

	<p>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER</p> <p>29 October 2015</p>
<p style="text-align: right;">Title</p>	<p>University College School Section 106 Agreement</p>
<p style="text-align: right;">Report of</p>	<p>Director of Assurance</p>
<p style="text-align: right;">Wards</p>	<p>Childs Hill</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Enclosures</p>	<p>Appendix 1 – Decision of the Finchley and Golders Green Planning Committee to refuse planning permission for application reference F/00002/14 for a new sports pavilion at University College School, Ranulf Road, NW2</p> <p>Appendix 2 – Log of correspondence with Councillors</p>
<p style="text-align: right;">Officer Contact Details</p>	<p>Davina Fiore – Director of Assurance davina.fiore@barnet.gov.uk Andrew Charlwood – Head of Governance andrew.charlwood@barnet.gov.uk Joe Henry - Service Director - Development Management & Building Control (joe.henry@barnet.gov.uk)</p>

<p>Summary</p>
<p>This report seeks authorisation from the Director of Assurance to agree the sealing of legal agreement under delegated powers. This has been provided by the appellant at the Public Inquiry into decision of the Finchley & Golders Green Area Planning Committee to refuse planning permission for a sports pavilion.</p> <p>The legal agreement would make financial contributions towards traffic management improvements outside the school and towards the monitoring of a Travel Plan for the facility.</p>

Decisions

That the Director for Assurance agrees that the Section 106 Agreement between the Council and the appellant can be sealed

1. WHY THIS REPORT IS NEEDED

- 1.1 This report is needed to authorise the approval of the section 106 agreement provided at the Public Inquiry in relation to the planning appeal at University College School.
- 1.2 The Members of the Finchley and Golders Green Area Planning Committee on 28/07/2014 voted to refuse planning permission for the development at University College School for a new sports pavilion.
- 1.3 The applicant lodged an appeal against this refusal of planning permission and this was heard at a Public Inquiry on 13/10/2015-15/10/2015/
- 1.4 The appellant submitted a Section 106 legal agreement at the planning appeal to make provision towards traffic management measures and the monitoring of travel plan in an effort to mitigate the impact of the development.
- 1.5 As this matter has not been subject to a committee decision to approve the planning application and associated section 106 agreement a delegated powers report is therefore necessary to give the Council authorisation to seal the agreement.
- 1.6 Page 21 of the 'Commissioning Director for Growth and Development Scheme of Delegation including Statutory & Regulatory Duties and Powers (2015)' states that the Director of Assurance has authorisation to agree legal obligations which commit the council to an obligation. In addition, as the Council's statutory Monitoring Officer, the Director of Assurance has delegated authority to take and implement any decision required for operational effectiveness. It is in the interests of the Council that this s106 agreement be sealed by the Council.

2. REASONS FOR DECISIONS

- 2.1 Section 106 of the Town and Country Planning Act states that any person interested in land in the area of a local planning authority may enter into an agreement:
 - (a) restricting the development or use of the land in any specified way;
 - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
 - (c) requiring the land to be used in any specified way; or
 - (d) requiring a sum or sums to be paid to the authority .

2.2 At the Public Inquiry the applicant has submitted a Section 106 agreement.

2.3 The Section 106 agreement provided makes provision for the following:

- To pay School Travel Plan Monitoring Contribution to the Council within 28 days of the Commencement of Development Date
- To submit a draft School Travel Plan to the Council for its approval in writing 3 months prior to the date of first Occupation of the Development. To revise the draft School Travel Plan to incorporate any comments made by the Council
- To promote and publicise the approved School Travel Plan using the services of the School Travel Plan Champion from the date of its approval.
- To implement the provisions of the School Travel Plan by the date or dates or within the time limits set out in the approved School Travel Plan.
- To appoint a School Travel Plan Champion and to submit the name and associated details of the School Travel Plan Champion to the Council for its approval in writing 3 months prior to the date of first Occupation
- That the School Travel Plan Champion shall remain in place for five years
- To carry out a School Travel Plan Review within 3 months of first Occupation.
- To update the School Travel Plan within 4 months of first Occupation in light of the School Travel Plan Review carried out in accordance with paragraph 8 of this Schedule and to submit a copy of the updated School Travel Plan to the Council for approval.
- To carry out a School Travel Plan Review annually over a period of four years beginning on the first anniversary of the approval of the School Travel Plan using the services of the School Travel Plan Champion.
- To update the School Travel Plan in light of the outcome of the annual School Travel Plan Review carried out in accordance with paragraph 7 above, and submit a copy of the updated School Travel Plan to the Council for its approval.
- In the event that a School Travel Plan Review carried out in accordance with paragraphs 8 or 10 above indicates that the School Travel Plan is not meeting its stated objectives and targets, then the updated School Travel Plan shall propose measures to be put in place in order to achieve the objectives and targets set out in the School Travel Plan.

