

Application No: 11/2423N

Location: LAND OFF WYCHE LANE, BUNBURY, CW6 9PS

Proposal: Variation of Condition 2 Relating to Adherence To Approved Plans To Allow Position Of Access To Land At Rear To Be Amended, And Removal of Condition 17 Restricting Use Of Access To Maintenance Vehicles Only

Applicant: MUIR GROUP HOUSING ASSOCIATION

Expiry Date: 30-Aug-2011

#### **SUMMARY RECOMMENDATION:**

**That the Committee endorse the view that the application would have been APPROVED subject to a Deed of Variation to the existing Section 106 Agreement to reference the new permission and conditions.**

#### **MAIN ISSUES**

- **Appropriateness of Condition 17**
  - *Background*
  - *Government Advice*
  - *Necessary*
  - *Relevant to Planning*
  - *Relevant to the development to be permitted;*
  - *Enforceable;*
  - *Precise*
  - *Reasonable in all other respects*
- **Acceptability of Proposed Amendments to Approved Plans**
  - *Background*
  - *Visual Impact*
  - *Amenity*
  - *Highway Safety*

#### **REFERRAL**

The application has been called into committee by Councillor Michael Jones because he had already requested that 11/2575N (now withdrawn) be called in. As such he has called in this application on the grounds of clarification and to determine whether the proposed changes are within the planning permission. There exists extensive concern in Bunbury that these amendments to planning are an attempt to procure further development beyond the current 10 dwellings. Although this would appear not to be the case, he feels, in the public's interest a full open examination should occur so that we can maintain public confidence in the planning procedures at CEC.

This application was submitted on 27<sup>th</sup> June 2011 and, following the subsequent public consultation period, generated a significant amount of objections from neighbours of the site. Since the closure of the consultation period on 26<sup>th</sup> August 2011, Planning Officers have been attempting to facilitate a meeting between the owner of the land to the rear and the applicants in order to attempt to establish a mutually agreeable solution. However, officers have been unsuccessful in bringing all the parties to the table. Consequently, the applicant's, who wish to make a start on site in the near future, have appealed against non-determination of the application. In such cases the matter is taken out of the hands of the Local Planning Authority and the determination is made by the Secretary of State.

Therefore the purpose of this report is merely to seek the committee's resolution as to what its decision would have been had it been able to determine the application, and this will form part of the Authority's Statement of Case on the appeal. It is generally accepted that failure to do this, with the case for the Authority relying on officer level views, will result in less weight being given to the Authority's case, and there may be possible costs implications.

(N.B. A second identical application was submitted (12/0459N refers) on 2<sup>nd</sup> February 2012. This is currently on public consultation and is anticipated to come before Southern Planning Committee at its next meeting. The applicant has indicated that if the second application is successful they would be willing to withdraw the present appeal against non-determination. A further application (12/0457N) has also been submitted to extend the time limit for implementation of the original consent (P07/0867) which expires on 31<sup>st</sup> March 2012.)

## **1. SITE DESCRIPTION AND DETAILS OF PROPOSAL**

Full planning permission was granted in March 2009 for an affordable housing development of ten houses along the frontage of the former football field, situated between the village centre and the area of Higher Bunbury to the east.

The scheme comprises 3 pairs of semi-detached dwellings fronting onto the road and a single larger detached dwelling at 90 degrees to the road. A further block of 3 mews houses is located to the rear of the site. A parking court has been provided in the centre of the site, with areas of open space to the rear corners. Vehicle access to the parking court is from a single T junction midway along the site frontage.

The permission was subject to a number of conditions including the following:

*2. This permission shall refer to drawing no.'s 0340-07A, 0340-08A, 0340/401 (excluding block plan), 0340/400B and 0340-10,*

*Reason: For the avoidance of doubt and to comply with Policy BE.2 (Design Standards) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.*

and

*17. The use of the access gate at the land to rear of site shall be restricted to vehicles being used in connection with the maintenance of that land only and for no other purpose.*

*Reason:- To protect the character and appearance of the open countryside and the amenity of neighbouring occupiers in accordance with Policies NE.2 (Open Countryside) and BE.1 (Amenity) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.*

This application seeks consent for a variation of condition 2 relating to adherence to approved plans to allow position of access to land at the rear to be amended and the removal of condition 17 which restricts use of the said access to maintenance vehicles only.

