

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

2nd December 2009

AUTHOR/S: Executive Director (Operational Services)/
Corporate Manager (Planning and Sustainable Communities)

S/1371/92/O - CAMBOURNE

Proposal to Vary Section 106 Agreement Requiring Provision of Sports Centre by 2000 Occupations

Recommendation: Approve Variation to Trigger Point in S106 Agreement to 1st December 2011, and Authorise Injunctive Proceedings if Timetable for Provision is Not Met.

Date for Determination: N/A

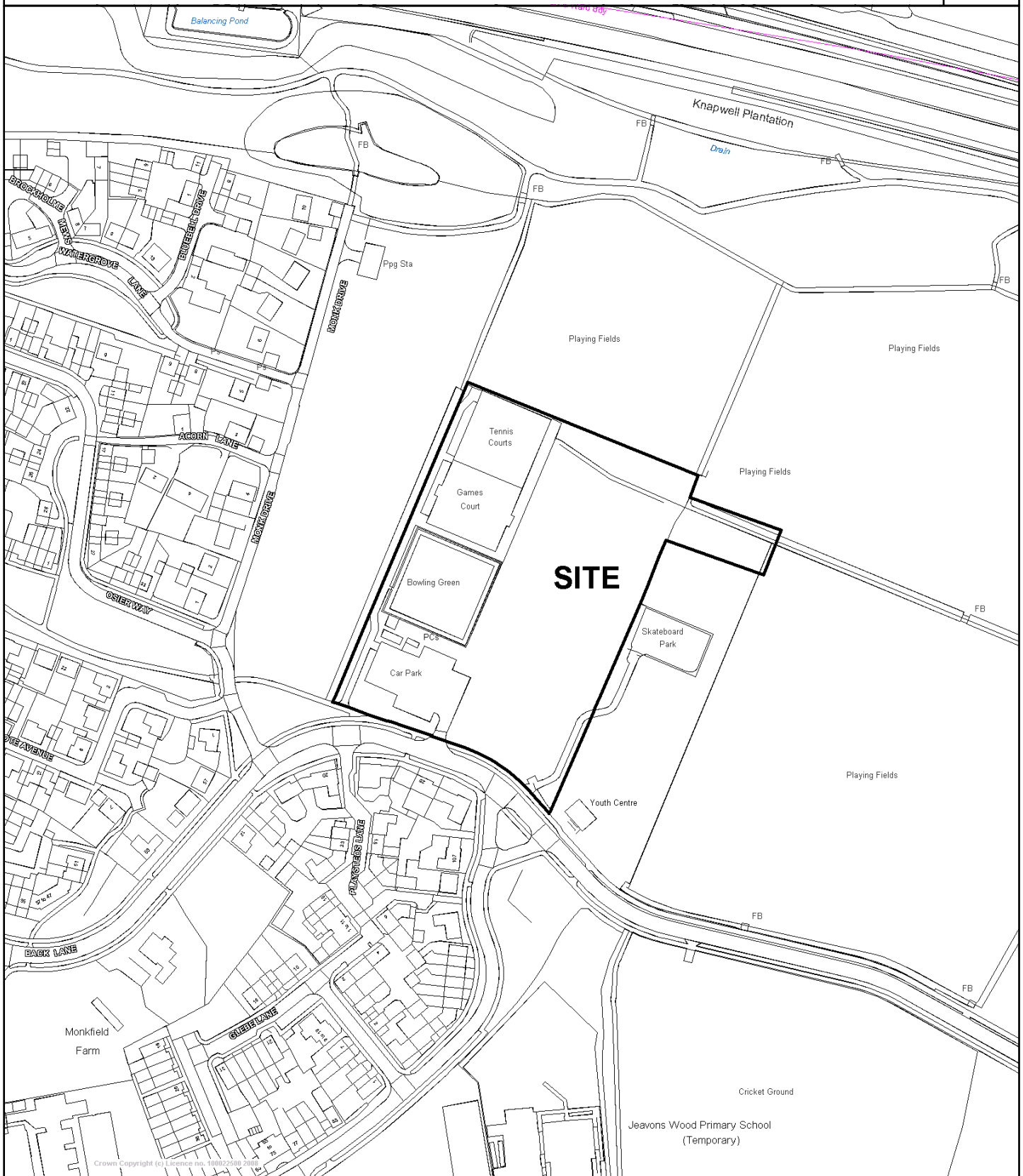
Notes:

