

Application No: 13/1324N

Location: LAND OFF, QUEENS DRIVE, NANTWICH

Proposal: Variation of Condition 2 (Reserved Matters), 6 (External Lighting), 15 (Drainage), 19 (Affordable Housing) and Removal of Condition 12 (Flooding) on 12/4654N for Residential Development of up to 240 Dwellings

Applicant: Mr S Gladman, Gladman Developments

Expiry Date: 24-Jun-2013

SUMMARY RECOMMENDATION:

Approve subject to Deed of Variation and Conditions

MAIN ISSUES:

- Compliance with the tests in Circular 11/95

REFERRAL

The application has been referred to Strategic Planning Board because it is a largescale major development and a departure from the Development Plan.

1. SITE DESCRIPTION

The application site measures 9.90 hectares and lies on the south western edge of Nantwich. The site is defined and contained on two sides by Queens Drive to the north and the Shropshire & Union Canal to the west. To the east, Fields Farm and associated outbuildings and yards occupies a triangular shaped area of land in between the site and the railway line.

The site is agricultural land comprising a single broadly square pastoral field. A row of approximately 8 semi-detached houses face towards the site on the northern side of Queens Drive and a further 12 properties back onto the site on the southern side of the road. These are two storey late twentieth century red brick properties and are set back from the road behind drives.

There are 2 public footpaths that run along the boundaries of the site (one within the site boundary). Immediately west of the site, the towpath of the Shropshire and Union Canal

is a well used path by walkers and fishers, with a seating area adjacent to the site and a listed milepost. The hedgerow along this boundary is intermittent with occasional trees.

At the north west and south west corners of the site attractive stone bridges over the canal (one a road bridge and the other a farm access track) are listed structures. The eastern edge is more open, and defined by a post and wire fence.

The Nantwich Circular Walk passes through the site along the southern boundary, linking across the railway on a level crossing into Nantwich. The southern boundary is defined by a hedgerow and occasional mature trees, with a group of trees in the south east corner adjacent to an off site pond. This lower south east corner is boggy and appears to have potential for occasional flooding, with the existing footpath raised above ground level.

The contours within the site generally slope from west to east, with the canal at a high point of approximately 50m AOD on the western boundary. The land then rises up very slightly to the west of the canal to a minor ridge, before dropping down to the western boundary to a low point of 44m AOD in the south eastern corner. A minor shallowing of contours east of the existing listed milepost could be due to excavation of the canal, and allows views across the site from this position. In the wider context, the landscape is relatively flat, with land slowly rising to the west to a high point of approximately 60mAOD at Acton. To the east, the contours drop towards the River Weaver approximately 500m east of the site.

2. DETAILS OF PROPOSAL

Members may recall an outline planning application (12/2440N) for a total of 7.6 hectares of residential development, providing up to 270 dwellings. The scheme included a broad range of block densities from 30-40 dwellings per hectare (dph). The development would provide for a broad mix of dwellings and house types, ranging from 2 to 5 bedroom units, offering a mix of market housing from first time homes to larger family homes. The housing mix would include affordable housing, which will be accommodated in small clusters and evenly distributed around the development.

The proposal also included 2.04Ha of Public Open Space & Habitat Creation Areas. The open space will include informal recreation, footpaths and habitat creation areas. 0.17ha of ponds, will be created with areas of permanent water and ephemeral areas with grassland planting and 0.04ha of Equipped Children's Play Space (0.04Ha) would also be provided, offering toddler, child and teenage play provision. The play space would be set within an area of public open space. In addition, a tea room / convenience store would be located near the entrance to the site adjacent to the canal with outdoor picnic area and parking.

However, before the application could be determined, the Applicant appealed against non-determination and the Council were able to issue a decision. The Strategic Planning Board subsequently resolved to contest the Appeal on two grounds. They were, firstly, housing land supply, and secondly, highways concerns.

In addition, the Applicant resubmitted a smaller scheme for 240 dwellings, (application 12/4654N) so that this second application was running in parallel with the Appeal on the first. After receiving legal advice at that time, (prior to the recent publication of the 2012 SHLAA) Members resolved to remove the housing land supply reason for refusal from the appeal as it was considered not sustainable - leaving only the highways reason. Ongoing negotiations with the developer, culminated in the Taylor Drive link solution being identified to address the highways concerns. This effectively eliminated the second reason for refusal. On this basis the 240 scheme was put to committee with a recommendation to approve, which was duly followed and permission granted for 240 dwellings, subject to a S106 agreement to deliver the Taylor Drive improvement and a number of conditions.

