

**WIRRAL COUNCIL**  
**PLANNING COMMITTEE**  
**9TH AUGUST 2011**

<b>SUBJECT:</b>	<b><i>A SECTION 106 LEGAL AGREEMENT ATTACHED TO PLANNING PERMISSION OUT/1994/6791/D (GRANTED 07 OCTOBER 1997) REGARDING CHILDREN'S PLAY PROVISION.</i></b>
<b>WARD/S AFFECTED:</b>	<b><i>LEASOWE AND MORETON EAST</i></b>
<b>REPORT OF:</b>	<b><i>KEVIN ADDERLEY - INTERIM DIRECTOR OF CORPORATE SERVICES</i></b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b><i>COUNCILLOR PHIL DAVIES</i></b>
<b>KEY DECISION?</b>	<b><i>NO</i></b>

**1.0 EXECUTIVE SUMMARY**

1.1 The purpose of this report is:

- To inform members of the situation regarding a Section 106 Legal Agreement attached to planning permission OUT/1994/6791/D (granted 07 October 1997) regarding children's play provision.
- To seek members' agreement for the approach to be taken with regards the above S106 Agreement.

**2.0 RECOMMENDATION/S**

2.1 A decision is being sought from members whether the play area should be constructed as initially required by the S106 agreement. Alternative options that might be pursued are considered to include:

A The Local Planning Authority accepts the dedication of land and constructs a play area to the value of £56,000 (plus interest), on that portion of the site indicated at Appendix 1.

B The Local Planning Authority does not pursue construction of the play area, returning the developer's contribution of £56,000 (plus interest) to the current owner of the site. In such circumstance, it is not considered that the Council should accept dedication of the 3,600 square metres. The developer should be approached to agree variation of the S106 agreement to this effect.

**3.0 REASON/S FOR RECOMMENDATION/S**

3.1 To enable the Council to conclude on this matter, and respond to enquiries from members of the public, Ward councillors and the land owner and agents with clarity as to a way forward.

#### **4.0 BACKGROUND AND KEY ISSUES**

4.1 Outline planning permission was granted on the 7<sup>th</sup> October 1997 for the “Development of houses and bungalows including children’s play area and associated landscape works”. The grant of permission was subject to 16 no. planning conditions and a Section 106 legal agreement.

4.2 The developer (at that time Premier Brands, now Taylor Wimpey UK Ltd.) in signing the S106 Agreement, agreed to:

- Pay to the Council in two instalments the sum of fifty six thousand pounds (£56,000) in respect of the provision of the play area.
- Reserve an area of 3,600 metres squared within the application site for the layout of the play area - the precise location of the play area to be agreed in writing between the developer and the Council.
- Provide a surface water connection within the play area to the satisfaction of the Council.
- Dedicate to the Council as soon as possible after the first instalment of the payment (and not later than two months from the developer serving notice of intention to implement the planning permission) that area of land (3,600 metres squared) upon which the play area is to be sited.

4.3 In turn, the Council, in signing the S106 Agreement, covenanted that:

- It would use the payment to construct (at the location to be agreed) a play area, and equip and fence the play area as soon as possible after receipt of the second instalment of payment of the £56,000.

4.4 Payment of the two instalments of the required £56,000 was made by Wilcon Homes (the then owner) in August 2000 and October 2001. Reserved Matters applications were submitted and have been approved – DLS/1999/5633 (granted 15<sup>th</sup> June 1999) for the erection of 173 detached houses and associated garages, and DLS/2000/5377/D for the erection of 67 detached houses and associated garages (granted 19<sup>th</sup> May 2000).

4.5 The houses granted consent have been constructed at the site, Building Regulations records indicating that the last of the houses was completed in 2002.

4.6 Despite this, the play area has not been constructed at the site to date. There are a number of reasons for this:

- Whilst plans submitted with the Reserved Matters applications did indicate the broad location of the proposed play area, the precise

location of the said play area had not been agreed in writing between the developer and the Council. Nor had the developer sought to dedicate the land to the Council in fee simple absolute in possession.

