

# CHERWELL DISTRICT COUNCIL

## PLANNING COMMITTEE

1 OCTOBER 2009

### REPORT OF HEAD OF DEVELOPMENT CONTROL & MAJOR DEVELOPMENTS

#### ENFORCEMENT AND LEGAL ACTION RELATING TO THE FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS AS SET OUT WITHIN A S106 LEGAL AGREEMENT DATED 7 DECEMBER 2004 REQUIRING THE PROVISION OF COMMUNITY BUILDINGS AND AREAS OF PLAY AT:

#### THE FORMER CATTLE MARKET, MERTON STREET, BANBURY OX16 4RT

#### 1 Introduction and Purpose of Report

- 1.1 The purpose of this report is to bring to the attention of the Committee the continued failure of the developer to provide LAPs (Local Area for Play), LEAPs (Local Equipped Area for Play) and a NEAP (Neighbourhood Equipped Area for Play), a Community building with sports changing rooms and sports/playing pitches as required by the Legal Agreement tied to the land and development.

#### 2 Wards Affected

- 2.1 Grimsbury

#### 3 Effect on Policy

- 3.1 Saved Policy R12 of the Adopted Cherwell Local Plan 1996 requires the provision of appropriately equipped children's play areas in connection with all new housing developments. Saved Policy R14 of the Adopted Cherwell Local Plan 1996 also requires the provision of community buildings, secured through appropriate These policies relate to the need to ensure that the provision of amenities, facilities and infrastructure for housing development.

#### 4 Contact Officer(s)

- 4.1 Graham Wyatt (Ext. 1811)

#### 5 Brief Background

- 5.1 Planning permission was granted under application **01/00210/OUT** for a residential development, including live/work units, together with a community facility and alterations to existing access and construction of a new vehicular and pedestrian accesses.
- 5.2 This permission was the subject of a number of conditions and a legal agreement. As the application was outline, it required the submission of reserved matters applications for the development of the site.
- 5.3 The reserved matters applications sought a phased development of the site, which is still currently under construction. For information the following applications have been approved at the site. However, it is important to note that the legal agreement tied to the original outline application covers the entire site and subsequent developments and requires the provision of a number of community and public facilities. The timing for the provision of

these facilities is controlled through the agreement and the occupation of dwellings at the site.

- **01/00953/F** - Engineering works Comprising: 1) the raising of land levels with part of the Cattle Market site to provide for future development without risk for flooding. 2) the excavation of material to provide compensating flood storage volume on land.
- **04/02710/REM** - Reserved Matters (Outline 01/00210/OUT refers) Phase 1 Residential development and associated works for the development of 55 apartments and 21 houses in blocks 4 and 5. Total 76 units (as amended by plans and documents received in the Department on 10.03.05 and further modified by plans received in the Department on 24.06.05).
- **05/00070/REM** - Reserved matters (Outline 01/00210/OUT refers) Phase 1 Residential development and associated works for the development of 12 dwellings and 21 apartments for blocks 1 and 2. Total 33 units.
- **05/00244/F** - Sale centre on ground floor with 2 No. bedroom show room on first floor.
- **05/00425/F** - Ground floor sales centre with 2 No. bedroom showroom on first floor.
- **05/00768/REM** - Reserved matters (Outline 01/00210/OUT) Residential development for 13 No. dwelling units with associated parking and garaging.
- **05/01082/F** - Removal of Condition 6 from Outline Planning Permission 01/00210/OUT (highway works to the junction of Middleton Road, Merton Street and The Causeway).
- **05/01631/REM** - Reserved Matters Application (OUTLINE 01/00210/OUT refers) Residential development blocks 6, 7 and 8 for 78 No flats and 50 No dwellings (as amended by plans accompanying agent's letter received in the department on 28 September 2005, amended and amplified by plans accompanying agents letter received in the department on 3 November 2005 and additional site section plans received in the department on 14/12/05 and amended landscaping plans received 02/02/06 and further amended by plans accompanying architects letter received on the department on 23/02/06).
- **06/01364/REM** - Reserved Matters to Outline 01/00210/OUT - Community centre and changing rooms (as amended by plans received by the Council on 28.11.07).
- **06/02443/REM** - Reserved Matters ref. 01/00210/OUT - Phase 2 residential development and associated works for the development of 107 no. dwellings.

