

<b>BODY:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>5 February, 2013</b>
<b>SUBJECT:</b>	Revocation of the s.106 agreement re 24 Enys Road and recommended amendments to the council's scheme of delegation to officers
<b>REPORT OF:</b>	Lawyer to the Council
<b>Ward(s):</b>	ALL
<b>Purpose:</b>	To consider the request of the owner of 24 Enys Road regarding the revocation of the s.106 Agreement completed in 1996 relating to the property. Also to consider amendments to Scheme of Delegation to Officers.
<b>Contact:</b>	Geoff Johnson, Regulation and Litigation Lawyer 1 Grove Road, Eastbourne, BN21 4TW. Tel no: (01323) 415044 E-mail: geoff.johnson@eastbourne.gov.uk
<b>Recommendation:</b>	<ol style="list-style-type: none"> <li>1. That the S.106 Agreement relating to 24 Enys Road dated 28 August 1996 be revoked and removed from the Local Land Charges register.</li> <li>2. That the proposed amendments to the Scheme of Delegation set out above be recommended to full Council for approval.</li> </ol>

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## INTRODUCTION

1. This report deals with two related matters. The first is a request from the owner of 24 Enys Road for the revocation of the s.106 Agreement completed in 1996 relating to the property. The second concerns a request that this Committee approve – and in turn recommend to full Council – proposals to amend the Scheme of Delegation to Officers to clarify officers' authorisation to negotiate S106 agreements and to introduce a new authorisation to cover future applications to modify, discharge or revoke s106 Agreements

## HISTORY

2. Application EB/95/0306 was submitted in June 1995 for the erection of a 3 story extension at the side of 24 Enys Road and conversion of the existing house in multiple occupation to three self-contained one bedroom flats, six studio flats and one dwelling.

3. It was approved on 3 September 1995 subject to the completion of a S.106 Agreement requiring the allocation of the six studio flats in the conversion as affordable housing.

4. The S.106 Agreement was completed on 28 August 1996 but the allocation of the affordable units was never taken up by the Council.

5. In 2011 and 2012 two applications for Lawful Development Certificates were submitted to verify the fact that the six units in question had been occupied since completion without complying with the obligations in the S.106 Agreement. The two LDC applications were supported by substantial evidence and were both approved under delegated powers.

#### THE CURRENT APPLICATION

6. The owner of the property has now requested that, following the granting of the LDCs, the original S.106 agreement should be revoked and removed from the Local Land Charges register as it is no longer enforceable.

#### COMMENTARY

7. In view of the length of time since the conversion was completed, the fact that the Council never followed up the obligation to provide the units of affordable housing and the confirmation through the granting of the LDCs that the obligation has never been complied with, it is not now possible to revive the obligations nor to seek an affordable housing financial contribution in lieu of the provision of the units.

8. It is therefore recommended that the owner's request be granted and that the S.106 Agreement dated 28 August 1996 be revoked.

#### THE DELEGATED SCHEME

9. Under the Council's Scheme of Delegations to Officers the negotiation of and entering into planning or other agreements regulating or controlling the use or development of land is delegated to the Lawyer to the Council. Normal practice, however, is for the need for a S.106 Agreement to be flagged up by the planning officers early on in the application process. If the application is reported to Committee and a s.106 Agreement is required it will be dealt with in the officer's report and the Committee's resolution. Where an agreement is required on a delegated application, the policy justifying the agreement will be referred to in the delegated report and the officer's decision will include the requirement to enter into the agreement.

10. Other than a delegation in the Scheme of Delegations to the Lawyer to the Council authorising that officer to make minor amendments to planning or other agreements regulating or controlling the use or development of land, there is no specific reference to the modification, discharge and revocation of Section 106 agreements. As a result, all such

applications are currently referred to the Planning Committee. In order to cover this gap in the scheme and bring it more closely into line with the desired practice outlined above, it is proposed:-

- That the power to negotiate S.106 Agreements be delegated to the SHDE in consultation with the Lawyer to the Council.

*(Note; The power to negotiate and formally to enter into and complete planning and other agreements regulating or controlling the use or development of land remains with the Lawyer to the Council).*

- That the power to revoke, modify or discharge any agreement associated with an application determined under delegated powers be delegated to the SHDE in consultation with the Lawyer to the Council and the Chair of Planning Committee.

*(Note; The Chair will have the power to require that any such application for modification, revocation or discharge will be reported to Committee as he/she does now with any planning application. The power to revoke S.106 Agreements and to modify or discharge any part of an agreement remains with the Committee where the agreement in question has been authorised by Committee resolution).*

## RECOMMENDATIONS

1. That the S.106 Agreement relating to 24 Enys Road dated 28 August 1996 be revoked and removed from the Local Land Charges register.
2. That the proposed amendments to the Scheme of Delegation set out above be recommended to full Council for approval.