## **2. PREVIOUS RELEVANT DECISIONS**

7/12804	(1986)	Outline planning application for speculative housing development - refused and appeal dismissed – 1986
P04/0594	(2004)	Outline Application for Housing for Affordable Use – Refused
P04/0545	(2004)	10 Two Storey Houses – Refused. Appeal dismissed 6 <sup>th</sup> June 2006.
P07/0867	(2009)	10 Affordable Houses - Approved
11/2575N	(2011)	Variation of condition 2 and 17 of planning permission 07/0867 – Withdrawn

## **3. PLANNING POLICIES**

### **National Policy**

PPS 1 Delivering Sustainable Development  
PPS 3 Housing  
PPS7 Sustainable Development in Rural Areas

### **Local Plan Policy**

### **Other Material Considerations**

Circular 11/95 Use of Conditions in Planning Permission

## **4. OBSERVATIONS OF CONSULTEES**

None received at the time of report preparation.

## **5. VIEWS OF THE PARISH / TOWN COUNCIL:**

Bunbury Parish Council supports the above planning application. The Parish Council requests that conditions are added to any approval restricting the surface of the proposed accessway to Toptrek or an alternative agricultural surface.

## **6. OTHER REPRESENTATIONS:**

Letters of objection have been received from Inyanga, Dorward, Whitegates, Ivy Cottage, Redcliffe, Sunnyside, The Summit, Isle O'Tycin, Lynton, Edinbane Cottage, Long Acre, Aisling, Fern Cottage, Ludford Ginger and The Brambles, Wyche Lane; 4 The Acreage; Hillview, Whitchurch Road; 17 Darkie Meadow; 1 The Hawthornes, The Chantry House and Vergers Cottage, Wyche Road; The Croft and Ericeira, Bunbury Lane, making the following points:

### **Site History**

- Specific conditions had been laid down in planning application P07/0867 by an Appeal Court judge, specifically to limit the development of the field behind Wyche Lane to that development approved in P07/0867.
- Muir Group gave specific assurances at a public meeting concerning no further development of the remainder of the field as clause 2 and clause 17 of the original application would stop this from happening
- This and the strip of land to be transferred to the Parish Council was to be the village's security blanket. .
- Muir Group has started on site.
- There have been extensive changes to the site plans.
- The assurance given by Muir at the public meeting and the decisions of an Appeal Court judge both appear to be being ignored or brushed under the carpet by Muir
- The Borough Council is surely there to respect and comply with the law and respond to the promise made to the population it is there to defend.
- The land was subject to an appeal by Muir Housing Association against the refusal of its original application to build 10 houses on the land in Wyche Lane. The Inspector concluded in paragraph 23 of her decision as follows:"I have found that even though the level of need is so compelling as to outweigh in principle the harm arising from development of this site, the proposal as it stands is acceptable because the layout of the rear access road and parking areas. On this ground alone, the appeal fails (Paragraphs 13 and 14 give the reasoning)
- Permission was subsequently given to build the 10 houses when a new application was made but access to the rear of the houses had to be restricted to agricultural access only and the piece of land which was no longer to be developed by Muir would be gifted to the Bunbury Parish Council
- What is the point of having Planning Inspectorates and spending enormous amounts of state money to hold such inquiries then to have the Council override the Inspectors Decision by agreeing to an application to have conditions overturned.

- The proposal will enlarge the entrance to the land which is to be given to the parish Council to 4.5m and also to provide a road and drainage to the land at the rear which is totally unnecessary. This being all agricultural land which the Inspector deemed should not be built on in the future.
- The Inspector at the appeal stated "At the enquiry it was confirmed that the Appellant no longer intended to pursue a second phase. Even so the layout of the scheme to the rear of the houses, in terms of access road and parking areas, still reflects that earlier intention with the result that the access to the rear field has been designed to a higher standard that would normally be associated with a simple field access." To me this suggests that she was not happy with Muir's stated intention not to try to develop the remainder of the field. The Inspector went on to say in paragraph 14 of her report that "The fact that the layout of this scheme would be compatible with further residential development is therefore of great concern to me since it would make the land to the rear more attractive to potential developers.
- When permission was eventually granted the access to the rear of houses was to be restricted to agricultural access only so that the field could be dealt with on an agricultural basis and a strip of land immediately behind the houses should be gifted / sold to Bunbury Parish Council for the benefit of the local community.
- Now quite out of the blue, Muir have returned seeking to vary the original planning application by stating in their application "Condition 17 as constituted may have the effect of constraining unnecessarily some future possible lawful use (whether or not planning permission is necessary) of the land edged blue and the adjacent accommodation land to which it in turn gives access". The land edged blue refers to the land to be passed to the Parish Council
- From the application it can be seen that it was submitted after a meeting was held between Muir and Council officers where the principle of the application was agreed. Since when have Council officers been given permission to go along with over ruling the decision of one of her Majesty's Inspectors. If they now have this sort of power what is the point of having the Planning Inspectorate.
- Why does the access road now need to be brought up to highway standard and widened to 4.5m as the land being passed to the Parish Council will not be developed and the agricultural land to the rear of that only needs an access wide enough to accommodate agricultural vehicles and the standard of the road surface needs only be hardcore with a top dressing with no services. This is what the Inspector feared would happen.
- The only reason for wanting these 2 conditions removing would be to allow further development of the land behind the already approved development. These conditions were put in place when the application was finally approved in order to protect this land from over developed. The Council should not be allowed to remove these conditions, which were approved by the planning inspector in March 2009.
- The variation re-introduces the explicit extendibility of the layout in the future in relation to development of the fields at the rear and is thereby completely contrary to the ruling given by the Inspector.
- The later/final Planning Application only subsequently received approval on the grounds that the inspectors concerns to ensure that no further development took place to the rear of these new dwellings were addressed by a) gift to the community of a buffer strip immediately to the rear of this development to prevent

