



SHEFFIELD CITY COUNCIL

Development, Environment and Leisure Directorate

REPORT TO WEST & NORTH PLANNING AND HIGHWAYS AREA BOARD

DATE 2nd October 2012

REPORT OF Head of Highways Maintenance Client

ITEM

SUBJECT Proposed refuges for pedestrians on the A61 near Salt Box Lane, relating to Planning Application Number 05/04790/FUL, and incomplete internal road works.

SUMMARY

This report relays to Members the response from Salt Box Developments Ltd (managed by Jaguar Estates Ltd) to the possibility of Planning Enforcement Action being pursued, and presents options for Members to consider and decide upon a strategy that should resolve the two issues outstanding at this development.

RECOMMENDATIONS

- 9.1 To note the content of this report.
- 9.2 For Members to decide which outstanding obligation is the most pressing and which will best serve the public interest and to authorize officers to take all necessary steps to ensure compliance by Salt Box Developments with Members chosen course of action.

FINANCIAL IMPLICATIONS

No

PARAGRAPH

CLEARED BY

Elaine Nunn

BACKGROUND PAPERS

CONTACT POINT FOR ACCESS

Mark Simons

TEL NO: 2736369

AREA(S) AFFECTED

Grenoside

CATEGORY OF
REPORT

OPEN

DEVELOPMENT SERVICES
REPORT TO NORTH & WEST
PLANNING COMMITTEE
02nd OCTOBER 2012

PROPOSED REFUGES FOR PEDESTRIANS ON THE A61 NEAR SALT BOX LANE
AND COMPLETION OF INTERNAL HIGHWAY WORKS RELATING TO PLANNING
APPLICATION NUMBER 05/04790/FUL

1.0 PURPOSE OF REPORT

1.1 The purpose of this report is to relay to Members the response from Salt Box Development Ltd (managed by Jaguar Estates Ltd) to the possibility of Planning Enforcement Action being pursued, and to put possible options forward for Members to consider and decide upon a strategy which should bring the outstanding matters to a satisfactory conclusion.

2.0 BACKGROUND

2.1 There are two outstanding issues at this development. Firstly the construction of the road inside the development has not been completed and therefore the Highway Authority has been unable to adopt the road as 'highway maintained at the public expense'.

2.2 Secondly, it was a condition of the Planning Consent for this development that pedestrian refuges be constructed on the A61 prior to work commencing on site and to date, these refuges have not been constructed although the majority of the development has taken place. There is also a requirement to resurface the footway abutting the development site boundary.

2.3 At it's meeting of 02/11/2010, this Committee received a report from the Director of Development Services which gave an update in relation to the provision of pedestrian refuges on the A61 near Salt Box Lane. Committee resolved that: (a) the report now submitted be noted; (b) the decision to provide refuges at the junction be reaffirmed; and (c) officers be requested to continue negotiations with the developer of Case No. 05/04790/FUL (for a period of up to three months) to seek a signed and sealed Section 278 legal agreement for provision of the refuges as outlined in the report and, should this not be agreed within three months, for the Director of Legal Services and Head of Transport & Highways to pursue enforcement action against the developer.

2.4 During the intervening period, progress has been made regarding development of an acceptable layout and bollard specification for the refuges. Verbal updates have been given by officers at various meetings of this Committee. However, the necessary work to construct the refuges has not yet begun and Members will see from the correspondence below that Jaguar Estates who manage the site do not anticipate the work being completed this year. Officers and Members have been sensitive to the need to reach a negotiated solution with the developer in order to try to ensure that Salt Box Developments Limited remain in an economically sound position to complete the development. However, the lack of progress has become

increasingly frustrating and culminated in The Chair requesting an internal meeting with officers from Planning, Highways and Legal, to discuss options for securing a more positive outcome than has thus far been achieved.

2.5 Section 3 below sets out in two e-mails the discussion that took place between The Chair and officers; together with the response from Rod Wadsworth of Jaguar Estates.

3.0 RECENT COMMUNICATION BETWEEN SCC & DEVELOPER

On 27/07/2012 15:48, Simons Mark wrote:

Hi Rod,

As I mentioned over the phone last week, the Chair of Planning requested a meeting recently to discuss the proposed refuges associated with your Salt Box Lane scheme. He wanted Julian Ward (SCC Solicitor) and John Williamson to attend, such that options could be considered for accelerating progress. It was one of Julian's last meetings before leaving SCC. His position has since been filled by Deborah Eaton.

