

Committee: Cabinet

Date: 10 March 2014

Agenda item:

Wards: Pollards Hill

Subject: Allocation of S.106 Monies – Mitcham Common Conservators

Lead officer: John Hill, Head of Public Protection and Development

Lead member: Councillor Andrew Judge, Cabinet Member for Environmental Sustainability and Regeneration

Forward Plan reference number:

Contact officers: Tim Catley, S.106 Monitoring Officer (S.106 Processes), Martin Boyle (matters relating to Mitcham Common Conservators), and Richard Lancaster, Placemaking Programme Manager, Future Merton (matters relating to the original S.106 Unilateral Undertaking and revised agreement)

Recommendations:

- A. To allocate £100,000 of S106 monies associated with the development of the site of the former Windmill Trading Estate, 302-312 Commonside East, Mitcham for the enhancement, maintenance and management of Mitcham Common by the Mitcham Common Conservators.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The purpose of this report is to seek Cabinet authorisation for the allocation of £100,000 S106 monies associated with the development of the site of the former Windmill Trading Estate, 302-312 Commonside East, Mitcham for the enhancement, maintenance and management of Mitcham Common by the Mitcham Common Conservators.
- 1.2. The allocation of the monies is necessary to facilitate the agreement of the works and easements on common land necessary for the new housing development owned by Notting Hill Housing Trust. The owner paid the monies under the S106 agreement for highways measures that are not required. The owner and Planning Applications Committee have formally agreed to the alternative use of the funding.
- 1.3. It is Council procedure that allocation of £50,000 or more S.106 funding to any specific scheme must be authorised by decision of Cabinet.

2 DETAILS

General S.106 Considerations

- 2.1. S.106 of the Town & Country Planning Act 1990 (as amended) permits Local Planning Authorities to enter into agreements with applicants for planning permission to regulate the use and development of land. This may involve the payment of a financial contribution for off site works.

- 2.2. The Community Infrastructure Regulation 122 requires planning permission can only be granted with S.106 agreements that are:
- i) Necessary to make the proposed development acceptable in planning terms;
 - ii) Directly related to the proposed development; and
 - iii) Fairly and reasonably related in scale and kind to the proposed development

- 2.3. It is Council procedure that allocation of £50,000 or more S.106 funding to any specific scheme must be authorised by decision of Cabinet.

Case Specific Details

- 2.4. A planning application was submitted to the Council in 2005 for the redevelopment of the Former Windmill Trading Estate, Mitcham including demolition of existing buildings and erection of a mix of residential and commercial units.
- 2.5. The applicant lodged an appeal following the Council's failure to determine the application within the statutory period set by the Government for local planning authorities to determine applications which was allowed thereby granting planning permission.
- 2.6. Prior to the Secretary of State's release of a decision in relation to the appeal the developer submitted a Unilateral Undertaking under S.106 of the Town and Country Planning Act 1990 dated 2 March 2007. The Unilateral Undertaking included an undertaking by the developer to pay the Council £85,050 (prior to commencement of building works in relation to the development) to be applied "towards the enhancement, maintenance and management of the Mitcham Common by the Conservators". A total of £300,000 monies for various highways measures were also required. In his decision dated 4 June 2007, the Secretary of State confirmed that he was happy to accept the above Unilateral Undertaking to form part of his decision.
- 2.7. The Mitcham Common Conservators is a body established by Statute whose sole purpose is to regulate and manage Mitcham Common for the benefit of the public.
- 2.8. The financial contributions were paid by the owner of the development, Notting Hill Housing Trust, in 2010 following commencement of works on site and the £85,050 was transferred to the Conservators in 2011 following authorisation by Cabinet in June 2011.
- 2.9. The building works on the former Windmill Trading Estate site have been completed by Notting Hill Housing Trust, and dwellings occupied. Highways officers confirmed that the highways monies could not be spent on the measures under which they were paid and Planning Applications Committee on 14 June 2012 agreed to the alternative use of the funds for various alternative measures associated with the development together including £100,000 to be paid to the Conservators so as to facilitate their agreement to landscaping works and utility easement arrangements needed for the

development on common land. The alternative use of the funds were agreed by Notting Hill Housing Trust in writing on 5 December 2013.

- 2.10. Following allocation of the contribution the sum would be transferred directly to the Conservators on the basis that they use the funds towards the enhancement, maintenance and management of Mitcham Common.

3 ALTERNATIVE OPTIONS

- 3.1. Any alternative use of the monies would be contrary to the agreement between the Council, the owner of the development Notting Hill Housing Trust and the Mitcham Common Conservators as authorised by Planning Applications Committee and could result in the owner requesting repayment of the monies and failure to deliver a development with suitable access and circulation arrangements.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. Planning Applications Committee agreed to the proposal on 14 June 2012. The report to that committee provides details of consultation that was carried out in advance of that meeting.

5 TIMETABLE

- 5.1. There are no deadlines set out in the Unilateral Undertaking for the expenditure of the Contribution.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The S.106 funds referred to in this report have been received by London Borough of Merton and are available to be spent in the manner agreed by Cabinet, subject to any restrictions contained in the agreements.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. As stated within the body of the report and within the report to 14 June 2012 Planning Applications Committee.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. The planning application was considered in the light of the Human Rights Act. The S.106 contribution was secured towards community benefits to mitigate the impact of the development granted planning permission. The proposed allocations would be in strict accordance with the terms of the S.106 Agreement. As a consequence, equalities and community cohesion implications are taken into account.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1 There would be no crime and disorder implications associated with the allocation of the above contribution.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. There are no deadlines set out in the Unilateral Undertaking for the expenditure of the Contribution. The Mitcham Common Conservators sole purpose is to regulate and manage Mitcham Common for the benefit of the public, have requested the monies and have confirmed that they would be in a position to utilise the funds.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

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12 BACKGROUND PAPERS

12.1. Planning Applications Committee Report and Minutes 14 June 2012