000

This change is valid for a period of three years and then it reverts back to the original Section 106 Agreement. The sums for education provision, public open space provision and transportation/highways are unaffected by the decision.

In reaching the decision the Inspector was mindful that the Council and Kensingtons had moved closer on matters such as sales revenue from the development, land acquisition costs, build costs, infrastructure and abnormal costs and profit levels.

5.2 **Land at Moss House Road, Marton Moss, Blackpool FY4 5JF**

Appeal by Kensington Developments against the failure of Blackpool Council to determine whether the Section 106 agreement should be modified in relation to affordable housing
Appeal allowed

In April 2013 the Growth and Infrastructure Act was introduced and one of the clauses allows developers to challenge the affordable housing requirements set out in Section 106 Agreements where it can be shown that the requirement is impeding the commencement of development on viability grounds. The Council has 28 days to make a decision whether to modify the Section 106 Agreement or not. In this case the Council requested more time to consider Kensington's application. Kensington was not prepared to give the Council more time and hence chose to take the matter to appeal.

The original Section 106 Agreement was signed in July 2010. The negotiations which took place prior the signing of the Agreement were predicated on the overall viability of the development and the eventual agreement allowed for phased payment of contributions towards affordable housing, education provision, public open space provision and transportation/highways.

The total level of contributions in the original Section 106 Agreement is as follows -

- affordable housing £9,184,000 (30 per cent provision would require a sum of £21,974,992)
- education £2,430,000
- transportation/highways £1,400,000
- public open space £236,000

The phasing of the payments is set out in the schedules in the Agreement and can be summarised as follows -

- affordable housing - on commencement of the development £1,000,000. Then nine payments based on the prior occupation of the following numbers of dwellings -150, 175, 225, 250, 300, 350, 400, 450 and 584 with eight payments of £1,000,000 and one of £184,000.

On 21st December 2012 the Council agreed a Deed of Variation to the original Section 106 Agreement to further assist with the timing of the contributions over the life of the development. The changes are as follows –

- affordable housing - the contributions would be on the basis of seven payments rather than the originally agreed ten payments. £2,500,000 would be paid in the first half of the development and £6,684,000 would be paid over the second half of the development with the largest single payment of £2,500,000 to be paid prior to the occupation of the 500th dwelling.

This has been changed by the Inspector's decision - the overall sum is £5,070,000 and this is to be paid as follows -

Prior to the occupation of the 125th residential unit -£1,070,000.
 Prior to the occupation of the 225th residential unit - £1,000,000.
 Prior to the occupation of the 325th residential unit - £1,000,000.
 Prior to the occupation of the 425th residential unit - £1,000,000.
 Prior to the occupation of the 525th residential unit - £1,000,000

This change is valid for a period of three years and then it reverts back to the original Section 106 Agreement. The sums for education provision, public open space provision and transportation/highways are unaffected by the decision.

In reaching the decision the Inspector was mindful that the Council and Kensingtons had moved closer on matters such as sales revenue from the development, land acquisition costs, build costs, infrastructure and abnormal costs and profit levels.

Does the information submitted include any exempt information? No

List of Appendices:

None.

6.0 Legal considerations:

6.1 None.

7.0 Human Resources considerations:

7.1 None.

8.0 Equalities considerations:

8.1 None.

9.0 Financial considerations:

9.1 None.

10.0 Risk management considerations:

10.1 None.

11.0 Ethical considerations:

11.1 None.

12.0 Internal/ External Consultation undertaken:

12.1 None.

13.0 Background papers:

13.1 None.