

Forest Heath District Council

**DEVELOPMENT
CONTROL
COMMITTEE**

27 AUGUST 2014

DEV14/128

Report of the Head of Planning and Regulatory Services

PLANNING APPLICATION F/2013/0257/HYB – (i) LAND EAST OF RED LODGE; (ii) LAND SOUTH OF ST CHRISTOPHER’S PRIMARY SCHOOL, RED LODGE (PART OF PHASE 4A OF KINGS WARREN); (iii) LAND SOUTH OF THE VILLAGE CENTRE, RED LODGE (PART OF PHASE 4A OF KINGS WARREN); (iv) LAND SOUTH EAST OF HERRINGSWELL

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT OFFICER

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Committee Report

Parishes: Red Lodge and Herringswell **Committee Date:** 27th August 2014.

App. No: F/2013/0257/HYB **Date Registered:** 20th June 2013

Expiry Date: 18th September 2013

Proposal: Hybrid application:

(i) Outline application - demolition of Hundred Acre Farm and the construction of up to 268 dwellings, new public open space, drainage ditches, associated access, landscaping, infrastructure and ancillary works on land East of Red Lodge and the construction of up to 225 sq., metres of Class A1 retail floorspace on land forming part of Phase 4a Kings Warren.

(ii) Full application - (Phase A): construction of 106 dwellings (including the relocation of 3 committed dwellings from Phase 4a), new public open spaces, associated access, landscaping, infrastructure and ancillary works on land East of Red Lodge. Restoration of open Breck grassland on land South East of Herringswell, as amended.

Sites:

- i) Land east of Red Lodge,
- ii) Land south of St Christopher's Primary School, Red Lodge (part of Phase 4a of Kings Warren);
- iii) Land south of the village centre, Red Lodge (part of Phase 4a of Kings Warren);
- iv) Land south east of Herringswell.

Applicant: Crest Nicholson (Eastern) Ltd

Section A – Background and Summary:

A1. This application was deferred from consideration at the Development Control Committee meeting on 6th August 2014. Members resolved they were 'minded to refuse' planning permission contrary to the officer

recommendation of approval. Members were concerned that the proposal would result in;

- i) Unsatisfactory vehicular access to the site
- ii) Adverse short to medium term impact upon primary education provision in the village (specifically St Christophers School).
- iii) Adverse impact upon the local sewerage infrastructure.

- A.2 The previous Officer report for the August 2014 meeting of the Development Control Committee is included as Working Paper 1 to this report. Members are directed to this paper in relation to site description, details of development, details of consultation responses received etc.
- A3. This report sets out updates from the written papers presented to the meeting of Development Committee on 6th August and includes a risk assessment of the three potential reasons for refusal.
- A4. The officer recommendation, which is set out at the end of this report remains that planning permission should be granted.

Section B – General Information:

Application Details:

- B1. Please refer to Working Paper 1, paragraphs 1 to 11 for a description of the application proposals.

Amendments:

- B2. Please refer to Working Paper 1, paragraphs 12 to 17 for details of amendments made to the planning application. Since the report was prepared for the 6th August meeting, the applicants have supplied two further reports relating to sewerage infrastructure matters. The first was circulated to Members in advance of the Committee meeting on 6th August and is attached as Working Paper 2.
- B3. The second item is an e-mail received by officers following the 6th August meeting. Members have not been party to this information. The e-mail provides further technical information about the sewerage infrastructure that would serve the development proposals. More specifically, the information has been provided in response to a query made by an unnamed resident of Herringswell seeking clarification of where the pressure release points are in the sealed sewerage system that passes by Herringswell and other villages on to the Treatment Works at Tuddenham. The additional information, which should be read in conjunction with the report attached as Working Paper 2, is follows;
- Each pumping station (Warren Road, Kings Warren and Herringswell) has a wet well (a large, sealed chamber) ahead of the pumps, which receives pumped sewage from either a rising main of another pumping station (e.g. the Kings Warren pumping station rising main discharging to Herringswell pumping station) or a local gravity sewerage network.

Although the well is sealed it is at atmospheric pressure by virtue of ventilation equipment, so in very simple terms, the pumping station wet well could be termed as a 'pressure relief point' in the system.

- However the term 'pressure relief' isn't relevant in series of networked pumping stations and this should not be construed to mean if there is a problem with any pumping station the well is the 'pressure relief point', i.e. the point at which sewage will escape, flooding properties, gardens and roads etc. Wet wells are designed and built with considerable spare capacity and, as mentioned briefly in my report, the Herringswell pumping station will 'communicate' with the Kings Warren pumping station if there is a problem so the Kings Warren pumping station ceases pumping and stores incoming sewage in its wet well.

