

## **Cornfactor Development Planning Issues**

### **1. PURPOSE AND RECOMMENDATIONS**

<b>Purpose of Report:</b>	To update Members on the investigation into the planning process in connection with the Cornfactor development site.
<b>Recommendations:</b>	<b>It is RECOMMENDED that Members note the:</b> <b>a) refusal of the Judicial Review Application; and</b> <b>b) on-going work to improve all aspects of the Planning process.</b>
<b>Portfolio Holders:</b>	Councillor M. Phipps (Environment)
<b>Wards:</b>	Town Centre
<b>Contact Officer:</b>	David Barnes – Strategic Director

### **2. BACKGROUND**

- 2.1. In March 2014 Members of the Committee received a report following a detailed investigation in to the way in which the Council had dealt with the planning process in respect of the Cornfactor site. The report itself was not discussed at committee due to a Judicial Review application being submitted which requested that the decision to grant planning permission for the site, be set aside. Following Legal advice the report had to be withdrawn until after the judicial review application had been determined by the High Court.
- 2.2. Councillor Mrs Gillian Geary had initially suggested a single member item to bring the matter before the Audit and Scrutiny Committee to deal with concerns she identified in the reporting process to Members, and more recently to examine the impact of actions taken by the developer of the Cornfactor site which resulted in the felling of trees which were subject to a Tree Preservation Order.
- 2.3. To ensure that concerns were thoroughly examined the Leader of the Council in consultation with the Portfolio Holder for the Environment and the Chairman of the Audit and Scrutiny Committee instigated an investigation with the following terms of reference:-
  - a) The process of determining all aspects of the planning applications submitted for the Cornfactor site from 2006
  - b) The substantive Legal position concerning the felling of trees in connection with the Cornfactor Development.

c) Improvements to the Development Control Service using this case as an example

d) The Council's stewardship of Druitt Gardens

### **3. The Judicial Review and its conclusions**

3.1 A copy of the judicial review decision is attached at Appendix 1 and its judgement provides an authoritative comment on the first two items set out in the terms of reference of the investigation. The key conclusion from the deliberations of the Honourable Mr Justice Lewis is as follows:

*“ The reality is that this judicial review would serve no purpose. The damage to the trees has happened and steps are being taken to remedy, so as far as possible, the damage. The Defendant is well aware of the deficiencies in the way in which these matters have been handled and have, very fairly, acknowledged these shortcomings in the audit and scrutiny report and in the acknowledgement of service which fully explains what has happened. In those circumstances, there can be no purpose served now by granting judicial review on grounds related to the failure to consider and protect the trees when those matters are now historic”*

3.2 In line with the High Court judgement this report therefore necessarily concentrates on the actions being taken to remedy the damage which has occurred and the actions being taken to ensure that procedures and protocols in relation to the handling of planning applications, are improved.

3.3 With regard to the actions taken to remedy the damage, at the time of writing this report officers have concluded negotiations with the developer to finalise a S106 agreement which details extensive replanting of trees and other species in the Gardens. The agreement is due to be considered by the Planning Committee on July 24<sup>th</sup> 2014 and if approved by Members will secure a legally binding agreement to the improvements which will also greatly enhance a previously much neglected area of the Gardens and make it an attractive area for local people to enjoy compared with what exists there now.

3.4 The second area of activity relates to the steps being taken by the Council to improve procedures in order that the deficiencies referred to in the judgement do not happen in future. Members will be aware that some of the issues identified date back to 2007 so it was considered necessary to carry out a detailed review of the Development Control systems and processes in order to ensure that improvements were thorough and covered policy, practice, and the culture which underpins it.

3.5 Appendix 2 provides Members with an update to the Improvement Plan which was included in the original report to the Scrutiny Committee in March 2014. Members will see that a number of additional actions have been added in order to ensure that improvements are through and cover all areas of the service. The appendix lists the areas where action is being taken and the following table summarises some of the work completed or in progress and the impact this will have on the service

Action	Outcome
1. New instructions to staff to ensure that historical records are properly reviewed rather than a simple reliance on previous decision notices.	This will ensure that previous decisions are in line with the evidence held on file and as reported and agreed by Members ( where appropriate )
2. Re alignment of some supervisory responsibilities	Improvements to the checking and quality control of decisions
3. Design of training Programmes for Members and officers	Improve the quality and clarity of decisions
4. Peer Challenge of the Development Control Service	Use best practice approaches from other Councils to make improvements to the efficiency and effectiveness of the service
5. Design Review Panel	Proposal to include a wider Membership than the current Architects panel and to examine applications earlier in the process i.e. at pre app stage. Outcome will be better quality design of applications
6. New procedures on amending applications and extending time limits	Reduce time taken to make amendments and increase the quality of applications
7. Service level agreement with Legal Services	Clarify where Legal input is required and a timescale for advice to be provided in order to ensure all legal considerations are properly considered before reports are completed.
8. Utilise Planning Performance Agreements	Reduce pressure to meet finite deadlines which can cause pressure on officers, and make relationships with developers more business like

3.6 The improvements will take time to deliver changes to working practices at both an officer and Member level but are essential if the Council is to have in place a modern and professional Planning service which compares favourably with the best up and down the country

#### **4. IMPLICATIONS**

##### **Corporate Plan & Council Objectives**

4.1. A number of the Council's Corporate priorities have relevance to the Cornfactor Development and reveal the need to strike a sensible balance

between priorities over Housing provision, maintaining and economically viable Town Centre and protecting the environment

### **Legal**

- 4.2. The Legal issues relating to this case have been covered extensively both in the March report and in this report.

### **Environmental**

- 4.3. Covered in the previous report.

### **Financial and Risk**

- 4.4. None directly

### **Equalities**

- 4.5. None directly

## **5. CONCLUSION**

- 5.1. The Judicial Review application independently clarified a number of issues regarding the impact of the decisions made by the Council regarding the Cornfactor site. The High Court is satisfied that the Council has honestly examined the shortcomings in the way in which the planning applications were administered and has taken positive steps to rectify the damage which has been caused; namely, the loss of 4 trees in Druitt Gardens.
- 5.2. Members will see from the report that arrangements are in place or underway to deal with both of these aspects and the High Court is satisfied that the Council's response has been both fair and proportionate.

**Background Papers:** Audit and Scrutiny Committee report dated 18<sup>th</sup> March 2104. Members who have note retained a copy of this report can find it on Dorset for You or request a copy from Democratic Services.

**Appendices:** Appendix 1- Judicial Review Conclusion  
Appendix 2 - Forward Plan for Development Management