

Note to Scrutiny (Policy & Performance) Committee: 12 February 2019

Granting of an easement at Matthews Close, Deal

Background

Cabinet agreed at the meeting on 3 December 2018 to a proposal to grant an easement in return for a the payment of a capital sum to enable a road to be constructed across a ditch owned by the Council to provide access to a field located to the west of Matthews Close, Deal which has been granted planning consent for residential development.

The Cabinet decision was reviewed by the Scrutiny (Policy & Performance) Committee on 4 December 2018, when Cllr Gardner advised that the developer had indicated within the planning process that the monies paid to the Council for this easement had reduced the viability of his scheme thus limiting the funds available to be allocated for affordable housing.

The committee agreed to request a further report on this matter.

Scheme Viability

Within the planning process, the National Planning Policy Guidance (NPPG) sets out the government's approach to viability assessment. Whilst this does not expressly refer to the inclusion of ransom payments as a development cost, it does include a non-exhaustive list of what development costs include, including abnormal costs. RICS Guidance on Financial Viability in Planning suggests that such costs are 'relevant development costs that should be taken into account in viability assessments'. Case law supports the reliance on RICS guidance and thus in the circumstances arising in this application, the Council has been advised that ransom payments can lawfully be taken into account in a viability appraisal.

Application of the Capital Receipt

With regards to the application of the monies received by the Council in return for the granting of the easement, these are treated as a capital receipts, The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, provides that capital receipts can only be used for one of the following purposes:-

- a) to meet capital expenditure;
- b) to repay the principal of any amount borrowed;
- c) to pay a premium charged in relation to any amount borrowed;
- d) to meet any liability in respect of credit arrangements, other than any liability which, in accordance with proper practices, must be charged to a revenue account;
- e) to meet the administrative costs of or incidental to a disposal of an interest in housing land;
- f) to make a payment to the Secretary of State under regulation 12 or 13.

Decisions as to how capital funds are applied, taking account of the respective priorities of the many competing demands on the Council's funds, are considered as part of the Council's annual budget setting process and are then set out in the Medium Term Financial Plan.

The Council clearly can, and indeed on occasion does, allocate capital funds to support the provision of affordable housing should it wish to.

Roger Walton, Strategic Director