

EAST HERTS COUNCIL

DEVELOPMENT CONTROL COMMITTEE – 22 MAY 2013

REPORT BY HEAD OF PLANNING AND BUILDING CONTROL

9. LEGAL UNDERTAKING IN RELATION TO DEVELOPMENT AT GOLDINGS, HERTFORD (REF 3/98/1849/FP)

WARD(S) AFFECTED: Hertford: Sele

Purpose/Summary of Report

- To enable Members to consider possible action in relation to a Legal Undertaking.

RECOMMENDATION FOR DEVELOPMENT CONTROL COMMITTEE:

That:

(A)	The undertaking of legal action, if necessary and appropriate, to ensure compliance with the Legal Undertaking relation to application 3/98/1849/FP and development at Goldings, North Road, Hertford, be endorsed.
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1.0 Background

1.1 Development proposals at this site were considered by the Council in 1998. They comprised the conversion of the existing mansion and other buildings at the site into residential use and the construction of additional new residential dwellings. The matter was referred to the Secretary of State and a public inquiry was held in early 2000. The outcome of the inquiry was that planning permission was granted.

1.2 A unilateral legal undertaking was associated with the planning permission and is dated 20 March 2000. Unilateral undertakings are similar to planning legal obligation agreements. However, as the name suggests, a unilateral undertaking is offered by one party, often the potential developer, without requiring the agreement or support of others involved. This report relates to the provisions of that unilateral undertaking. A copy of the undertaking is attached as ERP B to this report.

2.0 Report

- 2.1 There are two significant undertakings given in the unilateral. These are that the developer of the site will:
- prepare and implement a Landscape Management Plan (LMP);
 - transfer the communal areas of the site to a separate Management Company.
- 2.2 The timing of the first of the obligations above is that the LMP should be prepared prior to commencement of the development at the site and it should be implemented on the occupation of the last dwelling on the site. For the second obligation, the transfer should take place on the completion of the sale of all of the dwellings.
- 2.3 Development at the site has now been completed and residents have been in occupation for a number of years.
- 2.4 Residents, through a residents committee, have raised with officers, and local Members, their concerns that the requirements of the unilateral undertaking have not been honoured and, as a result, the objectives of the development have not been fully met. When the Secretary of State considered the development proposals, they were considered to constitute inappropriate development in the green belt. However, the benefits of the development, in relation to the improvement and future preservation of the listed buildings at the site, the works of landscape renewal and public access and the degree of certainty provided by the undertaking were considered to outweigh the harm.
- 2.5 In relation to the first of the significant obligations referred to, some work has been undertaken to secure the production of the LMP. A number of versions of a draft LMP appear to have been produced over a lengthy period. However, a further draft LPM has recently been provided to Officers and the detail of it is now being considered by the Councils Landscape Officer.
- 2.6 Whilst this represents promising progress, this does have to be set against the undertaking which required the LMP to be prepared a good number of years ago. It will still be necessary, after Officers have commented on the draft plan, for a finalised version to be drawn up and be subsequently implemented.

- 2.7 Residents have raised the matter that, given they are now in occupation at the site and because the second matter, the setting up of a Management Company, is one which they will ultimately required to meet the expenses of and which will implement the LMP, they should reasonably also be offered the opportunity to comment on the LMP before it is finalised. This does not appear to be an unreasonable request. It is considered appropriate that such a consultation takes place after the initial consideration by the Landscape Officer, so that residents can also be provided with the thoughts of Council Officers on the LMP.
- 2.8 There are then a number of steps that have to be taken and work required before an acceptable and complete LMP is in place.
- 2.9 The second significant undertaking of the unilateral is that communal areas of the site should be transferred to a separate Management Company. That Management Company will then be charged with maintaining the land transferred in accordance with the requirements of the LMP.
- 2.10 There appears to be an inconsistency in the unilateral undertaking in that the covenants set out in it require the transfer of land to take place on completion of the last dwelling in the development to be sold or let. A schedule in the undertaking places a proviso on this such that the transfer should not take place until all the dwellings are sold. Thus, whilst the spirit of the undertaking is clear, this inconsistency may suggest that if dwellings are let, rather than sold, the trigger to transfer the land is not reached.
- 2.11 This aside, the residents committee takes the view that the developer is in breach of this element of the undertaking. Management fees are currently being levied on them but there is no Management Company structure in place which draws on this funding in which they have meaningful input and influence the works to which the funding is put. The residents committee set out that proper and appropriate meetings of the Management Company are not being held.

3.0 Next Steps

- 3.1 The requirements of the unilateral undertaking in relation to the LMP are clear. It appears to Officers that the developer is in clear breach because of the requirement for this to have been prepared prior to the commencement of development which took place now some years ago. It should also have been implemented on

occupation, which also appears as a clear element of breach. Whilst a draft LPM has been submitted now, it is by no means clear that this work will progress to completion. Indeed, past experience would indicate that, if progress is made at all, it will not be at a quick pace. In this respect Members are asked to endorse the taking of legal action, as may be required, to ensure that the obligations entered into by the developer are met.

- 3.2 Whilst Officers recognise the concerns of the residents committee, matters in relation to the second matter, and the setting up of a Management Company, may be less clear. As residents point out, management charges are being levied and work is being undertaken at the site. They have no apparent control over this work and it is clearly not in accordance with an agreed LMP.
- 3.3 The undertaking requires that each purchaser or lessee of a dwelling at the site is to be a member of the Management Company. It does not go beyond this however to indicate that such membership will confer control of the company to the members of a collective group of them. There remains also the issue of the proviso in the schedule to the undertaking which sets out that the Company should be set up only on the completion of the sale of all the dwellings at the site.
- 3.4 Because of these matters, Officers are unable to formulate a clear view on whether a breach has occurred here in relation to which action should be taken at this stage. However, Members are asked to consider this matter and to endorse further work by Officers to seek to ensure compliance with the obligations of the undertaking and, if it becomes clear that legal action would be appropriate to ensure this, that such legal action is also endorsed.

4.0 Implications/Consultations

- 4.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Planning application 3/98/1849/FP

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