

Application No: 11/2530C

Location: BATH VALE WORKS, BATH VALE, CONGLETON, CW12 2HD

Proposal: Removal Of Condition 11 Imposed On Application for Approval Of Reserved Matters 10/1269C Relating To Sustainable / Energy Saving Features

Applicant: Bovis Homes Limited

Expiry Date: 24-Aug-2011

#### **SUMMARY RECOMMENDATION**

**Approve subject to Section 106 Agreement and conditions.**

#### **MAIN ISSUES:**

- **Compliance with the tests in Circular 11/95**

#### **REFERRAL**

The application has been referred to Southern Planning Committee because it relates to a previous decision made by committee.

#### **SITE DESCRIPTION**

The site is located approximately 1.5km to the north east of Congleton town centre in an area of open countryside. It is broadly rectangular and orientated in a north western – south eastern alignment. The existing buildings on the site were previously used for industrial purposes and covered most of the site. These have now been demolished and the site is now undergoing redevelopment. The site itself, which slopes up gradually from the entrance, lies in a river valley, the sides of which are steeply sloping and heavily treed. The site area is approximately 10.07ha. It is accessed off Brookhouse Lane, which roughly follows the southern boundary of the site.

#### **DETAILS OF PROPOSAL**

Outline planning permission was originally granted in June 2008 for residential redevelopment of the site for 130 dwellings, with 20% affordable housing. (07/0596/OUT refers). A subsequent outline application (08/1317/OUT) for 130 dwellings was refused on 7<sup>th</sup> November 2008, because the developer sought to reduce the extent of affordable

housing provision to 5%. A subsequent appeal against that decision was allowed, and outline planning permission granted, on 28<sup>th</sup> April 2010.

A reserved matters application seeking approval for details of access, appearance, landscaping, layout and scale was approved on 24<sup>th</sup> November 2011. The permission was subject to a number of conditions. Condition no.11 stated:

*Within three months of the date of this permission a detailed specification for all the sustainable / energy saving features to be incorporated in the development hereby permitted, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall make provision for at least 10% of the energy requirements of the building to be obtained from decentralised and renewable or low-carbon sources. The approved features shall be installed and fully operational prior to the first occupation of the development and shall thereafter be retained unless the Local Planning Authority gives written consent to any variation.*

*Reason: To comply with Policy EM18 (Decentralised Energy Supply) of the North West of England Plan: Regional Spatial Strategy to 2021.*

This application seeks to remove that condition.

## **RELEVANT PLANNING HISTORY**

07/0596/OUT - Outline planning permission for up to 130 dwellings, provision of public open space, highway improvements and associated works – Approved 23<sup>rd</sup> June 2008.

08/1317/OUT - Outline Planning Application for demolition of existing buildings and erection of up to 130 dwellings, provision of public open space, highway improvements and associated works.- Refused 7<sup>th</sup> November 2008 – Appeal Allowed

10/1269C – Reserved Matters for Erection of 126 No. dwellings, provision of public open space and associated works – Approved 24<sup>th</sup> November 2011

## **PLANNING POLICIES**

### **Regional Spatial Strategy**

Policy EM18 (Decentralised Energy Supply)

## **OBSERVATIONS OF CONSULTEES**

**Environmental Health** - No objection

**Natural England** - No comment

**Public Rights of Way Unit**- It appears unlikely that the proposal would affect the public right of way

**Environment Agency** – No comment

**United Utilities** - No objection

## **VIEWS OF THE PARISH / TOWN COUNCIL**

No objection

## **OTHER REPRESENTATIONS**

A letter of representation has been received from Bath Vale Farm, making the following points:

- More insulation is no substitute for 10% renewable energy when we have a carbon crisis.

## **APPLICANT'S SUPPORTING INFORMATION:**

- **Supporting Letter**

## **OFFICER APPRAISAL**

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.

The stated reason for the condition was to comply with Policy EM18 (Decentralised Energy Supply) of the North West of England Plan: Regional Spatial Strategy to 2021. This policy states that all residential developments comprising 10 or more units should secure at least 10% of their predicted energy requirements from decentralised and renewable or low-carbon sources, unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable.

However, the developer has pointed out that the RSS was in place at the time of the outline approval and the inspector did not see fit to impose a renewable energy condition. It should not therefore be added at this stage. Furthermore, the outline consent included conditions relating to minimum requirements in terms of Code for Sustainable Homes and energy saving measures to be incorporated into the design.

Therefore, the Inspector that granted the outline approval, clearly considered the issue of sustainability. He clearly did not consider it necessary to impose conditions relating to the 10% renewable requirement but ensured that a sustainable development could be achieved through the imposition of the Code for Sustainable Homes standards instead.

These points were reported and the recommendation amended verbally by the Planning Officer at the committee meeting on the 24<sup>th</sup> November 2011. However, this change to the resolution does not appear to have been minuted and therefore the approved minutes of the resolution made at the meeting of 24<sup>th</sup> November 2011 include the renewable energy condition. Consequently planning permission has had to be issued in accordance with the approved minute. Nevertheless notes taken by officers, the Borough Solicitor and the applicant's agent confirm that this verbal amendment was made at the meeting.

## **CONCLUSIONS**

The condition in question is considered to be unnecessary as the sustainability requirements of the site will be met through the Code for Sustainable Homes requirement. It is also considered to be unreasonable to retain the condition given that the RSS was in place at the time of the outline approval and the inspector, having clearly given consideration to the issue of sustainability, did not see fit to impose a renewable energy condition

Circular 11/95 makes it clear that any condition which fails to meet all of the following tests: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects should not be imposed. The application is therefore recommended for approval subject to a Deed of Variation to the Section 106 Agreement to reference the new permission and the same conditions as the previous approval, with the exception of condition 11 which will be omitted.

## **RECOMMENDATION**

**APPROVE subject to completion of a Deed of Variation to the Section 106 Agreement to reference the new permission**

**And**

**The following conditions**

- 1. Plans**
- 2. Materials**
- 3. Boundary Treatment**
- 4. Internal layout details**
- 5. Contaminated land**

- 6. Updated Tree Canopy Plan**
- 7. Updated Landscape Plan**
- 8. Implementation of Landscaping**
- 9. Removal of Permitted Development Rights**
- 10. Construction of Access**



