Report to: **Elsea Park Community Trust Board**

Date: **Wednesday 5 March 2014**

Subject: **Articles of Association**

From: **Sally Waltham – Community Trust Manager**

1.0 The report on the Articles of Association was deferred from the February Board meeting as it was felt that input into the discussion was needed from Dan Browne of Kier Homes.

2.0 The original report is attached. Also below the email response from SKDC Planning Department, which I verbally reported to the Board, is reproduced.

Following discussions with the Council's accountant I can confirm that their examination of the Trust's audited accounts at 31 March 2013 reveal that the Trust are financially sound and viable as a going concern. Using the figures provided the accountants have quantify the risk to the council of the Trust defaulting on its responsibilities to maintain the site to be £42K pa. However following the agreed expiry of the existing guarantee next year this risk will revert to the Council in any case.

Based on the above it is my informal opinion that the Officers could support a deed of variation application, however the ultimate decision will be taken by Members at Planning Committee.

Many of the covenants in the S106 refer to the "original owners" and so any deed of variation will need signing by all parties to the original agreement (listed in the agreement (1) – (11) + owners of the land, Kier? Other developers that have bought land?

The Council will require payment of legal fees, generally £750 and LCC £500 but it does depend on the complexity of the matter. I dare say that the original owners may want their legal fees paid and Kier and other developers that own land. This is not a matter for the Council it is for the Trustees to negotiate.

If you wish to pursue this a formal application will need to be submitted.

I trust this information is of use to you.

Regards

Justin Johnson

Principal Planning Officer

3.0 Dan Browne has confirmed that he will be present at the March Board meeting. By email Dan has given Kier Homes' view on the variation of the Articles of Association which is reproduced below with his permission:

Thanks for your email and I should be fine to attend next week on 5th March.

The key to making the deed of variation to the S106 agreement happen quickly, will be to agree:

1. *Which parties need to be involved – it should not be all land owners, which would include RSLs, TW, David Wilson, Kier, The Trust, Bovis, the land owners, the district and county councils etc. Normally it would need to involve only those parties affected. I will get some legal advice on this point at Kier's cost*
2. *Kier will not unconditionally release the trust and approve the new articles without the S106 release.*
3. *Kier would be happy to fund the deed of variation as it has obvious benefits to Kier, although we would cap the initial costs at £10k and if we go beyond that then we may need to just wait for the issue to lapse in accordance with the business plan.*

From my understanding of the land owners, they will not be a problem, although they will need to be involved. They are aware of the S106 terms and I can work with them to explain the position. They have recently consolidated their position and reduced the number of land owners involved in any case.

With regards other developers currently on site, we effectively indemnify them in respect S106 matters, so they will be willing parties if required to join in to the document.

I do not think the process will be quick, perhaps 6 months. We should target conclusion before the AGM in September 2014?

Recommendation

None – for information