

COUNCIL

14th September 2015

UPDATE REPORT ON THE OAKHAM NORTH DEVELOPMENT

Report of the Chief Executive

Strategic Aim:	All	
Exempt Information	Appendix C & D are exempt as they contain exempt information and are not for publication in accordance with Part 1 of Schedule 12A of the Local Government Act 1972.	
Cabinet Member(s) Responsible:	Councillor Terry King, Portfolio Holder for Places (Development and Economy) and Resources	
Contact Officer(s):	Helen Briggs - Chief Executive	Tel: 01572 758203 hbriggs@rutland.gov.uk
Ward Councillors	Impacts on all Wards and specifically Oakham Wards	

DECISION RECOMMENDATIONS

That Council:

1. Notes the update relating to the development known as Oakham North.
2. Approves the negotiated agreement at the figure of £4.800m and the basis for the allocation of the revised figure based on Section 4 (4.5 (e)) of this report.
3. Delegates to the Chief Executive and the Portfolio Holder for Places (Development and Economy) and Resources the authority to sign on behalf of the Council final agreements to allow the proposed arrangements to take effect.

1. PURPOSE OF THE REPORT

- 1.1. To provide the Council with an update on the situation in relation to the Oakham North development and to seek authority to enter into a negotiated agreement to secure the funding as set out in this report.

2. BACKGROUND AND MAIN CONSIDERATIONS

- 2.1. On 11th July 2011 Rutland County Council entered into a Section 106 agreement (“the Section 106 Agreement”) with the land owners of a development site between Barleythorpe and Oakham.
- 2.2. The Section 106 Agreement was linked to the outline planning permission granted and signed on the same date OUT/2009/1306 for a major residential development now known locally as Oakham North¹.
- 2.3. On the 10th November 2011 an application was made by Hawksmead (Larkfleet) Limited) (“Larkfleet”) to vary condition 10 of OUT/2009/1306. The application was made under Section 73 of the Town and Country Planning Act 1990. The variation was relatively minor relating to a requirement by the Environment Agency for a flood risk assessment for the whole site before the first of the ‘Reserved Matters’ were approved. The variation proposed and subsequently agreed was that the Flood Risk Assessments would take place as each phase was submitted rather than in totality for the whole site. The original conditions were made based on comments received on the original application from the Environment Agency.
- 2.4. Applications made and approved under Section 73 in all instances lead to the issuing of a new planning permission.
- 2.5. The application for a variation was determined under delegated powers by the Development and Control Manager (Acting) and counter signed by a second planning officer. The actual decision notice was signed by the Head of Service as a Proper Officer of the Council. The permission was issued as APP/2011/0832 on 18th January 2012. At this point the Officer should have instructed the Council’s Legal advisors (in this instance Peterborough Legal) to have completed a new section 106 Agreement or a deed of variation based on the Section 106 Agreement that would have ensured that the planning obligations required by the Section 106 Agreement applied to the new permission. They did not.
- 2.6. From this point Larkfleet as developer and other developers² had two valid planning permissions in place and could choose which to implement, OUT/2009/1306 which would invoke the Section 106 Agreement or APP/2011/0832 which would not.

¹ For the purposes of this report the development will be referred to as Oakham North

² During the course of the development the original developer (Larkfleet Homes) transferred parts of the site to additional developers – Bellway and Persimmon thus any agreements were from that point relevant to each of the developers

