

REPORT FROM: CORPORATE DIRECTOR

TO: EXECUTIVE

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MAY TREE CLOSE, REEDLEY

PURPOSE OF REPORT

To consider a contribution of £16,500 towards the making up and adoption of May Tree Close Reedley.

RECOMMENDATION

That the requested contribution of £16,500 be approved to be met from the Brownfield Sites Fund; and that pursuant to Contract Procedure Rule 5.4 exemption from Contract Procedure Rules be approved.

REASON FOR RECOMMENDATION

To secure the making up and adoption of May Tree Close, Reedley

ISSUE

1. This matter has been raised several times recently in public question time at the Brierfield and Reedley Committee who have referred it to the Executive.
2. It has its origins in 2005 following the grant of planning permission and building regulation approval for this small housing development.
3. Although the facts are not entirely clear it appears that at that time the Council failed to serve a s.220 Highways Act 1980 Advance Payments Code notice on the developer. Such a notice requires the deposit of money as security for the making up of roads on a development. Frequently a s.38 Highways agreement is concluded as an alternative.
4. Although such an agreement was drafted and sent to the developer it was never completed.
5. A few years later the developer went bankrupt without having made up the roads.

6. The residents have for some time put pressure on the Council to sort out the making up of the road. More recently Stonehaven Estates, who have been granted planning permission for housing on the adjoining land subject to a condition that they complete the making up of May Tree Close, have made similar representations.
7. The Council's view on the legal position has always been that though there may have been administrative shortcoming on its part this did not mean it had any legal liability towards the residents or to Stonehaven Estates. When discussions reached an impasse we suggested to the residents a complaint to the Ombudsman as an independent voice and a possible way forward.
8. The Ombudsman found that the failure to serve the s220 notice was an administrative failing by the Council. However she did not issue a formal report finding maladministration causing injustice by the Council.
9. These are the relevant paragraphs from her investigation setting out her findings:

Where the Ombudsman finds fault by a council, she must decide whether the fault causes an injustice to the individuals concerned. She must take account of all the relevant information available to her, including the purpose of the Council's powers and what steps individual complainants might take to protect themselves.

When they bought their homes, Mr X and other residents of the estate employed their own solicitors to protect their interests.

We asked our lawyers what home buyers could expect from their solicitors. They say the average practitioner should do the following:

- check to see if planning conditions are discharged;*
- check to see if there is a private road management scheme or section 38 agreement in place;*
- if the section 38 agreement is not signed, check whether there is an APC bond or payment;*
- if there is no section 38 agreement, APC bond or payment, the solicitor should secure a covenant with the seller requiring him to have the road adopted or withhold a sufficient sum to meet the client's potential costs.*

I have seen some evidence that solicitors acting for residents of the estate realised there was a problem and withheld money as a precaution against non-adoption of the road. Any losses or costs to the residents could have been avoided if their solicitors had done what is expected of them.

There was fault by the Borough Council, but for which it could have used its statutory powers to ensure the estate roads were built to an adoptable standard. But I cannot demand the Borough Council should pay for the work. I am appreciative of the Borough Council's suggestion it would be willing to work with the new developer to reach an agreement to bring the road up to an adoptable standard.

I would not find fault if the Borough Council, despite its best efforts, could not reach an agreement with the residents about them providing a share of the costs.

10. Since the Ombudsman's letter there have been further discussions with a representative of the residents and Stonehaven Estates. The Council initially offered a contribution of £10,000 towards the estimated cost of £38,000 and later increased this to £15,000.
11. At a meeting last month at a meeting attended by the Leader of the Council and the Corporate Director, Stonehaven Estates reported on estimates they had received from three contractors to carry out the road surfacing work and street lighting provision, the lowest of which from Dale Contractors is £26,500.

12. Whilst the Council has not obtained these estimates itself, they have been provided to the Council and Engineering Services are satisfied that the lowest is a competitive estimate and represents good value for money. Bearing in mind the unusual circumstances of this case and whilst the Council will oversee the work, a technical departure from Contract Procedure Rules is justified. The Executive may agree to this under Contract Procedure Rule 5.4.
13. At the meeting it was agreed subject to the approval of the Executive that the Council will contribute £16,500, with the residents contributing £5,000 and Stonehaven Estates £5,000.

IMPLICATIONS

Policy: None applicable

Financial: The recommended payment of £16,500 is an ex gratia payment. As the making up of May Tree Close will help facilitate the development of the adjoining land for which planning permission for housing has been granted it would be appropriate to fund it from the Brownfield Sites Fund.

Legal: The Council's view is that it has no legal liability in this case. There is no finding by the Ombudsman that the Council must make a financial contribution to the cost of the work.

Risk Management: None arising from the report.

Health and Safety: None arising from the report.

Sustainability: None arising from the report.

Community Safety: None arising from the report.

Equality and Diversity: None arising from the report.