- A surface water connection within the play area had not been provided by the developer to the satisfaction of the Council.
- There remained issues outstanding with regards planning conditions attached to the grant of permission OUT/1994/6791/D. In particular, conditions 4 and 11 in relation to the landscaped amenity areas within the site. Condition 11 required the retention of an open land drainage ditch across the site and the provision of an open water feature. The developer made applications in 1998 and 2008 (APP/1998/5825/D and APP/2008/5910 respectively), which successfully removed the requirement to comply with this condition. Discharge of condition 4, requiring agreement of the details of landscaping to be undertaken, was held up as a consequence, and has only latterly been discharged for the relevant part of the site (August 2010).
- Lastly, the broad location identified within Reserved Matters applications for the proposed play area included a number of mature willow trees. It became apparent, through tree surveys undertaken by the developer, that the health of the trees was poor and that they presented a health and safety risk. Agreement was reached with the Council's Tree Protection Officer and with local residents following consultation with the Forestry Commission, that the trees should be removed. Discharge of condition 4, requiring agreement of the details of landscaping to be undertaken, took account of this fact, additional tree planting being undertaken by the developer to mitigate for the loss of the trees.

4.7 In recent months, as noted, agreement has been reached on the precise location for the play area, and formal discharge of relevant planning conditions has been made. The area identified is detailed at Appendix 1 to this report. The developer has written to the Council to seek progress in dedicating the 3,600 square metres of land, so that they may make a decision over the remainder of the open amenity space. Condition 15 on the outline planning permission requires 60 square metres of publicly accessible greenspace per dwelling to be provided.

4.8 Through discussions with local residents and a ward councillor it has become apparent, however, that a number of local residents are opposed to the construction of a play area within the residential development. Councillor Ian Lewis has outlined that the reasons for this include the length of time that has elapsed, and that many people who have moved into the area since construction were not aware of the possibility of a children's play area nearby. Whilst the open space was purposely designed to enable provision of play equipment which would be well overlooked and to give 20m between the edge of the fenced activity area and the nearest residential property boundary

in accordance with the Council's normal requirements, concerns have been expressed regarding visual impact and the potential for nuisance from the potential facility.

- 4.9 It would be normal for the Director of Technical Services (Parks and Countryside) to undertake consultation before implementing a new play area, particularly given that maintenance of the play area would be funded through the Council (no commuted sum was secured through the s106 Agreement to cover the future maintenance of the area). Similarly, should planning permission be required for the equipment proposed, Planning Policy Guidance 17 (PPG17) outlines that before development is progressed on open space, there is a need to consult the local community and demonstrate that their proposals are widely supported by them. Given this, public opposition would be a material consideration in this instance.
- 4.10 By way of context, it is understood that there has been an investment of approximately £70,000 on the play area at Whiteheath Way, on the east side of Reeds Lane, which serves to some extent this development as a result of a successful application for funding by the Director of Technical Services. A smaller play area is also available at Farnworth Avenue, which was provided through s106 contributions associated with another development to the north.
- 4.11 That said, whilst these play areas are within easy walking distance of the houses at Reeds Lane/Ditton Lane, they are separated from the site by Reeds Lane and Ditton Lane (respectively), which do not benefit from crossing facilities at present. It should be noted that the principle of providing a play area on this site was negotiated and accepted as part of the original consent. Both of these facilities were already available, however, since a number of the new properties that would fall further than 200m from the above mentioned play areas at Whiteheath and Farnworth, in accordance with the standards set out in paragraphs 8.7 to 8.10 of the UDP and the normal requirements of UDP Policy GR6, the provision of an additional play area as part of the outline consent was required by the s106 Agreement. Members should also be advised that there might be an issue of precedent if it were accepted that properly negotiated and planned play areas, in compliance with established Council policy, would result in a negative impact on neighbour's amenity.
- 4.12 The site is now identified as being in flood zone 3a in the Council Strategic Flood Risk Assessment, where the policy aim in National Planning Policy PPS25 is to safeguard open space for flood storage and direct any additional housing to more sequentially preferable sites.
- 4.14 Given the above, a decision is being sought from members whether the play area should be constructed as initially required by the S106 agreement. Alternative options that might be pursued are considered to include:
- A The Local Planning Authority to accept the dedication of land and proceed with the intention to construct a play area to the value of £56,000 (plus interest), on that portion of the site indicated at Appendix 1.

