

Committee: Development Control

Agenda Item

Date: 27 April 2011

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Title: Land to west of Duck Street and south of
Chinnel Lane, Wendens Ambo

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Control (01799 510476)

Item for
decision

Summary

1. This report relates to land which a previous land owner decided he would transfer to the District Council by a Unilateral Undertaking under section 106 of the Planning Act. The land has not been transferred and the current owners have requested that they be permitted to amend the obligation to permit them to retain some of that land. This report accepts the request subject to confirmation that the rest of the land has been transferred to Wendens Ambo Parish Council. A report was originally drafted for the committee on 15 December 2010 but it was deferred at that committee pending receipt of the final agreement.

Recommendation

that UDC Legal Services be given delegated authority to execute a deed of release for the Unilateral Undertaking when it is satisfied that the transfer of the land to Wendens Ambo Parish Council has taken place

Background Papers

Unilateral Undertaking and request for amendment.

Impact

Communication/Consultation	Wendens Ambo Parish Council has been involved in negotiations with the owner and notified of this proposal by officers. Twelve adjacent properties have been informed plus the Parish Council and the Wendens Ambo Society
Community Safety	None
Equalities	None
Finance	None
Human Rights	None
Legal implications	None
Ward-specific impacts	Under the agreement a smaller parcel of land will have been transferred to the Parish Council
Workforce/Workplace	None

Background

2. During the last local plan review (2001-4) the then land owner submitted an objection to the Council requesting that the development limit for Wendens Ambo be redrawn to include within it a parcel of land adjacent to Duck Street. When making this request he submitted a unilateral obligation (a one sided S106 agreement) proposing to transfer another area of land (measuring approximately 0.94 hectare) to the District Council for public amenity use, together with a sum of £10,000 for its future maintenance, if the land adjacent to Duck Street was included within the development limit. The transfer would be triggered by a residential development on the land facing Duck Street that he hoped would receive planning permission as a result of the change to the development limit. The local plan inspector concluded that the inclusion of the land within the limit was appropriate. The transfer of land appeared to carry no weight in his decision and was not a condition of the change in the line of the limit. The authority accepted the Inspector's recommendation and the limit was amended before the adoption of the local plan in 2005.
3. In 2006 a planning application for four dwellings was refused and later dismissed on appeal. When determining the appeal the Inspector commented that the transfer of land was not required by local policy and not justified by national policy relating to planning agreements. Influenced by this comment, later planning permissions granted on the residential site did not require the transfer of land. However the obligation dating from 2004 still stands. The residential development on the land within the development limit was carried out during the last couple of years.
4. At the Development Control Committee on 21 May 2008 it was agreed that once the District Council, who had not requested or desired the land, received the land it would transfer it to the Parish Council. The Parish Council accepted this.
5. The current owners of the site have decided that they do not wish to be bound by the requirements of the S106 Obligation but request an amendment of the obligation to permit the transfer of most of that land to the Parish Council, while retaining the remainder. In deciding whether to agree to their request to amend the obligation the local planning authority needs to judge whether the original obligation was necessary and justified for planning reasons. Two planning Inspectors have failed to reach the view that the obligation was necessary – the second explicitly said it was unnecessary and failed the tests in national policy for planning agreements which remains extant today. In this context there is no justification in principle for refusing to amend the obligation as requested.
6. Furthermore the land owners have agreed with the Parish Council that they will transfer approximately 5700 sqm of the land to it (without a sum for maintenance). The remainder of the land, approximately 3700 sqm, is stated to be retained as a buffer zone between the residential development and the public open space. Both these parcels of land – the one to be retained by the owners and the own to

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be transferred to the Parish Council – are outside the development limit where normal planning policy restraint operates.

Comments received

7. Wendens Ambo Parish Council has confirmed to the District Council that it accepts the proposal subject to inclusion of the requirement to transfer the relevant parcel of land to it. A letter from a local household supports the proposal, stating that it is a good deal and predicts that enforcement of the existing obligation would be unsuccessful and a waste of Council resources.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Losing an appeal against a refusal to amend the obligation	High	Use of resources defending a refusal which is unlikely to be supported at appeal.	Agree the recommendation