

Agenda Item 7

Development Services
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Report

Subject : Land at Downton Road and Proposed Swap of Community Land
Report to : City Area Committee
Date : Thursday 5 April 2007
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1.0 Report Summary:

As part of the original Westbury Homes housing development at Downton Road, a s106 Agreement was entered into in 1998 by the developers, which provided a specific area of land for a community hall facility (plus associated open space and parking).

Members will recall that in 2005, members of the City Area Committee resolved to approved an outline application for up to 130 houses on land allocated adjacent to Downton Road (between the park and ride and existing housing development), subject to a S106 legal agreement. This application scheme conflicts with the terms of the 1998 S106 legal agreement, in that it envisages the relocation of the community hall land, and ancillary open space and car parking to a different location to facilitate a new shop.

Consequently, the developers Westbury (now Persimmon) Homes have requested that the terms of a 1998 S106 legal agreement be varied, to allow the development of a community centre, shop and housing development as shown as part of the 2005 outline planning application S/05/980.

As City Area Committee resolved to grant the 1995 application and agree with the terms of the associated 1998 legal agreement, the authority of City Area Committee is once again required to the vary terms of that legal agreement.



Awarded in:
Housing Services
Waste and Recycling Services



2.0 Background:

As part of the original Westbury Homes development at Downton Road (application ref S/95/1302), the developers entered into a Section 106 legal agreement. As well as containing all the usual requirements, the legal agreement also provided monies in the form of a commuted sum towards the provision of a future community hall on a piece of land to the east of that original development. The land, shown edged in black on the attached plan, was transferred to the Council as landowner in January 2003 for community purposes as part of a Section 106 Agreement in respect of the original Rowbarrow development, and transfer of that land to Salisbury District Council (as land owner). The total area of the site is about 4256 sq meters.

The Community Association obtained planning consent in 2003 for a Community Hall on the land which complies with the terms of the 1998 agreement. However, development has not yet commenced (as it is the intention of the East Harnham Community Association, with the agreement of the developer and the Council as planning authority to construct a different hall on the adjacent site).

In 2005, Members will recall that a development brief was agreed for the housing site adjacent to the community land, allocated in the local plan under policy H2F. The policy states that as part of the development a shop will be provided. The consultation draft of the brief stated that the Council and Westbury Homes were commissioning an independent consultant to assess whether a shop is financially viable in this location. The response from the consultant was that a shop is expected to be financially viable, and that the preferred location for the shop would be the location of the proposed Community Hall. This location makes sense in commercial terms, as it will be a prominent location for passing trade.

As a result of the above, Members will recall that as part of the more recent outline application for the 130 dwellings submitted in 2005 (ref S/05/980), a new retail unit was indeed shown in this preferred location close to the main road, with a revised site for a community centre shown on adjacent land. Members subsequently resolved to approve this outline planning application in 2005, subject to a legal agreement. One of the Heads of Terms of the associated legal agreement refers to the need for a transfer of land to be undertaken between the developers and the landowner (the Council) to facilitate siting of the shop and the community centre, before any development can commence.

There is therefore a conflict in a legal sense between the terms of the 1998 S106 legal agreement, and the now revised siting of the community hall and other facilities as suggested by the more recent 2005 application. The developers therefore have to apply to this Authority to vary the terms of the 1998 legal agreement in order to resolve this conflict. Hence this report.

(Whilst not a planning matter, Members of the City Area Committee should note that in order for the shop to be located on the site of the Community Hall, lengthy discussions have taken place between the Community Association, officers of the Council and Westbury. The result of these discussions has been that there needs to be a "land swap" between the Council (as landowner) and Westbury (now Persimmon) Homes, so that the part of the Community Hall land currently owned by the Council will be transferred back to Westbury (Persimmon) Homes, and an equivalent area of land will be given back to the Council for community purposes.

Plan B shows the area of land to be swapped with the council, which is a like for like swap, resulting in the new community hall land being 4256 sq m.

Original community hall site (Plan A)	Land to be swapped Plan B, parcel C	Area of remaining community land plan B parcel A	New area for community hall Parcel C + Parcel A
4256 Sq m	2683 Sq m	1573 Sq m	4256Sq m
Difference			0 sq m

(all the land (parcels A,C,D,E) are either currently in Council ownership, or will be transferred to the Authority as part of the housing development, therefore the small parcel of community land adjacent to parcel E, will not be cut off from other public land).

These details of the land swap will be debated by Cabinet on 28th March 2007, the outcome of which will be reported to members of the City Area for background information purposes. However, whether or not the land owner (the Council) agrees to the land swap is **not a planning consideration** in this particular case. Members of the city area (planning) committee must only consider the planning implications of a change to the wording of clause 10 of the 1998 Agreement.

3. Recommendation:

If members choose to agree the above variation to the terms of the 1998 S106 Agreement as suggested, this will facilitate the relocation of the Community Hall, the associated recreational land and car parking, and the retail unit as envisaged by the recent outline planning application. This move also benefits the future operational usage of the hall, as it facilitates access to open land that could be used for summer fetes on etc. In officers opinion, such a change would therefore have positive outcomes in a planning sense.

If, however, members do not accept the varying of the terms of the 1998 S106 Agreement, then the developers of the new housing site will not be able to commence the 2005 outline planning permission, and also be in breach of the terms of the 1998 Agreement.

It is therefore requested that members of City Area Committee agree to delegate to officers the details of the varying of the terms of the 1998 legal agreement in order to achieve the desired outcome of facilitating the relocation of the community hall and recreational land and the proposed shop land, as shown on the submitted plans relating to application S/05/980.

Such a change would not fetter or otherwise prejudice any decision made by members regards any future application for a community hall on the relocated site.

4. Background Papers:

Written request from Persimmon Homes relating to change of wording of 1998 legal agreement. 1998 Legal Agreement associated with planning application S/95/1302. Adopted Development Brief and outline planning application S/2005/980

5. Implications:

Financial : None arising from this report
Legal : None arising from this report
Human Rights : None arising from this report
Personnel : None arising from this report
Community Safety : None arising from this report
Environmental : None arising from this report
Council's Core Values: Excellent Service; Fairness and Equality; open, learning Council and a willing partner; communicating with the public; supporting the disadvantaged.
Wards Affected : East Harnham