

Legal comments on DD for release of a s106 payment to support sustainable transport infrastructure

1. The funds derive from a section 106 unilateral undertaking dated 16 October 2006 linked to the development of land north east of the Tennis Centre on University Boulevard under planning permission ref 06/00910/POUT. The development was for the erection of buildings for B(1) business use. The undertaking was entered into by the East Midlands Development Agency as leasehold owner of part of the site and by two Blueprint companies which proposed to purchase and develop the site.
2. The unilateral undertaking required that the parties to it make a payment of £36,700 (which was not index linked) to the Council as a highways contribution prior to occupation of any building. It is understood that payment was received on 22 July 2014.
3. The Council was not a party to the unilateral undertaking and hence as stated at paragraph 2 of the "Reasons" section of this decision, made no direct covenants to the other parties. However, as detailed in that same paragraph, the unilateral undertaking specifies that the highways contribution "*is intended to be used by the Council to mitigate the impact of the development on the highway network by either carrying out minor works to the principal roundabouts within the wider locality or **to be used to contribute towards sustainable transport measures relating to the development***" (*my emphasis*). The allocation of the s106 monies proposed by this decision is considered to be compliant with the second limb of the above provision.
4. The Council's Constitution requires that the relevant Area Committee is to be consulted on detailed proposals for enhancements within the local area funded by section 106 obligations. This requirement was met since the Arboretum, Dunkirk and Lenton, Radford and Park Area Committee considered a report on this decision at its meeting on 19 December 2018. That Area Committee endorsed the proposals.
5. The decision appears to fall within the terms of reference of the Portfolio Holder for Transport.