

# **Report to District Development Control Committee**

**Date of meeting: 30 January 2013**



**Epping Forest  
District Council**

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**Subject: Planning Application EPF/2361/09 – Former Jennykings Garden Centre, Manor Road, Chigwell – Redevelopment of land formerly in use as a garden centre to provide 21 flats 80% of which will be affordable housing. (Revised application)**

**Officer contact for further information: K Smith**

**Committee Secretary: S Hill Ext 4249**

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## **Recommendation:**

That members of the Committee consider a variation to the existing legal agreement, as requested by the Developer.

## **Report Detail**

1. (Director of Planning and Economic Development) This proposal was granted planning permission in August 2012, following approval by this Committee, referral to the Secretary of State and the completion of a legal agreement under Section 106 of the Act, to secure planning obligations.
2. Prior to the grant of planning permission, ownership of the site passed from the original applicant to two separate developers: Homestyle Properties 2007 Ltd in respect of the block of 4 private dwellings and East Thames Housing Association in respect of the remainder of the site. Development of the part of the site within Homestyle Properties' ownership has since commenced, albeit contrary to imposed planning conditions and to the provisions of the legal agreement. Works within the site ceased last year, following informal intervention by the Council's Planning Enforcement team.
3. A variation to the requirements of the legal agreement is now sought by Homestyle Properties. The requirement sought is:
  1. The removal of clause 5.51 of the agreement, which requires that the construction of buildings within the site does not exceed one metre in height until such time that the access road into the development has been constructed to base level.
4. The Developer provides the following case in support of this request:

*Due to unforeseen delays not caused by ourselves. We commenced on site as originally agreed with our development partners but alterations to their plans and some legal and financial technicalities prevented them meeting their planned start date. We have constructed our building to first floor level and the works to this level*

*have been approved by EFDC Building Regulations but has been stopped voluntarily.*

*Delays are costly and do place financial risks to our project. We believe that the Council is protected by clause 5.52 in that our flats cannot be occupied until the access road is built. If we can at least complete the building then this will remove one set of building works from the site and concerns about a half finished building on which nothing is happening will be of benefit to local residents.*

*The ten thousand pounds and one thousand will be paid by East Thames as agreed. We have also an option to build the road ourselves in conjunction with East Thames if this becomes necessary.*

## **Planning Issues**

5. The purpose of including this requirement within the legal agreement originally, was to prevent the occurrence of a situation whereby the development was completed, but no vehicular access to the site was secured (the proposed road lies within an adjacent site which has only outline planning permission). This requirement was relaxed by the Committee from the previous recommendation by the planning officer that the development should not be commenced until such time that the road was constructed to base level, to enable ground works to take place and development to proceed up to one metre in height, prior to the construction of the road.

6. The Developer correctly states that clause 5.52 of the legal agreement protects the Council as it would prevent the occupation of any dwelling prior to the construction of the access road. However, by this time the development could be complete, and the Council, if it chose to enforce this requirement of the legal agreement, would be faced with the retention of a fully constructed but unoccupied building until such time as the road (which lies within separate ownership and does not benefit from full planning permission) was constructed, if indeed that happened.

7. Accordingly, Members of the Committee should carefully consider whether the limitation on the further construction of the building in advance of the access road should be removed.

8. It should also be noted that other obligations and planning conditions which restrict the construction of the development at this time do also exist.

9. Planning conditions require the Council's approval, prior to the commencement of the development, of the following matters:

- Materials;
- Construction Method Statement;
- Site Levels;
- Land Contamination
- Screening;
- Tree Protection;
- External Lighting;
- Landscaping; and
- Refuse storage.

10. The above matters remain outstanding, although an application has been submitted seeking the Council's approval of the first three items. Discussions are underway between officers and Homestyle Properties in respect of other the need for information regarding the other outstanding matters.

11. The legal agreement also requires, prior to the commencement of the development, the payment of £20,000 towards the provision of a Post Office facility and £1,000 towards highway improvement works. Whilst Homestyle Properties advise that the owner of the remainder of the site will fund this contribution, the legal agreement does not make this distinction. Furthermore, as development has not commenced in relation to the land with East Thames ownership, that organisation is not responsible for the existing contravention.

12. The legal agreement also contains, at clause 5.1.8, a requirement that 'if the Development is to be constructed in phases the overall percentage mix of Affordable Housing Units and Market Housing shall be the same within each of the phases.' However, development of the Affordable Housing has not yet commenced. The intended commencement of this element of the development is unclear, following the refusal of planning permission for amendments to the approved development by Area Plans South last month.

13. Finally, Homestyle Properties state that they have an option to build the road if necessary. However, it should be borne in mind that even if an option exists with the adjacent landowner, such works would be subject to full planning permission being secured for the road.

14. If Members agree the variation to the agreement, a revised legal agreement will need to be signed by representatives from Homestyle Properties, East Thames, Epping Forest District Council and Essex County Council.

## **Conclusion**

15. The Committee should decide whether it wishes to accept the deletion of the cause within the legal agreement, thereby permitting the construction of the development to continue without the vehicular access being provided.