# PLANNING COMMITTEE

## Agenda Item 113

Brighton & Hove City Council

Subject: Land at and adjacent to West Pier and 62-73 Kings

Road Arches, Kings Road, Brighton

Request to vary S106 Agreement signed in connection with planning permission BH2006/02369 for partial demolition of existing West Pier structure and construction of 183 metre high observation spire and

heritage centre (use class D2).

Date of Meeting: 22 September 2010

Report of: Director of Environment

Contact Officer: Name: Katherine Rawlins Tel: 29-2232

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Wards Affected: Regency

### 1. PURPOSE OF THE REPORT:

1.1 To consider a request for a variation to the Section 106 Agreement dated 16 October 2006 in connection with planning permission BH2006/02369, in order to defer the payment of financial contributions required under clauses 4.2, 4.4, 4.5 and 4.6 of the Section 106 Agreement.

### 2. RECOMMENDATION:

2.1 That the proposed variation be agreed and the payment of financial contributions in respect of public transport, pedestrian and vehicular signage and a Traffic Regulation Order is rephased until six months after the resumption of construction work on site.

### 3. BACKGROUND INFORMATION:

- 3.1 Members were minded to grant full planning permission and listed building consent in October 2006 for the partial demolition of the existing West Pier structure and the construction of a 183 metre high observation spire, known as i360, and heritage centre (use class D2).
- 3.2 Approval was subject to a Section 106 Obligation to secure the following financial contributions:
  - A contribution of £10,000 towards public transport improvements to be spent on transport initiatives, including real time bus information and accessible kerbs on Western Road;
  - A contribution of £50,000 towards traffic signage to be spent on directing motorists to appropriate routes to access i360;
  - A contribution of £5000 towards pedestrian signage;
  - A contribution of £2,000 towards a Traffic Regulation Order to prohibit coach parking on Kings Road, immediately outside the site

- and to secure additional disabled persons' car parking spaces in the vicinity;
- A contribution of £10,000 towards enhancement of lighting in the Regency Square car park subway.
- 3.3 The Agreement was completed on 16 October 2006 and planning permission and listed building consent granted on 25 and 24 October 2006 respectively.
- 3.4 Since planning and listed building consent was granted, the majority of pre-commencement planning and listed building consent conditions and planning obligations have been discharged, to the satisfaction of the Local Planning Authority. The Local Planning Authority received written notification of the developer's intention to commence advanced piling works, to comply with condition 7 of the listed building consent and clause 3.1 of the Section 106 Agreement, in September 2009. The advanced piling works duly commenced on 14 October 2009 at the foot of the stairs to the West of the Pier, within the curtilage of i360. The piling foundations are accepted as comprising a material operation, as defined under Section 56(4) of the Town and Country Planning Act. The Local Planning Authority is satisfied that the development may be treated as having lawfully commenced and the permission has been implemented.
- 3.5 The above financial contributions are to be paid to the Local Planning Authority 180 working days after the commencement of development. The developer has paid the subway lighting contribution for the Regency Square subway.

## 4. PROPOSAL:

4.1 The developer has written to the Council to request that payment of the above financial contributions, other than the Subway Lighting Contribution, be re-phased in order to complete the funding package for the development. The contributions would fund public transport improvements and enhance access to the attraction when complete. The construction period for the project is approximately 22 months.

#### 5. COMMENT:

- 5.1 The Local Planning Authority is satisfied that the development may be treated as having lawfully commenced. The substantive works for i360 (including site establishment, demolition and site clearance, main outfall sewer diversion, groundworks, tower and cladding, and passenger pod and drive control mechanisms) will proceed, pending finalisation of the funding package for the development.
- 5.2 All the contributions, with the exception of the subway lighting contribution, are intended to be implemented and are associated with the completed Development. These include signage directing motorists on appropriate routes through the City to the attraction; a Traffic Regulation Order to prohibit coach parking on Kings Road immediately outside the i360 site; public transport improvements to be spent on

transport initiatives, including real time bus information and accessible kerbs on Western Road. All of the improvements relate directly to the completed development and are intended to assist public access to i360. It would not be practical to implement these amenities at this stage of the project.

5.3 At the time of writing, there is no definitive date for the resumption of construction work on site. However, the developer is currently in discussions to secure the additional funding required in order to proceed with the substantive construction works on site and complete the project.

#### 6. FINANCIAL & OTHER IMPLICATIONS:

## 6.1 <u>Financial Implications:</u>

There are no direct financial implications in agreeing to the variation. The payments being deferred relate to the implementation of amenities associated with the completed development and therefore the deferral on the terms proposed does not present a financial risk for the council.

Finance Officer Consulted: James Hengeveld Date: 28.07.2010

## 6.2 Legal Implications:

S.106A Town and Country Planning Act 1990 provides that a s.106 obligation may be modified by agreement between the authority by whom the obligation is enforceable and the persons against whom the obligation is enforceable. This mechanism enables the Agreement to be modified to accommodate the rephasing of some payments due under the Agreement. The modification gives rise to no human rights implications.

Lawyer Consulted: Alison Gatherer Date: 20.08.2010

### 6.3 Equalities Implications:

None identified.

### 6.4 Sustainability Implications:

None identified.

## 6.5 Crime & Disorder Implications:

None identified.

## 6.6 Risk and Opportunity Management Implications:

None identified.

## 6.7 Corporate / Citywide Implications:

None identified.