The Board then resolved to withdraw the highways objection to the Appeal for application 12/2440N). Consequently, when the public inquiry opened, the Council's case was one of no objection subject to a Section 106 requiring the Taylor Drive link to be undertaken. The Inspector heard why the Council considered this to be necessary and carried out a site visit and we are awaiting a formal decision. The Inspector also chaired a discussion between the Council and the Appellant over the conditions which should be attached to the permission, if we were minded to allow the Appeal.

This application seeks to vary the conditions attached to permission, 12/4654N so that they reflect the outcome of the discussion in front of the Inspector in respect of the Appeal scheme 12/2440N

3. RELEVANT PLANNING HISTORY

12/2440N	(2012)	Outline planning permission for 270 dwellings – Appealed
12/4654N	(2012)	Outline planning permission for 240 dwellings - Approved

4. PLANNING POLICIES

Policies in the Local Plan

NE.2 (Open countryside)
NE.5 (Nature Conservation and Habitats)
NE.9: (Protected Species)
NE.20 (Flood Prevention)
NE.21 (Land Fill Sites)
BE.1 (Amenity)
BE.2 (Design Standards)
BE.3 (Access and Parking)
BE.4 (Drainage, Utilities and Resources)
RES.5 (Housing In The Open Countryside)
RT.6 (Recreational Uses on the Open Countryside)
TRAN.3 (Pedestrians)
TRAN.5 (Cycling)

National Policy

National Planning Policy Framework

Other Material Policy Considerations

Interim Planning Policy: Release of Housing Land (Feb 2011)

Interim Planning Statement: Affordable Housing (Feb 2011)

Strategic Market Housing Assessment (SHMA)

Relevant legislation also includes the EC Habitats Directive and the Conservation (Natural Habitats &c.) Regulations 1994

North West Sustainability Checklist

5. OBSERVATIONS OF CONSULTEES

Canal and River Trust

- After due consideration of the application details, the Canal & River Trust has no comments to make.

Environment Agency

Make the following comments.

- Condition 12 relates to event exceedence conditions, when the site's surface water drainage system becomes surcharged and overland flow results. This Condition should remain.
- Condition 13 relates to the regulation of the discharge of surface water from the proposed development, for up to the 1 in 100 years design event, such that flood risk elsewhere is not increased.
- Condition 15 relates to the discharge of foul water from the proposed development and is for the water company to comment on.

United Utilities

- United Utilities do not agree to the variation of condition 15 as the 10 l/s limitation imposed relates to the foul water discharge rate and not the surface water discharge rate.

6. VIEWS OF THE PARISH / TOWN COUNCIL

Nantwich Town Council

- The Town Council has no objection to this application.

Acton, Edleston & Henhull Parish Council

- No objections re Conditions 2, 6, and 12.

- Condition 15 (drainage) seems to be alright to the Parish Council without change.
- Condition 19 (affordable housing) reflects the '270' application and should be changed for this application of 240

7. OTHER REPRESENTATIONS

2 letters of representation have been received making the following points:

- Should the proposed development go ahead the extra traffic using the local roads has not been given serious enough thought
- Looking at the plans it seems the entry /exit is very close to Marsh Lane bridge surely this presents a traffic risk given that cars entering Nantwich from the Wrenbury Road (Marsh Lane) are faced with a greater chance of collision with the extra traffic exiting the estate. This bridge has been a concern for locals and motorists for some years with its poor visibility on the twisted junction. Would it not be in everyone's interest to consider moving the entrance/exit further down Queens drive if this development should happen.
- It is a disappointment that these developments are changing the views and landscape that people bought their homes for over the years and surely have a right to enjoy.
- This application is being railroaded through without any consultation with the general public regarding the suggestions about excess traffic along Queens Drive and Welsh Row. No-one has the right to agree to closing off Welsh Row, or making it a one-way street, before a full, and proper, public consultation has taken place. If the granting of this application depends upon that then it should be refused.
- Travelling from the Ravensmoor direction into Queens Drive, the right-hand turn is already difficult with visibility obscured from the northern approach of Marsh Lane. To also have to contend with traffic using the proposed access road will be even more difficult and dangerous.
- When Taylor Drive was proposed there should have been a condition applied that a new Welsh Row by-pass route would be created along Taylor Drive, Edmund Wright Way to Millfields, joining Waterlode via a new access road and bridge over the River Weaver. Due to an error by Crewe and Nantwich Borough Planning Department this condition was not imposed and, obviously, the builders failed to provide this facility.
- Cheshire East Council should now correct this error and this condition should be included in this application. This would ease the enormous pressure which already exists and which would be increased with this proposal, by the amount of traffic using Welsh Row, Queens Drive and Marsh Lane.

