

Meeting:	Overview & Scrutiny Committee
Date:	22 November, 2005
Subject:	Stanmore Multi-Storey Car Park
Responsible Officer:	Andrew Trehern Executive Director Urban Living
Contact Officer:	Andrew Trehern Executive Director Urban Living
Portfolio Holder:	Keith Burchell Planning Development & Housing
Key Decision:	No
Status:	Public

Section 1: Summary

Decision Required

Overview and Scrutiny Committee are asked to:-

- (i) Consider the contents of this report.
- (ii) Identify any issues on which Members require either further information or action.

Reason for report

Cabinet on 6 October, 2005, asked for this matter to be referred to the Overview and Scrutiny Committee for consideration.

Benefits

Consideration of this matter provides an opportunity for Officers within the Urban Living Directorate, to significantly improve the approach to the management and development of Section 106 Agreements.

Cost of Proposals

Reimbursement of £300k, plus interest earned to Sainsbury Supermarket Ltd.

Risks

Potential legal action by Sainsburys for recovery of the money if not reimbursed.

Implications if recommendations rejected

An opportunity for improvement will be lost.

Section 2: Report

2.1 Brief History

The Stanmore (Broadway) multi-storey car park was constructed in the 1960's. The design and construction works were undertaken by the developer of the supermarket and office building adjacent to the car park.

On 1 April, 1998, the Development and Planning Committee considered an application by Sainsburys Supermarkets Ltd., to establish a new supermarket and multi-storey car park, fronting Church Road, The Broadway and Elm Park in Stanmore.

The Committee resolved to defer determination of the application pending a high level meeting between Council Officers and Sainsburys, to enable negotiations in respect of a Section 106 Agreement to be undertaken.

The Development and Planning Committee on 30 June 1999, considered a further report relating to the Sainsburys application, which now incorporated the Section 106 Agreement.

The Section 106 Agreement between the Council, Sainsburys Supermarket Ltd., and Goldmack Ltd., (Goldmack Ltd owned part of the application site) was sealed on 29 July, 1999.

The Section 106 Agreement provided, among other things, for:-

- Temporary car parking
- Public Transport information
- Site access
- Highways works
- Footpath link
- Traffic impact studies
- The public square
- Rights of Way, Stopping up, Traffic and Compulsory Purchase Orders' costs reimbursement where incurred
- Contribution to the Controlled Parking Zone
- The Council's Legal costs
- Improvement of The Broadway multi-storey car park (this is the main component of the Agreement)

The Section 106 Agreement contains various Covenants, relevant Clauses are summarised below:-

- Payment to the Council of £300,000 towards the cost of works of improvement to the multi-storey car park (the contribution).
- That the contribution shall apply "exclusively towards works of improvement to The Broadway multi-storey car park".
- The Council "shall use all reasonable endeavours to commence the works of improvement to The Broadway multi-storey car park before the food store is open".
- If the contribution has not been applied by the Council as provided for in the relevant Clauses of the Agreement, within five years from the date of the commencement of the development of the supermarket, the Council will at the request of Sainsburys, repay the contribution, together with such interest as may have been earned thereon. The development commenced on (1st June, 2000).

In 2001, a detailed structural investigation of the multi-storey car park was undertaken. At this time, the structure was found to be in need of extensive repair and was declared unsafe. The parking spaces at first and second floor levels were closed, leaving only the covered surface level car parking spaces in use.

The estimated cost of refurbishment of the existing multi-storey structure was in a range £650k to £1m.

Cabinet considered reports on this matter, and the future provision of car parking in this area in November and December 2001, and May 2002. The decision was made to demolish the existing structure, and to replace this with a 150 space surface level car park.

On 11 November, 2004, Cabinet considered a report which among other things, sought approval for the Capital resources necessary to construct the new surface level car park. The financial implications section of this report clearly advised Members that the Section 106 contribution would have to be returned to Sainsburys.

In December 2004, Development Control Committee gave planning consent for a permanent surface level car park.

Given the decision of Development Control Committee and the passing of time, Sainsburys have now formally requested repayment of the £300k. Attempts were been made to negotiate with Sainsburys regarding the use of the contribution for the current scheme or alternative. Sainsburys rejected the Council's proposals.

The Section 106 Agreement did not provide any flexibility to utilise the contribution should the multi-storey structure need to be demolished. Additionally, negotiations with Sainsburys should have commenced earlier, to utilise the contribution in a different way to that prescribed within the Agreement. However, there is no suggestion that an earlier commencement of discussions with Sainsburys, would have resulted in a more positive outcome.

Discussions have already taken place within Urban Living and with Officers in Strategic Planning Department, to ensure that negotiations in respect of future Section 106 Agreements, provide appropriate flexibility to enable an effective response to on-site circumstances, other problems or opportunities as and when they arise.

The new organisational arrangements within Urban Living, will require Planning and other professional Officers to take a more robust approach to options appraisal and risk assessment, when negotiating Section 106 Agreements in the future.

As a result of this case, the need to improve performance in this area of the Council's business has been recognised. All action as necessary and appropriate will be taken within Urban Living, to ensure that future Section 106 Agreements provide for appropriate flexibility. Additionally, effective controls will now be implemented and maintained, to ensure that the full potential of these Agreements is realised in the future.

2.3 Consultation

None.

2.4 Financial Implications

The cost of demolishing the multi-storey car park and construction of the new surface level car park, will now be borne entirely by the Council.

2.5 Legal Implications

There is a legal obligation to repay the £300K with interest, and a risk of legal action by Sainsburys to recover in default.

Planning obligations must satisfy the test set out in ODPM Circular 05/2005 namely that they must be: (i) relevant to planning; (ii) necessary to make the proposed development acceptable in planning terms; (iii) directly related to the proposed development; (iv) fairly and reasonably related in scale and kind to the proposed development; and (v) reasonable in all other respects.

Planning obligation agreements often dictate when, where and how monies received are to be spent. Developers very often seek to include specific provisions dealing with precisely how monies are to be applied and inevitably insist on a provision for the repayment of monies not applied for the stated purposes within the period specified. There is therefore a general need to ensure that planning obligation agreements are properly addressed at all stages of the process. This includes negotiation and drafting as well as post completion monitoring and enforcement.

2.6 Equalities Impact

The new surface level car park, which will replace the multi-storey structure, will facilitate access for customers.

2.7 Section 17 Crime and Disorder Act 1998 Considerations

The new surface level car park is an open space which will be well lit and subject to inspection by Council staff. This will act as a deterrent to crime, particularly motor vehicle crimes.

Section 3: Supporting Information/Background Documents

Background Documents -

The Planning Application East/961/97/FUL/TEM
Reports to the Development & Planning Committee and Development Control Committee
Previous reports to Cabinet