further future development and b) access through the current development up to (but not through) this buffer strip being restricted to agricultural use presumably at best an unmade narrow width farm track / gate without any services (lighting, drainage etc.) . The buffer strip has no value whatsoever if it has a significant public right of way right through it to the land at the rear.

- The stated boundary fence and existing field gate within it to which this proposed through route leads were not there when this development application finally received approval in 2009. They were erected afterwards – presumably speculatively.
- What possible lawful use can the applicant argue that would need a significant vehicle access but not planning approval as it seems unlikely there could be any
- Granting this variation would also be contrary to the clear intent of the approved Bunbury village Design Statement to “Have regard for the individual identities of the four Bunbury’s, in particular the remaining open space between higher and Lower Bunbury acknowledged as extremely important in retaining their separate identities – a defining characteristic of the settlement.” Approval of this variation application would explicitly destroy the historic green corridor between the two distinctive identities of the settlements of Lower and higher Bunbury – fundamentally changing the character of the village
- Their original submission was clearly unacceptable even upon appeal to the Secretary of State and now has changed. How can there now be any intent to undermine the outcome of the Public Inquiry, particularly by means of a low key variation application.
- Muir Group is reneging on their previous agreement not to develop the land and to gift it to the parish in a most underhand manner.
- Furthermore it was universally understood that access from the new development would only be into and not right through the buffer strip –
- Why can the existing agricultural access not be retained, as this would appear to be possible without any significant detriment to the layout of the development? It has been adequate as it is for decades – if retained it would be very similar to the existing access on the same side of the lane some 400m or so to the east.
- Removal of Condition 17 is contrary to the decisions and agreement already reached and the planning authority should retain full control over further use of the land edged blue to ensure that the developers do what has already been agreed. Regarding Condition 2, the variation needs clarification. What is the access along the westerly boundary? Appropriate conditions should be imposed to cover its use and maintenance. If as a matter of practicality more general access is needed this could be allowed in the same position as on the original plan and to the original dimensions and standard of construction. The right of way should not be constructed in a manner that it could be adopted as a road in the future.
- The proposed 4.45m right of way in the centre of the development is too big and out of all proportion for what is required for what in all events is still agricultural land and should be restricted to the original plan.
- This planning application only finally gained approval following a public enquiry and after being referred to an appeal court judge. Clauses 2 and 17 that the Muir Group are now seeking to have removed give assurances to the residents of Wyche Lane and the broader Bunbury village community that there will be no further development of the fields behind the planned housing development.

