

Wiltshire Council

Council

12th May 2015

Public Participation

Statement from Mr Michael Sprules, - Chairperson RADAR
(Residents Against Development Affecting Recreational Land)

Item No. 7

Statement :-

**“Digger Dances” as Westinghouse Bowls Clubhouse Falls leaving a “Deficit”
in “Sport Provision” at the West End of Chippenham.**

Cabinet Members and attending Elected Members

It is with a heavy heart that I, once again, write another Statement to Full Council today. Cabinet Members and Elected Members will be aware that I have spoken and submitted Statements at Cabinet many times, over the past five years, in regard to my concerns over Westinghouse Sports Ground and the potential for this **“Existing Sport Provision”** to be **“Lost”** prior to being provided elsewhere.

Indeed, at the last Full Council Meeting, held on 20th January 2015, I submitted a Statement to Full Council which demonstrated a potential for the **“Loss”** of **“Existing Sport Provision”**, at the West End of Chippenham, following **“Archaeological Excavations”** at Westinghouse Sports Ground. Therefore, in light of more recent events, at the Ground, I have resubmitted this Statement (*Included with this Statement - Attachment 1*) for the attention of Cabinet Members and attending Elected Members.

At the time of the last Meeting of Full Council, an application had been submitted to Wiltshire Council, by the Agent, acting on behalf of the Developer, which attempted to seek a **“Variation”** to **“Condition 5” (Parking)**, of the Westinghouse Sports Ground application (14/11864/VAR).

Having raised my concerns with the Case Officer, I was saddened to read the Officer's Report recommending permission be granted by the Northern Area Planning Committee. However, I had grave concerns over the contents of the report. Indeed, I took time to raise these grave concerns with both Leader of the Council, Councillor Jane Scott, as well as Cabinet Member for Strategic Planning, Councillor Toby Sturgis.

In the Officer's Report, the Case Officer appeared to not only re-write previously **“Approved Conditions”** but also appeared to suggest **“Extending the Planning Permission”**, by a further three years, whilst at the same time **“Omitting”** the previously approved **“Westinghouse Sport Mitigation Package”**. This was an **“Omission”** that had not gone unnoticed by Sport England, who sent an **“Impressively Assertive Solicitor's Letter”** (*Included with this Statement - Attachment 2*) to Wiltshire Council, in order to make sure that the **“Omission”** of the **“Westinghouse Sports Mitigation Package”** would be corrected.

Furthermore, National Planning Policy appeared to suggest that seeking to “**Extend the Time Limit**” of a planning permission using a “**Variation of Condition**” to achieve this was not considered as acceptable in planning terms. Indeed, after some extensive searching of the NPPF Guidance, I finally found the following Planning Legislation :

“Are there any restrictions on what section 73 can be used for?”

Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made.

Revision date: 06 03 2014”

Having found this NPPF Legislation, I wrote to all Members of the **Northern Area Planning Committee** to make them aware of the existence of this Legislation, together with a letter from the then Minister for Sport, Helen Grant (*Included with this Statement – Attachment 3*). I was, therefore, most heartened to discover that this application, for “**Variation**” to “**Condition 5**”, of the Westinghouse Sports Ground application had been “**Withdrawn**”.

Sadly, as a result of the Applicant having “**Withdrawn**” their application, a letter was sent to Local Residents’ to give “**Notice of Intent to Demolish Buildings**” at Westinghouse Sports Ground.

As promised, a “**Hi-Mac Digger**” was delivered at Westinghouse Sports Ground in late March 2015, Within a few days of delivery, Westinghouse Bowls Clubhouse was “**Demolished**”, and so the “**Loss**” of much needed “**Sport Provision**” at the West End of Chippenham had now begun.

With the “**Demolition**” of Westinghouse Bowls Clubhouse complete, a new issue came to light, in regard to “**Planning Enforcement**”. The Section 106 Agreement that accompanies the Decision Notice for Westinghouse Sports Ground makes it clear that “**Pre-Commencement – Sport Provision**”, that included “**New Sport Pitches**”, for both “**Rugby**” and “**Cricket**”, should have been well under construction prior to any “**Demolition**” of “**Existing Sport Facilities**” at Westinghouse Sports Ground.

With this in mind, the Right Hon. Duncan Hames, Incumbent Member of Parliament for Chippenham (*Correct at the time of writing this Statement*), brought up the issue of “**Planning Enforcement**”, at Parliament, on 16th March 2015, just prior to Dissolution.

The then Planning Minister, Brandon Lewis, gave the following response :

“The Hon. Gentleman makes an important point. It is vital that enforcement is dealt with properly to give people confidence that the planning system will deliver the right results”.

This recent “**Response**” given by the then Planning Minister has not gone unnoticed by other Councils in the United Kingdom.

In a recent landmark case, on 29th April 2015, Bath and North East Somerset Council ordered a Developer to “**Bulldoze**” a new apartment block because it says that the Developer has committed a “**Breach of Planning Control**” due to the building being only four feet wider than approved.

Similarly, on 5th May 2015, Westminster Council issued an “**Unprecedented Enforcement Notice**” to the firm that owns the Carlton Tavern, in Maida Vale, London, requiring it to “**Recreate in Facsimile the Building as it stood Immediately prior to its Demolition**”. This was due to the fact that the Developer had “**Demolished**” the building without seeking permission to do so.

