

**Appointment to Enforcement Sub-Committee established
by a Memorandum of Understanding in relation to the
Developments at Brunswick Street and Union Street**

Final Decision-Maker	Audit, Governance and Standards Committee
Lead Head of Service/Lead Director	Mark Green, Director of Finance and Business Improvement
Lead Officer and Report Author	Mark Green, Director of Finance and Business Improvement
Classification	Public
Wards affected	All

Executive Summary

This report seeks to secure the appointment of an independent person to the Enforcement Sub-Committees established pursuant to Memorandums of Understanding which will oversee the delivery and implementation of the planning mitigation required for the Council's proposed developments at Brunswick Street and Union Street.

This report makes the following recommendations to this Committee:

1. That the Committee notes the requirement to appoint an independent person to the Enforcement Sub-Committees envisaged by the Brunswick Street and Union Street Memorandums of Understanding.
2. That the Committee agrees either the appointment of the independent person or the process for making an appointment set out in the report (as the case may be).

Timetable

Meeting	Date
Audit, Governance and Standards Committee	19 March 2018

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1. INTRODUCTION AND BACKGROUND

- 1.1 Maidstone Borough Council will shortly (circa June 2018) be commencing two developments to provide a mix of affordable homes, homes for sale and homes for rent at Brunswick Street and Union Street. It is therefore landowner, developer and local planning authority in relation to these developments.
- 1.2 The law allows a local planning authority to grant planning permission to itself. On 19 December 2017, the Council's Planning Committee resolved to grant planning permission for its proposed developments at Brunswick Street (planning ref. 17/504632/FULL) and Union Street (planning ref. 17/504428/FULL) subject to conditions and a legal agreement.
- 1.3 In such situations where the Council is landowner, developer and the enforcing planning authority, the Council cannot secure the required planning mitigation in the same way that it would be by a third party landowner/developer who has entered into a planning obligation with the Council pursuant to Section 106 of the Town & Country Planning Act 1990. Although this is a matter yet to be resolved by the courts, Leading Counsel has advised that a solution which best fits these circumstances is to have a Memorandum of Understanding ("MoU") secured pursuant to other statutory powers which reflects the protections envisaged by Section 106 and is made between the landowning function and the planning decision making function of the Council. Two such MoUs have now been drawn up for the proposed developments at Brunswick Street and Union Street respectively.
- 1.4 As part of the Council's requirements to be open, transparent and accountable each MoU proposes the establishment of an Enforcement Sub-Committee that will ensure that the planning mitigation secured by the MoU is realised.
- 1.5 The membership of this Committee requires an independent person who is neither an employee nor an elected Member of Maidstone Borough Council to sit on the Enforcement Sub-Committee.
- 1.6 It is envisaged that the Enforcement Sub-Committee will meet, as a minimum, on three occasions: on commencement of the developments; on first occupation; and on practical completion of the affordable housing.
- 1.7 The Enforcement Sub-Committee will be a stand-alone Committee, created purely for the purpose of monitoring compliance with the MoU, to resolve any disputes or differences and confirm the discharge of the planning obligations created by the MoU. It will not therefore report into any other Committee and will not form part of the wider Maidstone Borough Council committee structure.

1.8 It is appropriate, given the remit of the Audit Governance and Standards Committee, for it to appoint the independent person. The independent person must be:

- Neither an employee nor an elected Member of Maidstone Borough Council
- Experienced in working within the governance framework of public bodies
- Able to assimilate and effectively analyse information in order to reach sound judgements
- Able to demonstrate an ability to work effectively with others to achieve collective decisions, while having the strength of character to ensure independence of thought and judgement.

It is not anticipated that the independent person will require specialist technical planning skills or qualifications.

1.9 It is proposed that the position may be offered to a member of the Audit Governance and Standards Committee who meets the requirements in paragraph 1.8 above or, in the absence of such suitable person or such person not being agreeable to taking the role, to advertise the position. A short list for consideration by the Audit Governance and Standards Committee would then be drawn up by the Director of Finance and Business Improvement in consultation with the Chairman.

2. AVAILABLE OPTIONS

- 2.1 Option 1 - The Committee notes the requirement set out in this report and agrees either the appointment of the independent person or the process for appointing an independent person (as the case may be).
- 2.2 Option 2 - The Committee may propose alternative arrangements for appointing an independent person.

3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 3.1 Option 1 – It is recommended that the Committee notes the requirement set out in this report and agrees either the appointment of the independent person or the process for appointing an independent person (as the case may be).

4. RISK

- 4.1 The arrangements described in relation to the Brunswick Street and Union Street developments minimise the risk of non-compliance with planning requirements.
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5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 No public consultation is required. Professional advice has been obtained on the matters described in the report from Leading Counsel.
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6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 Once a process is agreed for appointing the independent person to the Enforcement Sub-Committee, this will be enacted and an appointment made either at the meeting or at the next available meeting of the Audit Governance and Standards Committee.
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7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	There are no direct impacts on corporate priorities.	Director of Finance and Business Improvement
Risk Management	The arrangements set out in this report themselves serve to minimise some of the risks associated with the Brunswick Street and Union Street developments.	Director of Finance and Business Improvement
Financial	Expenses incurred in appointing the independent person and reimbursing him/her can be met from within existing Planning Service budgets.	Director of Finance and Business Improvement
Staffing	None.	Director of Finance and Business Improvement
Legal	As advised pursuant to advice from Leading Counsel the arrangements set out in this report ensure	Team Leader (Planning) – Mid Kent Legal Services

	compliance with planning legislation and ensure that the Council is operating in an open, transparent and accountable manner.	
Privacy and Data Protection	No implications.	Director of Finance and Business Improvement
Equalities	No implications.	Director of Finance and Business Improvement

8. REPORT APPENDICES

None.

9. BACKGROUND PAPERS

Memorandums of Understanding for the developments at Brunswick Street and Union Street.