

**REPORT TO: ENVIRONMENTAL SERVICES COMMITTEE ON 16 APRIL 2008**

**SUBJECT: RESIDENTIAL DEVELOPMENT AT THORNHILL ROAD, ELGIN**

**BY: DIRECTOR OF ENVIRONMENTAL SERVICES**

**1. REASON FOR REPORT**

1.1 The Committee is asked to note

- the road safety implications arising from the current but as yet incomplete works undertaken to up-grade/widen Thornhill Road;
- the outcome of a road safety assessment and, recommendations for remediation measures;
- the commencement of development on site R14, Thornhill Road including non-compliance with planning conditions attached to the grants of planning permissions already issued for development on this site; and
- recommendations for enforcement action, as appropriate.

1.2 This report is submitted to Committee in terms of Section E(1) of the Council's Administrative Scheme relating to the role of the Council as Planning Authority and in terms of Section E(13) of the Council's Administrative Scheme relating to the Council's functions as Roads Authority.

1.3 **REASON FOR URGENCY**

*In terms of the Local Government (Access to Information) Act 1985 this report requires to be considered on the grounds of urgency in order to give early consideration to road safety issues on Thronhill Road and the potential requirement to take enforcement action due to the non-compliance with planning conditions.*

**2. RECOMMENDATION**

2.1 It is recommended that the Committee agree to:

- note the outcome of the independent road safety assessment including recommended short-term remedial measures;

- **note that development has commenced on units of accommodation within the site without compliance with planning conditions, including the requirement to upgrade/widen Thornhill Road;**
- **note that Officers have met with notifiable parties to establish whether satisfactory progress towards the resolution of the breach of planning condition can be achieved;**
- **recommended that the Committee agrees to grant delegated responsibility to the Director, in consultation with the Joint Chairs and Chief Legal Officer, to receive sufficient details within stated timescales that confirm:**
  - (a) within the next 7 days - interim road safety measures have been addressed and implemented;**
  - (b) within the next 4 weeks - progress with negotiations between the parties required to achieve compliance with the planning conditions relating to the construction of the road widening works have been undertaken;**
  - (c) otherwise, if satisfactory progress is not established then Officers be instructed to immediately serve the Enforcement Notice on appropriate parties as described within this report.**

### **3. BACKGROUND**

- 3.1 At the Environmental Services Committee meeting on 5th December 2007, Members agreed the recommendations arising from consideration of a (confidential) report on unauthorised development at Thornhill Road. This included authorisation to the Director of Environmental Services for enforcement action where necessary (para 34(v) of the Minute of 5th December 2007 refers).
- 3.2 Whilst the recommendations have been overtaken by events, Springfield Properties Limited (Springfield) (currently developing the western part of site R14) are aware of the Council's concerns and the contents of the report following an approach made to the Chief Executive regarding the previous report. In recent correspondence (e-mail) to Barratt North Scotland Limited (Barratt) (currently developing at the eastern end of site R14), reference was made to the concerns regarding the incomplete widening of Thornhill Road in the vicinity of the water storage tank and that any development commencing on site without compliance of the relevant planning condition(s) would represent a breach of planning control.
- 3.3 In response to a question regarding issues of safety, as raised at The Moray Council meeting on 26th March 2008, the Director of Environmental Services advised that an independent safety assessment had been commissioned and an up-date report would be submitted to the next Environmental Services Committee meeting (hence this report) and if in the meantime it is deemed

that action is necessary, Members would be kept advised. Every effort is being made to contact all the parties involved in an attempt to resolve the issue prior to the Committee meeting on 16th April 2008 and Committee will be advised accordingly on any progress at the meeting.