8. APPLICANT'S SUPPORTING INFORMATION:

- Supporting Statement

9. OFFICER APPRAISAL

Main Issues

The previous planning permission has established the acceptability, in principle of this development, and, therefore, this application does not present an opportunity to re-examine those issues. The only issues in the consideration of this application are the acceptability of the proposed amendments to the conditions that have already been imposed on that planning permission.

Advice on the use of conditions can be found in "Circular 11/95: Use of Conditions in Planning Permission". According to the Circular, *"Secretaries of State take the view that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they satisfy all of the tests described in paragraphs 14-42. 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 2

Currently this condition requires the submission of all reserved matters within 18 months of the date of the planning permission. This is a standard condition for outline consents. The developer has advised that the site may be disposed of to more than one house builder who may, in turn, develop the site in phases. Accordingly they have requested that the condition is varied to read as follows:

Application for approval of reserved matters in the first phase of the development must be made not later than the expiration of 18 months beginning with the date of this permission. Application for the reserved matters in all subsequent phases must be made no later than the expiration of 3 years beginning with the date of this permission. The development to be begun on or before the expiration of 18 months from the final approval of the last reserved matters.

This is the standard time limit condition for phased outline planning permission, as advocated by the Government and the Planning Inspectorate. The equivalent condition was agreed for the appeal proposal and has been imposed by the Strategic Planning Board on other phased schemes. Given that this is likely to be a phased development it would be unreasonable to refuse to amend the condition accordingly.

Condition 6

Condition 6 requires the submission of external lighting details for the site, and includes a reference to providing details of the floodlighting to a 5-aside football pitch. This is a typographical error as the public open space on this particular scheme, as secured through the Section 106 agreement does not, and was never intended to include a 5-aside pitch. The condition as it stands is therefore unnecessary and should be amended to remove the reference to the 5-aside pitch.

Condition 12

Condition 12 states that the site layout shall be designed to contain any such flooding within the site, to ensure that existing and new buildings are not affected. The developer has argued that it should be removed as it does not make sense and is not necessary. They say that Condition 13 provides the necessary controls to prevent flooding.

The Environment Agency have stated that the condition relates to event exceedance conditions, when the site's surface water drainage system becomes surcharged and overland flow result and should remain.

However, it is considered that other conditions require the detailed design of the drainage system to be submitted and approved. The site layout is subject to a further application for reserved matters approval. The Environment Agency would be a consultee on any application to discharge conditions or for reserved matters approval and at that stage they could check to ensure that the design of the drainage and layout of the scheme were such that any flooding was contained within the site to ensure that existing and new buildings were not affected and could object to the applications if the scheme failed to meet these requirements. On this basis it is considered that the condition is unnecessary and should be removed.

Condition 13

Condition 13 relates to the regulation of the discharge of surface water from the proposed development, for up to the 1 in 100 years design event, such that flood risk elsewhere is not increased. The developer has suggested that condition 15 needs to be amended to clarify that the discharge rate of 10l/s should relate to 10l/s per hectare.

The Environment Agency has stated that Condition 15 relates to the discharge of foul water from the proposed development and is for the water company to comment on. United Utilities have objected to the variation of condition 15 as the 10 l/s limitation imposed relates to the foul water discharge rate and not the surface water discharge rate.

On this basis, to include a reference to l/s per hectare would seem inappropriate. However, it is considered that the condition should be varied to make specific reference to foul water discharge.

Condition 19

Condition 19 relates to the provision of affordable housing. The policy requirement is 30%. However, the condition states that 81 units should be affordable housing, which does not equate to 30%. This is also a typographical error. It is recommended that this condition is varied to state 72 units.

Other Matters

A number of other matters have been raised by third parties, relating specifically to highway safety matters, and loss of views. These relate to the principle of the development, and were considered at the time that the outline planning permission was granted. They are not material to the determination of this application for variation of conditions relating to time limits, drainage and lighting.

10. CONCLUSIONS

The previous planning permission has established the acceptability and the principle of this development, and, therefore, this application does not present an opportunity to re-examine those issues. The only issues in the consideration of this application are the acceptability of the proposed amendments to the conditions that have already been imposed on that planning permission.

The proposed amendment to the time limit condition to reflect the fact that this is likely to be a phased development is considered to be reasonable and appropriate. Given that the scheme does not include the provision of a 5-aside pitch the omission of the reference to such a facility from the external lighting condition is clearly acceptable.