- 2.7. On 20th February 2012 a 'reserved matters' approval was issued for Phase 1 of the development. This enabled Phase 1 of the development to proceed and at the appropriate trigger point the planning obligations pursuant to the Section 106 Agreement would fall due.
- 2.8. For all development associated with Phase 1 of the Oakham North development Larkfleet acted under OUT/2009/1306. In this circumstance the Section 106 is valid and Larkfleet was obliged to make the contributions as they became due. Consequently in total £340,667 was invoiced by RCC to Larkfleet and was paid.
- 2.9. Following further development taking place and 'trigger points' occurring the Council continued to invoice Larkfleet based on OUT/2009/1306. Larkfleet raised queries in relation to indexing of the claims which required amended invoices to be issued but a second invoice was issued.
- 2.10. Based on this invoice on 24th April 2015 Larkfleet advised the Council in writing that in relation to the outstanding invoice valued at £976,476.05³ it no longer considered it was liable to pay any contributions as development was now taking place under APP/2011/0612 and not OUT/2009/1306. As there was no section 106 agreement linked to APP/2011/0612 then no payment was due. At this point the Council paused to allow officers to take advice.
- 2.11. This proved to be a time consuming exercise as the details were checked and legal opinions were sought initially from Peterborough Legal and then from Ropewalk Chambers (Jonathan Mitchell) (see further details at Section 3).
- 2.12. In their letter of 24th April Larkfleet requested a meeting to discuss the issue and subsequently meetings took place on 11th June, 27th August and 2nd September 2015. The delay from receipt of the letter and the initial meeting was caused by:-
- the Election which took place on 7th May 2015 and the need for the new Executive to be put in place. This was concluded on 1st June 2015; and
 - the need for the Council to take advice and establish its position and options.
- 2.13. For the purposes of the meetings and all subsequent negotiations Larkfleet were acting with the consent of and for all of the developers connected with the Oakham North site.
- 2.14. The meetings were positive and provided the Council with an opportunity to work with the developer to achieve an acceptable negotiated position.

³ The second invoice raised was for £989,392 but as there was a credit on the account because the first invoice was raised for £303,652 which was paid in full. However a revision to the indexation meant that the invoice was reissued for £290,735 leaving a credit of £12,917 on the account. The amount owing from Larkfleet was £976,476.05.

- 2.15. **Appendix A** to this report contains a summary of the sequence of key events.

3. THE LEGAL POSITION

- 3.1. The Council through its Legal Advisors, (Peterborough Legal) instructed Jonathan Mitchell (Ropewalk Chambers, Nottingham) to review all the associated documentation and specifically to advise on the implication of the mistake of failing to attach a section 106 agreement to the new planning permission APP/2011/0832.
- 3.2. Legal advice was that the best option for the Council was to enter into a negotiated settlement. Further information on the legal position is set out in **Exempt Appendix D**.
- 3.3 The Section 106 Agreement contained four broad areas for consideration the impact of which needs to be assessed. This needs to be seen in the context of a reduction in the overall numbers of dwellings being built having reduced from 1,096 to 988 which would trigger a reduction in the planning obligations and contributions in any case:-
- a. A financial contribution to mitigate against the impact of the development - **Appendix B** is a breakdown of the key headings and the value of the original contribution - £7,559,960, reduced to £6,680,421 due to the reduction in dwellings being built and other items now considered not eligible e.g. monitoring fees.
 - b. Provisions for affordable housing on the development – This was set at a figure of 15% for the development. Based on the reduced number of dwellings (988) this would equate to 148. 62 have already been delivered. Of these, 24 (rented) have already been transferred to Housing Associations (HA's), 15 Shared Ownership properties have transferred and 13/15 have been sold. A further 23 properties are in the process of being transferred to HA's.
 - c. Highways and Transportation issues – The planning conditions included further requirements relating to the Highways that remain in place as planning conditions relating to the planning permission and not the Section 106 Agreement. Those issues that are included in the Section 106 Agreement are:-

Lands End Roundabout – the requirement for the size of the roundabout at the junction of the Bypass with Lands End Way to be increased prior to the occupation of the 500th dwelling.

Huntsman's Drive Roundabout – the requirement for the mini-roundabout at Huntsman's to be upgraded to a full roundabout prior to the occupation of the 500th dwelling.

A606/Langham Road Crossings Work - the requirement for the construction of a Toucan crossing on the Bypass near the Langham roundabout prior to

the occupation of the 300th dwelling to assist children walking to Langham Primary school.

A606 Lands End Crossing – the requirement for the construction of a Toucan crossing on the Bypass near the Lands End roundabout by 31st December 2016.

Barleythorpe Road Crossing – the requirement for the construction of a Toucan crossing on Barleythorpe Rd by 31st December 2018 to assist children walking to school in Oakham.

