

Application No: 17/3126N

Location: LAND OFF, CREWE ROAD, HASLINGTON, CHESHIRE, CW1 5RT

Proposal: Variation of condition 8 on application 16/1046N - Reserved matters application for the erection of 245 dwellings, highways, public open space, play facility and associated works following approved outline application (13/4301N) APP/R0660/A/14/2213304.

Applicant: Mr Christopher Conlon, Bovis Homes Ltd

Expiry Date: 02-Nov-2017

## **SUMMARY:**

The principle of development of this site has already been accepted as part of the outline approval. Development has commenced and all pre-commencement planning conditions attached to both the outline and the reserved matters permissions have been satisfactorily discharged, including information pertaining to condition 8 (electric vehicle charging infrastructure and dust mitigation) imposed on the reserved matters approval.

Dust mitigation also forms part of condition 16 attached to the outline approval. Information pertaining to condition 17 attached to the outline permission (requirement for a Travel Plan) is a pre-occupation condition, and is yet to be the subject of an application.

### **Social Sustainability**

The development, without complying with the contested condition requiring electric vehicle infrastructure, will have a neutral impact upon the social strand of sustainability

### **Economic Sustainability**

The development, without complying with the contested condition requiring electric vehicle infrastructure, will have a neutral impact upon the economic strand of sustainability

### **Environmental Sustainability**

The removal car charging infrastructure from the scheme would have a detrimental impact upon initiatives to reduce carbon emissions, which in turn will have an adverse impact upon air quality.

However, the issue at the heart of this assessment is a matter of law. Namely whether the disputed condition can lawfully be imposed on the reserved matters in this first instance.

Having sought legal advice, it is concluded that the electric charging infrastructure condition can not be reasonably required as a reserved matter since it does not relate to the matters reserved by the outline permission.

**RECOMMENDATION: Approve subject to conditions**

## **PROPOSAL:**

Permission is sought to vary condition 8 attached to the reserved matters approval for 245 dwellings.

Condition 8 of the reserved matters on 16/1046N states:

*Prior to the commencement of development a Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority, which outlines:*

- *The provision of Electric car charging points to be provided on car parking spaces within each dwelling and a scheme for the provision of charging station in each communal car park. These shall be maintained throughout the use of the development*
- *details of all potential dust sources during the construction phase and mitigation measures. The development shall then be constructed in complete accordance with the method statement.*

*Reason: In the interests of the air quality and amenity of local residents and to comply with policy BE1 of the Crewe and Nantwich Replacement Local Plan 2011 and the NPPF.*

The rewording sought is -

*Prior to the commencement of development a Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority, which outlines:*

*- details of all potential dust sources during the construction phase and mitigation measures.*

*The development shall then be constructed in complete accordance with the method statement.*

*Reason: In the interests of the air quality and amenity of local residents and to comply with policy BE1 of the Crewe and Nantwich Replacement Local Plan 2011 and the NPPF.*

In effect this application seeks to remove the requirement for electric vehicle infrastructure on the site.

## **SITE DESCRIPTION:**

The application site is located on the eastern edge of Haslington and covers an area of 11.91 hectares. It is currently under construction by Bovis Homes with houses being developed. In total the site will contain 250 dwellings.

## **RELEVANT HISTORY:**

There are numerous historic applications on this site but the most relevant is -

13/4301N - Outline Planning Application for Demolition of existing structures and foundations of a partly constructed building, and the erection of up to 250 dwellings, medical centre/community use, public open space, green infrastructure and associated works – Conditional planning permission granted on appeal 14/8/2014

16/1046N - Reserved matters application for the erection of 245 dwellings, highways, public open space, play facility and associated works following approved outline application (13/4301N) APP/R0660/A/14/2213304 - Conditional permission granted 31/10/2016

16/5493D - discharge of condition 8 of existing permission 16/1046N - Discharged 22/02/2017

## **NATIONAL & LOCAL POLICY**

### **Cheshire East Local Plan Strategy (CELPS)**

PG2 – Settlement Hierarchy

PG6 - Open Countryside

PG7 – Spatial Distribution of Development

SC4 – Residential Mix

SC5 – Affordable Homes

SD1 - Sustainable Development in Cheshire East

SD2 - Sustainable Development Principles

SE3 – Biodiversity and Geodiversity

SE5 – Trees, Hedgerows and Woodland

SE 1 - Design

SE 2 - Efficient Use of Land

SE 4 - The Landscape

SE 5 - Trees, Hedgerows and Woodland

SE 3 - Biodiversity and Geodiversity

SE 13 - Flood Risk and Water Management

SE 6 – Green Infrastructure

IN1 – Infrastructure

IN2 – Developer Contributions

Policy CO4 – Travel Plans and Travel Assessments

### **Crewe and Nantwich Local Plan**

NE.5 (Nature Conservation and Habitats)

NE.9: (Protected Species)

NE.20 (Flood Prevention)