- As part of gaining acceptance, the Muir Group Housing Association agreed to gift a strip of land to the Parish Council in order to satisfy the concerns of the Inspector that there would be no further development beyond the 10 houses proposed. It appears that the Muir Group are now attempting to renege on their promises.
- Residents object to the removal of essential restrictions (as deemed by a senior planning inspector following a public enquiry) to restrict potential further development in a sensitive, rural location.
- The proposed 4.5 metre right-of-way and access gateway in the centre is too big and out of proportion for requirements and surrounding roads and ways. (However, it is perhaps noteworthy that a 4.5 metre access-way would permit entry by construction vehicles to the fields behind). Existing agricultural access should be sufficient as it has been to date for farming and recreational uses.
- This is unacceptable conduct of the Muir Group Housing Association (MGHA). Promises made and assurances given in public consultation are now being withdrawn by this action.
- Furthermore, condition 15 of the original permission has not been complied with as the hedge was removed in June for the construction of the road. The hedge had not been previously netted to stop birds nesting.
- Initial planning permission granted by an appeal court judge specifically limited the right of access to an agricultural access and the proposed variation contravenes that original approval. If the land directly behind the proposed housing is to be managed by the Parish Council for the local community there is absolutely no need for the access to be greater in width than an agricultural gate and of no greater construction than an agricultural road. It certainly does not need to be of highway standard in either construction or width. It was an application that contained access to a higher standard than agricultural standard that was rejected in 2006 and only subsequently granted after that access had been amended to agricultural status. Therefore this condition should stand.
- Residents are deeply suspicious of the need to vary the original application of the land is to remain for Parish community use and a field beyond that.
- This proposed variation reintroduces future development of the fields at the rear of the ten dwellings. The whole purpose of the buffer strip and access restricted to agricultural use was to limit future development in the field beyond; to change that now would make a mockery of previous rulings.
- If Muir consider themselves to be in a cleft stick that is of their own making and is not of itself a reason to seek a variation some 5 years after their open meeting with residents of Bunbury Village to the very carefully defined conditions of the Inspector who considered their Appeal against the Planning Committee's original decision.
- There is an apparent lack of good faith on their part in seeking a potential for the breaking of undertakings given to the Village by them at that open meeting and, on my limited understanding the reasons they give for seeking the variations are not themselves one usually considered relevant for planning considerations
- Contract and land law in the first instance should define the nature and extent of any easement giving rights of access in favour of one parcel of land over another, not planning law save to the extent that, on planning grounds, it may be necessary to impose conditions on the Applicants land which may prevent a

development taking place unless the owner of the adjoining dominant land relaxes or releases any right of access in favour of that land, a matter which will not directly affect the Local Planning Authority when it imposes planning conditions.

- If the Planning Committee considers that there should be any variation of the Inspectors decision the condition as to any access in favour of the land to the rear should presumably mean the width of any access should also be limited to that necessary for the agricultural user.
- The statements “Muir has no intention of developing any further homes on any part of the site at Wyche Lane”, and “the land shaded green, yellow and orange to be gifted to the parish Council” do not reassure local residents in any way whatsoever. It is not Muir's current intentions that concern residents.
- The gifted strip has no value at all in restricting development of the land behind if the proposed Amendment to include a highway width vehicular public right of way through it is accepted (not shown on the original Planning Approval).
- Residents accept that Muir did secure an option on the whole of the field as stated but it is not now the case that Muir neither own nor have any control over the land to the rear of the intended gifted strip. It is the intentions of these other landowners and / or option holders that concern residents
- Muir could sell on the option to purchase the land to another developer. Are the new option holders then going to be bound by these promises?
- If Muir is still seeking to withdraw from this option entirely why can they not enter into an option agreement with the parish Council for the whole of the field to be gifted rather than just the shaded area? Alternatively why can Muir not retain the existing agricultural entrance to the field off Wyche Lane with a farm track along the boundary which appears feasible if space is not taken up with a right of way through the middle of the development?
- The variation seeks to change the width of the track into the field from 3m to 4.5m, to comply with the provisions of Section 38 of the Highways Act 1980. The Act states that there must be a 4.5m wide road with a 2m curb and path on each side for the roadway with full use. This would be an 8.5m wide road into a field. However, if the road is restricted use, only one of the curbs or paths can be reduced to 1m, which would be a total width of 7.5m road into a field .The retained land was to be a ransomed strip and donated to the Parish Council as a public relations exercise. This retained land with a 3m access track through it would provide total confidence to the people of Bunbury that the field could not be developed. The retained land with a 4.5m (or is it 8.5m) roadway running through it was useless for the purpose that it was offered in the first place i.e. a ransom strip.

### **Highway Safety / Infrastructure**

- Overdevelopment of site leading to dangerous levels of traffic on narrow country lane with no pavement
- Over the years Wyche Lane has been a quiet and peaceful land to live on. However, the land is very dangerous for a person with limited mobility with too many cars and lorries moving along it even without the new development opposite. When the new buildings are built and all those new people have cars it will make things much worse. Elderly people will be scared to leave their gardens



- If the changes applied for lead to further development behind the new buildings and all those people have cars it will make Wyche Lane a death trap for people with limited mobility. They would be able to walk to the shop. Will the Council provide them with a free taxi.
- The traffic situation between the site of P07/0867 and the village is already not good with a further 20 vehicles from this development using the road possibly twice or three times daily it will be bad and if the variation is allowed to pass and further houses are built then it will be intolerable bearing in mind that the road is single track in places with no footpath for pedestrians.
- The infrastructure of the village is not capable of either handling the further traffic or indeed providing access to such a development. The primary school would not be able to handle the additional influx of children that a major development would create.
- Bunbury has already been overdeveloped and yet more houses will spoil this once pretty village still further.
- Another concern for people living in Wyche Road is that this small lane will be used as a short cut by those wishing to join the A51 at Alraham. Wyche Road is very narrow and has no pavements. There is concern for small children living on the lane
- Bunbury School is full to capacity. Muir Group should be building extra classrooms to accommodate more pupils

