

**MAIDSTONE BOROUGH COUNCIL**

**MINUTES OF THE REGENERATION AND SUSTAINABLE  
COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE  
MEETING HELD ON THURSDAY 16 JULY 2009**

**PRESENT:** Councillor Sherreard (Chairman)  
Councillors Beerling, Nelson-Gracie, Ross and Vizzard

**APOLOGIES:** Councillors FitzGerald, Paine and Thick

**20. Web-Casting**

**Resolved:** A technical fault prevented the meeting from being web-cast.

**21. Notification of Substitute Members**

There were no substitute Members.

**22. Notification of Visiting Members**

There were no visiting Members.

**23. Disclosures by Members and Officers**

Councillors Batt and Vizzard declared personal interests in Agenda Item 7, Councillor Call for Action, as they were close neighbours of the Oakwood Hospital development being discussed. All Members of the Committee declared that they had been lobbied with regard to Agenda Item 7, Councillor Call for Action.

**24. Exempt Items**

**Resolved:** That all items on the agenda be taken in public as proposed.

**25. Councillor Call for Action: Oakwood Hospital Site Section 106 Agreement**

The Chairman read out a statement, attached at Appendix A, on behalf of the Oakwood and St Andrews Park residents. He then invited Councillor Batt to explain her reasons for raising a Councillor Call for Action (CCfA) with regard to the Oakwood Hospital site's Section 106 Agreement.

Councillor Batt explained that the work on the Oakwood Hospital site had progressed quickly since the CCfA had been raised but that she felt that the outstanding work now needed to be fully completed. She suggested that a definitive statement was needed stating that legal action against the developers would be pursued if the outstanding work was not completed to an acceptable standard by Friday 24 July, the date given by Persimmon Homes.

The Chairman invited the Section 106 Compliance Officer, Mrs Juliet Stringer, the Senior Solicitor, Mr Ian Trueman and the representative from Linden Homes, Mr Steve Appleby, to respond to Councillor Batt. Mrs Stringer advised the Committee that she had been monitoring the progress of the Section 106 Agreement (S106) since November 2007 and that without the support of residents and ward Councillors this task would have been more difficult. Mr Trueman explained that the Council had avoided seeking an injunction to get the outstanding works completed as the process took months; and Persimmons had started addressing outstanding works at the beginning of 2009, the deadline the Council had previously given. The Committee discussed the following:

#### Community Hall

Mr Trueman confirmed to the Committee that the Beechwood Community Hall was ready to be adopted by the Council as soon as the Energy Performance Certificate was received. Persimmons had been given a 24 July deadline for this certificate.

#### Play Area and Equipment

The S106 required that Persimmons grass the play area but did not specify whether seeding or turfing was the required method. Persimmons had given preference to seeding. Under the S106 the Council was able to adopt the land as soon as the commuted sum had been received and the grass had been grown. However, Mr Trueman advised that an arrangement could be made with Persimmon Homes that enabled the land to be adopted by the Council prior to it being seeded, so long as the Council received an additional sum to reflect this extra responsibility on the Council.

#### Commuted Sums

In April 2000, Bryant Homes Southern Limited, Beazer Homes Limited and Try Home Limited drew up a deed of partition which divided the land. Mr Appleby explained that Linden Homes felt that they had met the relevant S106 requirements set out within the Deed of Partition and therefore did not think they were liable for the outstanding commuted sums. Linden Homes had therefore written to Persimmon Homes stating that they would commence legal action against them if they did not pay the commuted sums required for adoption by Wednesday 29 July. Mr Trueman however informed the Committee that the Council held the S106 with the owners of the land and as such, both Linden Homes and Persimmons Homes as the land owners could be legally required to pay the commuted sums. The Committee agreed that if Persimmon Homes had not completed all works within their section of the Oakwood Hospital site to an acceptable standard by 24 July 2009 and paid the commuted sums owed by 29 July 2009, the deadline set by Linden Homes, the Council should begin legal action to bring the S106 to its completion.

#### Use of Bonds

Developers were required by statute to put bonds in place for roads and sewers. They were not required under a S106, as a matter of course, and they could be appealed should they be requested. The Committee

however felt that Persimmon Home's history with regard to S106 compliance was such that a bond should be sought on all future Persimmon Homes developments in Maidstone.

