

ENVIRONMENT CABINET MEMBER MEETING

Agenda Item 31

Brighton & Hove City Council

Subject:	Pool Valley Enhancement Scheme - Arbitration		
Date of Meeting:	4 July 2008		
Report of:	Director of Environment		
Contact Officer:	Name:	Tom Campbell	Tel: 29-3328
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Key Decision:	No	Forward Plan No. N/A	
Wards Affected:	Regency		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 The Cabinet Member is being asked to authorise officers to proceed with arbitration to secure the consent of relevant frontagers under Part VIIA of the Highways Act 1980 to the construction of a ticket office and associated facilities on public highway at Pool Valley Coach Station

2. RECOMMENDATIONS:

- 2.1 To authorise officers to initiate and partake in arbitration proceedings between the council and Imperial Property and the council and Brighton Coaches Limited in order to secure the consent of both parties, as required by Part VIIA of the Highways Act 1980, to the construction of a ticket office and associated facilities at Pool Valley Coach Station.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 On 13th September 2007 Environment Committee approved the design of the Pool Valley Enhancement Scheme and agreed to its construction. The scheme's objectives were to improve the safety and character of the area.
- 3.2 A key part of the improvements to the area will be a new ticket office building constructed by National Express. The building will be constructed on land designated as public highway. Environment Committee on 13th September 2007 and Policy & Resources Committee on 27th September agreed to approve the principle of the proposed lease of the highway surface and the building to National Express.

- 3.3 The council hoped to secure permission for National Express to construct the ticket office building on highways land by way of traffic orders under section 32 and section 38 of the Road Traffic Regulation Act 1984. However following an objection the council sought expert legal advice, which concluded that the council was unlikely to be able to obtain Orders under those in section 1.

4 CONSULTATION

- 4.1 Consultation not required.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The new ticket office will be funded by National Express and they will lease the surface of the highway and the structure from the council on a long lease at a peppercorn rent. It will cost £500 to appoint an arbitrator, which will be funded from within existing resources allocated to the scheme. Any award of costs against the council from the arbitration would be funded in the same way.

Finance Officer Consulted: Patrick Rice

Date: 16 June 2008

Legal Implications:

- 5.2 The council has power, by virtue of section 115E of the Highways Act 1980, to grant permission for the ticket office to be built on the public highway at Pool Valley Coach Station. However, as this building will be used for the production of income and for the purpose of providing advice or information the consent of relevant frontagers is required before such permission can be given. Consent may be given subject to any reasonable conditions, including a condition giving consent for a specified period of time or for the payment of a reasonable sum. Such consents must not be unreasonably withheld. Section 115J of the 1980 Act provides that any question as to whether consent is unreasonably withheld or is given subject to reasonable conditions shall be referred to and determined by an arbitrator.

Lawyer Consulted: Hilary Woodward

Date: 11 June 2008

Equalities Implications:

- 5.3 There are no equalities implications.

Sustainability Implications:

- 5.4 Delivery of the Pool Valley Enhancement Scheme forms part of the council's Local Transport Plan. The scheme will increase coach travel patronage and reduce the number of journeys made by car.

Crime & Disorder Implications:

- 5.5 A key objective of the Pool Valley Enhancement Scheme is to improve safety in the area. Enabling the ticket office building to be constructed will improve safety through the passive surveillance of staff and customers.

Risk and Opportunity Management Implications:

- 5.6 Officers' analysis of the issue suggests that the council has a good chance of securing a positive decision from the Arbitrator. However the decision of the Arbitrator cannot be predicted with certainty and the extent to which his finding will side with one party or the other is unknown and therefore a risk.

Corporate / Citywide Implications:

- 5.7 Delivery of the Pool Valley Enhancement Scheme forms part of the council's Local Transport Plan.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 Pursuing a stopping up Order under Section 257 of the Town and Country Planning Act 1990 was considered instead of using Part VIIA of the Highways Act 1980. However this approach was rejected as considerable delay was likely due to the requirement to hold a public inquiry if an objection was received. Additionally delay was likely as ownership of the subsoil is unknown.
- 6.2 As stated in paragraph 3.4 of the report orders under sections 32 and 38 of the Road Traffic Regulation Act 1984 were considered but not pursued following legal advice.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 As stated above, the consent of the frontagers with an interest is required before consent can be granted under section 115E of the 1980 Act. In this case the frontagers with an interest have been identified as:-

- Brighton & Hove Council
- Lace House
- Imperial Property
- Brighton Coaches Limited

- 7.2 Each party was approached in December 2007 and to date consent has been received from Brighton & Hove Council and Lace House. Discussions have been held with the remaining two parties although to date their consent has not been secured.

- 7.3 Insofar as consent has not been obtained from Brighton Coaches Limited and Imperial Property, and in order to take matters forward, the issue of the withholding of consent will need to go to arbitration for determination.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents In Members' Rooms:

1. None

Background Documents

1. Environment Committee minutes 13 September 2007.