

**EXETER CITY COUNCIL**

**SCRUTINY COMMITTEE - COMMUNITY  
4 SEPTEMBER 2007**

**PLANNING COMMITTEE  
10 SEPTEMBER 2007**

**COMMUNITY FACILITIES ON NEW DEVELOPMENTS**

**1. PURPOSE OF REPORT**

- 1.1 To respond to a request that Members be advised as to progress in enforcing the requirements for open space and other community facilities, required by agreements under section 106 of the Town and Country Planning Act 1990 ("section 106 agreements") in relation to new developments, and to advise Members of the work of a group of officers in this regard.

**2. BACKGROUND**

- 2.1 Following a meeting of the Planning Member Working Group in August 2005, various steps were taken to improve the monitoring, implementation and enforcement of section 106 agreements, particularly those relating to open space and play areas.

**3. PROGRESS TO DATE**

- 3.1 The database used to monitor developers' financial obligations was expanded in 2005 to contain information about the contents of all section 106 agreements, to enable physical requirements to be monitored as well as financial contributions. Since December 2006, all new agreements have been entered in the Council's Acolaid case management software, which now contains a module designed for this purpose.
- 3.2 This has proved valuable in cases where a buyer's solicitor has asked whether an agreement has been complied with. Where the agreement in question has been included in the database, the work involved in ascertaining whether the agreement has been complied with has been minimal, whereas otherwise it has tended to involve extensive enquiries.
- 3.3 In parallel with this, a working group of officers has been set up, whose role is to achieve the effective implementation of section 106 agreements relating to the provision of open space and other community facilities. It is chaired by the Planning Solicitor and comprises those most directly involved in the process (Development Control Manager, Leisure Manager, Parks and Open Spaces Manager, a Senior Valuer, and the Implementation Officer) in addition to which an Area Planner attends the meetings on a rotational basis. Recently the group has been extended to include Environmental Health Officers, because the provision of open space frequently involves decontamination and other environmental issues.
- 3.4 This group meets every two months, dealing in rotation with the sites within each of the three areas covered by Planning Services. Each area is therefore considered every

six months, although sites are considered as the need arises in between formal meetings. This has resulted in progress with a number of adoptions, with recalcitrant developers being chased up.

- 3.5 As a result of the improved monitoring by the group and use of the database, breaches of obligations are being identified and reported to Land Charges section so that an appropriate note appears in response to searches. This process secured completion of the Exwick Community Centre before all the dwellings at Medley Court had been sold.
- 3.6 During the lifetime of the group, facilities on several sites have been completed, including the following. (In some of these cases the transfer of the land has yet to be completed, but the developer has finished all physical works.)
- Exwick Community Centre, Kinnerton Way, including the MUGA (multi-use games area);
  - Fleming Way play area (Princess Elizabeth Orthopaedic Hospital);
  - Gras Lawn;
  - Haven Banks play area (improved with contributions from Chandlers Walk and Willeys Avenue developments);
  - Hoopern Valley play area (Horseguards);
  - Hylton (play area);
  - Orwell Garth (Galsworthy Square);
  - Powlesland Road, Alphington;
  - Round Table Meet;
  - St Thomas Pleasure Ground play area (Prospect Place).

Sites which are still under construction, or where significant problems remain, are detailed in Appendix 1 to this report.

- 3.7 In addition, closer monitoring has enabled breaches to be spotted at an early stage and rectified. An example is the Persimmon and Barratt development at Kings Heath, Digby, where a shortfall in the provision of affordable housing was identified on the Persimmon part of the site. This has since been rectified. On the same site, the developers were late in supplying the performance bond which we now require as a matter of course, in case the developer goes into liquidation. This was also rectified, following the service of formal notices by the Council.

#### **4. CURRENT SITUATION**

- 4.1 There has been better early monitoring of developments commenced since the establishment of the group. A good example is Wyvern Barracks where the implementation of the open space has proceeded relatively smoothly, albeit that the developer has been particularly co-operative. At Richmond Yard, monitoring has enabled us to identify problems with the installation of the play equipment, meaning that it should be possible to rectify matters without delay.
- 4.2 What is proving more time-consuming for the group is a small number of sites where development was already complete. The most problematic are Lavender Road, Exwick (Barratt) and Polsloe Priory (Persimmon). The developers have had little incentive to remedy the outstanding issues, other than that they continue to remain liable for the land until it is transferred to the Council, and it is only through constant pressure by officers that any progress is being made at all. There is no simple enforcement notice procedure for planning agreements.

- 4.3 Officers were determined that there should not be a repeat of these problems with the Barratt/Persimmon development at Kings Heath, Digby, a development of about 670 dwellings where the section 106 agreement provided that certain things should happen before occupation of the 300th dwelling, namely completion and transfer of the open space, but also completion of remediation works and monitoring requirements and certification of those matters by an environmental consultant, provision of collateral warranties by that and any other consultants, and payment of a commuted sum. However, if remediation works were required (which they were), the agreement recognised that provision of the facilities would take longer, and provided for the timetable to be "as otherwise agreed". In July 2006 agreement was reached with Barratt and Persimmon that 50 dwellings (25 each) would not be sold or occupied until all these matters had been completed.
- 4.4 In breach of that agreement, Persimmon have sold at least 4 dwellings already, with others being actively marketed. Some of Barratt's 25 dwellings are being actively marketed and they have exchanged contracts to sell at least one. Although no sales have been completed to our knowledge, they have not responded to a request for confirmation that they will not complete sales of any of the 25 dwellings. Barratt own the open space land and are doing the works on behalf of both developers. They are in breach of the agreed timescale which envisaged the work being completed last autumn.
- 4.5 The Head of Legal Services is therefore preparing to apply to Court for an injunction preventing Persimmon and Barratt from selling the restricted dwellings until the open space and play area have been completed, the other requirements listed above have been complied with, and the land has been transferred to the Council.

## **5 RECOMMENDED**

- 1) that the contents of the report be noted;
- 2) that Planning Committee endorse the actions of the Head of Legal Services in applying for an injunction in relation to the Kings Heath development, as described in paragraph 4.5 of the report.

ROSS HUSSEY  
PLANNING SOLICITOR

BAAN AL-KHAFAJI  
HEAD OF LEGAL SERVICES

S:LP/Committee/907SCC10  
23.8.07

### **CORPORATE SERVICES DIRECTORATE**

**Local Government Act 1972 (as amended)**  
**Background papers used in compiling this report:-**

Section 106 agreements for the sites referred to.