

MINUTES of the **EXTRA-ORDINARY MEETING** of the St. Enoder Parish Council held on **Tuesday 13th September 2016** in the Summercourt Memorial Hall at 7.45pm

PRESENT: Cllr. M Bunyan (Chairman)
Cllrs M Hopkins, D Cole, C Parkyn, M Kessell, C Cowburn, J Baker, C Dixon & G Lobb.

APOLOGIES: Cllrs M Morcom, J Pickles, P Cocks, D Hearl & R Brawn.

16/155 Declarations of Interest (in agenda items)

None

The Chair invoked SO 6a to allow public participation.

16/156 Indian Queens Play Area- to resolve financial shortfall following potential withdrawal of S106 open space funding on planning application at former John Julian's site.

Written report circulated covering background information and present situation, also briefing note from Local Planning Authority.

Attached to these minutes as Appendix 1.

The Chairman read out the report, Cllr Hopkins stated he felt it was accurate.

Mr Marshall stated the s106 remains in place and if the new owners developed the site as approved the s106 would be triggered. In Kingsley's view the offer to pay early was intended as an advance, but the new owners will not honour the agreement.

Kingsley are still willing to contribute what they originally said, but would need to work out a mechanism.

Cllr Cole stated he felt very let down, as when the planning permission was approved on the John Julian's site he was given assurances from Kingsley that they would be developing the site and if there had been any indication that it was to be sold then the Parish Council would not have requested early payment. The Parish Council has been made aware the new owners may wish to extend the site to build 50 to 60 houses by taking in the field behind, if this option is not successful, then it was reported by Kingsley that they may only build 10 houses on the site to ensure that under recent changes in guidelines they would not have to make a s106 contribution.

Mr A Simpson stated Kingsley did always intend to develop the site, but the situation changed. Kingsley has taken legal advice and they need to work out how we can accept the money. Their legal team thought putting a s106 on the Carvynick applications was an option, but though this may technically be a legal option, this is not acceptable to Cornwall Council. The advice is it would put both the Parish Council and Cornwall Councillor Cole in a compromised position.

Cllr Hopkins felt it was morally wrong, and as Carvynick is yet to be determined it could just shift the problem, which may reoccur if the Carvynick applications are refused and this would put us in an even more difficult position.

Mr Simpson stated he is trying to overcome the problem and would like his legal team to be able to discuss options with Cornwall Council's legal team.

Cllr Baker asked if Kingsley Developers could give a gift to the Parish as a Community Benefit but not link it to any planning application.

Clerk would need to obtain legal advice on this.

Query raised as to whether if the former John Julian's site was built on as approved whether we could then repay the money.
Other solution suggested was an interest free loan.
Mr A Simpson, Mr D Simpson & Mr J Marshall left the meeting.

Clerk circulated recommendation to Members, so in the short term the invoice could be paid:

Recommendation to Council:

To cover the £33,748 shortfall by part reallocation of ear-marked funds to Indian Queens Recreation Ground;

£3000 from Neighbourhood Plan (as Council has received a grant of £3950)

£3,000 from Parish Project Fund

£1,000 from Contingency

£5,000 from Wesley (to be replaced when setting Precept 2017-18)

£5,500 from Kelliars (as Council has received a grant of £4950 from CC)

£2,000 from Goonabarn Community Fund

£5,000 from Melbur Community Fund

£24,500 total reallocation, shortfall **£9,248**.

To reallocate £3,500 from GP budget & residual £5,748 to be used from rolling reserves, with £2,500 of this replaced in December 2016 from the Melbur payment. There are some other potential sources of small amounts of funding which could be explored to backfill the Council's earmarked reserves.

Proposal by Cllr Baker to accept the recommendation, to enable payment of the invoice, second Cllr Cowburn, unanimous.

The above was duly **resolved**.

Proposal by Cllr Cole to contact Parish Council's solicitor to ascertain if we can accept payment as a gift or sponsorship, seconded Cllr Baker, unanimous.

The above was duly **resolved**.

Proposal by Cllr Hopkins to contact Kingsley stating we are investigating the legalities of a gift or sponsorship, and also whether it would be legally possible to pay it back if s106 is triggered on the former John Julian's site, and we would be in contact again once we had the information, seconded Cllr Kessell, unanimous.

The above was duly **resolved**.

Proposal by Cllr Hopkins not to accept any linking with the Carvynick applications in line with the legal advice from NALC and Cornwall Council, seconded Cllr Baker, unanimous.

The above was duly **resolved**.

There being no further business the meeting closed at 8.40pm.

Chairman.....

Date.....

Report for the extra-ordinary meeting of 13th September 2016.

Background information:

Councillors will be aware that part of the funding (£33,748) for the new play equipment in the Indian Queens Recreation Ground was due to come from a Section 106 linked to the development of the former John Julian site in St Columb Road.

The owners (Kingsley Developers) agreed to release the money early so that we could secure funding from a local grant body and the play area project could go forward in a timely manner.

Letter was received from Kingsley Developers confirming this and this letter was subsequently sent off to the Cornwall SITA Trust on 11th Jan 2016 in our grant application.

In early April 2016, Cllr Cole heard through the 'grapevine' that the former John Julian site had been sold and, later in the month, Cllr Cole and the Clerk met with Mr D Simpson, Mr A Simpson & Mr J Marshall at Carvynick. At this meeting, it was confirmed that the site had been sold but the letter would be honoured and if the new owners would not pay the s106 then Kingsley Developers would. The Simpsons stated that they were confident the new owners would be honouring the agreement and stated they would be contacting Cllr Cole, but told us not to worry we would definitely get the money.

By the end of April, we had received confirmation that the SITA Trust grant had been successful and the order was placed on 9th May. The Parish Council was aware of all the above circumstances and continual reassurances were received stating the s106 money would be paid, and there was no mention of maybe having to link it to another application.

Update on situation:

Following a meeting on 1st September with Mr D Simpson, Mr A Simpson & Mr J Marshall, it was clarified that the new owners of the site would not be honouring the agreement that Kingsley Developers had agreed with the Parish Council. Kingsley Developers have said that they would honour the arrangement, but would need to tie the payment to something for tax purposes. Mr A Simpson has offered to link £33,748 of s106 money to the Carvynick applications. Cornwall Council has confirmed that this would be (i) inappropriate for reasons of probity and (ii) wrong to link an off-site contribution from a Summercourt development to the Indian Queens site.

CALC have been contacted for advice regarding the situation, which they then forwarded to NALC solicitors who have come back with a list of questions, mainly around the view of the Local Planning Authority and no further legal progress has been made. They did however forward a copy of the Legal Briefing covering The Bribery Act 2010.