- d. Community Buildings – the Section 106 Agreement required the provision of a Community Building or a payment in lieu of this provision to the value of £1.338m. The Council opted to request the financial contribution. This figure is included in the overall financial contribution referred to at 3.3 (a) above.
- e. Indexation – the sum of £6,680,421 excludes indexation. The Council is allowed per the original agreement to apply indexation (effectively an inflationary sum to amounts due). The impact of not receiving indexation or a revised approach to how it is calculated or when it is payable in any settlement would need to be considered.

4. THE PROPOSAL FROM LARKFLEET

4.1. Larkfleet indicated at meetings that took place on 27th August and 2nd September 2015 that despite the fact that they were under no 'legal' obligation they and their co-developers were keen to honour what they saw as a moral obligation to make a contribution to the Council to assist in the mitigation of the impact of the development.

4.2. Both parties agreed that the best way to progress would be to prepare a new, binding legal agreement under the various Local Government Act provisions to achieve the following objectives:-

- a. Secure the financial contribution of £4.8m from the collective of developers to the Council
- b. Protect the interests of the Council in the event of a change of land ownership or an unforeseen event
- c. Ensure that the way forward on other aspects of the Section 106 Agreement were codified in a legally binding agreement
- d. Phase payments at the reduced amount.
- e. Address the indexation issue

4.3. At this stage it is important to note:-

- a. The development and the associated Section 106 Agreement was based on the number of houses built. Since the Section 106 Agreement was completed the number of houses actually being built has reduced from 1,096 to 988 a reduction of 108 and monitoring fees of £150k are no longer eligible. This would have led to a reduction in

the liability of £880k⁴.

- b. Larkfleet as developer has the option and indeed it is common practice to review the planning obligations that will fall due to be paid as time passes. Circumstances change and some of the 'need' falls away. The Council was mindful of this in the course of the negotiation.

4.4. **Table 1** explains how the level of the Section 106 Agreement would have been affected by these factors:-

Table 1

Section 106 Analysis	Original Amount £000	Revised Amount Owing (Cumulative excluding indexation) £000
Original figure as at 11/07/11	£7,560	
Figure reduced based on reduced properties/other factors	£880	£6,680

4.5. Larkfleet acting for all developers have offered a figure of £4,800,000. They have proposed:-

- a. a figure of £2,256,046 will be paid to the Council as soon as the proposed legal agreement is signed;
- b. Four future payments of £551,056.75 will be made on each of the four consecutive anniversaries after the signing of the agreement;
- c. that they will honour the original 15% figure for Affordable Dwellings and will continue to work with the Council to discuss how Affordable; Housing solutions can be achieved outside a section 106 agreement;
- d. that they will work with the Council to review the need and appropriate design for the highways infrastructure referred to in the original S106 agreement and if required they will be delivered;
- e. Whilst the Section 106 Agreement headings as per **Appendix B** are to be retained Larkfleet have agreed that they are happy for the Council to exercise its discretion about how the funding is allocated based on the principle that it will be used as in the spirit of the Section 106 Agreement to mitigate against the impact of the development. With the exception of the funding relating to Oakham and Uppingham town centre contribution of £125,173 which must be applied towards Oakham and Uppingham town centre facilities;
- f. RCC will lead on communication relating to the issue; and
- g. Indexation will apply to certain aspects of the settlement – this will result in the Council receiving £135,150 over the £4.8M main settlement.

⁴ Original value of agreement £7.560M less monitoring fees (£123K), less IDOX system (£27K), less reduced number of dwellings at £6,760 per dwelling (£730K) = £6,679,627 (a reduction of £880K).

