

## **REPORT FOR: Planning**

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**Date of Meeting:** 9 June 2010

**Subject:** **INFORMATION REPORT –  
Urgent Non-Executive Decision:  
Richards Close**

**Responsible Officer:** Hugh Peart – Director of Legal and  
Governance Services

**Exempt:** No

**Enclosures:** None

### **Section 1 – Summary**

The Urgent Non-Executive Decision procedure, set out in Part 3 of the Council's Constitution, requires all decisions taken under the procedure to be reported to the appropriate Committee. The Committee is requested to note the action taken under the Urgent Non-Executive Decision procedure, as outlined in Section 2 below.

**FOR INFORMATION**

## **Section 2 – Report**

### CIRCUMSTANCES

The re-development of the site at Richards Close for the “*demolition of 55 dwellings and construction of 47 unit 'extra care' scheme and 29 flats, landscaping and works*” was granted planning permission [Ref P/2843/08] by the Planning Committee on 25 March 2009, following the completion of a S106 agreement. Subsequent to the grant of planning permission, development commenced in the summer of 2009 in accordance with the approved plans.

Following the commencement of the development, in Autumn 2009, the Council entered into discussions with the developers of the site to secure amendments to the planning permission. These amendments sought to respond to concerns expressed by local residents around the impacts of the approved development on levels of privacy to surrounding properties. This culminated in an application [Ref P/2568/09] under newly introduced S96A “...*for non-material amendment to planning permission reference: p/2843/08 for the demolition of 55 dwellings and construction of 47 unit 'extra care' scheme and 29 flats, landscaping and works.*”

Following public consultation, the application was reported to the Planning Committee on 2 December 2009. The Planning Committee determined to approve some, but not all, of the amendments outlined in the application. Those amendments that were rejected, notably the re-location of an entrance way, a first floor flat and 2 storey void/atrium area on the west elevation of the 4 storey block (Block A) are the subject of an outstanding appeal.

The applicants made a further application [ref P/0719/10] under S96A for more limited changes to ground floor window openings, associated with the modification of the development to return the void/atrium to its original configuration. These changes did not form part of the earlier s96A decision under reference P/25681/09. This application for non-material amendment was received on 25 March 2010.

Given the elapsed time since the application for planning permission, the continued level of public interest and the specific nature of the earlier complaints by residents concerning the levels of consultation on the original proposals, officers took the decision to carry out extensive consultation on the recent application comprising some 630 individual letters and 4 site notices in the locality, despite no statutory requirement for such consultation. The notification letters provided 21 days for comments to be submitted, in line with the levels of consultation for planning applications. The consultation period expired on 22nd April.

Applications for Non Material Amendments are required to be determined within 28 days of receipt or some other date by agreement. The 28-day period expired on 23rd April. The next scheduled meeting of the Planning Committee was not until 9 June – some 48 days after the statutory period. The applicants

had indicated that because of financial and contractual requirements they were not able to agree to an extension of the statutory period to 9 June to allow the application to be determined by the Planning Committee.

Given the original objections against the development, officers considered that full and extensive consultation was an important consideration in this case to allow public engagement with the proposals. As a consequence of the extensive consultation undertaken, at the time of writing this report, the Council had received 2 letters of objection. The letters raised no specific comments in relation to the particular elements of the current application.

Part 3b of the Council's Constitution, provides that in relation to matters which are the responsibility of Council the Chief Executive, Corporate Directors or Statutory Officers may (subject to consultation with the Leaders of all the Political Groups), act on its behalf if the matter is urgent and it may be against the Council's interests to delay and it is not practicable to obtain the approval of Council.

In determining an application made in terms of s96A, the Council must have regard to the effect of the change, together with any previous changes made under this section. They must also take into account any representations made by anyone notified, provided they are received within the period specified. As this is not an application for planning permission, s.38(6) of the Planning Act 2004 does not apply.

Having carried out the consultation and secured two responses to the proposals, officers have assessed the proposals. The application (as opposed to the development) has not prompted specific objections from the consultees. The comments received instead oppose the development - a matter that falls beyond the remit of the current application.

The Council was obliged to reach its decision within 28 days. It was not able to meet this deadline because of a decision to carry out full neighbour consultation. There was no Planning Committee (as a consequence of the Local Government Elections) at which a decision on the application could be made before 9 June. It would not be practicable to refer the decision to Council meeting before 9 June.

Failure to make a decision within the statutory timetable would expose the Council to an appeal (for non determination) and potentially, a claim for costs on the ground of its failure to reach a decision within a reasonable period. Even though the statutory timetable had already expired, it was expected that if a decision was reached shortly, it would not be reasonable for the developer to appeal against a non-determination of their application. The applicants had also highlighted considerable cost implications for this project in the event of any significant delay in the decision.

Officers consider that the amendments proposed by the application were non material amendments to the original planning application

In these circumstances, where there was no objection to the specific elements of the application following extensive consultation, where the works outlined were considered to be non material and where there was a clear statutory timeframe set for the Council to make such a decision, the delay in any determination arising from the need for a decision by the Planning Committee was considered to be contrary to the Council's interests. The need for the Council to make a decision was equally considered to be urgent.

Accordingly, it was considered that the circumstances existed in this case where a decision by the Corporate Director (following consultation with the Chair of the Planning Committee and the nominated member) as opposed to the Planning Committee was justified in accordance with Part 3b of the constitution.

### **Section 3 – Further Information**

#### ACTION SOUGHT

To approve a non material amendment application (made pursuant to S96A of the Town and Country Planning Act 1990) in respect of proposals for a development at Richards Close.

#### Date of Request for Action:

4 May 2010

#### Reason for urgency:

The Council was required to make a decision in accordance with a 28-day statutory deadline. The officer decision to undertake full consultation on the proposals prior to a decision being taken (because of the site's history) meant that the application could not be considered, alongside any comments, at the Planning Committee meeting on 21 April 2010. Due to Local Government elections, there was not a Planning Committee meeting in May. The first meeting (on June 9) was 48 days after the statutory deadline and the applicants would not agree to an extension of the statutory period to that date.

Decision: Officer recommendation agreed.

### **Section 4 – Financial Implications**

None

### **Section 5 – Corporate Priorities**

The proposal would be in line with the objective of creating sustainable places where people want to live, work and learn in.

Name: Kanta Hirani



on behalf of the  
Chief Financial Officer

Date: 26 May 2010

## **Section 6 - Contact Details and Background Papers**

Contact: Miriam Wearing, Senior Democratic Services Officer, 020 8424 1542

Background Papers: Individual Urgent Non-Executive Decision Form, as reported.