

Planning Reference No:	10/4486C
Application Address:	10 Padgbury Lane, Congleton CW12 4LP
Proposal:	Removal of Conditions 3, 4 and 5 on Approval 10/2631C Relating to Materials, Tree Protection and Access
Applicant:	Mr & Mrs K Phillips
Application Type:	Removal of Conditions
Grid Reference:	383653362811
Ward:	Congleton Town East, Congleton Town West
Earliest Determination Date:	23 December 2010
Expiry Dated:	6 January 2011
Date Report Prepared:	8 December 2010
Constraints:	

SUMMARY RECOMMENDATION

REFUSE

MAIN ISSUES

- Do conditions 3, 4 and 5 on Approval 10/2631C accord with the six tests in circular 11/95

1. REASON FOR REFERRAL

This application has been called in to the Southern Area Planning Committee by Councillor Domleo. The reason for the call-in is as follows:

When the original planning application came in for a new gate access to this agricultural field, there was considerable concern among local residents. Their main concern seemed to be that if any type of access was permitted then that would set a precedent for other types of access such as for housing or employment.

Condition 5 calls for the requirement for the gate to be 10 metres back from the road. I can understand a request to remove this condition and I think that some residents might support a change.

Condition 3 relates to materials to be used being approved- there are concerns regarding the proposed materials if details are not submitted.

Condition 4 is to safeguard existing trees and hedgerow, and a request to remove this raises concerns regarding the protection of the hedgerow and trees.

The residents have every reason to feel that this may not be as straight forward as a new access gate to a field. Having declined to call in the first application I now feel that this subsequent application should go through the full democratic process and go to committee. Whatever the outcome the residents should be able to feel that this has been processed openly.

2. DESCRIPTION OF SITE AND CONTEXT

The application site comprises a field sited along Padgbury Lane in Congleton measuring 4.88 acres. The site is rectangular and is bounded by a river to the west, residential properties to the east with adjoining fields to the north and south. At present there is a native hedgerow with a number of trees within it, along the road frontage. The fields are currently grazed by horses.

3. DETAILS OF PROPOSAL

The proposals relate to the removal of conditions 3, 4 and 5 attached to permission 10/2631C which related to a field gate. These conditions relate to the submission of details in respect of construction materials and design, tree protection measures and the provision of a pull-in for the access.

4. RELEVANT HISTORY

10/2631C Field Access Approved 25/10/2010

5. POLICIES

The development plan includes the North West of England Plan Regional Spatial Strategy 2021 (RSS) and the Congleton Borough Local Plan First Review 2005.
The relevant development plan policies are:

Local Plan Policy

NR1 Trees and Woodlands,
NR3 Habitats,
GR2 Design,
GR9 New Development

Other Material Considerations

Circular 11/95 The Use of Conditions in Planning Permission

6. CONSULTATIONS (External to Planning)

Strategic Highways Engineer: None received at time of writing report

7. VIEWS OF THE PARISH COUNCIL

None received at time of writing report

8. OTHER REPRESENTATIONS:

Letter of objection from the occupants of 31 and 33 Padgbury Lane on the following grounds:

- Impact on nature conservation if tree protection measures are not conditioned
- visual impact of materials if these are not conditioned
- impact on highway safety if pull in not provided

9. APPLICANT'S SUPPORTING INFORMATION

Covering Letter; summary

- Condition 3 is unnecessary as the proposed gate could constitute permitted development
- Condition 4 is unnecessary as the proposed gate could constitute permitted development and the nearby trees and hedges are not at risk, are not subject to TPO and no consultation response requires a scheme of protection to be submitted
- Condition 5 is unnecessary as pre-application discussions with the Highway Officer concluded that no set back was necessary.

10. OFFICER APPRAISAL

Principle of Removal of Conditions

The principle issues in determining this application relate to whether or not, conditions 3, 4 and 5 attached to permission 10/2631C accord with the six tests within Circular 11/95 in respect of the imposition of conditions.

In brief, these explain that conditions should be:

- i. necessary;
- ii. relevant to planning;
- iii. relevant to the development to be permitted;
- iv. enforceable;
- v. precise; and
- vi. reasonable in all other respects."

The Circular continues by stating at para.15 that "*the same principles, of course, must be applied in dealing with applications for the removal of a condition under section 73 or section 73A: a condition should not be retained unless there are sound and clear-cut reasons for doing so.*"

Therefore, in order to determine whether the condition serves a useful purpose it is necessary to examine it in the light of these tests.

Condition 3

Condition 3 states that:

No development shall take place until details of the materials to be used in the construction of the gate hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure that the external appearance of the building/structure is acceptable and to comply with policy GR2 Design of the Borough of Congleton Local Plan First Review 2005.

The officer's report for this application indicated that this condition was imposed because the applicant did not provide these details within the submission.