#### General Maintenance of Park

Mr Appleby advised the Committee that because the commuted sums had not been paid by Persimmon Homes, Linden Homes had had to maintain the park for over two years longer than required by the terms of the S106. They had initially been undertaking 3 week maintenance visits of the park but were increasing this to fortnightly visits during the growing season. Mr Appleby advised this would increase to weekly visits if required. In response to a question, Mr Appleby clarified that Linden Homes was legally required to maintain the park until the land was adopted by the Council; which could not be done until the commuted sums were paid.

#### Anti-Social Behaviour

A member of the public stated that hazardous health items were being disposed of around the site and that this had been reported to the Council. Mrs Stringer advised this had, in error, been reported to her as fly-tipping and was therefore being treated as such. The Committee agreed to investigate why the report of offensive littering had been communicated as fly-tipping. The Committee was then informed that young people were gathering under the pavilion in the park and were being abusive to residents. Councillor Batt informed the Committee that, in her opinion, the pavilion structures were unsafe and residents felt that they should therefore be demolished but were told that English Heritage had refused. Members agreed that the issue of the pavilions should be raised again with English Heritage in light of the anti-social behaviour and be supplied with evidence of this. Members of the public also informed the Committee that vagrants and a number of young people were able to steal alcohol unchallenged at the Oakwood Park Tesco Express. Residents had approached the manager of the store but had been advised that they were short staffed and were therefore not dealing with the issue. The Committee agreed that the licensing team should be advised of this to see whether the Council could place pressure on Tesco to prevent the thefts or to remove the alcohol license. The Committee agreed that the evidence of the residents, Linden Homes and the Council regarding the anti social behaviour on the site should be collated and provided to the Borough Commander to support a request for an alcohol restriction zone. Members also agreed that a three way liaison team, consisting of the Police, Linden Homes and Maidstone Borough Council, be set up to deal with the issues of anti-social behaviour, including immediate action on environmental health issues.

#### Lighting

Mr Appleby advised the Committee he was aware of the on-going issues with vandalism of the lighting around the park and agreed to fix any broken lighting in the park as soon as possible. The lights in the park met the specification of lighting required under the S106 however, the Committee agreed that Linden Homes should consider replacing vandalised lights with hardwearing and CCTV compliant lighting.

The Committee discussed residents' concerns and how to ensure the S106 was brought to its completion and made a number of recommendations:

- That it would be useful to have a single point of contact for residents concerns to made to with regard to the Oakwood Hospital Development Site;
- The Council start emptying the bin in the playground, prior to the adoption of the site, to prevent it overflowing;
- That the Local Government Association (LGA) be lobbied with regard to the difficulties, across the Country, Councils were experiencing in getting developers to comply with existing S106 planning agreements, and to request the assistances of the LGA in addressing this issue; and
- That the media should be informed of the outcomes of the meeting.

**Resolved: That**

- a) The Licensing Department be made aware of the issues around the theft of alcohol from Oakwood Park Tesco Express on the Oakwood Hospital Site and the lack of action by Tesco on this;
- b) Linden Homes repair the lights around the St Andrews park and pavilion and consider replacing vandalised lights with hardwearing and CCTV compliant lighting;
- c) The evidence provided to the Council on anti social behaviour around all areas of the Oakwood Hospital site development be provided to the Borough Commander to support a request for an alcohol restriction zone on this site;
- d) The Council start emptying the bin on the playground prior to the adoption of the Persimmons section of the Oakwood Hospital site;
- e) The issue of the St Andrews Park Pavilions be raised again with English Heritage in light of the anti social behaviour issues and evidence of this;
- f) If Persimmon Homes has not completed all works within their section of the Oakwood Hospital site to an acceptable standard by 24 July 2009 and paid the commuted sums owed by 29 July 2009, the deadline set by Linden Homes, the Council begin legal action to bring the Section 106 Agreement to its completion;
- g) Bonds be applied to Persimmon Homes developments in the future;
- h) The Council initiate a three way liaison team comprising of Maidstone Borough Council, Linden Homes and the Police to tackle

the issues of anti social behaviour relating to the Oakwood Hospital site, including immediate action on the environmental health issues;

- i) Maidstone Borough Council create a single point of contact for resident's concerns to be made to with regard to the Oakwood Hospital Section 106 Agreement;
- j) The Local Government Association be lobbied with regard to highlighting the difficulties, across the Country, Councils are experiencing in getting developers to comply with existing S106 planning agreements, and to request the assistances of the LGA in addressing this issue; and
- k) The media be informed of the outcomes of the meeting.

**26. Duration of the Meeting**

6.30 pm to 8.40 pm.

