

- 6 DCNW2003/2576/G - THE DISCHARGE OF THE OBLIGATION TO PROVIDE FOR OPEN SPACE AS PER SECTION 106 AGREEMENT  
&  
7 DCNW2003/1916/F - CHANGE OF USE OF PLAY AREA TO DOMESTIC GARDEN**
- AT BLACK BARN CLOSE, KINGTON, HR5 3FB**
- For: Tabre Developments per John Phipps,  
Bank Lodge, Coldwells Road, Holmer, Hereford**

**Date Received:**  
24th June, 2003

**Ward:**  
Kington Town

**Grid Ref:**  
30286, 56249

**Expiry Date:**  
19th August, 2003

Local Member: Councillor T.M. James

### **Introduction**

This joint report was previously considered by the Northern Area Planning Sub-Committee on 28 January 2004 when it was advised that the applicant had agreed to an increased contribution of £3,000 in lieu of off-site recreation provision in Kington. This sum is considered appropriate having regard to the discussions that have been undertaken with the Council's Leisure Department, Parks and Countryside service and would, subject to approval of these applications, be made available to Kington Town Council.

It was noted that the applicants offer fell significantly short of the £20,000 request made by the Town Council and the determination of the application was further deferred to seek additional clarification of the site area and its potential residential development.

In response to this further information has now been received from the applicant, with the delay being due to an attempt to establish if neighbouring occupiers were interested in the purchase of the land in order to extend their existing gardens. The response from the applicant indicates that this is the case with the occupier of 15 Blackburn Close having expressed an interest.

The status of the land would be residential if these permissions are granted but having regard to the particular constraints of the site, which include a limited developable area (in view of the presence of an embankment adjacent to the brook); the lack of any vehicular access and its close proximity to existing dwellings in Blackburn Close and Barley Drive, this would not be an appropriate plot for a dwelling.

If the applicant is unable to dispose of the land then its maintenance would remain his responsibility.

In the light of the above, the report and recommendation otherwise remains identical to that previously considered by Members.

## Original Report

### 1. Site Description and Proposal

- 1.1 The application site comprises a roughly triangular plot of land to the rear of 15 and 17 Black Barn Close. The land is generally overgrown and slopes away in an easterly direction down to a brook which generally defines the boundary of the modern housing development that has taken place off Eardisley Road.
- 1.2 Consent is sought to discharge the requirement to provide recreational open space established in the Section 106 Agreement entered into alongside original permission for the development of this site and subsequently for the change of use of this land to private gardens.
- 1.3 The applications have been accompanied by a statement of case justifying the reasons for seeking the change of use.

### 2. Policies

#### **Leominster District Local Plan (Herefordshire)**

Policy A54	Protection of Residential Amenity
Policy A63	Retention of Open Space
Policy A64	Open Spaces Standards for New Residential Development
Policy A65	Compliance with Open Space Standards

### 3. Planning History

- 88/767 - Erection of 12 Dwellings - Approved.
- 94/0558 - Renewal of Permission Approved Under Code 88/767 for the Erection of 12 Dwellings - Approved 19 October 1994.
- 96/0826/N - Erection of 3 houses - Approved 27 February 1997.
- 98/0177/N - Erection of 2 houses with optional garages - Approved 1 May 1998.
- NW99/1732/F - Erection of 8 no. Semi-Detached Dwellings (plots 12-19) - Approved 2 November 1999.
- NW01/1094/F - Change of Use of Childrens Play Area to Domestic Garden - Refused 27 June 2001.

### 4. Consultation Summary

- 4.1 No statutory or non-statutory consultations required.

### 5. Representations

- 5.1 The applicant has submitted the following statement to justify the proposal :

'As you are aware since the previous refusal for this land (NW2001/1094/F) we have explored the possibility of having the Play Area adopted by the Local Authority, although they have since indicated that they are not prepared to take on this land.

If the Play Area were to remain in the private domain it would be necessary to take out an annual insurance for public liability. Unfortunately it has been found that an annual premium in the order of £5,000 would be payable and I feel that this is an unreasonable burden on the householders of Black Barn Close. The householders have also indicated that they do not want a Play Area adjacent to the stream which could prove dangerous to children and its concealed position gives limited views from the houses which could attract undesirable behaviour.'

## 5.2 Kington Town Council state :

'We believe that a similar application came before the Town Council a few years ago and Kington Town Council was opposed to that application. In the original application for the development of this estate, there was a requirement for a play area for children. It is unfortunate that the developer chose to put the play area in an unsuitable place, and to develop a property with insufficient garden. Kington Town Council object strongly to this application - an area set aside for children's play is intended to keep children from playing in the street, and should not be reallocated for a residential garden. If planning permission is granted, does the developer propose to put in place another area designated solely for children's play space. Kington Town Council would welcome such a gesture.'

## 5.3 The full text of these letters can be inspected at Northern Planning Services, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

## 6. Officers Appraisal

6.1 The fundamental issue at stake in respect of this application is to assess whether there are specific circumstances in this particular case that warrant the removal of the children's play space from the Black Barn Close housing development.

6.2 A strict interpretation of Policies A63, A64 and A65 would render this application unacceptable and accordingly it would be recommended for refusal as was the case with the recent application referred to in Kington Town Council's comments (NW01/1094/F refers).

6.3 However, in this case there are a number of factors which require Members consideration. In the first instance the recently refused application was accompanied by a signed petition of 14 residents of Black Barn Close (No.'s 1,3,4,5,7,9,11,17,19 and 21) supporting the change of use of the play area to domestic garden. The concerns raised were that the play area is not readily visible from the vast majority of houses in the cul-de-sac and is alongside a stream and concerns regarding its secluded location and the potential for anti-social behaviour. It is stated that the combination of these factors resulted in the conclusion that the signatories would not allow their children to play unsupervised in the designated area and as a result it would not be sufficiently used to enable regular maintenance to be worthwhile.

6.4 Since the previous refusal, approaches to the Council's Leisure Development, Parks and Countryside service regarding the adoption of the play area by Herefordshire

Council have indicated that it would not be of a sufficient standard to warrant this. Furthermore, to maintain it privately would entail an annual insurance premium of £5,000 to cover public liability.

- 6.5 In view of the above it is considered in this particular instance that the poor location of the remaining play area and the position adopted by a significant proportion of local residents is such that relaxation of the normal policy is warranted.
- 6.6 With regard to the comments of the Town Council the applicant has agreed to the principle of a payment in lieu of the non-provision of playspace which would be used for improvement/maintenance of existing recreational facilities in Kington. The amount had not been finalised at the time of writing and will be reported to Members verbally.

**RECOMMENDATION**

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- 1 - That subject to the receipt of a payment in lieu of off-site improvements/maintenance of recreational facilities, the Section 106 Agreement relating to the provision and maintenance of children’s recreational play area be revoked and upon receipt of the payment that the officers named in the Scheme of Delegation to Officers be authorised to issue planning permission subject to the recommendation set out below.

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That planning permission be granted subject to the following conditions :

- 1 - A01 (Time limit for commencement (full permission) )

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990.

- 2 - G01 (Details of boundary treatments )

Reason: In the interests of visual amenity and to ensure dwellings have satisfactory privacy.

Decision: .....

Notes: .....

**Background Papers**

Internal departmental consultation replies.