Site Details:

- B4. Please refer to Working Paper 1, paragraphs 18 to 23 for a description of the application site areas.

Application Supporting Material:

- B5. Please refer to Working Paper 1, paragraphs 24 to 26 for further details of the material submitted with the planning application.

Relevant Planning History:

- B6. Please refer to Working Paper 1, paragraphs 27 to 30 for details of relevant planning history.

Consultations:

- B7. Please refer to Working Paper 1, paragraphs 31 to 71 for details of consultation responses received. Any further consultation responses received will be reported verbally to the meeting.

Representations:

- B8. Please refer to Working Paper 1, paragraphs 72 to 90 for details of representations received. Members should also refer to the additional representations received after the committee report to the 6th August meeting was prepared. These are attached as an appendices to this report and were received from the Governing body of St Christophers School (circulated to Members before the 6th August meeting) and Councillor Hirst (comments received following the meeting on 6th August). Any further representations received will be reported verbally to the meeting.

Policies:

- B9. Please refer to Working Paper 1, paragraphs 91 to 108 for details of relevant policies.

Officer Comment:

B10. Please refer to Working Paper 1, 'Background' section (in its entirety) and paragraphs 109 to 357 for a comprehensive officer assessment of the application proposals. The officer assessment remains unchanged following the Development Control meeting on 6th August.

Section C - Risk Assessment

- C1. The main purpose of this report is to inform Members of the risks associated with the 'of mind' resolution to refuse planning permission for these development proposals, given that a refusal of planning permission would be contrary to officer recommendation.
- C2. As set out in the Background section of this report, Members deferred their consideration of this planning application from the 6th August meeting of Development Committee. Members are 'of mind' to refuse planning permission on grounds of i) impact upon sewerage infrastructure, ii) impact upon primary education and iii) unsatisfactory vehicular access.
- C3. The remainder of this report discusses the potential reasons for refusal cited by Members before discussing the likely implications of a refusal of planning permission on these grounds.

Section D - Potential Reason for Refusal 1; Sewerage Infrastructure:

D1. Members should also refer to attached Working Paper 1, paragraphs 249 to 265, attached Working Paper 2 and paragraph 3 above.

D2. *What does the evidence say?* –

- Evidence submitted with the planning application demonstrates the local sewerage system has capacity to accommodate the additional flows generated by the development proposals. Indeed the evidence suggests that increased use of the system (increased flow rates) would assist with preventing adverse odours from sewerage standing in pipes.
- Evidence also confirms flows from the development would feed into a sealed sewerage system running from Red Lodge to the treatment works at Tuddenham. The sealed system does not impact upon the more local sewerage systems of the villages on route to the Treatment Works at Tuddenham (including the gravity system at Herringswell).
- Anglian Water Services Ltd, custodians of the sewerage infrastructure and Statutory Consultee in relation to foul drainage matters, has not objected to the proposals and has confirmed their infrastructure would be able to accommodate the increased flows from this development.
- An assessment of the local sewerage infrastructure commissioned by the Council and prepared independently by a firm of expert drainage consultants (as part of the Single Issue Review of the Core Strategy) confirms the sewerage system has sufficient capacity to accommodate additional flows generated by the development proposals.

- Whilst the Council has received objections to the planning application from various local residents and groups (including Parish Council's) on sewerage infrastructure grounds, no tangible evidence has been provided to demonstrate these development proposals would have adverse impacts upon the sewerage infrastructure or cause odour or flooding issues at Red Lodge or along its route to the Tuddenham treatment works.

D3. ***Have there been any further developments or changes in circumstances which Members need to consider? –***

- Yes, further technical clarification has been received from the applicant's consultants and this is reported at paragraph 3 above.

D4. ***What is the officer view? –***

- *Officers have not identified sewerage as a 'dis-benefit' of the development proposals in the planning balance (please refer to paragraphs 343 to 357 of Working Paper 1).*
- *There is no evidence to suggest that development proposals would cause new or exacerbate existing issues in the sewerage network.*
- *Occupation of the development proposals could remove/reduce some odour issues experienced locally.*
- The evidence (including evidence gained independently) is clear that sewerage infrastructure is not a constraint on this development.
- Officers consider a refusal of planning permission on sewerage infrastructure grounds could not be sustained at appeal and would not be able to produce evidence to substantiate this reason for refusal.

