

## **INFORMATION ITEM ON URGENT DECISION RELATING TO LAND AT JASMINE PARK FORMERLY HENBURY HIGH SCHOOL, WHIRLEY ROAD, MACCLESFIELD**

### **BACKGROUND**

In February 2006, Macclesfield Borough Council granted planning permission for the redevelopment of Henbury High School for the erection of 123 dwellings (05/1184P).

The permission is subject to a section 106 agreement dated 24<sup>th</sup> February 2006 and subsequent variation dated 2<sup>nd</sup> December 2011 which provided for the provision of Open Space which includes an area of open land, a play area (LEAP), a Multi Use Games Area (MUGA), a pavilion comprising changing facilities and community rooms, car park and Sports England standard pitches.

The development was enabling development and the capital raised from the sale of the school land for the housing development has been used by the former Cheshire County Council to help fund the Macclesfield Learning Zone development and relocation of the synthetic turf football pitch to Fallibroome High School (now The Fallibroome Academy).

The Housing Development is now complete and the remaining provision of the open space provided for under the terms of the original s106 are yet to be completed with works still required before a completion certificate can be issued. The issue of a completion certificate will trigger a 12 month maintenance period or sum in lieu and thereafter transfer of the whole of the Open Space together with commuted sums for maintenance.

The local residents/local community have been lobbying the Council and the developer/Owner Taylor Wimpey to open the children's play area (LEAP) and the multi use games area (MUGA). These areas have been certified complete under a ROSPA but are within the Open Space and therefore part of the whole Open Space provision which is not complete and up to standard. Therefore no completion certificate can be issued in respect of the whole site until such time as the Open Space development is completed in accordance with the agreement and thereafter the development of the open space provision is of a standard to be handed over to the Council.

At the public meeting held on Friday 21st March a commitment was made by Taylor Wimpey to open the two play areas (the LEAP and MUGA) for public use but in order to satisfy their insurers they would require confirmation of the completion from the council in the form of a certificate of completion for the two play areas. In order to facilitate this departure from the terms of the s106 agreement it was necessary to vary the s106 by

Deed to ensure that the triggers are not affected by the issue of a certificate relating to two specific areas within the otherwise incomplete provision of the Open Space and to preserve the Council's position so that maintenance and transfer are not affected by the variation and the whole site is delivered as envisaged within the original s106 agreement.

The Council have worked with Taylor Wimpey and in order to enable them to acquire public liability Insurance the council agreed to issue a certificate for the parts to be opened but not to alter the terms of the s106 agreement so as to minimise in any way the provision of the open space and subsequent transfer of the whole of the Open Space with sums payable on transfer.

Taylor Wimpey will retain responsibility for the maintenance of the LEAP area and MUGA until the open space is complete and a certificate of completion can be issued in respect of the remainder of the whole open space provision and thereafter until transfer of the whole to the Council.

At a meeting at the Council Offices on Monday 24<sup>th</sup> March Taylor Wimpey agreed to the variation by Deed and to open the said areas to the public by the 4<sup>th</sup> April 2014 and furthermore to complete all outstanding works on the Open Space land including buildings ready for transfer by the 30<sup>th</sup> June 2014. The Council have agreed to prepare the legal documentation for transfer by this date on completion of the works and in accordance with the terms of the existing s106 agreement.

The Council have agreed to issue a certificate for the play areas only (the LEAP and MUGA) to facilitate the opening of those areas prior to the completion of the open space provision as a whole and transfer after the issue of a completion certificate for the remainder of the open space provision as set out in the existing s106. The Chair and Vice Chair in consultation with the Head of Strategic & Economic Planning authorised the variation of the s106 to enable the issue of a certificate for insurance purposes and for completion of the deed of variation before 4<sup>th</sup> April 2014.

The deed of variation was completed on the 1<sup>st</sup> April 2014. The play area and MUGA at Jasmine Park were open to the public by the 4<sup>th</sup> April 2014.

## **REASON FOR THE URGENCY**

The Head of Strategic & Economic Planning, in consultation with the Chairman and the Vice Chairman of Northern Planning Committee, authorised a variation of the original Agreement to allow for the issue of a completion certificate for the parts of the open

space comprising the play area (LEAP ) and the Multi Games Area (MUGA) incorporating the changes agreed at a public meeting attended by local press, residents, the Local Member of Parliament, the Developer/ Owner of the land and Officers of the Council to facilitate the opening of the LEAP and MUGA by Taylor Wimpey's declared deadline of 4<sup>th</sup> April 2014 and without further publicity, the proposed changes outlined above, in order to conclude a variation of the 2006 S106 Agreement and complete the legal process by the agreed date.

## **ACCESS TO INFORMATION**

The background papers relating to this report can be inspected by contacting the report writer:

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