We reviewed the planning condition and reflected on the plans thus far prepared by Cannon (Dave Taylor). I explained the position you've stated in the past concerning the banks, the fact that there's still a further cell for you to develop, and that most of the development is rented, so you've not had a large capital receipt. We also touched on the fact that some internal highway works remain outstanding.

None-the-less, the view of the meeting was that planning permission had been granted in April 2006, and that the amount of delay in providing the refuges was/is unacceptable.

The meeting concluded that by the end of August, you should be in a position whereby you are able to demonstrate that you have made significant strides in progressing the scheme, with a firm indication of when the refuges will be constructed. If you are unable to achieve this by the end of August, I've been asked to inform you that Planning Enforcement action will follow. The meeting wasn't obviously expecting the refuges to have been constructed by the end of August.....but we need a clear indication of when later this year they will be built.

I'd be grateful for your thoughts. Please feel free to include all the above in your response.

Mark Simons
Principal Highways Development Control Officer
Highways Maintenance
Sheffield City Council
0114 273 6369

From: Rod Wadsworth [rodwadsworth@jaguarestates.com]

Sent: 30 July 2012 16:37

To: Simons Mark

Cc: Rippon Peter (CLLR); Williamson John; Wheeldon Ian; Eaton Deborah (CEX)

Subject: Re: 05/04790/FUL Salt Box Lane/A61 Refuges

All

I am well aware that this matter has been stewing for while, although only recently have we seen sufficient progress on design and specification to justify serious contemplation and implementation, after much delay and indecision within the Council itself. Similarly, I appreciate concern about seeing these highway works completed.

For the benefit of new names on this round robin, I have to reiterate some history.

This site is a Salt Box Developments Ltd project, managed by Jaguar Estates Ltd. Whilst consent may have been granted in April 2006, this was after terrible unforgivable delays that have inevitably contributed to the present state of affairs. A serious recession began in October 2007 and still prevails - triple dip ? Development finance in any shape or form has been absent from a crisis ridden banking system, leaving the industry decimated. This status quo is also unacceptable, but I have no answer. The project funders have been Yorkshire Bank Page 5 latterly brought shame on themselves and

the name of Yorkshire, by totally pulling out of commercial lending and leaving customers hanging out to dry with little chance of help from elsewhere - see various current press releases and other periodical commentary.

YB are still owed monies by SBD albeit not a lot, and retain their overall charge position. There is a small amount of cash in the account which YB are entitled to snaffle to reduce the debt, but I have managed to fob them off for now. That amount will cover outstanding highway work within the site, and maybe refuge island work, but not both. If you ask the existing residents which works they would wish to see completed first, I guess they will say those within the site.

We do not have recourse to other peoples money like the Plc companies who raise cash from a stock market or via rights issues. Liquidity remains an issue here and everywhere.

As I have always said, this project will be concluded as soon as possible, and it is utterly in our interests to do so. That includes refuge islands on the A61. You have to understand the difficulties in reaching this objective. The immediate one is to get rid of YB and replace with alternative funders, or mechanism to enable the works to be completed, including erection of the last four houses. One quick easy answer is for the Council to provide funding secured on the four undeveloped plots.

Alternatively patience is required whilst we try, as we have continually done, to obtain finance from elsewhere. This will be achieved, but is unlikely to be before the end of this year.

I would reiterate that the A61 works could be completed swiftly (subject to final costs), at the expense of other site works. I would not make this decision and if the Council wish to pursue that route, then maybe they ought to seek 'approval' from residents on this site first.

I trust the above explains our position. I am available for discussion as necessary.

Sincerely

Rod Wadsworth

4.0 OPTIONS REGARDING THE INTERNAL ROAD ON THE SITE

4.1 The City Council could enforce the S38 Highways Act 1980 Agreement.

4.2 In January 2007, the City Council entered into a legally binding agreement between Salt Box Developments Limited and the Yorkshire Bank. Salt Box Developments Ltd as the owner of the land agreed to make up the road to the required standard and the City Council agreed that once this happened they would adopt the road as highway maintainable at public expense. Yorkshire Bank acted as Surety. In the event that Salt Box Development Limited default on the works then an immediate obligation is imposed on the Bank to Pay to the City Council the sum specified or do the works themselves.

4.3 Due to the economic downturn and the attempts to reach a negotiated settlement no firm schedule for the completion of the works has ever been provided by the City Council to Salt Box Developments Ltd and therefore neither the developer's nor the Surety's obligations have crystallized.

4.4 One possible course of action would therefore be to give Salt Box Developments Ltd formal notice under the S38 Agreement of an expected date for both commencement and completion of the road works and at the same time to serve a formal notice on Yorkshire Bank to inform them of this turn of events.

