

14 February 2020

Dear...

I am now in a position to respond to your emails received last week.

1. Your email of 4.2.20 at 20.26

It is correct that the 2006 Planning Obligation was discharged. The new S106 Agreement sealed on the 13 June 2016 was substituted for it. It is the error in that agreement which has caused the current situation to arise. The document was prepared by Solicitors on behalf of the Authority and the final version presented to it for sealing in the usual way. It is not for the authorised signatory, in this case the Chief Executive, to scrutinise each word of the agreement. He is entitled to rely upon the competence and expertise of solicitors to produce a document which reflects what was agreed and decided upon by the Development Management Committee.

My comment in the summary that there “is no evidence of impropriety or error on the part of the Authority” was in the context of whether any steps could be taken or procedures introduced to reduce or eliminate the risk of a repetition.

I note your suggestion that the Authority should revoke the planning permission and pay compensation. Such a step would not be possible for reasons outlined in my report which I reiterate here. If an attempt was made to revoke permissions it would inevitably be met by an application for judicial review. Such an application would almost certainly succeed and the Authority would be at risk as to substantial costs.

My role as Monitoring Officer does not extend to making recommendations in respect of planning breaches except in so far as they fall within the ambit of S5 Local Government and Housing Act 1989 as in this case.

2. Your email of 4.2.20 at 14.42

I enclose an extract from the S106 agreement dated 13 June 2016 and can advise you that the words “other than” were omitted from clause 7 in the 2nd Schedule headed “Owners Covenants with the Authority”.

I can confirm that the 2006 agreement no longer applies to any of the 13 Golf Club units.

3. Your email of 4.2.20 at 15.42

As requested I attach a copy of the email.

I believe this response covers the points you make.

Yours sincerely

Michael Kent

Michael Kent
Monitoring Officer