

Forest Heath District Council

**DEVELOPMENT
CONTROL
COMMITTEE**

2 DECEMBER 2015

DEV/FH/15/050

Report of the Head of Planning and Growth

**PLANNING APPLICATION F/2013/0257/HYB – LAND EAST OF RED LODGE;
LAND ADJACENT VILLAGE CENTRE, RED LODGE; LAND ADJACENT ST.
CHRISTOPHERS PRIMARY SCHOOL, RED LODGE; AND LAND AT
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

Case Officer: Gareth Durrant
Email: gareth.durrant@westsuffolk.gov.uk
Telephone: 01284 757345

Committee Report

Date 20th June 2013 **Expiry Date:** 18th September 2013
Registered:

Case Officer: Gareth Durrant **Recommendation:** Grant Planning Permission

Parishes: Herringswell and Red Lodge **Ward:** Red Lodge

Proposal: (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

Background:

This application has been considered previously by this Committee on three occasions culminating in a risk assessment and resolution to grant planning permission at the meeting on 27 August 2014.

The planning application is returned to Committee to enable Members to consider material changes in circumstances which have occurred since they reached their decision last year. These are:

i) Enactment of CIL Regulation 123 which has led to off-site public open space contributions being dropped from the S106 Agreement, and

ii) The adoption of the Council of the Joint Development Management Policies document in February 2015.

iii) Adoption of new parking guidance by Suffolk County Council in November 2014, replacing the 2002 Suffolk Advisory Parking Standards.

The most recent full Officer report to the Development Control Committee (6 August 2014, Report No DEV14/123) is included with these reports as Working Paper 1. This report was also a Working Paper supporting the risk assessment report to the subsequent Committee meeting on 27 August 2014. A copy of the minute of the 27 August 2014 meeting is attached as Working Paper 2.

Proposal:

1. The development proposed by this application is described at Paragraphs 1-11 of the report to the 6 August 2014 meeting of Development Control Committee (attached as Working Paper 1).

Application Supporting Material:

2. The material supporting the planning application (and amendments received up to the date of the Committee) are discussed at Paragraphs 12-17 and 24-26 of the report to the 6 August 2014 meeting of Development Control Committee (attached as Working Paper 1).

Site Details:

3. The x4 site which together comprise the application site are described at Paragraphs 18-23 of the report to the 6 August 2014 meeting of Development Control Committee (attached as Working Paper 1).

Planning History:

4. Relevant planning history is set out at Paragraphs 27-30 of the report to the 6 August 2014 meeting of Development Control Committee (attached as Working Paper 1).

Consultations:

5. Consultation responses received are summarised at Paragraphs 31-71 of the report to the 6 August 2014 meeting of Development Control Committee (attached as Working Paper 1).

Representations:

6. Representations received are summarised at Paragraphs 72-90 of the report to the 6 August 2014 meeting of Development Control Committee (attached as Working Paper 1).

Policy:

7. Relevant Development Plan policies were listed at Paragraphs 91-93 of the report to the 6 August 2014 meeting of Development Control Committee (attached as Working Paper 1).
8. The Joint Development Management Policies Document has been adopted by the Council (February 2015) since Members resolved to grant conditional planning permission for the proposed development. Relevant policies are listed below:
 - DM1 – Presumption in Favour of Sustainable Development
 - DM2 – Development Principles and Local Distinctiveness
 - DM6 – Flooding and Sustainable Drainage
 - DM7 – Sustainable Design and Construction
 - DM10 – Impact of Development on Sites of Biodiversity and Geodiversity Importance.
 - DM11 – Protected Species
 - DM12 – Mitigation, Enhancement, Management and Monitoring of Biodiversity.
 - DM13 – Landscape Features
 - DM14 – Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards.
 - DM20 – Archaeology
 - DM22 – Residential Design.
 - DM42 – Open Space, Sport and Recreation Facilities
 - DM44 – Rights of Way
 - DM45 – Transport Assessments and Travel Plans
 - DM46 – Parking Standards

Other Planning Policy:

9. Other relevant planning policies were discussed at Paragraphs 94-108 of the report to the 6 August 2014 meeting of Development Control Committee (attached as Working Paper 1).
10. In the period since the August meeting, the County Council has adopted fresh Parking Standards (although these have not been adopted by FHDC as a Supplementary Planning Document).

Officer Comment:

11. Members resolved to grant planning permission for this development at their meeting on 27 August 2014, subject to conditions and completion of an Agreement under S106 of the Town and Country Planning Act. The S106 Agreement has taken longer than envisaged to complete owing to a number of factors and, as a consequence, a planning permission is yet to be issued. A full and detailed Officer assessment of the planning application was included at Paragraphs 109-357 of the report to the 6 August 2014 meeting of Development Control Committee (attached as Working Paper 1).
12. Case law has established that Planning Officers are duty bound to return planning applications to Committee for further consideration in cases where there have been material changes in circumstances since a resolution was reached. Furthermore, a change in planning law in April 2015 means the S106 Agreement cannot be lawfully completed fully in accordance with Members August 2014 resolution.
13. In this case three separate material changes in circumstances are relevant requiring further consideration by the Committee. These are; i) the enactment of Regulation 123 of the Community Infrastructure Regulations 2010, ii) the adoption by the 'West Suffolk' Local Planning Authorities of their development management policies and iii) the adoption by Suffolk County Council of fresh parking standards (replacing the 2002 Standards). This section of the report considers the implications of these material changes in circumstances.

CIL Regulation 123

14. Regulation 123 of the Community Infrastructure Regulations 2010 was enacted in April this year. This has had the effect of making it unlawful for Local Planning Authorities to have regard to planning obligations in reaching a decision on a planning application where five or more contributions have already been collected for the specific infrastructure type or project. Accordingly and as the Council has already previously collected 5 or more separate contributions to be used generically towards public open space provision, it would now be unlawful to collect a further contribution from this planning application. This is irrespective of the applicant's apparent willingness to continue offering the contribution.
15. The resolution of the August 27th 2014 meeting of the Development Control Committee included provision to secure £437,107 towards 'public open space'. This figure is broken down into two parts; i) £385,243 for maintenance of the on-site public open spaces which are to be transferred to the Council and ii) £51,864 to be used towards public open space provision/enhancement away from the site. It is the off-site contribution (£51,864) that can no longer be secured by planning obligation; the maintenance contribution is not affected by the pooling restrictions. All other contributions Members resolved to secure from the development can still lawfully form part of a S106 Agreement and would not currently fall foul of the pooling restrictions.

16. At the Committee meeting in August 2014, the resolution included provisions that should the S106 heads of terms be reduced from those included in the resolution, the planning application would be returned to Development Control Committee for further consideration. The forced removal of the off-site public open space contribution from the S106 Agreement triggers this requirement.
17. The loss of the off-site public open space contribution, although regrettable, should not in your officers' view affect the outcome of the planning application. The scheme proposed by the application provides all of the on site open space and recreation space it is required to do in accordance with relevant planning policies, and more. Accordingly, the loss of what is a relatively small and inconsequential infrastructure levy contribution does not affect the overall sustainability credentials of the project, nor the 'planning balance' (weighing the benefits against the dis-benefits of development in reaching planning decisions –paragraph 14 of the NPPF).

Joint Development Management Policies Document February 2015

18. The adoption of this document introduced a suite of new planning policies to be taken into account in reaching decisions on all planning applications. When Members last considered the planning application (and resolved to grant planning permission) in August 2014, the Joint Development Management Policies Document (JDMPD) carried little weight and Members did not place a great deal of currency on the emerging policies at that time given there were widespread and fundamental objections to the policies (and numerous modifications were proposed) ahead of formal examination.
19. Officers have assessed the application proposals against all relevant policies contained in the now adopted JDMPD and conclude that none of these significantly affect the officer assessment or recommendation. A summary of that assessment is included in the table below:

Policy	Officer comment
DM1	This re-imposes the provisions of paragraph 14 of the NPPF which has been considered previously (Paragraphs 104-106 and 119-128 of the August 2014 committee report)
DM2	A general design policy covering numerous criteria. The proposals do not offend this policy and all matters are addressed in the August 2014 committee report (officer comment section)
DM6	The planning application proposes 'SUDS' drainage, the detail of which would follow at Reserved Matters stage (Paragraphs 266-268 of the August 2014 committee report)

DM7	This policy is reflective of contemporary national planning policies and in that context is more up to date than Core Strategy Policy CS4. National planning policy states that sustainable construction measures should accord with the Building Regulations unless local evidence suggests further measures are required. Local evidence confirmed that additional measures (over Building Regulations requirements) for water efficiency is justified and is therefore a Development Plan policy requirement (DM7). The condition recommended to Committee in August 2014 which was " <i>Quality assurance plan for each development phase, with particular focus on energy and water efficiency</i> " (Paragraph 354 of the August 2014 Committee Report) needs to be amended to drop the reference to energy efficiency.
DM10	The requirements of this policy are addressed by the August 2014 committee report (paragraphs 140-173).
DM11	The requirements of this policy are addressed by the August 2014 committee report (paragraphs 140-173).
DM12	The requirements of this policy are addressed by the August 2014 committee report (paragraphs 140-173). Appropriate biodiversity mitigation and enhancement would be secured via S106 Agreement and planning conditions.
DM13	The requirements of this policy are addressed by the August 2014 committee report (paragraphs 140-193 and 286-294).
DM14	The requirements of this policy are addressed by the August 2014 committee report (paragraphs 275-280).
DM20	The requirements of this policy are addressed by the August 2014 committee report (paragraphs 140-173).
DM22	The August 2014 committee report included an in-depth discussion about the design merits of the scheme (paragraphs 220-248). The provisions of this policy do not change the analysis or conclusions reached .
DM42	The Open Space, Sport and Recreation Facilities included (and to be secured) with the development proposals accords with the provisions of this policy.
DM44	The development would not affect the existing public footpath which abuts the south boundary of the site. The scheme enhances footpath provision in the village by providing a new public route along the east site boundary.
DM45	The planning application was accompanied by a Transport Assessment. Transportation matters were discussed at paragraphs 194-211 of the August 2014 committee report.
DM46	The proposed development accords with the most recently adopted advisory parking standards and adequate car parking levels would be provided. Car parking is discussed at paragraphs 205 and 233-235 of the August 2014 Committee Report. It is also discussed under the 'Background' Heading at the front of the report (under the sub-heading, 'question 5')

