

Planning Committee

Enforcement and legal action relating to the failure to comply with the terms and conditions as set out within a S106 legal agreement dated 13 January 2006 requiring the provision of an area of play at land to the rear of 286-304 Broughton Road Banbury (known as Claypits Close)

15 July 2010

Report of Head of Development Control and Major Developments

PURPOSE OF REPORT

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), as required by the Legal Agreement entered into by the applicants at the time of planning permission being granted, and to allow the Committee to consider the need to take formal action to require compliance.

This report is public

Recommendations

The Planning Committee is recommended to

- (1) 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 equip and landscape the LAP to be reasonable satisfaction of the District Council. The LAP must also be assessed and passed by RoSPA (Royal Society for the Prevention of Accidents).

Background Information

- 2.1. Planning permission was granted under application **05/00173/OUT** for a residential development, with vehicular access on 16 January 2006

That permission was the subject of a number of conditions and a legal agreement. This outline planning permission required the submission of reserved matters application for the development of the site.

- 2.2. The reserved matters application **06/00376/REM** sought the erection of 18 no dwellings with access road and was granted on 16 June 2006.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1. The 18 detached dwellings have now been constructed and are all occupied. Whilst some play equipment has been installed together with landscaping it is without approval and is not fit for purpose.
- 3.2. The legal agreement requires that the LAP will not commence, until there has been submitted in writing and agreed with the District Council a scheme for the landscaping and equipping of the LAP which will include a timetable for carrying out the works and the planting. The LAP is required to be constructed as the same time as the adjacent dwellings.
- 3.3. The developer was made aware of the failure to comply with the terms of the legal agreement in letters and emails from the Major Development and Enforcement Section in January 2008. The letter dated 8 April 2010 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 action.
- 3.4 A difficulty that the Council has encountered with the provision of open space area is that developers give the completion and maintenance of public areas very low priority, particularly once they have finished selling houses in that area. The Council can be left chasing for many months and in some cases years to get areas satisfactorily completed and transferred into public ownership so the long term maintenance can be taken care of. These works are important not just to prevent areas becoming untidy but also to make sure that they are safe through regular inspection.
- 3.5 There is also a safety issue to consider with the lack of completion of this area. As it is not being monitored regularly and looked after, it is prone to damage and there could be a risk of children/people injuring themselves within this area.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

Option One Do nothing

Option Two Take legal action as recommended

Financial: The costs of legal action can be met within existing budgetary provision.

Comments checked by Eric Meadows, Service Accountant PH & E 01295 221552

Legal: Failure to take enforcement action could bring the planning system into disrepute.

Comments checked by Nigel Bell, Solicitor, 01295 221687

Risk Management: Head of Legal and Democratic service will assess the quality of the evidence available before the commencement of any action

Comments checked by Rosemary Watts, Risk & Insurance Manager, 01295 221566

Wards Affected

Banbury Ruscote

Document Information

Appendix No	Title
Appendix	None
Background Papers	
Site plan Planning permissions 05/00173/OUT and 06/00376/REM Section 106 legal agreement	
Report Author	Bob Duxbury (Team Leader (DC & MD))
Contact Information	01295 221821 Bob duxbury@Cherwell-dc.gov.uk