

## **PLANNING ENFORCEMENT PROSECUTION**

**Lead Officer:** Tony Pomfret – Development Control Manager

**To inform Members of a recent prosecution of a developer in breach of outstanding planning conditions at Manor Gardens, Whitehaven**

**Recommendation :** That the report be noted and feedback from Members welcomed.

**Resource Implications :** Legal costs amounting to £150 awarded to the Council

### **1.0 SUPPORTING INFORMATION**

1.1 Planning permission was granted on 10<sup>th</sup> September 2003 for the road and plot layout for 24 dwellings at the Hollins, Hensingham, Whitehaven, which is now known as Manor Gardens. A planning condition attached to the grant of planning permission stated:-

“(15) Before a dwelling is occupied the roads and footways serving that dwelling shall be surfaced with a base course and street lighting shall be provided and brought into full operational use in accordance with Cumbria County Council “Roads for Housing: Technical Design Guide”.

1.2 The Council began to receive reports from residents that the street lighting was not installed and therefore we contacted the developer on numerous occasions between 2007 and 2010 in an attempt to resolve the breach of planning without having to commence legal action. The developer made various promises to carry out the work but little progress was made towards the street lighting being brought into operational use.

1.3 Due to the length of time the developer had been given to resolve the breach of condition and the adverse effect the breach was having on residents of Manor Gardens a Breach of Condition Notice (“BCN”) was served on the 25<sup>th</sup> May 2010. The BCN stated that the developer must bring the street lighting into operational use within 56 days.

The developer contacted the Council in writing and stated that he could not connect the street lighting because Electricity North West (previously known as United Utilities) would not carry out the required works. The Council therefore contacted Electricity North West and they denied this was the case and provided the Council with a written statement for any subsequent prosecution.

- 1.4 The time limit passed on 20<sup>th</sup> July 2010 and the developer had failed to bring the street lighting into use. Residents of the estate were concerned with the lack of functional street lighting on the estate and some had injured themselves in the winter months due to the dark nights and mornings coupled with the wintry conditions. The Council therefore gathered further evidence of the breach of the BCN and submitted a prosecution file to the Magistrates Courts in November 2010.
- 1.5 At the pre trial hearing on the 18<sup>th</sup> January 2011 the developer pleaded not guilty to the breach of the BCN. The developer failed to turn up to a number of case management hearings but eventually a trial date was set for 3<sup>rd</sup> June 2011.
- 1.6 The developer failed to turn up to the trial itself but the Magistrates agreed to hear the evidence against the developer and found the developer guilty of a breach of the BCN by not bringing the street lighting into operational use. The developer was fined £1,000 for the breach of the BCN and charged £150 for the legal costs of the Council and a £15 victim surcharge. If the developer fails to pay within 14 days he could face further action including a warrant of arrest.
- 1.7 If the developer fails to carry out the required works within the next two months prosecution proceedings will commence once more. The Council's aim is to ensure that the necessary works are carried out and the planning condition is complied with.
- 1.8 A full update to members on planning enforcement from January 2011 to June 2011 will be provided at the next Planning Panel meeting on 20<sup>th</sup> July 2011.

**Contact Officer:** David Wright – Planning Enforcement Officer

**Background Papers:** Planning application file ref 4/03/0789/0