### **Neighbour Amenity**

- The new houses should be at the same level as the existing bungalows and not where they can look over the hedge
- Comments on Muir Letter of 9<sup>th</sup> September 2011
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## **7. APPLICANT'S SUPPORTING INFORMATION:**

- Covering letter

## **8. OFFICER APPRAISAL**

### **Main Issues**

The previous approval established the acceptability in principle of 10 affordable dwellings on this site. The scheme which was granted planning permission can still be implemented and therefore this proposal does not represent an opportunity to revisit the principle of residential development on this site.

The main issues in the consideration of this application, therefore, are, firstly, the appropriateness of condition 17 which restricts use of the access to land at the rear to maintenance vehicles only, and, secondly, the acceptability in terms of highway safety, amenity and visual impact, of the proposed amendment to the approved plans to allow the said access to be repositioned.

### **Appropriateness of Condition 17**

## **Background**

In 2004 the applicants applied for planning permission for 10 affordable houses on the site (application P04/0545 refers.) The proposed site layout (see drawing 0340-11 in key plans bundle) involved frontage development, with a 5.5m wide access road to adaptable standards, running at 90 degrees to Wyche Lane, from the access point midway along the frontage, to the back of the site. An access road / parking area, stretched across the majority of the width of the rear boundary. This was because, at the time, a second phase of development was proposed on land to the south of the application site. However, the application was refused on the grounds that:

*The proposals would seriously diminish the physical gap which exists between the village centre and Higher Bunbury, detrimental to the distinctive character of the village, by reason of their scale, layout and design. The proposals would therefore result in demonstrable harm to the character of the settlement, in conflict with Policies BE.2 (Design Standards) and RES.8 (Affordable Housing in Rural Areas) of the Adopted Crewe and Nantwich Local Plan, and Policy RES.9 ((Affordable Housing in Rural Areas Outside Settlement Boundaries) of the Replacement Local Plan 2011 (Second Deposit Draft) as amended by the Proposed Modifications document."*

The applicant's Appealed against the decision and the Appeal was subsequently dismissed on 6<sup>th</sup> June 2006. The Inspector commented that:

*"It is also material, in my view that the original intention was to develop a second phase of eight dwellings on part of the field to the rear of the appeal site. At the Inquiry, it was confirmed that the Appellant no longer intends to pursue this second phase. Even so, the layout of the scheme to the rear of the houses, in terms of the access road and parking areas still reflects that earlier intention with the result that the access to the rear field has been designed to a higher standard than would normally be associated with a simple field access. This is a sensitive location in a village which has a history of strong development interest. Also, it is reasonable to expect that, in time, the proposed houses would come to be accepted as part of the built up area. The fact that the layout of this scheme would be compatible with further residential development is therefore of great concern to me since it would make the land to the rear more attractive to potential developers. At the same time, since the issues associated with achieving an acceptable access from Wyche Lane would have been overcome, such pressure for development would be more difficult to resist."*

The Inspector concluded that the evidence shows that the need for affordable housing in Bunbury is significant, is long standing and has provided exceeding difficult to address. On the other hand, development in the location would be harmful to Wyche Lane and would erode the gap between Higher and Lower Bunbury, threatening this important characteristic of the settlement. However any other rural exception site around Bunbury would likely to raise similar difficult matters because, by definition, they would be outside the settlement boundary. In principle, therefore, she considered that the need for affordable housing should prevail in this instance.

However she continued to have strong reservations as to the layout of the rear access road and parking area. These aspects of the scheme would reflect the original intention to develop the land to the rear for housing. In the circumstances, she considered that they would be highly likely to expose this land to considerable developer interest, making further erosion of the gap more difficult to resist. She recognised that the Council would be under no obligation to permit such development but by the same token, she considered that since this proposal is put forward as an exception to normal planning controls, it should be designed as such. Whilst access to the field would be required, the form in which it was proposed is not essential to allow the development to proceed so that the harm associated with it would not be outweighed by the identified housing need. In conclusion, she found that, even though the level of need was so compelling as to outweigh in principle, the harm arising from development on this site, the proposal as it stood was unacceptable because of the layout of the rear access road and parking areas. On this ground alone, the appeal failed and planning permission was refused.

