

Planning Committee - 15 December 2010

Report of the Head of Legal and Democratic Services

Miscellaneous Enforcement Item

1. Background

At a meeting of the Planning Committee on 28 July 2004 the Committee resolved to grant planning permission for a mixed use development at the former Taunton Trading Estate at Norton Fitzwarren subject the completion of a S106 agreement covering various issues. The agreement was completed in March 2006 following considerable negotiation.

2. The S106 Agreement

One of the requirements was that an area of 2.25 hectares of land in the vicinity of Stembridge Way was to be offered for transfer to the Council at nil cost with good title prior to the first occupation of any dwelling house on the main site. The land was to provide a new playing field.

3. The Present Position

The responsibility for complying with the terms of the agreement lies with St Modwen although they clearly have a contractual relationship with David Wilson Homes who are building the residential units. The Council has been in touch with solicitors acting for St Modwen for about the last eighteen months seeking details of the title to the land at Stembridge Way so that a transfer can be completed. There have been various problems relating to third party interests and a right of way, but little progress has apparently been made in resolving these matters. The first occupation on the main site has now taken place.

The provision of the playing field is a key obligation under the agreement and the Parish Council and local residents are very concerned that the land has not yet been transferred to the Council.

4 St Modwen's position.

I have been writing to St Modwen since May of this year reminding them of their obligation under the agreement and on the 30 November following the occupation of the first house I wrote advising that I would be reporting the matter to this Committee with a view to enforcement.

St Modwen do not at this stage have direct control of the land to be transferred although they do have contractual arrangements in place with two other parties. They are hopeful that the land transfer will be completed shortly and are now putting pressure on the other parties to expedite the various transactions prior to the land transferring to this Council.

5 Consideration

The S106 agreement is clearly being breached and it seems likely that now that occupation has started on site further dwellings will be completed and occupied. If the matter of the transfer of the land is allowed to drag on, the Council's leverage in securing the transfer of the Playing Field land will be increasingly weakened. The Council could safeguard its position by seeking an injunction to stop any further occupation of properties prior to transfer of the land.

From the latest correspondence it appears that the transfer may be completed within the near future, but there is no certainty as to this.

RECOMMENDATION

It is recommended that the Solicitor to the Council be authorised to seek an injunction preventing further occupation of residential properties on the former Taunton Trading Estate site if the transfer of the playing field land is not completed .

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