- To promote and publicise any updated School Travel Plan within 2 months of approval.
 - The Owner shall pay the Traffic Management Contribution to the Council within 28 days of completion of the agreement. The agreement further provides that the Owner will enter into highways agreements to deal with any relevant highways works prior to the commencement of development in this matter.
 - Any dispute arising between the Council and Appellant shall be dealt with in accordance with the terms of the agreement.
- 2.4 The provisions of the agreement are considered to be compliant with the terms of the National Planning Policy Framework, in that the agreement is a legally enforceable obligation entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal.
- 2.5 The provision of the agreement would accord with Core Strategy Policy CS9, Barnet Development Management Policies DM17 and the Supplementary Planning Document: Planning Obligations.
- 2.6 The proposed agreement could be considered to address the reason for refusal that states: *'The proposal would result in conditions prejudicial to highway and pedestrian safety at a dangerous bend, contrary to policy DM17 of the Adopted Barnet Development Management Policies DPD (2012).'*
- 2.7 The agreement requires the appellant to provide £5,000 towards Traffic Management Measures and £5,000 towards the monitoring of the Travel Plan.
- 2.8 The need for these contributions was identified in the Officer's delegated report to the Finchley & Golders Green Area Planning Committee on 28/07/2014.
- 2.9 The Members of the Committee decided to refuse planning permission contrary to the officer recommendation.
- 2.10 The appellant submitted the Section 106 agreement at the Public Inquiry and the wording has been agreed with HB Public Law.
- 2.11 The signing of the Section 106 Agreement would ensure that some mitigation was provided by the appellant in the form of a contribution towards the monitoring of the travel plan and for traffic management proposals; if the inspector decides to grant planning permission.
- 2.12 It should be noted that the acceptance and signing of the agreement does not compromise the Council's position in defending the appeal.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 The alternative would be for the Council to refuse to agree to seal the Section 106 agreement.
- 3.2 The Council has a duty to engage with applicants under paragraphs 186 and 187 of the National Planning Policy Framework.
- 3.3 It is not clear on what grounds the Council would want to refuse to agree the legal agreement.
- 3.4 If the agreement is not signed, then the appellant would be under no obligation to do the works within the agreement, and there is a risk if the inspector allows the appeal that the development will go ahead without this mitigation.
- 3.5 Given that the Council's officers have been involved in helping to prepare the agreement it is likely this would be viewed by the Planning Inspectorate as unreasonable behaviour to refuse to accept the agreement at this stage and there would be significant risk of costs award against the Council.
- 3.6 Therefore, it is not considered that refusing to seal the agreement would be an advisable course of action.

4. POST DECISION IMPLEMENTATION

- 4.1 The Council will await the outcome of the appeal. If the appeal is allowed, the Council and applicant will be bound by the terms of the Section 106 Agreement.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The proposals would assist in managing traffic flows in accordance with the Corporate Plan.
- 5.1.2 The provision of monitoring costs towards the Travel Plan would help encourage green and safe modes of travel, contributing positively to the Council's Health & Wellbeing Strategy.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 The only financial implications of making this decision would be to ensure that monies are available towards the review of the Travel Plan and traffic management proposals. These figures are set within the agreement at £5,000

for each purpose.

5.2.2 These monies would be available for the Highways Service.

5.2.3 There are unlikely to be any significant impacts on other services.

5.2.4 There is no external funding available given that these are site specific issues.

5.3 Legal and Constitutional References

5.3.1 Section 106 of the Town and Country Planning Act 1990 sets out the basis for planning obligations to be provided with planning applications.

5.3.2 Council Constitution, Responsibility for Functions, Annex B, Scheme of Delegated Authority to Officers – Section 1.4 states that Specific Chief Officers have powers to deal with regulation, licensing enforcement, staffing and other statutory matters which are functions for which the Council is responsible, or for which the Council, acting as Licensing Authority, is responsible. These powers must be set out in the Chief Officers Scheme of Delegation. Page 21 of the ‘Commissioning Director for Growth and Development Scheme of Delegation including Statutory & Regulatory Duties and Powers (2015)’ states that the Director of Assurance has authorisation to agree legal obligations which commit the council to an obligation. In addition, as the Council’s statutory Monitoring Officer, the Director of Assurance has delegated authority to take and implement any decision required for operational effectiveness. It is in the interests of the Council that this s106 agreement be sealed by the Council. Section 1.6 states that formal reporting of officers decisions will take place if actions or decisions involve specific statutory powers.

5.4 Risk Management

5.4.1 It is not considered that the decision to seal the agreement would present any risks, and that risks are only likely to arise from not taking this action.

5.4.2 The provision of Traffic Management measures and contribution to a review of the Travel Plan are routine provisions and would not themselves generate any significant risk.

5.4.3 Under the legal agreement the Council would be bound to undertake these provisions within 5 years of any grant of permission.

5.5 Equalities and Diversity

5.5.1 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people from different groups
- foster good relations between people from different groups

The broad purpose of this duty is to integrate considerations of equality into day business and keep them under review in decision making, the design of policies and the delivery of services

It is not considered that the decision to seal the agreement would have any significant equalities or diversities implications.

The provision of the agreement may assist in reducing congestion and helping to mitigate some aspects of the development for less able road users.

5.6 Consultation and Engagement

5.6.1 Prior to signing this report, the matter was discussed with the Childs Hill Ward Councillors, the Chairman of the Finchley and Golders Green Area Planning Committee and Councillor John Marshall, the Member of the Finchley and Golders Green Area Planning Committee who represented the Council at the public enquiry.

5.6.2 A log of these discussions is attached.

6. BACKGROUND PAPERS

6.1 The details of the committee decision to refuse planning permission are available at:
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=721&MId=8031&Ver=4>

6.2 A copy of the Commissioning Director Growth & Development Scheme of Delegated Authority is available on request from the Head of Governance (andrew.charlwood@barnet.gov.uk, 020 8359 2014)

7. DECISION TAKER'S STATEMENT

7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.*

8. OFFICER'S DECISION

I authorise the following action

- 8.1 That the Section 106 Agreement between the Council and the appellant can be sealed**

Signed **Davina Fiore, Assurance Director**

Date **29 October 2015**