The applicants submitted a revised scheme, in 2007 (P07/0867 refers) which went a considerable way towards addressing the previous Inspectors concerns (see drawing no. 0340-400 in key plans bundle). It comprised 3 pairs of semi-detached dwellings fronting onto the road and a single larger detached dwelling at 90 degrees to the road. A further block of 3 mews houses is located to the rear of the site. Vehicle access is from Wyche Lane into a parking court at the centre of the site and areas of open space have been provided to the rear corners of the site. As a result rear gardens and landscaped areas adjoin the field to the rear and with the exception of a narrow access gate, for maintenance purposes, no access roads or hardstanding were adjacent to this boundary.

The land immediately to the south of the application site, which had been acquired by the applicant, and was initially intended for use as part of a phase 2 development, (see land edged blue on location plan in key plans bundle) was to be gifted to the Parish Council for community use.

Planning Officers were satisfied that this had overcome the Inspector's previous concerns as set out above. However, Crewe and Nantwich Borough Council Planning Committee Members wished to have greater reassurance over the future use of the land to the rear and at their meeting to consider the application, resolved to approve subject to an additional condition, the access to the land at the rear, shown on the site layout plan was to be used for maintenance purposes only.

When the applicants acquired the site, they also took out an option to purchase further land, beyond the land edged blue, to the south of the application site (known as "the Retained Land" and edged green on the location plan in the key plans bundle). This was originally intended to be used, along with the blue edged land, as a phase 2 development. This option has less than 2-years left to run and the applicant has made it clear that they have no intention to take-up this Option and acquire this land and no plans, be they immediate or long term, to develop any further housing at Wyche Lane over and above the planned 10 affordable houses.

However, when the applicant acquired the application site from the then owners they were insistent that the access road was built to good standard without any access restrictions. As such the Contract (TP1) stated that the applicant must provide an access road *“to the satisfaction of the Local Highways Authority or to an adoptable standard”*, and provide *“a right of way at all times for all purposes in connection with the occupation of the Retained Land”*. Planning Condition 17, which restricted the access to maintenance uses only is at odds with the *“all uses”* obligation and as such the applicants have had to seek the removal of this Condition.

### **Government Advice**

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 conditions serve a useful purpose it is necessary to examine it in the light of these tests.

### **Necessary**

In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification.

It is clear from the history of the site that Planning Committee Members imposed the condition to prevent further development on land to the rear. The question is therefore, whether, without the condition, the Council would have refused the application on the grounds that it could potentially result in further development of land to the rear.

It is a fundamental planning principle that planning permission for an otherwise acceptable development, cannot be refused on the grounds that it may be the pre-cursor to a less desirable planning application.

This question has been considered by previous Appeal Inspectors on a number of occasions. In one remarkably similar case falling within the administrative district of Kerrier Borough Council, a housing development was proposed on the edge of a village. The local planning authority were prepared to grant permission if the applicant was prepared to enter into an agreement preventing any further development of his land adjoining. This he refused to do and the development was refused. At appeal the local planning authority argued that the agreement was necessary in order to prevent a precedent being set. An Inspector reasoned that the council had accepted that development of this land was acceptable on its own. It was inequitable if planning permission were denied because of unwillingness to enter into an agreement. He could understand the Council's concern over precedent but reliance should be placed on powers it already enjoyed.

In another case from Bracknell Forest Borough Council 46 houses were proposed on hospital land within a built-up area. One of the objections was that to allow the appeal would "open the floodgates" to more housing with access to a residential road. An inspector observed that the site could be developed in isolation. It was not for him to prescribe any ceiling for future development or set any numerical restraint in terms of highway capacity etc. Any future applications would have to be evaluated on the basis of its own merits.

In Hereford City it was proposed to develop the site of another former hospital. The site was located beyond the edge of Hereford and the local authority feared that a precedent would be set for the development of further open land between the city and the appeal site. An inspector retorted that the council had sufficient powers to prevent the spread of development.

Therefore, even if condition 17 were removed, the development of the land to the rear would still require a further planning permission before any development could take place. The Council would have the opportunity to assess any such application on its own individual merits in the light of the planning policies in place at that time.

Furthermore, the imposition / retention of condition 17 cannot prevent the submission of further applications for development of the land to the rear. Any such application would also constitute a variation / removal of conditions 17 and any permission granted pursuant to the application would override the provisions of the said condition.

Consequently, the condition serves no useful purpose in preventing further development of the land to the rear and planning permission could not have been refused if that condition were not imposed. In the absence of any other special and precise justification, having regard to the provisions of Circular 11/95, it is concluded that the condition is unnecessary and should be removed.

### ***Relevant to Planning***

Given that the reason for the imposition of the condition was to ensure that the Local Planning Authority could retain control over the use of the land to the rear, the condition is considered to be relevant to planning, as it is intended to meet broader planning objectives.