With regard to drainage, condition 12 is considered to be unnecessary as the Local Planning Authority and the Environment Agency, have control over the design of the drainage and layout of the scheme to ensure that any flooding was contained within the site and that existing and new buildings were not affected. United Utilities have confirmed that the discharge rates referred to in condition 15 relate to foul water rather than surface water. Therefore, the condition should be amended to reflect this rather than a run-off rate per hectare, as suggested by the applicant.

Condition 19 is clearly a typographical error, as the policy requirement for affordable housing is 30% of the total, which in the case of this 240 unit scheme equals 72 units, not 81 as stated in the condition. This should be amended accordingly.

The application is therefore recommended for approval, subject to the conditions that were attached to the original consent, albeit amended in accordance with the above, and a Deed of Variation to the Section 106 Agreement to reference the new consent.

9. RECOMMENDATION

APPROVE subject to a Deed of Variation to the Section 106 Agreement to reference the new consent and the following conditions: (Amendments underlined)

1. Standard outline (Phased)
2. Standard outline (Phased)
3. Plans
4. Submission / Approval / Implementation of details of appropriate mitigation measures to prevent any risk of pollution or harm to the adjacent Shropshire Union Canal
5. Submission / Approval / Implementation of Environmental Management Plan
6. Submission / Approval / Implementation of External Lighting (no reference to 5-aside pitch)
7. Submission / Approval / Implementation of noise mitigation measures
8. Submission / Approval / Implementation of Contaminated Land Assessment
9. No access to level crossing from site.
10. Discharge of surface water from the proposed development to mimic that which discharges from the existing site.
11. Submission / Approval / Implementation of Sustainable Urban Drainage System
12. ~~DELETED~~
13. Submission / Approval / Implementation of a scheme to limit the surface water run-off generated by the proposed development,
14. Submission / Approval / Implementation of a scheme to manage the risk of flooding from overland flow of surface water and any potential floodwaters from the Shropshire Union Canal
15. This site must be drained on a separate system, with only foul drainage connected into the public foul sewerage system. Foul water to discharge at a maximum discharge rate of 10 l/s.
16. Surface water should discharge to soakaway and or watercourse as stated within the FRA submitted.
17. Reserved matters to make provision for 10% renewable energy
18. Submission / Approval / Implementation of sustainability framework/strategy
19. Submission / Approval / Implementation of scheme for affordable housing to make provision for
20. 30% of the dwellings to be affordable, (at 240 units this equates to up to 72 dwellings.)
21. The tenure split of the affordable housing required is 65% rented, 35% intermediate tenure
22. Affordable Homes should be pepper-potted (in clusters is acceptable.)
23. The affordable homes should be built to the standards adopted by the HCA at the time of development and achieve at least Code for Sustainable Homes Level 3
24. The affordable homes should be provided no later than occupation of 50% of the market dwellings (or 80% if the development is phased and there is a high level of pepper potting of the affordable units)
25. Any rented units/shared ownership housing to be transferred to an RSL

- 26. Submission / Approval / Implementation of tree and hedge protection measures,**
- 27. Submission / Approval / Implementation of a programme of tree works, an Arboricultural Method Statement**
- 28. Submission / Approval / Implementation of a landscape scheme,**
- 29. Submission / Approval / Implementation of details of services locations**
- 30. Submission / Approval / Implementation of proposed future management of the new areas of planting,**
- 31. Reserved matters to make provision for retention of Important Hedgerows.**
- 32. All reserved matters applications to comply with provisions of the Masterplan and Design Code**
- 33. Safeguard breeding birds**
- 34. Ensure any reserved matters application includes detailed proposals for the proposed habitat creation areas including pond design, hedgerow creation, protection and enhancement etc.**
- 35. Ensure any reserved matters application includes additional provision for breeding birds and roosting bats**
- 36. Ensure any reserved matters application includes an up to date badger survey and mitigation proposals for any adverse impacts identified.**
- 37. Ensure any reserved matters application includes a 10 year habitat management plan.**
- 38. Details of bin storage to be submitted to the Local Planning Authority**
- 39. Submission of Construction Method Statement**
- 40. Reserved matters to make provision for a total of 9,450 sqm open space comprising of 4,050 sqm shared recreational open space and 5,400 sqm shared children's play space to include:**
 - a. NEAP to cater for both young and older children - 6 pieces of equipment for young, plus 6 pieces for older children including a cantilever swing with two support legs plus basket seat and a ground-flush roundabout. All equipment needs to be predominantly of metal construction, as opposed to wood and plastic.**
 - b. Multi Use Games Area.**

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