

- TRANSFER OF LAND TO ASHDON PARISH COUNCIL FOR PUBLIC OPEN SPACE
- DEVELOPMENT CONTROL COMMITTEE, Item 6

Committee: DEVELOPMENT CONTROL COMMITTEE ▪ **Agenda Item**
Date: 15TH OCTOBER 2008 **6**
Title: **TRANSFER OF LAND AT CHURCHFIELDS TO ASHDON PARISH COUNCIL FOR PUBLIC OPEN SPACE**
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Summary

RHT Developments (The Rural Housing Trust) has requested that this matter be returned to Committee (following the Committee's decision on 11th June 2008) to clarify whether or not the Council require Ashdon Parish Council to enforce all provisions outstanding in the Section 106 Agreement dated 19th January 2005, in particular that the fencing be of 1200mm high metal angle iron posts set in concrete and between each post chainlink fencing, when the land is transferred to the Parish Council.

Recommendations

That the Committee resolves that when the land for public open space is transferred from the Council to Ashdon Parish Council, the transfer requires that all provisions of the Section 106 Agreement 19th January 2005 that remain outstanding are enforced by the Parish Council.

Background Papers

- The report and the minutes of the Development Control Committee meeting of 11th June 2008 relating to the transfer of the land.
- Letter from RHT Developments dated 11 September 2008.

Impact

Communication/Consultation	None
Community Safety	The provisions of the Section 106 Agreement were agreed with the safety of the public in mind when using the open space.
Equalities	None

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Finance	The costs implications of the Parish Council having to maintain a fence which is constructed of less durable materials is unlikely to have any impact on the Council's finances.
Human Rights	None
Legal implications	There could be a challenge to the Council's decision to fail to enforce against non-compliance with the Section 106 Agreement. This is unlikely.
Sustainability	None
Ward-specific impacts	The fence as constructed with wooden posts will be more costly to maintain and deteriorate more quickly than a fence with iron posts.
Workforce/Workplace	None

Situation

- 1 The Council granted Planning Permission UTT/2048/03/FUL subject to a Section 106 Agreement to The Rural Housing Trust for the construction of affordable housing in Ashdon. The Section 106 Agreement, among other things, required the landscaping and fencing of the public open space owned by the Council. The public open space was then to be maintained by the Trust for twelve months, following which the Council would issue a Letter of Satisfactory Completion provided the work was satisfactory.
- 2 It had always been the intention of the Council to then transfer the public open space to Ashdon Parish Council. Ashdon Parish Council was acquiring play equipment and wanted the transfer of the land to take place swiftly for them to install the equipment.
- 3 The landscaping and fencing of the public open space is not satisfactory and the Council has not issued a Letter of Satisfactory Completion. There is an eight to ten inch dip in the ground over the access to the balancing tanks, some trees have died and need replacing and/or removing and the fencing has wooden posts and not angle iron posts. The Trust are willing to rectify all the defects except the fencing.
- 4 The matter was considered by the Committee on 11th June 2008 when it was resolved that the transfer of the land could take place, notwithstanding the failures to comply with the Section 106 Agreement, but the Parish

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Council were to be required to enforce the Agreement to ensure the that Trust complies with all its provisions. The Trust maintains that this was not the true intention of the Committee and it should not be required to replace the fencing. The Trust does undertake to comply with the Agreement in all other respects.

- 5 The provisions in the Section 106 Agreement for landscaping and fencing of the public open space were carefully considered by the Council's Officers and the requirements comply with what is considered safe and appropriate for this type of site, in particular as it was known it would be used as a children's play area. It is the view of officers that the lifespan of the fence with wooden posts would be less than the fence with concreted metal posts and therefore acceptance of the fence with the wooden posts as built would bequeath a maintenance cost to the Council, or to the Parish Council once transferred. Given that the required specification of the fence was clearly stated in the S106 (and was therefore known to the RHT before it chose to provide a fence of different specification) this is unreasonable and should not be agreed by the committee.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Legal challenge to the Council's failure to enforce the provisions of the Section 106 Agreement.	1	3	Ensure that the provisions are enforced.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.