#### **4. SUMMARY OF IMPLICATIONS**

##### **Implications for Road Safety**

- 4.1 The Transportation Manager has advised that site inspections have taken place with the Council's road safety engineer and the Traffic Inspector for the area from Grampian Police. The Police are of the view that the roadworks should be completed without delay in the interests of road safety and this is in agreement with the view of the Transportation Manager as contained in the previous report to Committee on 5th December 2007.
- 4.2 The Police Inspector, Road Policing Department, Grampian Police has written to the Transportation Manager to advise on his concerns regarding the road layout on Thornhill Road at it's junction with the access road to the Magic Roundabout Nursery. The Police Inspector has commented that this *"... section of road is clearly incomplete and has been that way for some time. ... westbound vehicles have to deviate sharply to the left at the junction in order to avoid the turning lane for eastbound vehicles wishing to turn right ... There is absolutely no warning of this sudden deviation, which takes even the most careful driver by surprise ... Although there have been no serious collisions at this location to date, patrols have reported several near misses ... the current set-up is, quite simply, dangerous and requires urgent attention before a serious collision does actually take place ... This issue has been apparent for too long and cannot continue."*
- 4.3 The Police Inspector concludes by asking the Transportation Manager to make contact with the appropriate developer, at the earliest opportunity, in order that the issue is addressed and rectified. Further to this request, the Transportation Manager has indicated that certain remedial works may be difficult to achieve, however, further investigation on these matters will be carried out.
- 4.4 In relation to the safety assessment, the Transportation Manager commissioned the Principal Engineer for Road Safety at Aberdeenshire Council to carry out an independent road safety review on the section of Thornhill Road which is affected by the uncompleted roadworks in the vicinity of the water storage tank. This review has confirmed the opinion of the

Council's own officers that the final scheme should be completed by Springfield as a matter of urgency to address the road safety issues. It is clear that this will not be possible immediately and as a result interim short-term measures should be carried out. These measures consist of the following works:

- for westbound traffic, erect "road narrows on left" sign in advance with a chevron sign at the first obstruction;
- infill the area between the carriageway and the fence around the tank, particularly at the western end of this fence;
- place a temporary edge-of-carriageway line across the mouth of the access to the nursery;
- prevent parking on the eastbound carriageway over the full length of the restricted section and for a short distance beyond for their safety as well as other road users; and
- provision of advance signs warning of "temporary road layout ahead."

- 4.5 Whilst it is understood that the land in question yet to be up-graded/widened is not in the ownership of either developer, the Council previously agreed that it would not intervene in negotiations over land ownership (para 34 (i) of the Minute, 5th December 2007 refers).

#### **Compliance with Planning Conditions**

- 4.6 Planning permission was granted to Springfield to erect 298 houses and 24 blocks of flats (application 06/01067/FUL) on site R14, Thornhill Road. Subsequent to this, ownership of part of the site was transferred to Barratts who were granted planning permission for 54 dwellinghouses on part of their site (application 07/00834/FUL).

- 4.7 Both consents include the same condition (as Condition 10 and Condition 17 respectively) that:  
*"No development shall commence on any unit of accommodation (houses and/or flats) within the development until:*

- a) *details have been submitted to and approved by the Council, as Planning Authority regarding the location, design, construction specifications and external material finishes for the required upgrading, including carriageway widening of Thornhill Road (to distributor road standard) between the roundabout junction with the A941 to the west and the roundabout junction with Linkwood Road. The required widening along the R14 frontage should be developed in conjunction with the widening of Thornhill Road along the frontage of the adjoining CF4 site, as required under formal decision notice 05/01307/FUL dated 24th July 2006; and*
- b) *the upgrading/widening of Thornhill Road has been provided in accordance with the approved plans.*

*Reason: To ensure a satisfactory form of development in transportation terms."*

- 4.8 In relation to part (a) no details to up-grade or widen Thornhill Road have been submitted to and/or approved by the Council, as Planning Authority. However, separate Road Construction Consent (RCC) was issued to Springfield to up-grade/widen Thornhill Road along the frontage of the R14 site and the CF4 site to the east. This includes appropriate drawings which could meet part (a) of the above condition and once approved, facilitate the up-grade/widening of Thornhill Road in order to comply with part (b).
- 4.8 Following this separate RCC submission, Thornhill Road has been widened except for the area adjacent to the water storage tank opposite nos 17/19 Thornhill Road. It is this 'missing' section of road that gives rise to the road safety concerns noted above and precludes completion of the road works to up-grade/widen Thornhill Road between the roundabout junction with the A941 to the west and the roundabout junction with Linkwood Road, as required by the above condition.
- 4.9 There would be no breach of this planning condition if no development had commenced on any unit of accommodation within the site. As part of the comments included on the formal consent notice for application 06/01067/FUL and re-iterated on application 07/00834/FUL,  
" ... 'commencement of development' is defined as being the excavation, or forming in any other way, of part or all of any trench to contain part or all of any foundation for any unit of accommodation or any associated garage."
- 4.10 Following investigation, the Council's Enforcement Officer (on 28th March 2008) observed works being carried out on the Barratt part of site R14. These works included the formation of the sub-structures for several houses, some with concrete floors having been laid and some with stonework at base course

level laid above blockwork foundations. Correspondence, as received from Barratts, also invites “inspection of sub-structures actually built on site.”