Section E - Potential Reason for Refusal 2 - Primary Education:

E1. Members should also refer to attached Working Paper 1, Background Section and paragraphs 312 to 318.

E2. ***What does the evidence say? –***

- St Christophers Primary School is the catchment primary school for the proposed development. There are no other primary schools within a convenient distance of the site. The existing 315 pupil place school is being extended with new classrooms to provide places for 420 pupils.
- Records of births and known developments with planning permission (currently under construction and/or not yet started) has led to forecasts that the primary school will exceed its 420 pupil place capacity by the start of the 2016 school year (448 places would be required).
- Even if no further planning permissions are granted for housing development in the meantime, demand for school places is likely to exceed the 420 place capacity of St Christophers by some 84 pupils by the beginning of the school year September 2017 (a total of 504 pupils of primary school age would require a primary school place).

- Evidence is clear that a new primary school will be need to be built to supplement St Christophers irrespective of any further growth in the village (i.e. development that is yet to receive planning permission, including any housing growth planned for in future Development Plan documents and that proposed by this planning application).
- Suffolk County Council, as the Education Authority and statutory provider of school places, is seeking to mitigate this impact by building a new school facility in the village to open in September 2017. In the mean time, a temporary solution will need to be found to accommodate the 84 pupils beyond the capacity of the School, irrespective of the outcome of this planning application.
- The application proposals (and any other future growth) does not alter the basic requirement for a new primary school to be provided in the catchment, but will ultimately influence how large a new facility needs to be.
- If planning permission were to be granted for the application proposals and development commenced on site as soon as practicably possible, it is unlikely that new pupils (which are not already accounted for in the forecasts) would emerge from the development proposals until September 2016 (at the earliest). Following a year of new house sales and occupations from September 2016 to September 2017, it is forecast that 17 new primary school pupils would emerge from the development. These pupils would emerge gradually through the school year and would add to the number of primary school pupils that would need to be educated via a temporary accommodation option (lifting this number from 84 pupils already in the system to 101 pupils with this development).
- The site of St Christophers primary school is constrained and it would be difficult to provide temporary classroom accommodation within its grounds without significantly compromising the use and function of the school playing fields.
- The applicants currently own land next to St Christophers Primary School and have the benefit of planning permission to build housing on this land. The developer has offered to part of their site (0.81 hectares) to the school on a temporary basis to allow the school grounds to expand. This would make it physically possible to install temporary classrooms within the school site.
- The amount of land being offered in this respect is in excess that actually required to cater for the 17 pupils expected to emerge from the development proposals in the next three years. The land would also be secured in advance of pupils emerging from the development proposals thus enabling temporary classrooms to be provided at St Christophers to accommodate the pupils emerging from elsewhere in the catchment. Officers understand this means that, with the additional land, all of the temporary classroom accommodation needed could be provided at St Christophers site and children of primary school age would not be forced to leave the village for their schooling.

E3. Have there been any further developments or changes in circumstances which Members need to consider? –

- There have been no changes in circumstances or further developments since the Development Committee meeting on 6th August.

E4. What is the officer view? –

- Officers acknowledge that the demand for 17 additional pupils from this development on what will be a full St Christopher's school is a dis-benefit of these proposals.
- The offer of provision of land from the developer on a temporary basis would enable the school site to be expanded temporarily and, consequently, temporary classrooms to be provided without compromising the external play space available to the school. This is considered a benefit of the application proposals and would allow all primary school pupils in the catchment to be educated at St Christophers until a new school opens.
- The benefits associated with providing more land than is required to mitigate the impact of the proposed development and securing access to the land before additional pupils begin to emerge from the new development are considered to outweigh the dis-benefits of adding 17 further pupils onto the school roll. Officers consider the development would have a positive impact upon primary education at Red Lodge in the short and long term.
- Evidence is clear that the impact of the development proposals will be adequately mitigated such that the impact of development upon primary school provision at Red Lodge is not a constraint on this development.
- Officers consider a refusal of planning permission on primary education grounds could not be sustained at appeal and would not be able to produce evidence to substantiate this reason for refusal.

Section F - Potential Reason for Refusal 3 – Vehicular Access:

F1. Members should also refer to attached Working Paper 1, 'Background section and paragraphs 194 to 211

F2. *What does the evidence say?* –

- The NPPF states that that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- Principal vehicular access would be provided to the development via Larch Way. A secondary vehicular access would be provided via Thistle Drive, restricted to use by emergency vehicles only (but including pedestrians & cyclists).
- Larch Way has been designed and constructed to function as a principal access to the application site and is suitable to serve the development proposals. The Transport Assessment submitted with the planning application has demonstrated the development would be acceptable in

highway terms. There is no evidence to hand to dispute these conclusions.