Parking Standards

20. The planning application was considered against the County Council's Parking Standards, adopted in 2002. At the time the planning application was considered in August 2014, the County Council was consulting on a draft replacement of the 2002 Standards. These were subsequently adopted in November 2014. The planning application (for phase 1, the detailed part of the hybrid submission) was prepared on the basis of the emerging standards. The Local Highway Authority confirmed the development accorded with those emerging standards (please refer to commentary on policy DM46 and the August 2014 committee report references included in the table above).
21. The adopted version of the 2014 Parking Standards did not change significantly from the emerging version which was considered by Members in resolving to grant planning permission for the development. The planning application remains in accordance with contemporary Parking Standards.

Other updates

22. Members who served on the Development Control Committee last in 2014 will recall that 14% of phase A of the development was to be secured as affordable housing. This represented a reduction in provision from the policy compliant target of 30%. A reduction in the level of affordable housing from a policy compliant position was agreed on the basis the applicant had demonstrated adverse financial viability. The viability assessment was submitted to the Council in February 2014. In May 2015, officers asked the applicants to submit a fresh viability assessment on the grounds of widely reported improvements in the local housing market (where house price increases were reported as outstripping increases in build costs over a 12-month period).
23. A revised viability assessment was received by the Council in late September 2015 and is presently being assessed by an independent expert appointed by the Council. Whilst discussions and negotiations are on-going, Officers are confident that more affordable housing than the 14% previously resolved could be secured from the development in the light of the improved market conditions. The final amount of affordable housing to be secured remains subject to final agreement and the recommendation at the end of this report reflects that and refers to minimum provision of 14% affordable housing from Phase A.
24. The grant of planning permission for this development would include (in a S106 Agreement) developer contributions to be used towards the purchase of land and construction costs for a new primary school in the village. The County Council has scoped the village for a potential site and have settled on a preferred site. Given that the land is yet to be secured and negotiations are on-going with landowning parties, it is not appropriate to confirm the location of the preferred site at this time. The County Council has confirmed its target to open the new school by September 2017 remains and is achievable.

Conclusions:

25. Members are asked to note the material changes in circumstances discussed in the report which officers consider do not significantly affect the previous committee resolution to grant planning permission. The recommendation set out in the next section is changed slightly from that resolved by the Committee in August 2014 in the light of the material changes in circumstances discussed in the report.

Recommendation:

26. It is recommended that full and outline planning permission is **GRANTED** subject to:

A. The completion of a S106 agreement to secure:

- Affordable housing: 30% provision unless the Head of Planning and Growth agrees that adverse development viability has been adequately demonstrated (in which case the precise level of affordable housing secured will be determined by an agreed viability assessment with minimum 14% provision).
- Education contribution: £1,508,416 (towards land and build costs for a new primary school)
- Healthcare contribution: £130,000
- Open space maintenance commuted sum: £385,243
- 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 tree planting sites.
- Provision of land adjacent to St Christophers 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 but only if levels less than 30% (policy compliant) provision are subsequently agreed and secured (Phase A to be re-appraised if not implemented within a reasonable period, later phases (currently at outline stage) to be 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)

And

B. 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 (and including maintenance responsibilities of the new SUDS systems).
 - 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 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.
27. That, in the event of the Head of Planning and Regulatory Planning Services recommending alternative (reduced) S106 Heads of Terms from those set out at paragraph 26 above, the planning application be returned to Committee for further consideration.

28. 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 26 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 (inter alia), education provision, open space, sport and recreation (contrary to the Framework and relevant Development Plan policies).
 - ii) Non-compliance with affordable housing policy (contrary to Core Strategy policy CS9 and supporting SPD document).
 - iii) Contrary to the provisions of the Habitats Regulations (failure to secure appropriate mitigation to off-set identified/likely impacts upon the features of interest of the Special Protection Area).

Documents:

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

<https://planning.westsuffolk.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>