

Planning Committee

Variation of Legal Agreement tied to Planning Permission 01/00210/OUT at The Former Cattle Market, Merton Street, Banbury

15 July 2010

Report of Head of Development Control and Major Developments

PURPOSE OF REPORT

To seek authorisation to allow the legal agreement attached to the development at the former Cattle Market, Merton Street, Banbury to be varied to reduce the commuted payments for LAPs at the site.

This report is public

Recommendations

The Planning Committee is recommended:

- (1) To authorise the Head of Legal and Democratic Services to vary the S106 agreement to reduce the commuted sum payment for the provision of LAPs at the site.

Executive Summary

Introduction

- 1.1 This report seeks to vary the terms of the legal agreement attached to the residential development at the site that is currently nearing completion. The proposal seeks to reduce the requirement for commuted sums to be payable for Local Areas of Play (LAPs) at the site and for the saving to be directed towards re-directing an existing power line that crosses the playing fields at the site.

Proposals

- 1.2 The proposal seeks to allow a reduction of the commuted sums payable to the District Council to the sum of £30, 969.30. The saving would be

used by the developer to allow the power cable that crosses the proposed playing fields to be diverted around the fields.

Conclusion

- 1.3 It is therefore requested that Members allow the variation of the legal agreement to include a reduction in the commuted payments towards the provision of LAPs at the site in order to allow the redirection of the power cable that currently crosses the proposed playing fields.

Background Information

- 2.1 **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.
- 2.2 **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).
- 2.3 **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.
- 2.4 **05/00244/F** - Sale centre on ground floor with 2 No. bedroom show room on first floor.
- 2.5 **05/00425/F** - Ground floor sales centre with 2 No. bedroom showroom on first floor.
- 2.6 **05/00768/REM** - Reserved matters (Outline 01/00210/OUT) Residential development for 13 No. dwelling units with associated parking and garaging.
- 2.7 **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).
- 2.8 **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).
- 2.9 **/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).

2.10 **06/02443/REM** - Reserved Matters ref. 01/00210/OUT - Phase 2 residential development and associated works for the development of 107 no. dwellings.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 Outline planning permission was granted in 2004 for a phased residential development at the site. As part of the permission the developer was required to provide a number of community facilities.
- 3.2 The facilities included a community centre, a Neighbourhood Equipped Area of Play (NEAP), two Local Equipped Areas of Play (LEAP) and a number of Local Areas of Play (LAPs). The NEAP and LEAPs have been provided and the community centre is ready to be transferred to the Council. However, there is a high voltage power line that crosses the playing fields that is considered a danger to users of the fields and is holding up the transfer.
- 3.3 The power line is in the ownership of E-On and they have agreed to redirect the line around the perimeter of the playing fields at a cost of approximately £30, 969.30.
- 3.4 The power line is not considered to be an issue by the developer and have queried the requirement to divert it as it was never raised as an issue when the location of the playing fields was considered. Our Landscape and Leisure Department have fears over the power line in relation to kite flying and sports.
- 3.5 As a result of our concerns the developer has agreed to have the power line diverted. However, the costs are prohibitive and should not be borne by the developer. Therefore, the developer has requested that the commuted payments for LAPs at the site be reduced and the monies directed to diverting the power line. LAPs will still be provided but the cost of the commuted sums when they are transferred to the Council would be reduced.
- 3.6 The legal agreement does not refer to a specific number of LAPs to be provided at the site. Rather it states that those LAPs that are provided, a commuted payment of £20, 100 for each LAP be paid to Council once the LAPs are transferred to the Council.
- 3.7 Works are on going at the site and a number of LAPs have already been provided. The landscaping scheme (which includes LAPs) is yet to be finalised. Therefore, the commuted sum would have to be discounted once the final landscaping scheme is agreed.
- 3.8 The following options have been identified. The approach in the recommendations is believed to be the best way forward

Option One Do nothing and allow the power cable to remain over the playing fields.

Option Two Fund the relocation of the power cable ourselves.

Option Three Reduce the commuted sums for the provision of LAPs at the site and direct the savings to the diversion of the power cable.

Implications

Financial: If the Section 106 Agreement is varied, this will result in the Council receiving a reduced Commuted Sum by £30, 969
 Comments checked by Eric Meadows, Service Accountant 01295 221552

Legal: Provided the legal agreement is varied to ensure that the cable is diverted there are no other legal implications
 Comments checked by Nigel Bell, Solicitor, 01295 221687

Risk Management: If members decide not to agree to the power line to be moved, there is a potential for children/young adults to be injured/killed if they fly kites or similar in the area.
 Comments checked by Rosemary Watts, Risk and Insurance Manager, 01295 221566

Wards Affected

Banbury: Grimsbury and Castle

Document Information

Appendix No	Title
None	None
Background Papers	
None	
Report Author	Graham Wyatt, Senior Planning Officer
Contact Information	01295 221811 graham.wyatt@Cherwell-dc.gov.uk