In this regard, box 9 on the application form, in terms of surfacing materials, was ticked as 'not applicable'. In respect of the gate, the agent ticked that these details were within the Design and Access Statement and the submitted plans. These details were however, not present on either the approved plan or within the Design and Access Statement.

The condition was justified on the basis that the external appearance could impact upon the character of the area. Policy GR2 Design states that proposals should be sympathetic to the character of the area in terms of the choice of materials. The site comprises an open field in a semi-rural location, where there is a predominance of post and rail fencing, hedging, walls and post and wire fencing. If the construction materials contrasted against this, the gate could have an adverse impact upon the character of the area.

The use of inappropriate materials could adversely affect the external appearance of the development and therefore have an adverse impact upon the character of the area. Details of materials were not submitted and therefore it is considered reasonable to condition the submission of these details. There is a policy within the Local Plan which relates to design and therefore the condition is relevant. The wording of the condition makes it clear what is required and therefore the condition is precise and enforceable.

Whilst it is acknowledged that the gate could be permitted development if permission wasn't required for the access, it is nevertheless, a part of a larger development which requires planning permission. It therefore falls under the control of the planning system and must comply with the relevant development plan policies. In addition the need for the gate would not arise without the creation of the access. As such the fall back position referred to by the applicant is given limited weight.

Condition 4

Condition 4 states that:

Prior to the commencement of the development, details of the measures to be used to protect the existing trees and hedgerow on the site from damage due to construction work shall be submitted to and approved in writing by the Local Planning Authority, and such measures as approved shall be implemented before the commencement of development and maintained insitu throughout the period of construction until the completion of the development.

Reason :- To ensure that these trees which make a significant contribution to the visual character of the area are not prejudiced by the development. This is in accordance with policies NR1 Trees and Woodlands and NR3 Habitats, of the Borough of Congleton Local Plan First Review 2005.

The submitted plans indicated that the front of the field bounding Padgbury Lane comprised a native hedgerow with a number of trees within this hedge. This was verified on site. Whilst the proposed access was sited within an existing gap within the hedge, the crownsread of the trees within the hedge would overhang the position of the gate and the proposed verge crossing. In addition the hedge would lie directly adjacent to the access point.

Whilst no formal response from the landscaping team was recorded, the case officer did informally discuss the application with one of the Council's landscape architects. As the

root spread of trees correlate to their crownspread, the works associated with the access i.e. the removing of the grass and the excavation and laying of hardsurfacing would result in disturbance to roots which could undermine the long-term retention of the trees.

The existing trees and hedgerow are not the subject of a tree preservation order. That said, this does not indicate that the trees and hedgerow are not worthy of retention. The hedge comprises native species and the trees are prominent within views along Padgbury Lane.

In this regard, policy NR1 states that the imposition of a condition in respect of tree protection measures and implementation are a requirement, where a development would affect trees. The policy draws no distinction between trees which are the subject of a Tree Preservation Order, and those which are not.

In summary, this condition is relevant, reasonable and the wording of the condition is sufficiently clear and precise to ensure its effective enforcement, if required.

Condition 5

Condition 5 states that

Notwithstanding the details shown on the approved plans, both the existing and proposed access gates shall be set back from the edge of the carriageway by a minimum of 10m.

Reason: In the interest of highway safety and to comply with Policy GR9 Access and Parking of the Congleton Borough Local Plan First Review 2005.

The applicant indicates that pre-application discussions with the Highways department were undertaken. It was not considered necessary to provide a pull-in for vehicles at this stage. Whilst the response from the Strategic Highways Manager and the pre-application discussions are a material consideration, the assessment of the implications of a development, ultimately lies with the Local Planning Authority.

Residents expressed concerns in respect of the existing highway safety issues and were concerned that the development would exacerbate the existing situation. Anecdotal evidence indicates that there are problems associated with people not respecting the 30mph speed limit. Moreover the access and footpaths narrow at the point at which the access is proposed. The access would be likely to be used by large, slow moving, agricultural vehicles and therefore it was considered to be appropriate to condition that the gates be set back into the field by 10m. This would ensure that slow moving vehicles would not be in a stationary position or slow moving, when entering the site.

11. CONCLUSIONS

In conclusion it is considered that the conditions imposed accord with the six tests set out in circular 11/95 relating to the imposition of conditions, and accordingly the application to remove them is recommended for refusal.

12. RECOMMENDATIONS

REFUSE Reason:

1. In the opinion of the Local Planning Authority the conditions in question meet the requirements of the 6 tests for planning conditions as set out in Circular 11/95 and are necessary in order to ensure that the proposed field access complies with policies GR9 New Development, GR2 Design, NR1 Trees and Woodlands and NR3 Habitats

Location Plan : Licence No 100049045

