

Committee:	Agenda Item No.:
Date:	Status
Category	
Subject:	Commutated sum payments in respect of the s106 agreement for Park Lane, Pinxton and the transfer of various plots of land to Bolsover District Council by Ben Bailey Homes Limited
Report by:	Special Projects Officer
Other Officers Involved	Head of Leisure Senior Valuer Senior Principal Solicitor
Director	Director of Neighbourhoods
Relevant Portfolio Holder	Leisure

### **RELEVANT CORPORATE AIMS**

COMMUNITY SAFETY – Ensuring that communities are safe and secure by providing recreational areas which are located to maximise informal surveillance

ENVIRONMENT – Promoting and enhancing a clean and sustainable environment by providing recreational facilities that are designed to enhance existing recreation areas and to facilitate easy maintenance

REGENERATION – Developing healthy, prosperous and sustainable communities by providing additional recreational facilities for young people and the wider community

### **TARGETS**

None

### **VALUE FOR MONEY**

By obtaining best value under section 123 of the Local Government Act 1972

### **THE REPORT**

As part of the residential development of an area of land at Park Lane Pinxton by Clarke Homes, a Section 106 agreement was produced which included the provision of an area of open space in the immediate vicinity of the development and provided commuted sums for informal and formal recreation

provision. The sums amounted to some £11,400 for informal and £38,125 for formal recreation provision.

The agreement was signed on 24 November 2003 and the commuted sums were paid to Bolsover District Council on 25 November 2003.

The formal contribution was earmarked for the development of football pitches at Wharf Road Recreation Ground in partnership with Pinxton Parish Council. Planning Permission for the project was granted in 2007 and discussions were held with the Football Foundation and the FA with regard to securing additional funding for the project, the cost of which, including pitch works, pavilion and car park was estimated to be of the order of £250,000. Even with s106 monies from the Park Lane development and other developments in Pinxton, there was still a significant shortfall in funding.

The informal element was earmarked for the provision of a play area within the vicinity of the development. A site off Widmerpool Street was identified initially and additional funding was secured from the Big Lottery Children's Play Programme.

During the ongoing discussions regarding the Wharf Road project it was discovered that the five year time limit on spending the s106 contributions had elapsed in November 2008. At this point the developer could have recovered any unspent s106 contributions, as stated in the third schedule of the s106 agreement. However, by this time, Clarke Homes had been subsumed into Gladedale, who then took on the s106 liabilities.

The Special Projects Officer has been in communication with Gladedale by letter and email regarding the spending of unspent s106 monies. There was some confusion regarding the wording of the initial email response from Gladedale, which suggested that Gladedale did have an issue with spending the unspent monies at Wharf Road Recreation Ground. A further letter was sent in early 2010 in an attempt to clarify the situation, by which time Gladedale had been re-branded as Ben Bailey Homes.

Further clarification was sought via a site meeting in April 2010 at which it was suggested that Ben Bailey Homes would look to recover some, but not all, of the formal s106 contribution to cover maintenance liabilities on another site.

In an email response from Ben Bailey Homes received on 15 June 2010, the following was proposed:

1. **Pinxton:** *Bolsover DC to take over the maintenance responsibility of the public open space (POS) with immediate effect.*
2. **Pinxton:** *Ben Bailey Homes to transfer POS land to Bolsover DC. Each party to take care of their own legal costs.*
3. **Hazelmere Park, Skinner Street, Creswell:** *Bolsover DC to take over the maintenance responsibility of the Play Area and paths providing access to*

*the area. This is take place once the small amount of outstanding remedials to the play area and surfacing to the paths are complete.*

4. **Hazelmere Park, Skinner Street, Creswell:** *Utilise £17,039 of the unspent £37,450 to satisfy the remaining S106 liability for the maintenance of the POS which is due on transfer.*
5. **Hazelmere Park, Skinner Street, Creswell:** *Bolsover DC to take over the maintenance responsibility of the landscaped area of the POS.*
6. **Hazelmere Park, Skinner Street, Creswell:** *Ben Bailey Homes to transfer POS land to Bolsover DC. Each party to take care of their own legal costs.*
7. **Woodhouse Lane, Bolsover:** *Bolsover DC to take over maintenance responsibility of open space area as shown on the enclosed plan.*

***Taking the £17,039 in item 4 above from the £37,450 of unspent monies leaves £20,411 which we would have no objection to Bolsover DC using however they like provided the above proposal is agreed to.***

This effectively means that there would be no physical transfer of monies between Bolsover District Council and Ben Bailey Homes. Ben Bailey Homes is proposing not to pay the s106 maintenance contribution for Hazelmere Park, Creswell and that this would be funded from the existing s106 contributions that were paid in 2003.

The informal contribution is not affected by this proposal. Following the award of £150,000 of Playbuilder funding to Bolsover District Council (£50,000 contribution per project to three projects), it has been suggested that the informal contribution (£11,400) could be combined with existing Big Lottery Children's Play Programme Funding (£10,500) and Playbuilder funding (£50,000) to allow the development of a large natural play area at Hilltop Park, Pinxton, which would be managed and maintained by Pinxton Parish Council.

At the time of writing, there is some uncertainty whether Playbuilder funding will still be available as it is central government funding (via DCSF) that is being administered by Derbyshire County Council and is no longer ring fenced. A decision is expected to be made in August 2010.

### **ISSUES/OPTIONS FOR CONSIDERATION**

Whether to accept Ben Bailey Homes' offer of £20,411 towards the development of Wharf Road Recreation Ground on the above terms

Whether to allow £17,039 of the existing s106 commitment to be re-allocated to cover the maintenance contribution for the POS at Hazelmere Park, Creswell.

Whether to allocate the informal contribution to fund the redevelopment of play facilities at Hilltop Park, Pinxton should the Playbuilder funding still be available.

### **IMPLICATIONS**

Financial:     Legal costs associated with the transfer of land  
                  Potential future maintenance costs on the land transferred to the Council

Legal:           Ensuring compliance with section 123 of the Local Government Act 1972

Human Resources: None

### **RECOMMENDATION(S)**

It is recommended that Ben Bailey Homes' offer is accepted

It is recommended that the informal contribution is allocated to Hilltop Park, Pinxton

### **REASON FOR DECISION TO BE GIVEN IN ACCORDANCE WITH THE CONSTITUTION**

ATTACHMENTS: Plan of the land at Woodhouse Lane, Bolsover

FILE REFERENCE:

SOURCE DOCUMENT: