

Title **Planning enforcement investigation into the compliance with approved plans and conditions in respect of a terrace of five dwellings at Victory Fields (the former gasworks site), Frome Road, Bradford on Avon.**

Reporting Officer **David Hubbard – Development Control Manager**

Purpose

To advise the committee about progress in the above planning enforcement case.

Background

At its meeting of 13th June the Scrutiny Committee considered a report about the outcome of the Ombudsman's Investigation into the handling of a planning application for the erection of a terrace of five dwellings at the above site.

The Chairman of Scrutiny Committee presented the recommendations of Scrutiny Committee to Cabinet at its meeting of 4th July (Agenda item 4).

Cabinet resolved (minute 105) that:

1. The Council issues a formal apology for the maladministration that has occurred
2. A report be made to the Planning Committee on:
 - The outstanding enforcement issues and actions to be taken to resolve them
 - The outstanding landscaping condition on the development and how it should be implemented.

A formal letter of apology has been sent to the chair of Bradford on Avon Preservation Trust and has been copied to the editor of the Wiltshire Times

A cheque for £2000 has been passed to the Preservation Trust which in line with the ombudsman's report has to be 'spent for the purpose of a project benefiting the Bradford on Avon conservation area'. The chair of the Preservation Trust has replied that the Trust's Council of Management will be asked to consider how the money should be used. He will advise of the outcome in due course.

This report addresses point two of Cabinet's resolution.

Key Issues

The development is largely complete. All five dwellings have been sold and are occupied. The external areas of the site which are in the main communal remain in the ownership of and are managed by the developer.

Four areas of non compliance with plans and conditions have been identified:

- A panel on the north wall of the building was coloured white when the approved plans showed light grey.
- Condition 4 in respect of landscaping

- Condition 5 in respect of pedestrian and vehicle gates.
- Condition 7 in respect of off site highways works involving the relocation of on street parking to the opposite side of Frome Road

Any action the council the council may wish to take would involve all parties with an interest in the land. This will include the owners of the five dwellings and the developers as owners of the communal areas of the site (i.e. - the access, parking areas, amenity areas and boundary walls). Planning Contravention Notices, the first step in formal enforcement action, have been served on all of these parties.

Following the service of these notices the Senior Planning Enforcement Officer was alerted to the possibility that the developer of the site may be in financial difficulties. This was confirmed by a letter from David Rubin and Partners, Chartered Accountants and Insolvency Practitioners. The letter states that the developers were in Creditors Voluntary Liquidation and the above firm have been appointed as liquidators. In the letter Mr Rubin warns:

"Unfortunately there are no funds in the liquidation to carry out any work on the above properties."

A further planning contravention notice has been served on David Rubin and Partners.

The position of the developer in Creditors Voluntary Liquidation presents a further difficulty in securing compliance with outstanding issues at this site.

Colour of the studio panel

This has been repainted light grey and is now in accordance with the approved plans. Therefore no further action need be taken.

Landscaping

Condition 4 requires the approval by the council of a landscaping scheme for the site including trees and shrubs of approved species and height, the implementation of the approved landscaping scheme in the first planting and seeding season following the completion of the building and the maintenance of the landscaping for a period of not less than five years after implementation.

A landscaping scheme for the site was approved in writing by letter dated 11 February 2005. This letter states:

"I confirm that we have discussed your landscaping proposals on site, which in view of the overall size of the area suitable for planting will be limited to a tree in the frontage area which will otherwise be paved, small rear gardens to be laid to grass and paving and shrubs/climbers within the boundary wall to the northern side. Condition 4 is hereby discharged subject to the implementation of the agreed proposals and need for these to be maintained."

The letter approving the landscaping does not make reference to a plan and there is no plan of this landscaping on the case file

The landscaping may have been implemented at some point in the past but a recent inspection of the site has revealed that even if carried out this landscaping has not been

maintained. The developers are therefore in breach of the planning condition at least because the landscaping has not been maintained.

The Council's Tree and Landscape Officer has inspected the site and considers that there is scope for different planting than was approved previously. Tree and climber species would need to be carefully chosen to have impact outside the site, to be tolerant of a predominantly hard landscaped site and to be suitable in a site where space for planting is limited.

The Council is seeking to at least secure the formal submission of the earlier approved scheme, its approval, implementation and maintenance. In parallel with this the Council through the Tree and Landscape Officer is seeking to negotiate an alternative landscape scheme although the council is constrained in attempting this by what was approved previously.

Pedestrian and vehicle gates

Condition 5 of the planning permission required that the site frontage wall should be retained in its entirety except for the formation of openings to provide vehicular and pedestrian access. It goes on to require that details of the openings and gates indicated on the approved plans shall be submitted to and approved in writing by the council before work is commenced on site.

Gates have been installed which have not been approved by the council. The design is considered inappropriate. The developer has undertaken further work in the form of welding additional uprights onto the existing gates. However, the design of the gates, even with these changes, remains unacceptable. Photographs of the gates will be shown at the committee meeting.

The Council is seeking to secure the removal of the unauthorised gates and the submission, approval and installation of gates in accordance with a design approved by the council.

Relocation of on street car parking

Condition 7 required that the relocation of car parking from the east side of Frome Road to the west side of Frome Road shown on the approved plans was implemented before work commenced on the site.

To implement these works the developers in conjunction with the County Council as highway authority were required to obtain a road traffic order.

Officers of the County Highways Department confirm that the Road Traffic Order was put in place and stands in perpetuity.

The contractors who carry out highway works for the County Council (Ringway) were ready to carry out the works and had full knowledge of what works had to be carried out but were never paid by the developer.

The County Council have advised that they are carrying out a review of all existing road traffic orders including the order associated with this site. The outcome of that review will determine what action is open to this council with regard to this condition. The support of

the county council will be required if the implementation of the road traffic order is to proceed.

A decision on the course of action to follow in respect of this condition stands deferred pending the outcome of the County Council's review of existing road traffic orders.

Conclusions

1. Repainting light grey a studio panel which was formerly white has been resolved
2. Formal enforcement action in respect of conditions 4 and 5 has commenced.
3. Negotiations to vary the approved landscape scheme and the design of the gate are being undertaken concurrently with the action at 2 above.
4. A decision regarding action on condition 7 is deferred pending the outcome of the County Council's review of existing road traffic orders.

Recommendations

1. That the report be noted
2. That a further report updating committee on further progress be made in February 2008/

Legal Issues

Formal enforcement action is being taken under the relevant planning legislation to secure compliance with planning conditions.

Financial Implications

The cost of officer time in investigating and enforcing the breaches of planning control set out above.

Human Rights

As formal enforcement action is being undertaken the human rights of all parties involved must be fully considered.

Background Papers

Planning application file – 02/01854/FUL