

By: Mark Dance, Cabinet Member for Economic Development
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To: Growth, Economic Development and Communities Cabinet Committee - 9 May 2019

Subject: Kent County Council Acting as Enforcement Body for Local Planning Authorities

Key Decision no: 19/00042

Classification: Unrestricted

Past Pathway of Paper: None

Future Pathway of Paper: For Cabinet Member Decision

Electoral Division: Countywide

Summary

Where districts and boroughs act as developer of their own land, they are in the potential position of being applicant, landowner and Local Planning Authority (LPA). These multiple roles create the dilemma where they may be required to enforce s106 planning obligations as LPA against themselves as developer. One option to resolve the district's potential conflict of interest is for the County Council, as the upper tier authority to become the enforcement body against the district.

This paper summarises the process for agreeing for KCC to act as the enforcement body.

Recommendation

The Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member for Economic Development on the proposed decision to:

- approve the principle of delegating the authority to act as the enforcement body for District and Borough S106 obligations subject to a range of conditions, to the appropriate officer; the Director of Economic Development. Examples of relevant S106 obligations may include those relating to community development, sports provision and open space.

as shown at Appendix A.

1. Introduction

1.1 There have been recent examples in both Tunbridge Wells Borough and Folkestone & Hythe District where the councils were developing schemes on land

within their ownership. This created a potential conflict for both authorities where they were potentially party to the planning obligations in more than one capacity.

- 1.2 Districts are keen to avoid this conflict and have sought legal advice to determine options to resolve it. Recent advice has suggested there are a range of options open to the District. These may include seeking a way of the district only entering into the planning obligation as planning authority not as landowner and leasing their land interest to a third party. There may also be instances where the district's land need not be not bound by the planning obligation.
- 1.3 However, some of these options are not always preferable particularly where the council wishes to retain control of land within its ownership. An alternative option is for the County Council to take on the enforcing role on behalf of the LPA. KCC would be party to the planning obligation and identified as the local authority by whom the planning obligations are enforceable for the purposes of the s106 agreement.

2 Process

- 2.1 The process for KCC to become the enforcement body would be:
 - the Leader takes the decision in principle whether the County Council can enter into these enforcement arrangements when requested to do so by the District or Borough Council, in specific circumstances; and subject to a range of conditions and;
 - in each specific instance, the delegated officer takes the decision to enter into a specific arrangement with a District or Borough Council when the conditions detailed in the original Leader decision are met
 - the delegated officer enters into the s106 agreement itself according to the existing process.
- 2.2 Once the decision was taken to enter in principle into a joint arrangement with another council to take on one of their functions, KCC would follow its usual procedures for entering into a s106 agreement and would seek legal advice as normal.

3 Risks

- 3.1 Most schemes promoted and delivered by districts on their own land have a regeneration focus. By helping to bring these complex schemes forward, KCC would be delivering wider economic benefits to the county.
- 3.2 To avoid the risk of challenge, KCC needs to be transparent in making this decision. All the associated risks must be detailed within the decision. KCC needs to consider how it ensures it does not compromise its independence, for example by acting as both highway authority and enforcement authority.
- 3.3 Each request would be considered on its own merits.

4 Conditions

- 4.1 There would need to be a range of conditions agreed to mitigate any potential risks to KCC taking on this role including:
- District to fully indemnify KCC against any liabilities that may be incurred
 - Full cooperation and funding of KCC resources involved (including legal and officer time)
 - KCC's role would fall away as and when the District's land is sold
 - Continued joint enforcement role against any land not within District ownership
 - Other conditions on a site-specific basis

5 Financial Implications

- 5.1 As mentioned above, the district and borough would have to cover any financial costs to the County Council of taking on the enforcement role, for example liability insurance, legal costs incurred and officer time. These costs would need to be detailed as part of the decision-making process.

6 Legal Implications

- 6.1 There are legal implications for any KCC decision to enter into a joint arrangement with another council to take on one of their functions. Invicta Law has advised that the proposal for KCC to act as enforcement body for local planning authorities is legally compliant. Legal advice would be sought in each specific instance.

7 Equalities Implications

- 7.1 If appropriate, any specific request relating to a development site in Kent would be accompanied by an equalities impact assessment.

8 Data Protection Impacts

- 8.1 A Data Protection Impact Assessment has been carried out. No processing of personal data has been identified.

9 Conclusion

- 9.1 The ability to enable development which benefits Kent residents and helps Districts and Boroughs achieve their strategic priorities provides a case for KCC to consider acting as enforcement body. This will only arise in a limited number of sites and whilst there are risks associated with this role, there are a range of measures available to the County Council to mitigate against these risks. Each request by the District or Borough Council to act as enforcement body must be determined alongside legal, financial; and democratic services' advice as well as other relevant professional guidance.

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Background Documents

- Appendix A: Proposed Record of Decision
- EqlA

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