***Relevant to the development to be permitted;***

According to paragraph 25, of Circular 11/95 to meet this test, the need for the condition must be created by the new development. It must not be imposed to deal with an existing problem. Given that the condition in question has been written specifically to restrict access through the new development only, it is considered to meet this objective.

***Enforceable;***

It would be easy to determine whether or not the access was being used by vehicles not associated with the maintenance of the land and therefore the condition is considered to be enforceable.

***Precise***

The condition is specific and clear in its requirements and it is therefore considered to be in accordance with the precision test.

***Reasonable in all other respects***

According to paragraph 35 of Circular 11 / 95 “*a condition may be unreasonable because it is unduly restrictive*”, for example where it would put a severe limitation on the freedom of owners to use their land for any lawful purpose. Restricting the use of the access to maintenance vehicles prevents its use in connection with agriculture which is the lawful use of the retained land. It would also prevent the Parish Council from using the access in connection with the community use of the blue edged land for any purpose other than maintenance and it is therefore considered to be unreasonable.

**Acceptability of Proposed Amendments to Approved Plans**

***Background***

As stated above Contract (TP1) also required that the applicant must provide an access road “*to the satisfaction of the Local Highways Authority or to an adoptable standard*”. The exact location of the access road was left open but the position of the access gate to the retained land was specified (point B on the location plan).

The applicant’s intention was to negotiate with the land owner an agreed access road to the back land tying-in with the existing planning permission. However the land ownership had changed and the new owner, was adamant that all conditions within the TP1 must be adhered to. The owner has threatened an injunction to stop the development until the applicants provide evidence that all of his rights were not affected.

The applicants state that they have worked closely with the Parish Council to come up with a proposal that met with their approval, allowed all the TP1 obligations to be addressed and allowed the Parish Council the maximum usage of the retained land.

The applicants have taken legal advice that the access road should be at 4.5m to ensure that there would be no possibility of the retained land seeking action against the “*all uses*” clause of the TP1. The applicants also argue that an access road of this width will also allow better access arrangements to the land being gifted to the Parish allowing for better on-going management of this amenity area.

Muir state that ideally they would have provided this access road from the existing access gate (as per the planning permission) running in a straight line to the retained land. However this proposal would need the permission of owner of the retained land to alter the position of the access gate to the retained land, (Point B) and this would not have been forthcoming. The alternative was to provide a dog legged or angled road between the two gates; this would have significantly reduced the usable space of the amenity land to be gifted to the Parish. The proposal, in Muir’s opinion, provides the optimum solution to provide good and clear access across our land, the amenity land to be gifted to the Parish and to the retained land.

The applicants state that their proposal to pave this access road relates purely down to a desire to minimise on-going maintenance costs that will have to included in the Service Charge charged to their residents. As Muir has the obligation to maintain this access road any temporary surface will increase on-going costs, which will have to be transferred to their residents, affecting the affordability of the scheme. The initial capital cost of a paved road can be capitalised and not charged to the residents. The applicant’s argue that a paved access road will also aid in the on-going management of the amenity land.

### ***Visual Impact***

It is acknowledged that, the original position of the proposed access from the development would have resulted in a winding track across the Parish Council land, given the access gate to the retained land at Point B is fixed, and the owner of the retained land is unwilling to enter into negotiation to relocate it. It is also acknowledged that this would limit the usability of the Parish Council and would have also increased the length of the track and thereby its visual impact on the character and appearance of the open countryside.

Residents have raised concern about the width of the access track. As shown on the proposed plans, this would be 4.5m and not 8.5m as some residents have suggested. The track would not involve the construction of pavements or footways as some objectors have suggested. Although at 4.5m wide the access will be wider than the average farm track. However, the straighter route will reduce its overall impact on the character and appearance of the open countryside. Furthermore, it would appear that resident’s principal concern with a track of this width is that it may give rise to further development, rather than the visual impact of the proposal. However, as has been stated above, the application cannot be refused on these grounds.

The track would be surfaced with “Toptrek”, a recycled material made from a mixture of tarmac and other waste materials ground up and screened to a particular size from 10mm down to dust. It has been used by organisations such as Natural England and The Peak District National Park Authority in a variety of sensitive and rural locations, where a paved surface is required, which has a less urban and harsh appearance than tarmac. This would help to minimise the visual impact of the track and can be secured through condition. Subject to compliance with such a condition the proposal is considered to be acceptable in visual impact terms.

### ***Amenity***

The existing access route from Wyche Lane, through the site to the land to the rear, is somewhat tortuous, involving two 90 degree turns and passing through the parking court of the development. The straighter access route will allow large agricultural and maintenance vehicles to pass more easily through the development, with less potential for conflict with parked cars or disturbance to the amenity of the prospective residents.