## **6 The Present Situation**

- 6.1 The Legal Agreement required the following community and public facilities to be provided during the phased development of the site:

### ***Sports Pitches/Playing Field***

The legal agreement requires at clauses 14.2 – 14.3 that the sports pitch must be completed (drainage construction, laying out and seeding and landscaping) and made available for public use, to the reasonable satisfaction of the District Council, no later than the occupation of the 300th dwelling. It is clear that the occupation of dwellings has been exceeded 300. However, the sports pitches still do not benefit from planning permission, are not acceptable for public use given defects to the surface (pernicious weeds) and landscaping has not been started/completed).

In addition to this, the power lines overhead have not been re-positioned away from the pitches. Although the power lines do not form part of the agreement, their current position render the pitches unfit for use. An agreement from the developer to request re-positioning by E-On has been reached, however, they remain in their original position.

### ***The Community Centre/Changing Rooms Pavilion***

The agreement requires under clause 12.3 and 18.3 the completion of the community centre/changing room pavilion, ready for adoption by the first occupation of the 200<sup>th</sup> dwelling on the development site. The building has been started yet has not been completed (only a few courses of bricks had been laid during my visit of 11th September 2009). The developer has not provided a timescale for the completion of the building that was originally to be ready for transfer to the Town Council in April 2009.

***Provision of LAPs, LEAPs and NEAPs (apart from small scale LAPs in the residential area)***

The legal agreement requires at clause 10.4 and 10.5 that the LAP or LEAP's should be laid out, landscaped and equipped, to the reasonable satisfaction of the District Council, prior to the occupation of more than 200 dwellings on the site and no more than 300 dwellings to be occupied unless the NEAP has also been laid out, equipped and landscaped, to the reasonable satisfaction of the District Council.

The LAP and LEAP's have not been provided at the site despite the occupation of more than 200 dwellings. The NEAP has been constructed and is currently available for public use. However, the NEAP has not been assessed and passed by RoSPA (Royal Society for the Prevention of Accidents). Until such time as the NEAP has been assessed and passed by RoSPA as acceptable, the Town Council are unable to take the play area into their ownership.

***The Urban Squares***

While the developer is not obliged to complete all the landscaping for Urban Squares until the removal of the show home complex, the LAP and LEAP within the Urban Squares should have been completed (see above) and the landscaping and equipping of the squares should have been agreed with the District Council (clause 11.2 of the Legal Agreement) prior to the commencement of the development. The developer is also in breach of clause 10.3 of the Agreement that required the laying out, landscaping and equipping of LAP's following commencement of construction of any adjacent dwelling.

The developer was made aware of the failure to comply with the terms of the legal agreement in letters from the Enforcement Section dated 25th November 2008 and 16th March 2009. Moreover, the letter dated 16th March 2009 made it very clear that the continued failure to adhere to the terms of the agreement would leave the Council with no option other than to take appropriate legal and /or enforcement action in respect of these outstanding matters to ensure their proper implementation. The developer was informed that this may include a court injunction to ensure compliance with the terms of the Legal Agreement, seeking to prevent occupation of further houses until the works are done.

**8 Financial Effect**

- 8.1 Financial Effects – It is anticipated that the costs of court proceedings could be met from the existing budgets. It is always a possibility that in civil proceedings as for an injunction an award of costs could be made against the Council, but the Head of Legal Democratic Services will advise on the strength of the Council's evidence and the reasonableness of its arguments to minimise this risk.

**9 Recommendation(s)**

**It is RECOMMENDED that the Committee resolves to authorise, subject to the Head of Legal and Democratic Services being satisfied as to the evidence, the application for legal proceedings by way of a court injunction to enforce the terms of the section 106 Agreement in respect of the non-compliance detailed above, such authorisation to**

**include the instituting and continuing of the proceedings to final judgement and any enforcement of the judgement. The application for the injunction would seek to prevent the occupation of further properties on the development until such time as the agreement has been complied with, as well as requirements to take positive steps to achieve compliance.**