B The Local Planning Authority does not pursue construction of the play area, returning the developer contribution of £56,000 (plus interest) to the current owner of the site. In such circumstance, it is not considered that the Council should accept dedication of the 3,600 square metres. The developer should be approached to agree variation of the S106 agreement to this effect.

## **5.0 RELEVANT RISKS**

5.1 Not relevant.

## **6.0 OTHER OPTIONS CONSIDERED**

6.1 Not relevant.

## **7.0 CONSULTATION**

7.1 No public consultation has been undertaken. This paper is to be circulated to members of the Planning Committee and ward councillors (Leasowe and Moreton East).

## **8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

8.1 The decision will be of interest to residents of the Leasowe and Moreton East ward.

## **9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

9.1 Option A would require the design and build of a play area by the Department of Technical Services and the Council to take on this site as dedicated in fee absolute, with associated ongoing maintenance resource implications. Option B would require the return of £56,000 currently held by the Council to the developer (plus interest).

9.2 Please note, interest has been calculated to be approximately £15,600, taking the total to be invested or returned to approximately £71,600 – refer to appendix 2 for details. It is understood that the average cost of constructing a LEAP (Local Equipment Area for Play) is roughly £80,000.

## **10.0 LEGAL IMPLICATIONS**

10.1 There are no specific Legal Implications, beyond the requirement to amend the s106 Agreement should Option B be pursued.

## **11.0 EQUALITIES IMPLICATIONS**

11.1 It is not considered that Equality Impact Assessment is required.

## **12.0 CARBON REDUCTION IMPLICATIONS**

12.1 It is not considered that the recommendations present Carbon Reduction implications.

## **13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

13.1 As detailed above.

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**APPENDICES**

Appendix 1: Map of identified location of play area, and of land to be dedicated  
Appendix 2: Interest calculation (approximate).

**REFERENCE MATERIAL**

Planning application OUT/1994/6791/D (granted 07 October 1997)

**SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
Planning Committee	07 October 1997.

Appendix 1:

Appendix 2:

NAME  
 DEVELOPMENT  
 DEPOSIT AMOUNT £ 56,000.00  
 DEPOSIT DATE 01/10/2001  
 REFUND AMOUNT £ 56,000.00  
 REFUND DATE TBC

INTEREST CALCULATION:

(INCLUDE DATE OF DEPOSIT, EXCLUDE DATE OF REFUND)

<u>PERIOD</u>		<u>DAYS</u>	<u>RATE %</u>	<u>INTEREST</u>
01/10/2001 to	31/03/2002	182	5.5	1,535.78
01/04/2002 to	03/02/2003	309	4	1,896.33
04/02/2003 to	04/02/2004	366	3.75	2,105.75
05/02/2004 to	05/05/2004	91	4	558.47
06/05/2004 to	09/06/2004	35	4.25	228.22
10/06/2004 to	04/08/2004	56	4.5	386.63
05/08/2004 to	03/08/2005	364	4.750	2,652.71
04/08/2005 to	02/08/2006	364	4.500	2,513.10
03/08/2006 to	08/11/2006	98	4.750	714.19
09/11/2006 to	10/01/2007	63	5.000	483.29
11/01/2007 to	09/05/2007	119	5.250	958.52
10/05/2007 to	04/07/2007	56	5.500	472.55
05/07/2007 to	05/12/2007	154	5.750	1,358.58
06/12/2007 to	06/02/2008	63	5.500	531.62
07/02/2008 to	09/04/2008	63	5.250	507.45
10/04/2008 to	07/10/2008	181	5.000	1,388.49
08/10/2008 to	05/11/2008	29	4.500	200.22
06/11/2008 to	03/12/2008	28	3.000	128.88
04/12/2008 to	07/01/2009	35	2.000	107.40
08/01/2009 to	04/02/2009	28	1.500	64.44
05/01/2009 to	04/03/2009	59	1.000	90.52
05/03/2009 to	26/07/2011	874	0.500	670.47
TOTAL INTEREST				19,553.61
LESS TAX AT 20%				3,910.72
NET INTEREST DUE				<u>15,642.89</u>

CODING	00000.208T.T1001.0000.0000.01	56,000.00
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	TOTAL PAYMENT DUE	<u>71,642.89</u>

