

Agenda Item No:

**Report
No:**

Report Title: Badgers Close, Newhaven

Report To: Cabinet

Date: 25 July 2007

Lead Councillor: Councillor Peter Gardiner

Ward(s) Affected: Newhaven Denton and Meeching

Report By: Director of Planning and Environmental Services

Contact Officer(s): Mr S J Howe, Area Team Leader (South)

Purpose of Report:

To consider the position concerning an incomplete development at Badgers Close, Newhaven.

Officers Recommendation(s):

- 1 To agree, as an exceptional case, financing of landscaping works at Badgers Close, having regard to the considerations below.**
 - 2 To seek an agreement from the Directors of Badgers Close (Newhaven) Ltd that, provided the District Council carries out landscaping works, they will maintain landscaped areas in perpetuity at no further cost to the Council.**
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Reasons for Recommendations

To ensure a satisfactory development for the benefit of local residents.

1. Information

1.1 Planning permission LW/98/0676 was granted on 20 July 1998 for the 'Erection of one detached and 14 pairs of semi-detached houses (total 29) including road works and site works' at 'Land at rear of 67-89 Hillcrest Road', Newhaven. The houses and access road have been constructed and the development has been occupied for over 5 years (see plan attached).

1.2 The planning permission was subject to a number of conditions, including the following:

"5. A landscaping scheme shall be submitted and approved by the Local Planning Authority before any work on the development commences, such approved scheme to be carried out and completed within 1 year of the commencement of the development or such longer period as may be agreed in writing by the Local Planning Authority.

Reason: To enhance the general appearance of the development."

"8. Details of all screen and boundary walls, fences and any other means of enclosure shall be submitted to and approved by the Local Planning Authority before any part of the development hereby approved is commenced; such approved means of enclosure to be erected to the satisfaction of the Local Planning Authority before any of the building(s)

hereby approved is/are occupied, unless the Local Planning Authority otherwise agrees in writing.

Reason: To ensure that the development does not adversely affect the privacy and visual amenities at present enjoyed by the occupiers of adjoining and nearby properties.”

“11. Details of the height and finish of all retaining walls within the site shall be subject to the and approved by the Local Planning Authority prior to the commencement of development.

Reason: In the interests of visual amenity.”

- 1.3 Details of proposals for landscaping, boundary treatment and a retaining wall along the southern boundary of the site, which backs onto houses at a lower level in Gibbon Road, were submitted to, and approved by, the Council in 2000. However, these matters were not carried out when the development was constructed, and the development is therefore incomplete in these respects. The southern boundary is untidy, unkempt and overgrown.
- 1.4 The Council’s Legal Section has advised that enforcement action would not be feasible in this case, particularly since the company who carried out the development no longer exists and responsibility for the site has, in effect, been passed to the residential occupiers.
- 1.5 Earlier this year the Directors of Badgers Close (Newhaven) Ltd (BCNL), who are a residents group formed to carry out the ongoing maintenance of the site, contacted the Council to advise that the National House Building Council (NHBC) have accepted responsibility under warranty agreement for the “stabilization and protection” of the southern boundary and that they have “agreed to adopt whatever method their engineer decides to adopt for this work” (including any retaining wall).
- 1.6 BCNL has asked that the Council will “fully cooperate in any matter involving fences, land, approvals, etc”, and that the Council should undertake to do the landscaping itself. This is in order that the Council fulfills what BCNL sees as “its duty of care to the residents of Badgers Close” as planning authority. The Association comment that they are “not looking for extensive planting but just clearing, leveling and seeding so that we can maintain the site in a tidy condition.”
- 1.7 Officers have met the Directors of BCNL and have assured them the Council’s Cabinet will be asked to give active consideration to resolving the outstanding matters at Badgers Close.
- 1.8 The Council’s Community Services Department has subsequently advised that to clear, level, topsoil and seed the land required to be landscaped, with some planting if desired, is estimated to cost up to about £5000. Given the difficulties of taking enforcement action against the developer and the continued adverse effect on the amenities of residents from the condition of the southern boundary, it is recommended that the Council finance and undertake the works required to landscape the site. This would be in consultation with the Directors of BCNL. In the exceptional circumstances of the case, it is considered that to do so would be fully justified in order to bring this matter to a conclusion.

2 Financial Appraisal

- 2.1 The costs of implementing the landscaping scheme are estimated to be up to £5000. No existing budgets are available to finance the work. This work could, however, be funded for the Council’s Contingency Fund for 2007-8, which currently has a balance of £50,000.

3 Environmental Implications

- 3.1 I have completed the Environmental Implications Questionnaire and there are no significant environmental effects as a result of these recommendations.

4 Risk Assessment

- 4.1 I have completed a risk assessment in accordance with the Council's Risk Management Methodology, and there is a risk that the reputation of the Council, as Local Planning Authority, would be adversely affected if the necessary landscaping works are not carried out.

5 Background Papers

Planning application file LW/98/0676.

Lindsay Frost
Director of Planning & Environmental Services

27.06.07