5. FURTHER ADVICE AND INVESTIGATIONS

- 5.1 Our External Auditor was alerted to the issue at the earliest opportunity. Meetings have taken place with the Council's External Auditor on 23rd June, 24th August and 11th September 2015 to brief him on the issue. He has been briefed at all stages throughout the negotiations. The External Auditor will be considering the matter raised in respect of his own responsibilities under the Audit Commission Act 1998 and Code of Audit Practice. To facilitate his considerations, the Council has made available all background documents and information
- 5.2 The External Auditor has initially advised that the Council review the Statement of Accounts and the Annual Governance Statement and consider whether any adjustments or additional disclosures should be made. The Council has completed this work for discussion with the auditors.
- 5.3 In view of the seriousness of the situation and the potential magnitude of the impact on the Council in addition to an internal review the CEO commissioned Baker Tilley LLP to undertake an independent investigation for the purpose of providing assurance that there are no financial connections, personal or undeclared professional relationships between the development staff from the contractor organisations – Hawksmead and Larkfleet Homes, and Rutland County Council staff involved in this planning agreement. The conclusion of the review was as follows:-
- “Based on our enquiries conducted, inclusive of interviews with staff members, review of correspondence held within RCC and information available from ‘open source’ enquires conducted, we have not identified any matters which would give rise for concern, with no financial connections, personal or undeclared professional relationships between the development staff within RCC and the contractor organisations involved in this planning application process.”
- 5.4 The confidential report and findings are attached in **Exempt Appendix C** to this document.
- 5.5 An all Member confidential briefing took place on 6th July 2015 and for those Members unable to attend a further briefing on 8th July. The objective was to ensure members were comprehensively briefed and had an opportunity to ask questions.
- 5.6 In order to mitigate the risk that this issue does not happen again or has not happened on other sites, the following action was taken:
- there has been a comprehensive review of the way we process Section 73 applications and section 106 agreements. The new arrangements have been in place for some time supported by training for planning officers. New planning applications are now reviewed by a dedicated Section 106 officer to

identify any impact on existing section 106 agreements and whether further action is required. It is not possible to say conclusively that mistakes will not be made but safeguards and checks are in place to mitigate against this situation arising again.

- All section 106 agreements that have subsequently been affected by a Section 73 Variation have been reviewed and there are no instances where this set of circumstances has applied.

- 5.7 The Chair of the Council's Audit and Risk Committee has been comprehensively briefed throughout and had an opportunity to comment on the brief for the Fraud and Corruption investigation and on the draft report. This report will be considered on 22nd September 2015 at the next meeting of the Audit and Risk Committee as an exempt part of the agenda due to the nature of the report. The cost of the Baker Tilly investigation was £7,000 and will be met from within existing budgets.

6. CONSULTATION, COMMUNICATION AND ENGAGEMENT

- 6.1 The nature of this report and its contents do not lend themselves to Consultation, due to the nature of the financial and legal negotiations taking place. The Chief Executive has met with key stakeholders and kept them advised of progress in relation to the negotiations. This includes Leicestershire Constabulary and Leicestershire Fire and Rescue Services.
- 6.2 Discussions are on-going with Leicestershire Fire and Rescue Service in relation to this matter and a verbal update will be provided at the meeting.
- 6.3 Leicestershire Constabulary and the Office of the Police and Crime Commissioner have indicated in writing that they:-
- a. Support the Councils stance of a negotiated settlement based on the advice received and the circumstances
 - b. Are prepared to accept a reduced allocation based on the reduced figure potentially being available
- 6.4 Larkfleet have agreed that it is appropriate in the circumstances for the Council to lead on communications relating to this matter. To support this objective both parties have agreed draft press statements. The Council has been working with Strategic Communications advisors, experts in the field to assist on developing a comprehensive communications strategy and associated training. The estimated cost of this support is £5,000 and will be met from within existing budgets.

7. ALTERNATIVE OPTIONS

- 7.1. The options going forward are limited. The legal advice was that the best option for the Council was a negotiated settlement. Further information on

the legal position is set out in **Exempt Appendix D**.

- 7.2. Larkfleet has put forward a proposal that allows the Council to mitigate against the impact of the mistake made by the Council. At the same time this has allowed a negotiation that reflects changes that would have impacted on the Section 106 in any case e.g. the reduction in the number of properties.

8. FINANCIAL IMPLICATIONS

- 8.1 A summary of the original Section 106 Agreement financial agreement is attached to this report at **Appendix B**. This summarises the key headings, the full Section 106 Agreement entitlement and the amount of the contributions paid to date by Larkfleet to which the Council is entitled to i.e. that due under Phase 1 of development linked to OUT/2009/1306.

- 8.2 One of the key questions that arises from the loss of the funding due under the Section 106 Agreement is what will the financial impact be on the Council? This financial impact can be measured in terms of the extra cost the Council will incur as a result of having to fund projects that would otherwise have been funded via the Section 106 Agreement. In order to assess the financial impact, there are two questions that first need to be answered:

How much funding will actually be 'lost'?

How will the Council meet the 'lost' funding gap?

- 8.3 **How much S106 funding will be 'lost'?**

The developer has chosen to make a significant contribution (£4.800m) towards infrastructure needs on the basis that the Section 106 Agreement was signed in the knowledge that this would be required.

Should the Council accept this offer then based on the proposed settlement figure of £4.800m and the recalculated maximum contribution due under the Section 106 Agreement of £6.680m (as set out in para 4.4) the actual financial loss (net of indexation) would be £1.880m.

- 8.4 The Council's view is that the need to mitigate the impact of the development remains the same i.e. that investment in infrastructure will be needed to meet the demand of growth. This is supported by the Council's assessment on infrastructure needed in support of its policy on CIL and existing Section 106 negotiations.

The Council would have received £6.680m to contribute towards this growth but now will receive £4.800m. It is very likely that the Council would have needed the original £6.680m contribution to meet growth needs but this is not definite for a number of reasons:

- a) The Council does not have a series of fully defined and costed projects that total £6.680m;

- b) Infrastructure needs do change over time and some of the 'need' could fall away or the nature of it could change;
- c) There are different ways of meeting infrastructure needs that have different levels of costs;
- d) Some of the funding is earmarked for third parties who would need to justify that funding is still needed (para 6.2 and 6.3 refers to the stance of the Fire and the Police).

- 8.5 Notwithstanding the above comments, the Council cannot say with any certainty that it can meet the original infrastructure needs for £4.800m so it is assumed at this stage that the 'loss' is £1.880m.
- 8.6 It has been agreed that indexation of 135,150 will be paid on certain elements of the settlement but not the full amount. There is therefore a loss to the Council. Any loss is difficult to quantify as it will depend on when triggers would have been hit, amounts are due and the index rate at that time. For example, if the development was completed today and the £4.8M paid over in full, then the Council estimates that an additional £700K would be owing in indexation. As noted above the Council is receiving £135,150 in indexation payments. However, the indexation loss is mitigated in part because the Council will receive the contributions earlier than what it originally anticipated. There is a financial impact in that an indexation loss would apply to the £1.880m no longer being received. As noted above this loss is difficult to quantify.
- 8.7 To illustrate the 'loss' of funding to specific categories of infrastructure, the revised figure has been allocated across the Section 106 Agreement as per Appendix B. In reality, the negotiated settlement will allow the Council to retain flexibility on how the contribution is applied as per paragraph 4.5 e of this report.
- 8.8 **How much will the 'loss' cost the Council should the original amount be needed ?**

For the purposes of assessing the cost to the Council, it will be assumed that the Council plans to spend an equivalent amount to what it has 'lost' through S106 i.e. £1.880m due. In reality, the Council has choices as it is not committed to fund any projects at this time. In theory, the figure offered by Larkfleet (if agreed by Council) will allow the Council to prioritise the contribution to achieve exactly what S106 should be used for – to mitigate against the impact of development albeit with a reduced level of funding.

There are various factors that can have an impact on the cost:

Capital/revenue split – Section 106 monies can be used to contribute to both revenue and capital costs. As the Council cannot borrow to fund revenue costs, it would need to fund S106 that would have been put to revenue via a different funding stream. In working out the costs, assumptions have to be made about whether costs incurred would be capital or revenue. For the most part, costs are assumed to be capital.

Timescales – the proposed timing of projects may impact on the cost of the project itself and borrowing. Contributions due under a section 106 agreement are payable when certain triggers have been met e.g. a certain number of homes built. All calculations are done at today's available rates and assumptions have been made about when projects would go ahead and hence funding needed.