- 4.11 On this basis works have progressed beyond commencement of development. Barratts have been advised (by e-mail) that activity currently taking place on the site would comprise development and therefore a breach of planning control had occurred in terms of non-compliance with planning conditions including Condition 17 regarding the widening of Thornhill Road. In being advised that any works undertaken on the site were undertaken entirely at their own risk and without prejudice to any consideration and/or exercise of enforcement proceedings by this Council, it was recommended that all works should cease on site pending resolution of the matter, including compliance with all planning conditions. Despite requesting confirmation on this matter, there has been no response from this developer and construction activity continues on site.
- 4.12 On the Springfield part of the site, no on-site working was observed. However, the Council’s Enforcement Officer noted the formation of some trenches in locations where houses/flats are proposed. Works would comprise commencement and similarly represent a breach of planning control with non-compliance with planning conditions including Condition 10 regarding the widening of Thornhill Road.
- 4.13 In an attempt to resolve these issues without recourse to enforcement proceedings, the Development Control Manager invited all parties involved to a meeting to discuss the road safety concerns and breaches in planning consent. From that meeting it can be reported that Springfield Properties agreed to carry out the list of identified short-term road safety measures (see para 4.4) as a matter of urgency, and all parties agreed to seek early resolution to the unresolved land negotiations that are required to permit the road widening works to be concluded by Springfield Properties, and requested a period of 4 weeks to undertake negotiations.

## 5. **SUMMARY OF IMPLICATIONS**

### **(a) Corporate Development Plan/Community Plan/Service Improvement Plan**

The report encompasses the main aims of the Economic Development programme by maintaining suitable transport facilities and infrastructure for residents, visitors, businesses and workers. The road improvement requirements are identified in the Moray Development Plan and Elgin South Masterplan.

### **(b) Policy and Legal**

The proposal to enforce the Planning Conditions complies with the requirements of the Town and Country Planning (Scotland) Act 1997.

The Roads proposals comply with the requirements of the Roads (Scotland) Act 1984.

**(c) Resources (Financial, Risks, Staffing and Property)**

If Committee are minded to approve planning enforcement action, legal advice will be necessary with resulting financial implications of raising any such action.

**(d) Consultations**

The Chief Legal Officer has been consulted and agrees with the recommendations contained within the report.

**6. CONCLUSION**

**6.1 Due to the concerns expressed over road safety and breach of planning conditions, it is recommended that Committee agree to delegate responsibility to the Director, in consultation with the Joint Chairs and Chief Legal Officer, to be assured that road safety matters have been addressed within the next 7 days, and that satisfactory progress towards resolution of the negotiations required in advance of the road widening works has been undertaken within the next 4 weeks otherwise Officers proceed to serve an Enforcement Notice on appropriate parties as follows:-**

**6.2 The Notice will require the recipients to undertake the following:-**

- **Within 14 days of the Notice taking effect (28 days after service) submit the plans required by Condition 10 (06/01067/FUL), Springfield and condition 17 (07/00834/FUL) Barratts;**
- **Thereafter, implement the works required by Condition 10 (06/01067/FUL) Springfield or condition 17 (07/00834/FUL) Barratts, to full satisfactory completion within 3 months of the approval of the plans required to be submitted as above;**
- **In the absence of the Notice not being complied with in accordance the above, that the Committee authorise Direct Action by the Council to carryout the outstanding works in the interests of road safety.**

**6.3 Further reports may be necessary should unsatisfactory progress be identified.**

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Background Papers: Planning Applications (Refs: 06/01067/FUL & 07/00834/FUL)  
Letter from Grampian Police 10 March 2008

Ref: