

Legal Comments

1. The section 106 agreement dated 20 April 2017 linked to the former Hicking Pentecost and Company development (planning ref 16/02688/PVAR3) between the Council, Cassidy Group Property Limited, IV Fund Limited SAC and Yury Ismagilov ('the S106 Agreement') has provided funding which this Decision proposes to apply. The section 106 agreement included an obligation on the Owner to pay an Education Contribution of £84,448 index linked. It is noted in the Decision that the Council received this Education Contribution (totally £91,032) on 2 December 2019, and that the Council has applied £649 of this amount towards the administration and monitoring of compliance with the agreement, leaving £90,383 of this contribution available ('the Contribution').
2. The Council is obliged by the terms of the S106 Agreement to use the Education Contribution "towards the provision of new or enhanced education facilities to accommodate pupils generated by the Amended Development within the Greenfields, Welbeck and/or Victoria Primary Schools in Nottingham City." The proposal under Decision 1 to apply the Contribution to Welbeck Primary School to create an additional upper Key Stage Two learning space at Welbeck Primary School in the Meadows is compliant with that obligation. Paragraphs 3-4 of the Reason for the Decision outline the proposed expansion and improvement which are envisaged to the upper Key Stage Two provision at the Meadows Primary School.
3. The S106 Agreement contains certain covenants to the landowner with which the Council has to comply regarding confirmation of expenditure and repayment. The Council is liable to repay the Contribution or part of the Contribution which remains unspent or uncommitted for expenditure 5 years after receipt, in the event that the landowner requests written confirmation of such expenditure or commitment. In respect of the Contribution, that 5th anniversary after which repayment can be sought has not yet occurred so the Contribution remains available for allocation with no potential liability to repay having arisen.
4. If the implementation of Decision 1 involves a transfer of funds to the Welbeck school, a separate agreement between the Council and the school will be required in the future, as per the authorisation sought under Decision 2. This separate agreement will need to ensure that the purposes for which the funds are used by the school are consistent with this DDM and with the Council's obligations to the landowner within the S106 Agreement.
5. Under the Council's current Constitution, the relevant Area Committee is a consultee for spending proposals of section 106 contributions in its area. However, as Area Committees no longer take place, the Leader of the Council

has confirmed by delegated decision that this consultation requirement will be taken in line with the usual thresholds for officers/ Portfolio Holders in consultation with the relevant Ward Cllrs. The “Consultations” section of the Decision gives details of the form and date of consultation relating to the Decision, and it is understood that the deadline for responses has passed.

6. It is understood that pursuant to a recent re-organisation of portfolio holder responsibilities which will be formalised by Council in due course, that the Decision comes within the remit of the Portfolio Holder for Strategic Regeneration Communications (previously known as the Portfolio Holder for Regeneration, Safety and Communications).
7. The City Council should put in place a funding agreement with the School to ensure the funds are used for the purpose specified in the s106 Agreement.

Paragraphs 1 – 6 provided by Tamazin Wilson, paragraph 7 provided by Andrew James.