

## CLERKS REPORT – 4<sup>th</sup> April 2016

### Agenda Items

**6a) Downside Close – adoption of roads, pavements, street lights etc.** - This is a copy of an email that I sent to Wiltshire Council's Highway Development Control Manager on Tuesday, 8<sup>th</sup> March (I also copied in the Cabinet Member & the Leader of the Council). At the time of writing this report, I have received no response although I have sent a reminder:

*We had a Town Council meeting last night, attended again by a number of residents from Downside Close. We reported the good news that you had received the Bond cheque from the NHBC and were in discussions with Ringway to get the works completed. However, as you know, this news was relayed to us on 10<sup>th</sup> February, almost a month ago now, and the residents are extremely anxious about the state of their roads, pavements and street lighting and are extremely frustrated at the slow progress. I reported that you wanted to resolve the street lighting in the first instance as you did not want to find yourself in a position where it was later necessary to dig up any new surfaces but concerns were raised by the residents & Cllr. Jeans, that the quotations received from the contractors were only valid for a limited period and that, if the works are delayed and protracted, then the Bond money will get swallowed up in administration costs, new quotations will need to be sought again which will inevitably be more expensive and subsequently there will be insufficient money left over to carry out all the works necessary in order to get the roads adopted. My colleague, Sonya Ward, did email you last Thursday to ask if there was any further progress regarding the works and if there was a proposed date for works to commence but unfortunately we did not receive a reply in time for our Council meeting. I do know, however, that the residents are calling a meeting for Monday next week and I would be very grateful if you could let me have an update that I can pass on to them before they meet.*

#### **8a) Applications:**

Application Ref: 16/00199/106  
Application for: Modification of 106  
Proposal: Modification of Section 106 Agreement relating to S/2009/1522 to discharge the liability on the southern and western boundary strips.  
At: Land off Downside Close and Old Hollow Lane, Mere. BA12 6AS

#### **Below is a copy of Wiltshire Council's decision letter:**

*Further to your application under the above reference to modify the Section 106 Agreement relating to S/2009/1522 to discharge the liability on the southern and western boundary strips, received by the local planning authority on 21<sup>st</sup> December 2015.*

*The application has been assessed and considered by the Council's solicitors and is hereby REFUSED for the following reasons:*

*Section 106A TCPA 1990 (as amended) sets out the law in relation to applications to modify or discharge s.106 agreements. The procedure is set out in the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992/2832 (as amended). There is also some brief guidance in the NPPG.*

*The relevant section states that a planning obligation may be modified or discharged by agreement at any time, as long as all parties against whom the obligation is enforceable consent to such modification/discharge.*

*Such consent is not needed in the case of an application for modification under subs.(3) of the Section:*

*Subsection 3 states that:*

*A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period [5 years in this case], apply to the appropriate authority for the obligation—*

*(a) to have effect subject to such modifications as may be specified in the application; or*

(b) to be discharged.

The applicant (yourself), by virtue of the transfer from Oval, appears to be a person against whom the obligation is enforceable.

However, the application in this case seeks not only to discharge the obligations but in addition to transfer land from a third party, along with the obligations with regard to the western boundary, to the individual plot owners. This cannot be achieved by an application under s106A. Any such transfer of land would need to be from the current land owner to the individuals concerned, and this would be purely a land transaction, outside of Planning legislation. As you are aware, the obligations concerned relate to maintenance of the boundary strip and open space and are binding on the management company, and by virtue of transfers from the management company to the various plot holders, on the individual residents as members of the management company.

Land Registry records show that the registered proprietor of the land concerned (ie the open space and the boundary strip) is Oval Investment Properties Limited. Any land transfer would need to be between the current land owner and the individual residents.

In summary therefore, the application seeks to achieve something which is not legally possible under the current application.

I therefore regret that Wiltshire Council is unable to validate the above application because it does not fulfil the relevant legal requirements set out in the Town and Country Planning Act and accompanying regulations. This is because the application seeks to transfer land ownership from a third party to individual residents. Such a transfer can only take place if agreed between the relevant parties, and moreover falls outside the remit of both planning law and the remit of the Council generally.

It is suggested that you take your own independent legal advice as to the appropriate way forward.

### **9b) Proposed Traffic Regulation order for Consultation – Various roads, Mere – Parking and Waiting**

**Restrictions** - The following has now been received from the TRO team:

#### **1. THE COUNTY OF WILTSHIRE (VARIOUS ROADS, MERE) (PROHIBITION AND RESTRICTION OF WAITING) ORDER 2016**

#### **2. THE COUNTY OF WILTSHIRE (VARIOUS ROADS, MERE) (STREET PARKING PLACES) ORDER 2016**

Please find attached a copy of the above proposed Traffic Regulation Orders forwarded to you for consultation.

This proposal will be advertised in the Western Gazette on 24<sup>th</sup> March 2016 and the consultation period ends on 18<sup>th</sup> April 2016.

Comments on this proposal, quoting reference LJB/TRO/MERE may be made by:

Email to [trafficorders@wiltshire.gov.uk](mailto:trafficorders@wiltshire.gov.uk)

or

In writing to:

TRO Team  
Sustainable Transport Group  
Highways & Transport  
County Hall  
Bythesea Road  
Trowbridge  
Wiltshire BA14 8JN

(see attachments for the Orders & plans etc).

**10d) Allotment report** - The allotment rental payment day was held on Wednesday, 30<sup>th</sup> March – we received £938.26 from 41 individual allotment holders. Unfortunately, there are 20 allotment holders still to pay. We currently have two small vacant plots at Wellhead, 7 vacant plots at Southbrook and 0 vacant plots at Jack Paul Close. I currently have four people on the waiting list but most of those want an allotment at Wellhead.

**11d) Request for financial support towards St. Michael's Church Flower Festival 2017** – We have received a letter from the Flower Festival Committee: *'There are plans already afoot to hold a spectacular Flower Festival in St Michael the Archangel Church in June 2017. We will be inviting flower arrangers from Mere and the wider community to create designs reflecting and celebrating all aspects of our community and aim to bring in people from Mere and further afield to enjoy the flower arrangements. Concerts and refreshments during the festival will help to raise money for the continued restoration of our beautiful parish church. We are looking to raise an initial £800 to cover the cost of flowers and publicity and are approaching Mere Parish Council to see if you would be willing to help us towards this goal. We have also submitted a bid to receive grant aid from the SWAB fund. It seems strange to be planning a flower festival for 2017 in the depths of a wet spring but even in the planning we understand what an amazingly uplifting event this is going to be for all of our community with our lovely parish church at the centre.'*

## INFORMATION ITEMS

A caravan was left abandoned in the Cemetery Car Park prior to the Easter holidays. Our Chairman has informed the police and taken legal advice on how to dispose of this item. The Chairman has taken the caravan into storage for the present time and we will be able to dispose of it once a respectable period of time has lapsed although there may be a disposal charge to the Council.