

## **Area North Committee – 24<sup>th</sup> October 2007**

### **Supplementary Report**

**The Chairman has agreed to allow consideration of this item as a matter of urgency in accordance with Section 100B(4)(b) of Part VA of the Local Government Act 1972 (as amended) as funding options of the applicants may be compromised by any further delay.**

This item will be considered at the commencement of determination of planning applications at approximately 3.45p.m.

### **07/01276/FUL - Erection of a single storey community village shop and café on Land adjacent Millennium Hall, Water Street, Seavington St Mary, Ilminster Somerset**

#### **Reason for Referral To Committee**

The proposed draft S106 Agreement provides for the revocation of the planning permission and is therefore differs from the Area North resolution for a legal agreement providing continued community use. The reasons for this approach are outlined in the report below.

#### **Update**

Members will recall that the Area North Committee resolved to grant permission in July 2007 for the proposed Seavington Village shop and café subject to:-

- 1) the applicant entering into a S106 Agreement to ensure that the building is kept for community use if, for any reason in the future, the community shop became no longer viable, and
- 2) the inclusion of appropriate conditions.

The officer's report and minutes are attached as Appendix A and B respectively.

Following the resolution of the Committee, the file was forwarded to the Council's solicitor to prepare a draft S106 Agreement. The Seavington Playing Field Association is a registered charity and whilst the solicitor was undertaking research into the Scheme regulating the charity, a paragraph was identified in the Scheme that would allow the trustees to let or sell land no longer required for use for the charity's purposes. Clearly, this raised an issue in terms of whether the trustees or tenant could enter into a S106 Agreement due to the charitable status of the land and whether agreement would be required from the Charity Commission. Moreover, the Council would be concerned if the trustees sought to use their power of sale to sell a site with the benefit of a retail permission in a countryside location where such a development in policy terms would not normally be acceptable.

In order to seek further assistance and clarification, Mr Legg sent an email to the Charity Commission on the 29<sup>th</sup> August 2007 and a reply was received on the 18<sup>th</sup> September 2007. Both of these letters have been attached to this report as Appendix C and D respectively. Members will note that the response received from the Charity Commission was not particularly clear and indeed, the advice was that trustees should seek their own legal advice.

In light of the above, Mr Legg has sought to prepare a draft S106 Agreement that would allow the trustees to sign without possible objection from the Charity Commission (Appendix E). However, it must be stressed that Mr Legg has made it clear that he is acting in the capacity of the Council's solicitor and that the trustees should seek their own legal advice on the effectiveness or otherwise of the legal agreement.

The proposed draft S106 Agreement requires the planning permission to be surrendered and revoked if the applicant ceases to be registered as an Industrial and Provident Society, or surrender or assign its leasehold interest in the site or otherwise ceases to operate as a community shop and café. This is different to the requirement that the site of the shop be restricted solely to community purposes. The Council solicitor advises that he considers that this approach would be acceptable to the Charity Commission since it does not seek to impose a continuing community use restriction on the application site. Moreover, the Charity Commission suggested in their letter that the trustees would not be able to restrict the use of the shop in the way outlined in any case.

**Recommendation:**

1. The applicant enters into a S106 Agreement requiring the planning permission to be surrendered and revoked if the applicant ceases to be registered as an Industrial and Provident Society, or surrender or assign its leasehold interest in the site or otherwise ceases to operate as a community shop and café.
2. The inclusion of appropriate conditions. (These will be outlined orally at the Committee).

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