

**Budshead, Honicknowle & Southway Area Committee (written questions and answers re 11 November 2009 meeting)**

**Director for Services for Children & Young People**

**Q1** Would Plymouth City Council be prepared to contribute to the costs of the provision of fencing to divide Widewell Playing Fields in such a manner as to allow public access to part of the fields whilst improving the safety of school children using the remainder of the fields?

**A1** Widewell Primary School became a Foundation School with Trust status with effect from September 2007, as such it is not within our legal ability to provide fencing on land owned by the Trustees of the school.

The school have access to Devolved Formula Capital funding which if the Trustees deemed this to be in the best interest of the school and the wider community could be used for such improvements.

**Q2** Is Plymouth City Council aware of plans to Widewell Primary School to 2 forms of entry and what source of funding is proposed for that expansion?

**A2** Given the restricted nature of other school sites in the area and due to legal aviation restrictions Widewell is the only school that could be expanded and this forms part of the City Council's Strategy for Change.

In June 2009 the LA wrote to the Headteacher of Widewell Primary regarding an allocation of Section 106 funding which was available for the provision of a capital build to provide additional school places. To date no response has been received.

If the Section 106 monies were not used then the LA would potentially identify future Primary Capital funding when the need for additional school places was identified by the LA.

**Director for Development & Regeneration / Director for Services for Children & Young People**

**Q3** To what use has Widewell Primary School put the amounts of £25,000 and £16,383 received under Section 106 agreements relating to the Belliver Reservoir Development?

**A3a** (Director for Development & Regeneration) Education use of Developers Contributions from developments at Belliver:

Thank you for your question you posed at The Budshead, Honicknowle & Southway Area Committee of 11<sup>th</sup> November 2009, regarding the above. Looking at our records we can confirm that we have received two sums of money relating to developments in this area, these being:

£16,363 (planning reference 05/00866 FUL) Belliver Reservoir

£49,312 (from planning reference 04/00572) Belliver Reservoir

We cannot find any reference to the £25K contribution you mentioned at the meeting.

Both contributions totalling £65,675 have been identified by our Education Service to assist with the implementation of Beechwood Primary School currently being delivered at Southway. To our knowledge, Widewell Primary School has not made any formal request for financial assistance to expend these monies.

**A3b** (Director for Services for Children & Young People) In June 2009 a letter was written to the Headteacher of Widewell Primary School informing her that funding from a Section 106 agreement was available. The legal requirement for the Section 106 agreement is related to the provision of a capital build to provide additional school places. The funding is allocated by two agreements £16,383 to be spent by October 2010 and an amount of £25,000 to be spent by January 2013.

The Headteacher has been asked to provide details for a proposed project to expand the school taking into account the wider community context ensuring that it does not adversely affect other schools within the locality. To date no response has been received.

Clearly the legal requirement of Section 106 funding is to meet strategic objectives and the expansion of Widewell is a stated objective within the City Council's Strategy for Change.

### **Director for Development & Regeneration**

**Q4** Development on old BAE sites Lulworth Drive and pedestrian access paths were agreed at the top and bottom of the site onto Lulworth Drive. It is believed that this provision is a Council responsibility, not the developer's. Will Council Officers make an assurance that this is carried out and funded and that no trees will be removed in the process?

**A4** Background: The site in question is part of the former BAE site (now Atlantic Inertial Systems) that fronts Clifford Road and Lulworth Drive and is known as Phase 1A. Outline planning permission for this site and other sites in Southway for housing, employment, associated highways and parking and open space was granted in 2007 subject to a section 106 agreement, reference 05/01085. Approval of Reserved Matters for 110 dwellings on the site was granted on 19 October 2009, reference 09/01081.

The background to the treatment of the verge is important and is a matter you will recall. As part of the outline application the original proposals included development of the verge, removal of the trees and two vehicular accesses to Lulworth Drive. Officers negotiated improvements that residents wanted including retaining the treed verge and downgrading the accesses to a combined cycle/pedestrian path and two pedestrian paths with no vehicular access. This is necessary to achieve good design and "permeability" linking the site to the nearby facilities of two primary schools, a doctor's surgery, the park and ride and The Carvery (formerly The George).

Answer: The applicant/developer is responsible for providing the combined cycleway/footway and footways crossing the verge. The details and programme for the works will be approved by the local planning authority. This is condition 9 of planning approval 09/01081.

It is not possible to say that no trees will be removed but the Council will ensure that any tree loss would be kept to a minimum.

### **Director for Corporate Support**

**Q5** (minute 35 refers) Has the law forbidding cyclists riding on pavements and the law requiring an 'audible means of approach' been repealed? It is recognised that some pavements are marked indicating cyclists allowed. Following a near miss experienced by me on Southway Drive, I would ask again that the 'audible

means' of approach be enforced. Having indicated permission to use of pavements by cyclists, does the Council carry third party liability insurance against the accidents which will be inevitable?

**A5** The Council's Legal Services Department has reviewed the legal position and advised the following:

- The law regarding cycling on pavements has not been repealed.
- All the relevant legislation has been checked but no reference has been found to the term "audible means of approach".
- The Highway Code clearly states in paragraph 64 "You must not cycle on a pavement".
- Relevant legislation is the Highways Act 1835 Section 72
- Enforcement action is a matter for the police who can issue fixed penalty notices for minor offences or bring a prosecution under the Road Traffic Act for more serious offences.
- Designating a pavement/footway for shared use by cyclists and pedestrians is governed by Local Transport Note 2/86 issued by the Department of Transport. Such a designation in Plymouth is dealt with by way of a Traffic Order or bye-law – no such Order or bye-law is in place in respect of Southway Drive.

As regards third party public liability, it is confirmed that the Council does have appropriate insurance cover in place. However, this cover only operates where it can be proved that any accident or property damage caused to a third party is as a result of negligence on the part of the Council. The Council cannot be held responsible for accidents resulting from the irresponsible actions of third parties over whom it has no control. For any incident involving a cyclist the Highway Code states that it is the cyclist who carries the liability. In terms of enforcement where problems are being experienced as a result of cyclists riding on pavements and endangering pedestrians, this should be reported to the police.