BE.1 (Amenity)

BE.3 (Access and Parking)

BE.4 (Drainage, Utilities and Resources)

RES.5 (Housing in the Open Countryside)

RT.3 (Provision of Recreational Open Space and Children's Playspace in New Housing Developments)

TRAN.3 (Pedestrians)

TRAN.5 (Cycling)

**Harlington Neighbourhood Plan** - Not reached regulation 14 Stage. No weight can be given

## **National Planning Policy Framework**

### **CONSULTATIONS:**

**Haslington Parish Council:** No comments received.

**Environmental Health Officer (Air Quality):** Objection on basis of impact on Air Quality. Considers that a developer of a scheme of this scale has a duty of care to human health, the environment and the reduction of impacts from large scale developments, particularly given the relatively small financial outlay for residential charging points

### **OTHER REPRESENTATIONS**

Letters of objection from 16 local addresses have been received on the basis of the following issues and making the following comments -

- Principle of the development
- Traffic congestion
- Impact upon infrastructure
- Disregard of local peoples views
- The removal of the condition is contrary to the Government's stated intention to reduce carbon emissions and provide the infrastructure for electric vehicles
- Impact of a development of 250 houses with cars upon air quality
- Widespread provision of charging points for electrical vehicles is critical to addressing the incremental pollution created by the significant number of additional houses. The agreement to this provision by Bovis Homes is a term they have agreed to by commencing development and one they should be held to deliver.
- The desire to appeal this term is driven by their desire to reduce costs by not providing such - and is therefore driven by the desire for incremental profit (and shareholder return) rather than meeting the environmental and societal commitment they made (by commencing the development).
- Only by holding Bovis to account for this will Haslington (and Cheshire East) take a material step forward in the provision of facilities to reduce the environmental impact of vehicles.
- Volvo announced that it will stop producing standard engines from 2019 and all new vehicles from this date will have an electric motor to power the car. This will be the start of mass production of electric vehicles and these will need to be charged at a location. Cheshire East has been very forward thinking in placing this condition on the planning approval. The date for Volvo starting to produce this new type of car will also be at a point when this site is fully under construction and a lot of the new home owners will be purchasing these new cars.
- The Council are being proactive in using methods to protect the environment and will also comply with potential future legislation.
- Electric vehicles is the future and a unique selling point for any prospective buyer.
- The houses are in the process of being built, how can amendments be made after work on the site has started? The conditions of the planning application should have been water tight.

### **APPRAISAL:**

## **Principle of Development**

The principle of residential development has already been accepted following the approval of the development of the site for up to 250 houses

The Charging Infrastructure that has been formally discharged under 16/5493D includes the electric cabling for individual houses together with 'Chargemaster' charging wands and 'Chargemaster' junction boxes for the individual dwellings. A communal charging station is also approved for the apartment block. These items are top of the range and provide wands etc that goes beyond what the Air Quality Officer would normally require. However, The Air Quality accepted the Charging Infrastructure since those were the details offered by the Applicant in discharging the planning condition.

The Applicant has now advised that these items are cost prohibitive. However, it remains that the charging system originally put forward could be simplified and therefore be less costly. The Air Quality Officer has suggested a system to the Applicant which would be acceptable in air quality terms for a fraction of the costs quoted by the Applicant to install the electric vehicle charging infrastructure.

This application is to consider the variation of planning condition 8 attached to the reserved matters which requires the provision of electric vehicle charging infrastructure and a dust mitigation scheme as attached to the reserved matters approval.

Air Quality is described as a public health emergency, causing 39,000 early deaths every year. Cheshire East considers the improvement and safeguarding of air quality within the borough a top priority for the Council. The primary emission source for air pollution in the UK and Cheshire East is emissions from road transport, and the Council is actively seeking the provision of infrastructure that makes the use of ultra-low emission vehicles a realistic prospect for our residents.

Policy SE12 of the Cheshire East Local Plan Strategy states that the Council will seek to ensure all development is located and designed so as not to result in a harmful or cumulative impact upon air quality. This is in accordance with paragraph 124 of the NPPF and the Government's Air Quality Strategy.

This application rests upon whether or not the imposition of the condition for the electric charging infrastructure is lawful as imposed on the reserved matters. In this case, it is necessary that planning conditions satisfy six tests as identified at paragraph 206 of the NPPF which states that conditions should only be imposed where they are:

1. Necessary;
2. Relevant to planning and;
3. To the development to be permitted;
4. Enforceable;
5. Precise and;

6. Reasonable in all other respects.

The Planning Practice Guidance (PPG) also states that in determining this application the local planning authority must only consider the disputed conditions that are subject of the application – it is not an opportunity for the complete re-consideration of the original application.

The PPG advises that conditions must serve all 6 tests and that 'It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls'

Paragraph 25 of NPPG states

*Conditions relating to anything other than the **matters to be reserved can only be imposed when outline planning permission is granted**. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters.*

The applicants reasoning for this application is that the provision of electric charging should have been imposed upon the original outline decision notice and it is not the role of reserved matters (which are looking at the reserved matters such as layout, landscaping, external appearance) to correct this omission.

