

WYRE FOREST DISTRICT COUNCIL**PLANNING COMMITTEE****13th OCTOBER 2009****Section 106 agreement in respect of Land at Stour Vale**

OPEN	
Responsible officer	Director of Planning & Regulatory Services
CONTACT OFFICER	John Baggott ext 2515 Kay Higman ext 2902
APPENDICES	None

1. PURPOSE OF REPORT

- 1.1 For Members to decide whether to accept a financial offer to the Council to accept a transfer of land at Stourvale

2. RECOMMENDATION

- 2.1 **The Committee is asked to decide that:
A one off full and final payment of £31,821 be accepted from the Administrators of Cofton Ltd and that in return the Council accept a transfer of the land at Stour Vale referred to in the section 106 agreement dated 30th March 2000**

3. BACKGROUND

- 3.1 The Council had entered into a Section 106 agreement with Cofton Ltd with regard to the Stour Vale development. The agreement specifies that the Council would adopt parcels of land and also that the Developers would provide a play area and commuted sums towards maintenance and enhanced pedestrian access. A sum of £50,000 has already been paid to the Council in respect of the pedestrian access.
- 3.2 The plan appended to the s106 agreement showed the land at the time the planning application was originally made. Subsequently various issues were raised by both the Developers and Council Officers that resulted in the need to revise the original agreement. The revisions included a change to the access to the SSSI and a commuted sum in lieu of the onsite play area provision as a result of local objections to the proposed site. This was reported to and agreed by the Council's Planning (Development Control) Committee. However, it was dependant on the Developers being able to establish that they owned the land over which a redirected access to the SSSI land to be adopted by the Council was to be taken. Due to the redirecting of the River Stour, this proved very difficult. Unfortunately, as soon as that issue had been resolved, the developers went into administration.

- 3.3 As a result Cofton Ltd has gone into administration prior to the land being adopted by the Council and the commuted sums being paid to the Council
- 3.4 The Council has been approached to ascertain whether members would be prepared to take a transfer of the Land subject only to payment of a commuted sum towards maintenance costs.

4. KEY ISSUES

- 4.1 Deloitte LLP is the appointed administrator, who in turn has employed the services of Camland Developments to assist in resolving outstanding Cofton matters.
- 4.2 An original offer was made in July 2009 of £10,000 and this was subsequently revised after communication between both parties.
- 4.3 The offer from Cofton Ltd is a one off full and final payment of £31,821 which is dependent upon the Council taking a transfer of all the area designated as Public Open Space and the Nature Reserve Land. All obligations would also have to be removed from both Cofton Ltd and all successors in title, which would include the obligation to provide a play area.
- 4.4 Officers have been advised that this is a full and final offer of payment. If WFDC does not take on this land it will fall to the Crown who will have no obligation to maintain the land. This would have massive implications for the residents of this area.
- 4.5 The amount of money being offered by Coftons is equivalent to that detailed in the Section 106 agreement to maintain the land. The main variation to the existing agreement will be that there would be no play area. However, residents did not want the play area to be in the location set out in the s106 agreement in any event (the revised position was to be on Clensmore playing field).
- 4.6 The Council has recently carried out a one off without prejudice maintenance of the open space area adjacent to Ox Bow Way.

5. FINANCIAL IMPLICATIONS

- 5.1 The sum of £31,821 is adequate to maintain the areas of open space and is the amount payable under the terms of the s106 agreement. In the case of the nature reserve area it is hoped that this can be supplemented by grant monies which may be available for this site, given its importance as a SSSI (Site of Special Scientific Interest). After the initial period covered by the commuted sum, the cost of maintenance of the open spaces would fall to the Council.

6. LEGAL AND POLICY IMPLICATIONS

- 6.1 As Cofton Ltd is in administration, there is limited opportunity for enforcement of the terms of the original s106 agreement before the land is transferred to the Crown, who would take it with no ongoing liability. It has already been identified that residents do not want the play area where originally proposed and any enforcement

action could only require the play area to be put in that location. The commuted sum currently offered equates to the sum payable under the s106 agreement.

7. RISK MANAGEMENT

- 7.1 If the Council do not accept this revised offer then the land associated with the agreement would fall to the Crown with no obligation to maintain. This would be unfavourable to the residents in this development and the wider area.
- 7.2 There is no guarantee of any additional funding from external funding but given the significant importance of this land it is considered the Council would be very likely to be successful.

8. CONCLUSION

- 8.1 It is very unfortunate that Cofton Ltd went into administration immediately prior to the impending transfer of land, however it is considered by Officers that the Council, in the circumstances, should accept this revised offer of £31,821 as it is in the best interests of the residents in this area.

9. CONSULTEES

Director of Legal and Corporate Services
Cabinet Member for Community and Partnership Services

10. BACKGROUND PAPERS

Section 106 agreement for Stour Vale dated 30th March 2000