

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	RIVERDENE PLACE, WHITWORTH CRESCENT – BREACH OF THE SECTION 106 AGREEMENT
DATE OF DECISION:	23 NOVEMBER 2010
REPORT OF:	PLANNING AND DEVELOPMENT MANAGER
STATEMENT OF CONFIDENTIALITY	
Not applicable	

BRIEF SUMMARY

Authority is sought to vary the Section 106 Agreement to allow the gate located in Whitworth Crescent to be shut between the hours of 18:00 hours and 07:00 hours each day. The Dell Wharf Residents Association should cover all costs involved in obtaining a deed of variation in respect of the Section 106 Agreement.

RECOMMENDATIONS:

- (i) That the Solicitor to the Council be authorised to vary the clause 11 which relates to the breach of the Section 106 Agreement dated 5th August 1993 between Southampton City Council and Bellwinch Homes Limited. The agreement relates to planning application number 910905/4297/E.
- (ii) In the event of agreement to vary the clause 11 within 2 months of the date of this meeting, the Local Planning Authority would not find it expedient to prosecute the current breach.
- (iii) If however, the deed of variation to clause 11 is not concluded within 2 months of the date of this meeting and the gate remains permanently locked shut, authority be given to the City Solicitor to prosecute those responsible for the gate being kept locked shut.

REASONS FOR REPORT RECOMMENDATIONS

- 1 The closure of the pedestrian route via the gated area at hours of darkness is contrary to the Section 106 Agreement signed 5th August 1993. However, the public is still able to reach the pedestrian route to the riverside walkway via the main road into Riverdene Place. Verbal complaints about the continued breach continue to be received by Officers.

DETAIL (Including consultation carried out)

- 2 Planning permission was granted in 1993 to redevelop the site to provide 7 blocks of 82 apartments (11x1 bed, 71x2 bed) and 2x4 bed houses and associated car parking.
- 3 The permission was subject to a Section 106 Agreement with clauses including one that related to access to the waterfront to the public at large.
- 4 Clause 11 states the following:- The owner hereby grants for a term expiring simultaneously with the term granted by the lease a right of passage and repassage at all times over the land coloured yellow on plan B attached hereto (as part of **Appendix 1**) to the public at large and the freeholder and the Commissioners give their consent thereto. For the avoidance of doubt, such use is only permitted by the virtue of the rights granted hereby and will not be exercised by the public as of right.

- 5 During November 2005, a complaint was received by a member of the public who was attempting to gain access to the waterfront via Whitworth Crescent. The member of public advised that black iron railings had been erected on the boundary of the site at Riverdene Place which prevents public access to the waterfront from Whitworth Crescent.
- 6 On 5 January 2006, an Enforcement Officer wrote to the Dell Wharf Residents Society's Administrator, Mr Jeff Etherington, to advise that the erection of the black iron railings preventing access is in breach of the Section 106 legal agreement between Southampton City Council and Bellwinch Homes Limited.
- 7 On 9 January 2006, Mr Etherington wrote to the Local Planning Authority requesting further particulars regarding the clause 11 attached to the Section 106 Agreement.
- 8 On 7 February 2006, an Enforcement Officer wrote to Mr Etherington detailing the facts surrounding clause 11 relating to the public access to the waterfront. Mr Etherington was advised to create an opening within the railings to create public access to the waterfront.
- 9 On 16 March 2006, no works had taken place on site to create an opening in the railings. An Enforcement Officer wrote to both the Society's Secretary, Mr Ridge and the Administrator, Mr Hetherington to advise that the matter would now be referred to the Planning and Rights of Way Panel meeting to be heard on 27 March 2006.
- 10 At the Planning and Rights of Way Panel meeting on 27 March 2006, the Panel agreed that the Solicitor to the Council be authorised to commence proceedings in the Courts in respect of a breach of the Section 106 Agreement dated 5 August 1993 between Southampton City Council and Bellwinch Homes Limited in relation to Planning Application Number 910905/4297/E.
- 11 On 10 April 2006, an Enforcement Officer visited the site and confirmed that the railings had been altered and that a gate had been created to provide the public access to the waterfront.
- 12 On 11 April 2006, an Enforcement Officer wrote to Mr Etherington to advise that the matter would no longer be passed to the Council's Legal Services Department due to the breach now being resolved. Mr Etherington was advised that access to the waterfront must be retained at all times.
- 13 In June 2007, the Local Planning Authority received a complaint to advise that the gate installed in April 2006 had been padlocked shut to prevent access (see **Appendix 2**).
- 14 On 29 June 2007, an Enforcement Officer wrote to the Society's Secretary and Administrator to advise that the gate had been locked preventing the public access to the waterfront.

- 15 On 6 July 2007, an Enforcement Officer received an email from the Society's Secretary Mr Ridge, to advise that he was not aware of the gate being locked and that he had now determined that the lock was placed on the gate by the Society's Administrator Mr Etherington. Mr Ridge confirmed that the lock had now been removed creating access again.
- 16 An Enforcement Officer visited the site on 10 July 2007 and confirmed that the lock had been removed.
- 17 On 15 July 2008, an Enforcement Officer was made aware that the gate had been locked shut again.
- 18 An Enforcement Officer visited the site and confirmed that there was no padlock on the gate and that the gate was open.
- 19 On 28 January 2009, the Local Planning Authority was made aware that the gate remains permanently locked preventing the public access.
- 20 Further correspondence has been exchanged between the Council's Solicitor, Enforcement department and Councillors but the gate remains locked and further verbal complaints continue to be received by Officer on this breach.
- 21 Whereas John Denham MP has written to express concerns on behalf of residents who assert anti-social behaviour occurs if this gate is not kept locked shut, he also understands the desirability of allowing law-abiding members of the public to gain access to the River Itchen frontage.
- 22 It has therefore been decided to bring this matter before the Panel to debate the issue and reach a lasting solution. Officers recommend that the residents should apply to secure the variation of the S.106 in the terms set out above and complete that process within 2 months of the date of this meeting at their own expense. If that is achieved, it is considered that it would not be expedient to prosecute a technical breach arising from the gate being locked shut between 18.00-07.00 hours on a daily basis.
- 23 If however, no such variation to the S.106 is secured within that time frame and the gate remains locked shut, authority is sought for the City Solicitor to prosecute those responsible for the breach.

RESOURCE IMPLICATIONS

Capital/Revenue

24 None.

Property/Other

25 None

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

26 Town Planning and Compulsory Purchase Act 2004

Other Legal Implications:

27 None

POLICY FRAMEWORK IMPLICATIONS

28 The report and recommendations are consistent with policies of the City of Southampton Local Plan 2006.

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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Copy of Section 106 Agreement dated 05 August 1993 including Map B
2.	Photographic evidence of the locked gate.

Documents In Members' Rooms

1.	None
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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
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Other Background Documents

Title of Background Paper(s) - None

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

Integrated Impact Assessment and Other Background documents available for inspection at: Civic Centre, Civic Centre Way

WARDS/COMMUNITIES AFFECTED:	Bitterne Park Ward
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