
REPORT TO:	Development Control Committee	AGENDA ITEM: 5
DATE OF MEETING:	1 April 2008	CATEGORY: DELEGATED
REPORT FROM:	Head of Planning Services	OPEN
MEMBERS' CONTACT POINT:	Tim Dening 595748	DOC:
SUBJECT:	Deletion of condition 16 – Hotel Site Doles Lane/Burton Road, Findern	REF:
WARD AFFECTED:	Willington and Findern	TERMS OF REFERENCE:DC01

1.0 Recommendations

- 1.1 That the Committee notes the report and that draft condition 16 be removed from the decision notice as it duplicated the provisions of the Section 106.

2.0 Purpose of Report

- 2.1 To update the Committee on the outcome of negotiations relating to the Section 106 agreement relating to the provision of a sound attenuation fence adjoining the A 38 and advise of a request to remove a condition that was recommended in the report on 20 November 2007.

3.0 Detail

- 3.1 In granting planning permission for the erection of a hotel at the junction of Burton Road and Doles lane Findern, Members were advised that the applicants were willing to make a contribution towards the provision of a noise attenuation fence along the Burton Road frontage. Condition 16 was recommended and approved by Committee as follows:

“Before development is commenced details of the type of 2 metre high fence and its location within the highway limits along the length of Burton Road frontage as described in your letter dated 18 January 2007 shall be submitted to and approved in writing by the Local Planning Authority. The implementation of the scheme shall be in accordance with a schedule agreed in writing with the local Planning Authority prior to the commencement of the development.”

- 3.2 As the works relate to highway land away from the application site, the only means of securing the funds and the implementation of the erection of the fence is through the medium of a unilateral undertaking made under Section 106 of the Planning Act. A draft of the undertaking has been received and the applicants have requested the removal of Condition 16 of the planning permission as the provisions of the undertaking would secure monies to enable the Highway Authority to erect the

fencing at a time of its choosing. Therefore the applicants would not be in control of when the scheme is implemented. As such, the applicants argue, the condition would not conform to the requirements of Circular 11/95 that sets standards for planning conditions. In short the condition would not be enforceable and as such fails one of the basic tests in the Circular.

- 3.3 In the light of this the Committee is recommended to remove condition 16. The permission containing the other 19 approved conditions will be issued when the final version of the undertaking has been agreed.

4.0 Financial Implications

- 4.1 The monies would be transferred to the Council within 2 months of the date of the commencement of the development.

5.0 Corporate Implications

- 5.1 None

6.0 Community Implications

- 6.1 Monies are secured to implement noise attenuation fencing that is currently not catered for in any highway budget.

7.0 Conclusions

- 7.1 There are no planning grounds to retain Condition 16, as the mechanisms exist in the unilateral undertaking to secure the provision of the fence.

8.0 Background Papers

- 8.1 Planning Application file 9/2005/0991