Source of funding used – if the Council needs to fund development it can use existing available resources, apply for external funding (if it is available), borrow (for capital purposes only) or sell existing assets (to generate a capital receipt).

- 8.9 In calculating the actual cost of the loss, the Council has assumed of £1.880m the majority (90%) would be capital related and therefore funded through prudential borrowing and in particular using its existing cash balances to undertake internal borrowing. Presently, the Council has cash balances in excess of £20m. The future cash flow is linked to future funding but the Council is likely to have cash balances above £10m for the next 10 years. In reality, the Council may also have some capital receipts and grants which it could also apply. The remainder (10%), totalling £188,000 would be funded through General Fund balances.
- 8.10 The total cost to the Council is therefore £1.880m (comprising additional Minimum Revenue provision of £1.692m, £67,680 per annum for 25 years, a one-off revenue loss of £188,000) and lost opportunity cost of using existing balances of £11,000 per annum⁵). The Council's Medium Term Financial Plan predicts a deficit of £2.5m by 2019/20 assuming no further savings are made. This means the Council has to make considerable savings over the next 5 years. An additional savings target of £79,000 on top of what is planned is achievable. The Council is doing a substantial amount of work looking at both savings and investment opportunities and will be bringing forward proposals for consideration by elected Members in due course.
- 8.11 **What is the overall funding position on the Oakham North development?**

Should the Council proceed with a settlement figure of £4.8m, the amount available to spend on further infrastructure projects would be £3.750m.

The table below summarises the overall funding position. The Council has decided previously to fund schemes in advance of S106 being received. The Council has always made such decisions in full knowledge of the implications of not receiving the contribution. The Council will therefore seek to use any contribution to fund decisions already made. Therefore, the first priority is to fund expenditure already incurred or committed.

⁵ £11,000 per annum is the lost interest income of not being able to invest £1.8m (based on current interest rates)

	£
Revised contribution	£4,800,000
<i>Expenditure incurred</i>	
Adult Soccer	(£597,000)
Sports Grants	(£220,191)
CCTV	(£118,000)
Library PC's	(21,048)
<i>Committed schemes</i>	
Youth Housing ⁶	(£93,000)
<i>Amount remaining for development</i>	£3,750,761

The remaining funds of £3.7m will be prioritised according to the needs of individual projects.

9. LEGAL AND GOVERNANCE CONSIDERATIONS

- 9.1. The legal advice in relation to this matter is fundamental and is contained in the body of the report.
- 9.2. A mistake was made that has unfortunate and far reaching consequences. The remedies available are limited. The advice is that a negotiated settlement is the best outcome for the Council and stakeholders.
- 9.3. In order to secure the funding that has been offered by Larkfleet as developer, it is necessary to enter into a legal agreement (the New Agreement), to ensure that the provision of the money and the allocation of the expenditure is legally binding on both parties.
- 9.4. It is proposed that the New Agreement will be made using the Council's powers under Section 1 of the Localism Act 2011 which gives local authorities the legal capacity to do anything that an individual can do, including entering into contracts of this nature
- 9.5. The New Agreement will provide a binding contract between the parties which is enforceable by the Council through the courts for breach of contract.
- 9.6. In addition, and for certainty, the Council has also obtained the commitment from Larkfleet and the other developers to enter into a financial agreement known as an Escrow Agreement, the sole purpose of which will be to pay the money required by the Council into a separate bank account which will be drawn by the Council to fund the infrastructure requirements in accordance with the New Agreement.
- 9.7. It is considered that through the operation of the New Agreement and the Escrow Agreement the Council will have the legal assurance that is

⁶ Youth Housing scheme is under review and amounts may change.

needed to secure the funding now and in the future as the development at Oakham North progresses.

- 9.8. It was considered necessary to seek the additional assurance of an Escrow Agreement to mitigate against the risk of any party failing to meet its financial commitments.