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**LETTER ON BEHALF OF RESIDENTS OF OAKWOOD/ST ANDREW'S PARK**

*Re: Councillor call for action on Thursday, 16 July 2008*

**Called for by Julia Batt**

**Chairman Ben Sherreard**

Residents are pleased that MBC have called a meeting to investigate the situation with regard to the S106 agreement at the Oakwood Park site but are concerned that no notification of the intention to raise a CCfA was given prior to Saturday, 11<sup>th</sup> July 2009, particularly as the meeting is only 5 days later.

In Appendix A it is stated that “the residents are under the impression that it is the Council, not the developers” who are causing the delay.

- Residents have never said that the delays are solely caused by the Council and know that Persimmon should have, and could have, done more to get the works completed as per the S106 earlier. Residents do however believe that the Council could have done more by taking a stronger stance at a much earlier stage.

It is stated that “an 'action group' of interested residents has been set up to help address the outstanding issues” with the developers and “are specifically **excluding** the council from” meetings with the developers.

- It was felt that the residents would like to meet Persimmons on a more one to one basis as purchasers of Persimmon homes and simply try to ensure that they got the work done, leaving it to MBC to deal with the issue of commuted sums. Residents have met as a residents group and some action has been taken (a protest outside 2 Persimmon developments).

It is stated that “a number of vocal residents seem convinced that MBC is causing the problems and moreover that” MBC “are causing delays by” their “attempts to get 'our hands on' the commuted sums owed”.

- The residents' aim is to help to get the outstanding work completed so that MBC can adopt the areas as quickly as possible and then maintain them to the residents' satisfaction (there are issues with anti-social behaviour, etc., that it is believed MBC can deal with without handover, but probably better following handover). Residents do understand the S106 agreement but believe the Chief Executive has the authority to allow adoption before commuted sums are paid over. There is also the issue of the bus gate that Persimmons can not advance on until the council make their decision.

The residents are aware of and grateful for the work that has been undertaken (particularly by Juliet Stringer who should be commended) in order to get Persimmon to complete the S106 work but are unhappy with the time it has taken. Juliet has been extremely helpful in informing residents of outstanding work on the site under the S106 agreement, therefore helping us to push things forward.

It is a cause of concern that MBC, having granted planning permission for the development and agreed an S106 agreement with the developers, still does not know exactly who is responsible for paying all of the commuted sums to them. If the developers have drawn up a 'deed of partition' between themselves, then surely it's up

## Appendix A

to them to sort it out and the Council should pursue whoever they have the S106 agreement with. The residents would like to be given a map showing who is responsible for which parcels of land. There are far too many areas of “no man's land”, some of which are being maintained by residents who have much better things they could be spending their time on.

We were made aware that an enforcement case had been looked into by MBC regarding the area which was earmarked as a school, we were told that there was insufficient abandoned material to warrant any form of prosecution. I would like to know if MBC are aware that vagrants now reside on the St Andrew's Park area. There are various offensive items on both sides of the site including women's lingerie, used condoms, needles, broken glass and knives. It has been necessary to call the police on numerous occasions to deal with this antisocial behaviour. Residents have also asked the police to ensure their safety whilst they remove the vagrants makeshift camp, only to be told “it is not safe for you to enter the area”. Please could MBC intervene as asked to do.

We fear the Council's response to this will be “It is a matter for Persimmons, or Linden Homes, but we are not sure which”. This is a serious issue that has resulted many residents too nervous to use the parkland.

The police's response to the recent anti-social behaviour has been brilliant. They have been responsive, helpful and reassuring and have turned up to every call and challenged behaviour where they are able to.

We would ask that part of the desired outcome from the scrutiny meeting mentions a list of exactly what outstanding work Persimmon should complete. We would ask that no items are added following this which delay completion and we would ask that the council look to adopt the site as soon as reasonably possible.

There has been mention that bonds should be put in place before developers are allowed to develop. We know that there are bonds amounting to almost £500,000 relating to the Marigold Way area of the development as they were included in our moving in pack.

Might it be possible for you to nominate a designated person(s) to receive questions via telephone, email or letter from residents and to pass them on to the relevant person to give answers. This is also vital as not everyone has had the opportunity to put their input into this letter.

Without Prejudice,

Mr Karl Joseph Gannon MREC (CertRP)  
Representative of Residents Group, Residents Action Group & Neighbourhood Watch member.

(We would like it known that not all members of the action group or residents group have had sight of this letter due to the late notice of the scrutiny committee meeting, therefore the views expressed can not be taken as that of every member but that those who were able to attend at short notice)