- Access arrangements were agreed with the Local Highway Authority at Suffolk County Council which, following various amendments to the internal layout of the Phase 1 proposals, has raised no objections to the planning application.
- Off-street car parking provision within the Phase 1 detailed proposals (106 dwellings) are adequate at an average of 2.2 off-street spaces per dwelling. This level of parking accords with emerging Parking Standards (which allow for greater levels of parking on residential schemes than existing standards).
- The Local Highway Authority has confirmed it would resolve persistent inappropriate on-street parking in Larch Way retrospectively should access into the development be compromised.
- Provision of a second principal vehicular access to serve the development proposals is not necessary and, if provided, would reduce the amount of public open space secured from the development and introduce a conflict between the use and operation of the public open space and traffic using any second access.

F3. *Have there been any further developments or changes in circumstances which Members need to consider? –*

- There have been no changes in circumstances or further developments since the Development Committee meeting on 6th August.

F4. *What is the officer view? –*

- Officers do not consider the development proposals would, in isolation or in combination, lead to severe transport impacts. On the contrary, officers consider the development proposals would have suitable and safe vehicular access. This view is shared by the Transport Assessment accompanying the planning application and the Local Highway Authority which has scrutinised the planning application.
- Officers consider a refusal of planning permission on vehicular access grounds could not be sustained at appeal and would not be able to produce evidence to substantiate this reason for refusal.

Section G - Implications of a refusal of planning permission:

- G1. It is likely that should Members subsequently resolve to refuse planning permission the applicants will appeal that decision.
- G2. Officers consider that it would be extremely difficult to defend a refusal of planning permission on the three grounds discussed above given the weight of evidence demonstrating the development proposals would not be harmful in these respects and the absence of convincing evidence to the contrary.
- G3. A refusal of planning permission for any development on indefensible grounds is likely to lead to planning permission being granted at appeal.

This outcome could have significant implications for the Council.

- G4. Firstly, the Council's reputation would be adversely affected by its inability to properly defend its reasons for refusal at appeal.
- G5. Secondly, if a Local Planning Authority experiences more than 20% of its major development appeals allowed in any two-year period, it is deemed a failing authority and would face Government sanction. This would include introduction of a right for applicants proposing major development to submit planning applications directly to the Planning Inspectorate, effectively taking the decision making power out of the hands of the Local Planning Authority.
- G6. Finally, the applicants would have the right to recover their appeal costs from the Council should the Inspector appointed to consider the appeal conclude it has acted unreasonably. Advice about what can constitute unreasonable behaviour by a Local Authority at appeal is set out in the National Planning Practice Guidance (paragraph 49). Three of the numerous examples cited in the advice are as follows:

What type of behaviour may give rise to a substantive award against a local planning authority?

Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- failure to produce evidence to substantiate each reason for refusal on appeal.*
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*

- G7. In the absence of evidence to substantiate its reasons for refusal and the presumption in favour of sustainable development set out in the National Planning Policy Framework, officers consider it would be difficult to defend a potential claim for the award of costs at appeal. An award of costs against the Council is likely to have significant financial implications and when combined with its own costs is estimated to exceed £100,000.

Section H – Conclusions:

- H1. Members should also have regard to paragraphs 343 to 357 of the attached Working Paper 1 where officer conclusions and assessment of the 'planning balance' of issues are set out.
- H2. Officers are concerned that the Committee resolution that Members are 'of mind' to refuse planning permission for this development on grounds of access, education and sewerage are ill-founded and not grounded in evidence. The evidence available demonstrates the three matters of

concern to Members would not be adversely impacted by the development.

- H3. Officers consider that should planning permission be refused on one or a combination of the three grounds for refusal resolved at the last Development Control Committee meeting, the Council would find it difficult to defend the decision at a subsequent appeal and is likely to face a claim for award of cost against it (on top of having to fund its own defence).
- H4. In considering the merits of this planning application, Members are reminded of the requirements set out in the National Planning Policy Framework for the decision maker to balance the benefits of the proposed development against its dis-benefits and only where those dis-benefits would significantly and demonstrably out-weigh the benefits should planning permission be refused (reference paragraph 14 of the National Planning Policy Framework).
- H5. In this case, the weight of evidence is clear that the dis-benefits of development are significantly outweighed by the benefits of development proceeding and clearly points to the grant of planning permission in this case.