In terms of residential amenity of neighbouring dwellings, the track will be sited further from the existing dwellings fronting Wyche Lane to the east of the site, than as approved. This will result in an improvement in their residential amenity. It will be located closer to the property known as The Grange, to the west of the site, but a separation distance of over 60m will be maintained, and therefore no adverse effect on the living conditions of its occupants is anticipated.

### ***Highway Safety***

Any proposal for a change of use of the land to the rear would require a further planning application and would need to be considered on its own merits at the time. This would include a consideration of traffic generation. The proposed change to the access arrangements to the rear of the site, will not in itself, increase traffic generation to or from the site. The straighter access through the site will also generate a minor improvement in highway safety within the site. Therefore, whilst resident's comments about traffic and highway safety on Wyche Lane are noted, it is not considered that a refusal on highway safety grounds could be sustained, particularly in the absence of any objection from the Highways Department.

The proposal to relocate the access to the land to the rear is therefore considered to be acceptable and in accordance with the relevant local plan policies.

## **9. CONCLUSIONS**

Full planning permission was granted in March 2009 for an affordable housing development of ten houses along the frontage of the former football field, situated between the village centre and the area of Higher Bunbury to the east. The scheme comprises 3 pairs of semi-detached dwellings fronting onto the road and a single larger detached dwelling at 90 degrees to the road. A further block of 3 mews houses is located to the rear of the site. A parking court has been provided in the centre of the site, with areas of open space to the rear corners. Vehicle access to the parking court is from



a single T junction midway along the site frontage. The permission was subject to a number of conditions

This application seeks consent for a variation of condition 2 relating to adherence to approved plans to allow position of access to land at the rear to be amended and the removal of condition 17 which restricts use of the said access to maintenance vehicles only.

Planning Officers have carefully considered condition 17, and are of the opinion that it does not meet the Circular 11/95 Tests. Firstly, it is unreasonable as it restricts access for the owner of the land behind. It is also unreasonable because it would restrict use of the access for other perfectly legitimate activities e.g. agriculture. Secondly, it is unnecessary, as it was added to prevent development of the land at the rear for further housing. However, such development would, require planning permission in its own right and would need to be judged on its merits at the time. Furthermore, even if the condition were retained, an application for further housing could still be made and approved, it would merely constitute removal of the condition as well as permission for housing, as part of the same application / permission. It is therefore recommended that Members raise no objection to the removal of this condition.

With regard to the variation of condition 2, the relocation of the access to the land at the rear is considered to be appropriate and reasonable, as it will make it easier for agricultural vehicles to pass through the development. This will be of benefit to residents of the new properties, in terms of amenity, and the convenience of the Parish Council and the owner of the remaining land to the rear in terms of convenience and ease of access to their land. Although at 4.5m wide the access will be wider than the average farm track. However, the straighter route will reduce its overall impact on the character and appearance of the open countryside. Furthermore, it is considered that the proposed "Top-trek" surfacing will be help to ensure that it remains agricultural in appearance and in keeping with the rural character of the surrounding area. The proposal will have no greater impact on residential amenity or highway safety than the approved scheme.

It is therefore recommended that the Committee endorse the view that the application would have been approved subject to a Deed of Variation to the existing Section 106 Agreement as set out below, and instruct the Head of Development to make representations to the Planning Inspectorate accordingly in respect of the forthcoming Appeal against no determination.

## **10. RECOMMENDATIONS**

**That the Committee endorse the view that the application would have been APPROVED subject to the following:**

- **A Deed of Variation to the existing Section 106 Agreement to reference the new permission**
- **The following conditions:**
  - 1. Standard Time Limit**
  - 2. Amended plans**

- 3. Materials**
- 4. Remove permitted development rights – extensions and ancillary buildings**
- 5. Access to be constructed to sub-base level prior to first occupation**
- 6. Landscaping scheme to be submitted**
- 7. Implementation / maintenance of landscaping**
- 8. Boundary treatment to be submitted and implemented**
- 9. Full drainage details to be submitted and implemented.**
- 10. Obscure glass to first floor window in east gable of unit 1.**
- 11. Scheme of tree protection to be submitted and agreed**
- 12. No lighting of fires / storage of materials etc. in protected area**
- 13. Specification for paths / drives etc. under trees to be submitted and agreed**
- 14. Implementation of wildlife mitigation measures.**
- 15. Hedgerow removal to take place outside bird nesting season**
- 16. Details of finished floor levels to be submitted and agreed**
- 17. Track to be surfaced using “Top-trek” or a similar material – details to be submitted and agreed.**