4.5 In the event that Salt Box Developments fail to comply with the work in accordance with the notice, either within the specified timescale or to the required standard, the City Council can then serve a further Notice on Yorkshire Bank requiring them to fulfill their obligations.

- 4.6 Salt Box Developments then have two choices; to find the money to do the work themselves, or not do the work and face the consequences with their bank.
- 4.7 Both the developer and the bank took the commercial risk that in the event of a failure by the developer to complete the work there would be a financial consequence. By signing the agreement, both parties accepted that they understood, and accepted, this risk.
- 4.8 It should be noted that the Section 38 bond covers only the internal work (new roads & footways) within the red-line boundary of the development site. If a decision is taken to call in the bond, the funds couldn't be directed towards provision of the refuges.
- 4.9 Correspondence with Jaguar Estates (section 3 above) suggests the funds are now in place to complete the internal road works, plus resurface the footway abutting the development site, though a funding gap still exists for provision of the refuges.
- 5.0 OPTIONS REGARDING THE PEDESTRIAN REFUGES ON THE A61
- 5.1 Condition 16 of the Planning Consent stated that pedestrian refuges should be built on the A61 before work started on site. The work has now largely been completed but the refuges have not been built. The City Council could serve an Enforcement Notice for breach of Planning Consent. However, from both a practical and legal point of view, it is difficult to see what this would achieve. There is no building work currently ongoing on site that could be stopped. Indeed, the objective now is to try to complete the site.
- 5.2 Another option might be for the City Council to enter into a Section 278 Highways Act 1980 Agreement with the developer whereby the City Council executes the works on terms that the developer pays the whole or part of the costs. The City Council must be satisfied that the works will be for the public benefit and they must fall within the Highways Authority's powers of improvement. However, this option still leaves the City Council with the problem of the recovery of the costs from a developer who says that he doesn't have the resources available. The City Council can recover monies owing under a S278 Agreement as a civil debt and having obtained a judgment, the outstanding sums can be registered as a local Land Charge or a Charging Order could be obtained from the Court which enables the City Council to register the Charge with the Land Registry so when the site or part is sold, the Council will be entitled to recover its costs from the proceeds of the sale. However, it is possible that other Charges exist on the land which will be in advance of the Council's Charge and these would be paid off before the Council's Charge. A Land Registry Search would reveal the existence of such charges. However, there is further uncertainty given the state of the property market and there seems to be no immediate prospect of any of the units being sold as most appear to be rented. Members may also wish to be mindful of any precedent that is set with this developer.
- 5.3 A controversial option for Members to consider is that given the amount of times these properties have been occupied, what evidence is there for an ongoing need for the refuges, specific to this development? Dependent on the view taken, agreement might be reached that this condition requiring the provision of refuges is unenforceable.

5.4 The developer's representative (Rod Wadsworth) has been invited to (and will attend) Committee, to give a statement and elaborate on the points contained within his e-mail above. He maintains that the serving of an Enforcement Notice will not help secure the funding required to complete the scheme, and that there are currently insufficient funds to complete the two outstanding obligations (the internal works and resurfacing the footway abutting the development site; & the refuges). Choosing to enforce completion of both obligations would undoubtedly have a financial impact on the developer and could even further delay completion of the outstanding highway works. Equally, the community, Members and Officers feel progress is long overdue.

6.0 EQUAL OPPORTUNITIES IMPLICATIONS

6.1 Provision of the facilities will assist pedestrian crossing movements for all age groups and degrees of mobility.

7.0 ENVIRONMENTAL AND PROPERTY IMPLICATIONS

7.1 Provision of the refuges will ease pedestrian crossing movements of the A61, thereby improving connectivity to bus stops, possibly increasing patronage and a shift away from private car use.

8.0 FINANCIAL IMPLICATIONS

8.1 The developer will fund Sheffield City Council fees attributable to design and construction of the refuges, or design and construct the scheme themselves, paying checking fees to The Council. However, the costs currently being considered by the developer don't (owing to how long ago this all dates back to) take account of current requirements for Commuted Sums to cover ongoing maintenance of new highways infrastructure, under the terms of the new PFI Contract.

9.0 RECOMMENDATIONS

9.1 To note the content of this report.

8.2 Given the points made by the Developer and in 5.4 above, Members are recommended to decide which outstanding obligation is the most pressing and which will best serve the public interest and to authorize officers to take all necessary steps to ensure compliance by Salt Box Developments with Members chosen course of action.

Steve Robinson
Head of Highways Maintenance Client
19 September 2012