Section I – Recommendation:

- I1. That, subject to the Secretary of State resolving not to recover the planning application for his own determination, outline planning permission is granted subject to:

The completion of a S106 agreement to secure:

- Affordable housing: 14% for Phase A with a tenure mix of 70% affordable rent and 30% shared ownership.
- Education contribution: £1,508,416 (towards land and build costs for a new primary school)
- Healthcare contribution: £130,000
- Traffic calming contribution: £45,000
- Early Years Education contribution: £225,367
- Libraries contribution: £80,136.
- Open space contribution: circa £437,107 (dependant upon the housing mix of the later phases and development viability of the later phases).
- Phasing (including delivery and management of the circular footpath and delivery village centre extension and land required temporarily for St Christopher's Primary School)
- Travel plan implementation and monitoring.
- Delivery and management of the Herringswell Mitigation site and the 2

(no.) replacement planting sites.

- Provision of 0.8ha of land adjacent to St Christopher's Primary School for a temporary period for education use (precise term to be agreed with the applicant and Local Education Authority).
- Review and re-appraisal of the scheme proposals for viability (Phase A to be re-appraised if not implemented within a reasonable period, later phases (currently at outline stage) to be re-appraised at reserved matters submission stage (and re-appraised should a policy compliant scheme not be secured from later phases and the later phase/s are not implemented within a reasonable period)
- Right of passage for construction vehicles over third party land (the route as generally illustrated on applicants drawing number CN059-PH1-13 Rev00)

I2. And subject to conditions, including:

- Outline time limit (later phases).
- 3-year commencement (Phase A)
- Reserved Matters to be agreed (appearance, scale, layout [including internal site layout of roads and ways] and landscaping)
- Compliance with approved plans.
- As recommended by the Local Highway Authority (not including S106 contributions)
- Archaeology – investigation and post investigation assessment.
- Contamination – further investigative work.
- Drainage details, including foul water and SUDS.
- Construction Management Plan.
- Details of boundary treatments.
- Use of materials as proposed (phase A).
- Details of Materials with subsequent Reserved Matters submissions (later phases)
- Detailed scheme of hard and soft landscaping, including the open spaces.
- Details of informal play equipment.
- Tree protection.
- Landscaping management plan.
- Recommendations of Ecological Assessment to be implemented.
- Provision of fire hydrants
- Waste minimisation and recycling strategy (including for demolition of Hundred Acre Way)
- Quality assurance plan for each development phase, with particular focus on energy and water efficiency.
- Bin and cycle storage strategy
- Noise mitigation (later phases – dwellings adjacent to sports pitches)
- Ecological and Landscape Management Plan.
- Any additional conditions considered necessary by the Head of Planning and Regulatory Services.

I3. That, in the event of the Head of Planning and Regulatory Planning Services

recommending alternative (reduced) Heads of Terms from those set out at paragraph 37 above, the planning application be returned to Committee for further consideration.

- I4. That in the event the applicant declines to enter into a planning obligation in full or in part to secure the Heads of Terms set out at paragraph 37 above for reasons considered unreasonable by the Head of Planning and Regulatory Services, planning permission be refused for the following reasons (as may be appropriate):
- i) Unsustainable form of development not mitigating its impact upon, education provision, open space, sport and recreation and libraries (contrary to the Framework and Core Strategy policy CS13 and saved Local Plan policy 10.3).
 - ii) Non-compliance with affordable housing policy (contrary to Core Strategy policy CS9 and supporting SPD document).
 - iii) Adverse impact upon the SPA and/or Stone Curlews nesting attempts outside the SPA.

Documents:

Application documents

All planning application documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<http://planning.stedmundsbury.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=ZZZZVSH HXB036>

Alternatively, hard copies are also available to view at Planning and Regulatory Services, West Suffolk House, Western Way, Bury St. Edmunds, Suffolk, IP33 3YU

Other background documents

The following documents are attached to this report as background documents;

- i) Representations received from St Christophers Primary School Governors
- ii) Comments received from Councillor Hirst following the Development Control Committee meeting on 6th August.
- iii) Committee Report from 6th August meeting of Development Control Committee (Working Paper 1)
- iv) EIA Screening Opinion (appendix to 6th August Committee Report)
- v) Secretary of State Screening Direction (appendix to 6th August Committee Report)
- vi) Habitats Regulations screening (appendix to 6th August Committee Report)
- vii) Independent Interim Sewerage Report (Technical Memorandum) (appendix to 6th August Committee Report)
- viii) Sewerage Infrastructure Briefing (WERM, August 2014) (Working Paper 2)