

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING & DEVELOPMENT CONTROL COMMITTEE**

DATE: **WEDNESDAY, 25 JULY 2012**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **GENERAL MATTERS ITEM RELATING TO APPLICATION 049426 FOR VARIATION OF CONDITION NO.3 ATTACHED TO OUTLINE PLANNING PERMISSION REF: 035575 TO ALLOW 7 YEARS FOR THE SUBMISSION OF RESERVED MATTERS FROM THE DATE OF THE OUTLINE PLANNING PERMISSION RATHER THAN THE 5 YEARS ORIGINALLY GRANTED RELATING TO "CROES ATTI", CHESTER ROAD, OAKENHOLT, FLINTSHIRE**

1.00 APPLICATION NUMBER

1.01 049426

2.00 APPLICANT

2.01 ANWYL HOMES LTD

3.00 SITE

3.01 "CROES ATTI", CHESTER ROAD, OAKENHOLT, FLINTSHIRE

4.00 APPLICATION VALID DATE

4.01 06/02/2012

5.00 PURPOSE OF REPORT

5.01 For the committee to determine whether it wishes to maintain its previous stance of deferring determination of this application or whether in the light of changed circumstances it now wishes to determine it.

6.01 BACKGROUND

- 6.01 This application is identical to planning application reference 049154 which is currently the subject of an appeal against non determination which will be considered at a planning inquiry due to commence on 20 August 2012.
- 6.02 At its meeting on the 14 March 2012 the committee determined its stance on the appeal against non determination of application number 049154. The committee agreed a stance supporting the grant of planning permission subject to the completion of a section 106 undertaking and the conditions detailed in the report of the Head of Planning. It also resolved that a condition should be sought requiring that the play area be up to adoptable standard and that it be offered to the County Council for adoption, together with a 10 year maintenance sum.
- 6.03 At its meeting on the 18 April 2012 the committee considered the current application 049426 which the Head of Planning recommended for permission. The committee decided to defer determination of the application.
- 6.04 At its meeting on the 20 June the committee received a report on the stance the Council was taking on the appeal relating to application 049154. The report explained that Counsel's advice had been obtained to the effect that the authority could not impose the condition it was seeking to impose at its March meeting requiring the play area to be offered to the County Council for adoption with a 10 year maintenance sum. The report also explained that in preparing the Council's case for the inquiry, the Head of Education and Resources had reviewed the background data and ascertained that the financial contribution for education could not be justified. The committee therefore determined that its stance on the appeal be amended to no longer pursue these two points being part of the permission.
- 6.05 The applicant's agent has recently written to the Council to indicate that should the current application be determined positively by the committee, then the non determination appeal would be withdrawn and serious consideration would be given to not applying for an award of costs against the Council for unreasonable behaviour.

7.00 CONSIDERATIONS

- 7.01 In the time since the committee decided at its April meeting to defer determination of this application there have been changes of circumstance that warrant the committee deciding whether it wishes to continue to defer determination of the application or not.
- 7.02 Firstly, the committee has accepted at its last meeting advice from

Counsel that it could not seek to impose a condition to transfer to the Council the play area or seek a sum for its maintenance.

7.03 Secondly, the committee has decided at its last meeting that it can not justify seeking a financial contribution for education purposes.

7.04 Thirdly, the applicant's agent has indicated that should the current identical application to that being appealed not be determined, it will make a claim for costs on the basis that the Council is acting unreasonably. It has however, indicated that should the current application be determined positively by the committee then the non determination appeal would be withdrawn and serious consideration given to not applying for an award of costs against the authority.

7.05 The view of officers and the advice given by the authority's Counsel is that continuing with the stance the authority has currently adopted is quite likely to result in a successful application for costs. Counsel urges the authority to reconsider its position as he has serious concerns that an application for costs would be successful.

7.06 The majority of costs relating to the forthcoming inquiry will be incurred by both the applicant and the Council in the period immediately before and during the inquiry and at the present time the authority has the opportunity of at least limiting and possibly eliminating the costs it is likely to have to meet if it maintains its current stance.

7.07 Accordingly Members are being given the opportunity to determine whether or not they wish to determine the current application. The options open to the committee are either:

Option 1: In the light of the changed circumstances referred to above to determine the application at today's Planning Committee as a separate agenda item.

Option 2: To continue, notwithstanding the changed circumstances to defer determination pending the appeal decision on application reference 049154.

8.00 RECOMMENDATIONS

8.01 It is recommended that the committee follow option 1 and determine the application at this committee meeting.

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