This Application has been reported to the Planning Committee for determination because there are no delegated powers to amend the Section 106 Agreement.

Site and Planning History

1. The site comprises the land allocated for a sports centre within the wider sports area north of Back Lane. It lies to the rear (north) of the existing car park, which is to be extended to provide a total of 146 spaces.
2. The outline permission for Cambourne (**S/1371/92/O**) includes the requirement for a sports centre within its associated Section 106 Agreement. The trigger point for provision was the 2000th house occupied, which was reached in 2006. There are now approximately 2750 houses occupied.
3. At the Planning Committee meeting of 5th April 2006, members agreed to change the specification of the sports centre as laid out in the Section 106 Agreement to a more up-to-date one (for example not including the squash courts but instead providing more fitness facilities). At the August 2006 meeting members also agreed to change the trigger point to a date, being 31st December 2007, since it would not be possible to obtain planning permission, let a contract and build the centre before then. Unfortunately, the likely provider of the sports centre (Xpect Leisure) pulled out of the deal with the developers in March 2007 and the Variation to the S106 Agreement was not finalised.
4. The developers then spent some time finding another provider, Leisure Connection, working in partnership with Relkin Construction. They made a planning application (**S/6427/07/RM**) for a larger sports centre, including a swimming pool, which was granted in September 2007. That permission was subject to the S106 Agreement being further varied to accommodate elements of the new specification. Clearly, it was not possible to meet the build deadline of December 2007, so at their meeting of 7th November 2007, Members agreed to a new trigger date of 31st March 2009.

S-1371-92-0



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December 2009 Planning Committee

5. During 2008, the developers and the sports centre provider continued to negotiate with each other and the Council over the wording of the S106 Agreement. Meanwhile several planning conditions were discharged by the applicant in order to be ready to start building. However, Leisure Connection's bank which was financing part of the scheme raised concern that as work had not started on site due to delays in negotiations, their client (Leisure Connection) would be vulnerable to enforcement action once the 31st March 2009 trigger point was met since it was clear the building would not be completed by then. The Cambourne Consortium therefore formally requested a further change to the trigger date to 31st December 2009, to allow for a 12-month build contract commencing at the beginning of this year. This was agreed by Members at their 5th November 2008 planning committee. However, Leisure Connection's bank announced at Christmas 2008 that it had changed its mind and would no longer fund Leisure Connection.
6. Since then, officers have met with MCA developments on a regular basis to pursue the sports centre, obtaining updates and attempting to help find alternative funding, etc. Leisure Connection eventually withdrew from the project in Spring 2009. The process has also not been helped by a change in staff at MCA, since the original project director for Cambourne was made redundant and a new one established from an existing post within Wimpey Homes (which is one of the Consortium members along with Bovis Homes).