In light of the “**Response**”, given by the then Minister for Planning, Brandon Lewis, I contacted Wiltshire Council’s Head Planning Enforcement Officer, in regard to “**Enforcement of the Section 106 Agreement**” for the Westinghouse Sports Ground application.

Sadly, however, I was told that, unless the Officer concerned with that application contacted “**Planning Enforcement**” directly, **NO ACTION** would be taken to “**Enforce**”.

As the Developer appeared keen to “**Keep the Permission Live**” and gain “**Commencement of Development**”, at Westinghouse Sports Ground, prior to the expiration date of 28th March 2015, some “**Extraordinary Lengths**” were taken to achieve this task .

These included a “**Road To Nowhere**” as well as “**Demolition**” of the Westinghouse Bowls Clubhouse. However, in their haste to achieve “**Commencement of Development**” the Agent and Developer have overlooked the Section 106 “**Definition**” of “**Commencement of Development**”.

In the Section 106 Agreement, the “**Definition**” of “**Commencement of Development**” is as follows :

Clause 1 Definitions

The definitions and rules of interpretation in this clause apply in this Deed :

“Commencement of Development”

The date on which any **material operation** as defined in Section 56(4) of the Act forming part of the **Development begins** to be carried out with the **exception of** :

- (a) investigation of ground conditions and remedial work ;
- (b) archaeological work ;
- (c) **demolition** ;
- (d) erection of hoardings ; and
- (e) the development of the **Blue** Land and the **Orange** Land.

“The Blue Land”

All that land and premises known as 35 Park Avenue Chippenham Wiltshire SN14 0HB shown edged **Blue** on Plan A and registered at the Land Registry under title number WT11173.

“The Orange Land”

All that land and premises known as 33 Park Avenue Chippenham Wiltshire SN14 0HB shown edged **Orange** on Plan A and registered at the Land Registry under title number WT116468.

In light of the above information, it would appear that any attempt by the Agent and Developer to “**Keep this Permission as Live**” should have failed. However, as the Section 106 Agreement was **NOT READ** in conjunction with the **Decision Notice**, then it seems clear that any “**Commencement of Development**”, in this instance, cannot be considered as “**Sound**” or “**Robust**”, as to do so goes against the “**Terms**” held within the Section 106 Agreement itself. Indeed, if this “**Commencement of Development**” continues to stand, then there is the potential for the Section 106 Agreement to be “**Open to Challenge**” and, therefore, in itself, to be considered as no longer “**Sound**” or “**Robust**”.

This is reinforced by a response given to a question that I originally asked at Cabinet back on 19th June 2012. This response reads as follows :

“The planning permissions for residential development on the Westinghouse Sports Club site and the associated Chippenham Rugby Club site have been granted. Both were granted permission on 28th March 2012 following the signing (and sealing) of a legal agreement under s106 of the Town and Country Planning Act 1990. This process was completed in accordance with the resolution of the Strategic Planning Committee on 16th November 2011. Accordingly, there is now no possibility of introducing additional planning conditions into either planning permission, Grampian or otherwise.

The aforementioned legal agreement, inter alia, requires the provision of sports facilities at the Chippenham Rugby Club site. Such “Sports Facilities Mitigation Measures” are defined within the agreement as including both cricket related facilities and enhancements to the existing rugby facilities. The Agreement also sets out a programme for the completion of the sports facilities and in doing so places upon the developer periodic constraints throughout the construction phase, as well as restricting the occupation of the new residential development. This is, in effect, to create a financial compulsion for the developers to provide the new sports facilities throughout the course of the development of the Westinghouse site. In particular, the rugby changing room extension, the cricket wicket, floodlighting and rugby pitch improvements are all scheduled to be commenced prior to any work starting upon the Westinghouse site, with all new sports facilities at the Rugby Club site to be completed prior to occupation of any new dwelling at the Westinghouse site.”

In light of this response from Cabinet, dated 19th June 2012, together with a lack of willingness, on the part of Planning Enforcement, to “Enforce”, in this instance, I am rapidly coming to the conclusion that it is now imperative that Wiltshire Council's own **Scrutiny Committee** investigates this whole application to ascertain the facts behind how the very fabric of this particular Section 106 Agreement could be so undermined.

With other local Sports Clubs expressing interest in using Westinghouse Sports Ground as an “Expansion” to their existing “Sport Facilities”, it is clear that there is already a “Deficit” in “Sport Provision” at Chippenham. Indeed, the need for Westinghouse Sports Ground to continue to be used as a “Sports Facility”, was originally identified in 2006 in the “North Wiltshire Local Development Framework - Core Strategy – Issues and Options December 2005 - Consultation Comments - Questionnaire Results & Council's Responses”, well before any application had been submitted for residential development of the Ground, a point that has not been lost by Wiltshire Council's own Leisure Strategy Team.

At the moment, I continue to work with the Estates Manager, at Siemens, Mr. David Boakes, with a view to tenanting Westinghouse Sports Ground to other sports clubs.

Moving forward, may I, once again, reiterate the sentiment that Cabinet Members and Elected Members continue to work with myself and all other parties to facilitate a solution to this issue that will, ultimately, be satisfactory to Mr. David Boakes, Estates Manager, Siemens U.K., Mr. Clive Wiltshire – Managing Director of Linden Homes (Western) and, finally, a solution that will be to the benefit of Local Sports Clubs and the Local Residents of Chippenham.

May I, once again, thank Cabinet Members and, indeed, Elected Members for allowing me to submit this statement.