On this basis the applicant is of the view that the condition fails the test of necessity and reasonableness in NPG and is not lawful.

It is regrettable that the applicant has sought to remove this element of the condition from the reserved matters. The condition has been discharged and details for individual charge points for dwellings and a communal point for apartments are already approved.

At build stage, officers estimate that the cost to the developer of standard electric vehicle infrastructure is normally about £50,000 for a development of this size. The system that Bovis have opted to use is significantly more expensive but also involves giving residents wands for their use with the charging infrastructure, an item that car manufacturers normally provide at car sale stage.

This application is also particularly disappointing given the commitment to sustainable development principles as expressed on the Bovis web site.

Additionally, Volvo have recently announced that they will cease to build cars with internal combustion engines by 2019, this together with the Governments recent announcement of the phasing out of the use of the internal combustion engine by 2040 indicates that electric vehicles will become more prevalent in the near future and in the medium term are likely to become the norm.

Legal advice has been sought and the Councils lawyer has advised that the appropriate stage to impose the requirement for car charging was at the outline stage and not the reserved matters. The Inspector at Appeal considered this and states at Para 56

*'.. this is an outline application, with reserved matters being appearance, landscaping, layout and scale. There is no need for conditions seeking to control details of such matters, as they can be imposed at the reserved matters...'*

On this basis, notwithstanding the disappointment that the Applicant has chose to submit this application in the first place, it is concluded that the condition is not reasonable to be imposed at the reserved matters stage and should be varied as sought.

## **PLANNING BALANCE**

The principle of development of housing on this site has already been accepted as part of the outline planning permission on this site.

To maintain the condition as originally stated to require electric charging points would not satisfy the reasonableness test with National Policy Guidance. The condition goes beyond what can reasonably be assessed as being relevant to the appearance, landscaping, scale of the development which are the matters to be determined at reserved matters stage only.

The variation of the condition is therefore considered to be acceptable in this case and would not change the environmental, social or economic sustainability considerations as part of the original application as assessed by the Inspector on the appeal, since the Inspector did not impose the condition for electric vehicle charging.

## **RECOMMENDATION:**

**APPROVE** subject to the following conditions

- 1. Approved Plans**
- 2. Implementation of the approved landscape scheme**
- 3. Materials as submitted**
- 4. Levels as discharged**
- 5. Boundary treatments as discharged**
- 6. Notwithstanding submitted LEAP plans and specifications, revised scheme of 12 pieces to be submitted and approved. Implementation as discharged**
- 7. Development to be undertaken in accordance with FRA. Properties to have FFL 600mm above flood level 59.76m AOD for the area of the development in Flood Zone 2**
- 8. Dust mitigation scheme as discharged (reference to Electric vehicle charging removed)**
- 9. The development shall be carried out in strict accordance with the submitted Tree Protection, Retention and Removal Plan (Drawing 03-081 Rev B dated 1/1/2016).**
- 10. Updated badger survey as discharged**
- 11. Scheme to be undertaken in accordance in accordance with paragraphs 4.1.2 and 4.1.3 of the Biodiversity Enhancement Strategy**
- 12. Bat and bird boxes as discharged**
- 13. PD removal – no wall front of building line/ open plan estate**
- 14. PD removal for Classes A-E (selected smaller plots/terraced and affordable/semi detached)**
- 15. Parking spaces to be laid out prior to occupation of dwelling to which it relates**
- 16. Garages to be retained and not converted into habitable accommodation**
- 17. Phase II contamination report to be submitted and remediation recommendations implemented prior to occupation**

18. The SUDS scheme produced for the site to include proposals to ensure that water levels of the identified great crested newt ponds are maintained in accordance with the pre-development levels, as discharged
19. The proposed development to proceed in accordance with the recommendations of the submitted Biodiversity Enhancement Strategy prepared by Middlemarch Environment dated February 2016. The seeded areas shown on the submitted landscape plans are to be seeded and managed in accordance with paragraphs 4.1.2 and 4.1.3 of the Biodiversity Enhancement Strategy.
20. The proposed development to proceed in accordance with the submitted draft great crested newt mitigation strategy unless varied by a subsequent Natural England license
21. Scheme for a fence and access gate is to be provided to demarcate the area of Wildflower planting and amenity grassland located in the sites south western corner as shown on the submitted plan C121832-Phase 2 – E3.1. as submitted. The access gate to be of sufficient size to allow access for management As discharged
22. Laybys to Park lane to be removed as discharged
23. GCN mitigation - scheme to be implemented as discharged
24. Additional landscaping - to Ashley Meadows elevation - scheme to be implemented as discharged

In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Principal Planning Manager (Regulation) has delegated authority to do so in consultation with the Chairman of the Southern Planning Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.