Background

7. The new project director is keen to work with us, and work to progress the sports centre is now being led by the Group Strategic Land Director at Bovis. The delivery of the sports centre has been badly affected by the recession, since eventual operators are working within a tighter financial environment. Rather than handing over the land and funding to an operator to design and build, MCA has now had to revisit this delivery model, and will now need to design the building in collaboration with its preferred operator, build it first and then hand it over, with the assurance of a back-up plan whereby the Parish Council could step in if necessary.
8. The letter and update at Appendices 1 and 2 have been submitted by the Group Strategic Land Director of Bovis. They outline the current situation and suggest a possible time-line towards a realistic delivery date, by way of justification for a further change to a new S106 trigger date of 1st December 2011. A new operator has now been chosen by MCA: Active Nation, a registered charity focussed on persuading communities to be active, formerly known as Community Leisure Services Ltd (CLS). It has been in business for over 10 years and runs 10 facilities for local authorities and one school. Active Nation would submit a new planning application, providing the specification required by the s106 (as already agreed to be amended) and providing further facilities (possibly a swimming pool) in addition to that specification, but in a phased way, so that the basic requirement can be fulfilled as soon as possible but at some future date an enhanced facility can be achieved. Active Nation has said it will wish to own the freehold of the sports centre since this would allow them to borrow against its value. MCA has carefully scrutinised Active Nation to ensure the business is robust, and the Parish Council has also confirmed its willingness to take ownership of the centre at some time in the future should this become necessary.
9. Whereas the last change to the trigger point was due to a delay in commencement, there was at least a sports centre operator associated with the development. The loss of that operator has caused significant further delay and the developers have been careful to find a company this time that they believe will be more robust. Active

Nation has now met with the Parish Council and will be commencing pre-application discussions with SCDC planners, thereby already moving forwards with the timetable.

Planning Comments – Key Issues

10. Provided there are no financial or contractual problems this time, the proposed new trigger point is realistic, since it reflects the likely timescale for preparing and submitting a new planning application, working up detailed working drawings for tender, going through the tendering and procurement process, letting a contract, preparing the site, and a one-year build programme including fit-out.
11. Being asked to agree yet another new trigger date is a very unfortunate situation since the residents of Cambourne will have to wait longer than agreed for their sports centre. However, not agreeing to the new date will not achieve the centre any more quickly, and will indeed make it impossible for an operator to sign up to a S106 Variation which it will automatically be unable to comply with.
12. The sports centre is one of the last community facilities under the Cambourne 3300 outline permission. It will play a crucial role in the health and social well being of this community, and will provide a positive focal point for particular groups such as young people.
13. The outstanding facilities include play areas in Upper Cambourne which are due to be delivered this winter, a play area at the sports centre, a sports pavilion at Great Cambourne cricket pitch (currently the subject of pre-application discussions), and the fire station which is likely to be the subject of a planning application by the date of this meeting.
14. The developers have been warned that a lack of success in achieving the sports centre will make it difficult for the Planning Committee to take seriously their application for 950 additional dwellings when it comes to be reported for decision. Officers consider that this has been a main factor in MCA's attempts to try and be more robust in their choice of operator in spite of the difficult financial climate. Nevertheless, pressure should be kept on the developers to deliver this facility, by ensuring that a strict timetable is adhered to regarding the making of the planning application, submitting tenders, starting on site, etc. without slippage between each stage.
15. In the past, Planning Committee has resolved not to grant planning permission for market housing parcels until progress has been made on certain facilities. However there are no market housing parcels within the outline permission which do not have the benefit of reserved matters consent. Therefore, and appropriate to today's financial climate with sales just starting to pick up and a stock of new homes for sale, it is recommended that authority is given for Officers to instruct Counsel to prepare injunctive proceedings, and that such proceedings are issued to prevent house occupations if each stage is not reached by an agreed time, as follows:
16. Authority is sought to instruct Counsel to prepare papers to cover the issue of Injunctive proceedings and to cater for each of the following (subject to any particular points of advice from Counsel):
 - (a) New planning application for revised sports centre design. If the Land Owners do not make a new planning application for a revised sports centre within 8 weeks of the December planning committee, injunctive proceedings are prepared to prevent any occupations of new dwellings until an application has been submitted and registered;

- (b) Approval of new application. If the application is not approved within 13 weeks, injunctive proceedings are prepared to prevent occupations of new dwellings until such application is successfully amended and determined, or an appeal is lodged;
 - (c) Submission of tender. If evidence is not provided within 4 weeks of planning permission being granted that the Owners have gone out to tender, and with a tender period of no more than 6 weeks, for the build of the sports centre (and within a build period of no more than 12 months from the tender date) injunctive proceedings are prepared to prevent occupations of new dwellings until a tender has been accepted by the Land Owners;
 - (d) Start on site. If works on site do not start within 8 weeks of the closing date of the tender, injunctive proceedings are prepared to prevent occupations of new dwellings until a start on site has substantially commenced;
 - (e) Continuing works. If works on site slip by more than 8 weeks by the Construction Programme that will form part of the tender, injunctive proceedings are prepared to prevent occupations of new dwellings until the works are back to within 4 weeks of the original Construction Programme.
17. Agreeing the proposed new trigger date for the completion of the sports centre will support MCA and Active Nation to provide the sports centre as soon as practically possible within a robust legal timeframe which is essential now given the time that has elapsed since it was first expected to be delivered. It is reassuring that the Parish Council is willing to step in and take over the building if any problems occur in the future.

Recommendation

18. a) Agree a new Deed of Variation to include a new trigger date of 1st December 2011.
b) Authorise Injunctive proceedings in each circumstance noted in paragraph 16 above in the event that the timetable for each or any of those circumstances is not met.

Background Papers: the following background papers were used in the preparation of this report:

- Reports to Planning Committee (and its predecessor) meetings of April and August 2006, November 2007 and November 2008.
- Planning file ref: S/6427/07/RM – sports centre, grounds maintenance building and extended car park.
- Section 106 Agreement dated 20th September 1994.
- Cambourne sports centre update 5-11-09 (see appendix 1)
- Letter from Bovis Group Strategic Land Director (see appendix 2)

Case Officer: Kate Wood – Principal Planning Officer (Major Developments)
Telephone: (01954) 713264

Presented to the Planning Committee by: Kate Wood

Appendices follow on next pages.

Appendix 1

“Cambourne Sports Centre Update from MCA Developments Ltd 5th November ‘09

The Consortium (MCA) have appointed ‘Active Nation’ (AN) as the preferred partner to assist develop and operate the Sports Centre

Cambourne’s Project Director is contacting five of AN’s clients for references (details attached) and proposes to visit and meet the Project Managers together with staff to discuss and understand performance

AN have submitted more detailed proposed Heads Of Terms to MCA for consideration and have arranged to make a presentation to the Parish Council on 11th November

AN business is to act as an Operator, not a Developer and therefore MCA will project manage the construction process to an agreed design and specification.

AN have proposed contributing the sum of £200k towards the project but as a prerequisite of their involvement (whether or not they make a contribution) they require the completed buildings and freehold title to be transferred to them to assist their overall business expansion aspirations as it will allow them to borrow funds, secured against a potentially valuable asset

AN have also proposed the following ‘time line’ for delivery of the completed Sports Centre:

- AN to issue revised floor plans and consultants’ fee proposals by Friday 06 November 2009
- AN to meet the parish Council on 11 November 2009
- Heads of Agreement to be agreed by Friday 20 November 2009
- Consultation with SCDC and Cambourne Parish Council in week beginning 23 November 2009
- Pre-application meeting with SCDC and Sport England in early December 2009
- Planning Application formally submitted by Friday 15 January 2010
- Planning application determined – Mid April 2010
- Working drawings prepared and out for tender by end of April 2010 [NB. Subject to MCA’s agreement that preparation of documents can take place during planning application consultation / determination period.]
- Contractor appointed – by end of June
- Start on site – 01 August 2010
- Completion of buildings – end of April 2011
- Opening of Sports Centre – summer 2011

MCA consider this programme should include at least, a 6 month contingency until further work and a more detailed 'time line' has been prepared and agreed.

For reporting purposes to SCDC's committee, we would therefore suggest at the earliest, winter 2011 for a targeted Sports Centre opening date.

The above is also subject however, to making quick progress with AN to resolve the 'key' issue of the transfer of title and therefore completed Sports Centre to AN

MCA will require that there are appropriate guarantees to operate and successfully manage together with some form of 'buy-back provision' in the event that AN enter into receivership etc. Further discussions are currently taking place with AN to find a suitable solution

With regard to SCDC's request for a supplemental S106 Agreement, MCA suggest that the design and drawings for the Sports Centre are progressed and following informal approval by SCDC, Sports England and the Parish Council, the plans could then be incorporated within a new S106 with an appropriate date for an agreed completion, potentially, say, no later than 1st December 2011.

N C Smith
Bovis Group Strategic Land Director
6th November 2011"

Appendix 2

(follows on the next page)



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Kate Wood BA (Hons) MRTPI AMInstLM
Principal Planning Officer: Major Developments
South Cambridgeshire District Council
Cambourne Business Park
Cambourne
Cambridge
CB23 6EA

19th November 2009
Our Ref: NCS/DMW

Dear Kate,

I refer to my email dated 9th November and as discussed, MCA would now like to formally apply to amend the trigger date in respect of our requirement to provide a 'Sports Centre', to the 1st December 2011.

As you will appreciate from the numerous discussions and meetings we have had on the subject, we have been working hard to find a solution following the withdrawal of Leisure Connection's developer and therefore funding, at the eleventh hour, last December.

You will recall that all the legal paperwork had been in place ready for execution on 22nd December 2008 when the developer's bank decided in view of the economic climate to withdraw from the scheme.

Following this set back, we worked closely with Leisure Connection in their attempts to raise funds from other banks, whilst at the same time as also discussing the project with other interested developers, e.g. Xpect Leisure, Odyssey and LEA Investments.

We were subsequently able to progress matters with LEA Investments, working in conjunction with Leisure Connection. Separate meetings were then held during April with the District Council, the Parish Council and Andrew Lansley MP, to provide an update on progress as MCA clearly understood and shared the concerns and disappointment of the resultant further delays in the provision of the Sports Centre.

Matters seemed to be progressing well, however, on 8th May, Leisure Connection's advised us that in the light of the economic climate, their Board had decided to withdraw their interest.

We continued to discuss matters with LEA Investments and another interested party, Nuffield Leisure, whilst at the same time as carrying out a full review of the situation with our advisor's, RAE Sports and Leisure Consultants.

As you are aware, further meetings were held with the District Council to discuss potential new designs and specifications for a Sports Centre that complied with the original S106 requirements but that could also be enhanced, with the addition of a swimming pool at some later stage, if and when, the market for such uses had improved.

We also met with Sports England to seek their views in respect of the type of facility that may be viable to run in the light of the current economic climate and this assisted the design process.

Other potential interested parties had also contacted our consultants but as little solid progress was being made we formally contacted all concerned and advised that we had set a dead line for submissions/offers, providing them with a detailed specification and brief to ensure they complied with the requirements as discussed with both Sports England and the District Council.

Disappointingly however, only two parties, LEA Investments and Active Nation actually submitted firm proposals to us and as you are aware we decided to proceed with the latter as we were still concerned with LEA's ability to raise suitable funding.

We are now discussing detailed 'Heads of Terms' with Active Nation whilst at the same time liaising closely with the Parish Council, as in the event that Active Nation do not proceed to contract, MCA would appoint a contractor to build the Sports Centre and transfer the completed project to the Parish Council. A suitable sports and leisure operator will also have been appointed to manage the facility.

We are however hopeful that legalities will be concluded with Active Nation as they seem an ideal partner for the project being a charity, whose objective is to assist in the delivery of the government's agenda for helping communities to become fitter and more active.

I hope the above is a useful summary of activity since the beginning of the year and naturally, we will continue to update you on progress and can discuss matters further at the meeting arranged with the Council for 3rd December.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'N' and 'C' followed by a long horizontal stroke.

N C Smith
Director MCA