10. EQUALITY IMPACT ASSESSMENT

- 10.1. An Equality Impact Assessment (EqIA) has not been completed because the report does not represent the introduction of a new policy or service or a change / review to an existing policy or service.

11. COMMUNITY SAFETY IMPLICATIONS

- 11.1. There are no specific implications identified at this stage. However discussions have commenced with Leicestershire Constabulary relating to their plans for the contribution due to them pursuant to the Section 106 Agreement, and the impact of its loss. Council will be updated further as this becomes clearer.

12. HEALTH AND WELLBEING IMPLICATIONS

- 12.1. The financial implications for Health and Well Being are contained in the body of the report.

13. ORGANISATIONAL IMPLICATIONS

- 13.1. **Environmental implications** - no specific environmental implications have been identified.

- 13.2 **Human Resource implications** – The Chief Executive has taken the appropriate advice from HR professionals in relation to this matter.

A mistake has been made by an Officer / Officers of the Council in the course of performing their duties. The magnitude of the impact is significant but there has been no breach of the Code of Conduct and as such the disciplinary procedures do not apply. This is an issue of capability and not one of misconduct leading to any procedures under the disciplinary procedures.

It is pertinent that at the time the Officer was acting up in the role of Planning Manager. Since the appointment of a new Planning Manager in May 2012 the Council's procedures have been comprehensively reviewed and we are as confident as we can be that there could not be a reoccurrence of this error.

Although the new Planning manager had no knowledge of this mistake he recognised the need to improve the knowledge of the planning staff upon his arrival and implemented a programme of training sessions on all aspects of planning. This training is still ongoing as part of the department's continued professional development.

New safeguards are also being put in place to improve oversight within the department. New planning applications are now reviewed by a dedicated S106 officer to identify any impact on existing S106 agreements and whether further action is required.

However no retrospective review was undertaken that would have highlighted this error until the point that Larkfleet raised the issue in April 2015. The Development Control Manager continues to assess skill and knowledge levels within the planning team and implementing a programme of retraining to ensure the Planning Team are best placed to carry out their duties effectively.

See also para 5.3, 5.4 and 5.5

14. CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

- 14.1 In 2011 the Council was responsible for a serious administrative error when it failed to deal appropriately with the documentation associated with a variation to a major planning application.
- 14.2 This mistake meant that the developer, Larkfleet, believed it was no longer legally obliged to pay a very significant sum of Section 106 monies toward the provision of local services in the Oakham North area and as a result proposed a renegotiation of the agreement.
- 14.3 Larkfleet representing all developers on the site have stated that while they have no legal obligation they have agreed that they do have an obligation to make a substantial contribution (£4.800m) towards the provision of services for the people who will buy and live in the homes they are building. The Chief Executive and Portfolio Holder for Places (Development and Economy) and Resources have therefore worked with Larkfleet to achieve an agreement with Larkfleet on a figure of £4.800m to recommend to Council for approval.
- 14.4 While this figure is less than the £7.560 million that was set out in the Section 106 Agreement a number of important points need to be made:
 - a. The final figure was always going to be considerably less than £7.560 million due to changes in the size of the development and other circumstances since the Section 106 Agreement was completed.
 - b. The proposed figure of £4.800 million will enable the council to guarantee service provision for local people on the Oakham Heights area with no impact on the level of Council tax on the basis that additional savings will

be made to fund any development above the £4.8m contribution from the developer.

- c. There will be very limited impact on the wider community following resolution of this this issue.

- 14.5 The circumstances that led to this are of course regrettable and action has been taken to ensure it should never happen again. It must be recognised that Larkfleet have behaved in an honourable manner in coming to a proposed settlement that ultimately protects the interest of local residents in the Oakham North area.

15. BACKGROUND PAPERS

Reports 238/2014, 80/2015, 259/2013, 184/2011 and 109/2012
S106 agreement.

16. APPENDICES

Appendix A - Timeline

Appendix B - Analysis of the S106 agreement

Exempt Appendix C - Baker Tilley investigation report

Exempt Appendix D – Further legal information

**A Large Print or Braille Version of this Report is
available upon request – Contact 01572 722577.**